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to the Preparatory Committee for the
Third Law of the Sea Conference

Sub-Committee I
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Mr. Chairman,

In speaking for the first time in this sub-committee I am particularly grateful for the tradition which allows us to begin by expressing our congratulations and best wishes to the chairman. In the brief time during which this sub-committee has been in existence, you have already demonstrated the will and the ability to guide us to a prompt and effective discharge of our mandate. I trust, Mr. Chairman, that we will prove ourselves worthy of your leadership and as equal to our task as you are to yours.

In keeping with the mandate of this sub-committee, my remarks will be addressed to two main questions: the establishment of the international seabed regime and the setting up of the necessary machinery to make this regime an effective, equitable and successful operation. I shall not at this stage enter into a detailed discussion of the related problem of limits, since on the one hand a substantive solution of this question is directly connected with the mandate of sub-committee II and, on the other hand, it is entirely possible in our view to discuss certain broad principles and general elements which will have to be incorporated into any regime and any machinery no matter what the ultimate decision on limits may be.

On this delicate question of limits, I do, however, wish to remind the sub-committee of the three-part suggestion which the Canadian Delegation made last March concerning the inter-relationship between the question of limits and the international regime and machinery. It will be recalled that

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we suggested then that every coastal state should as of a specific date, preferably a very early one, define and make known its continental shelf claims or, alternatively, the maximum limits beyond which it will never claim. We are gratified that the Secretary-General is circularizing member governments to obtain information on their most recent law of the sea legislation, and we believe that this procedure could go some way towards constituting a first step towards implementation of our suggestion. We are gratified too that a number of other delegations have expressed to us interest in the other elements of Canada's proposal, namely the establishment of a transitional international machinery and the granting of voluntary contributions to that machinery by coastal states from seabed resource revenues within the area under their national jurisdiction.

I do not propose today to attempt a detailed analysis of any draft treaty thus far put forward, since in any event we know that there are more proposals to come. Instead I will attempt to outline certain points which we, and we would hope other delegations, may use as a check list for evaluating every treaty proposal. In doing so we will, of course, be guided by the declaration of principles adopted by the General Assembly last year since that document itself virtually constitutes the nucleus of a draft treaty on which we have established a consensus.

Accordingly, I trust you will bear with me if I now proceed to refer to the principles in extenso and indicate how they might be reflected in the future seabed treaty, taking into account various proposals so far advanced.

1. "The seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction (hereinafter referred to as the area), as well as the resources of the area, are the common heritage of mankind."

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This of course is the most fundamental principle to be embodied in the future treaty either verbatim or in other words to the same effect. It is the principle from which all others flow and which determines the objectives and functions of the international seabed regime and machinery. This does not imply, however, that the UN should be given sovereignty over the area and its resources, any more than it has been given sovereignty over celestial bodies. Such a disposition, in Canada's view, would be not only unnecessary but could also involve grave dangers of conflict between the United Nations and its member states. What does flow from this principle is recognition of the clear need to have institutional arrangements for the protection, management and exploitation of the common heritage -- arrangements which will provide not only for the equitable distribution of benefits but also for equitable participation in the exploitation and management of the common heritage.

The concept of the common heritage, however, should not be interpreted to mean that, because of the unique legal status of the area, the future seabed treaty as such can automatically be made universally binding — even upon states which may not adhere to that treaty. This note of caution is particularly relevant in view of the fact that the treaty will affect national offshore boundaries. At the same time, however, the treaty must achieve if not universal acceptance then something very close to it, for otherwise the concept of the common heritage could be frustrated either by the majority of states within the treaty framework or by the minority of states outside it. It is possible of course that such fundamental elements of the treaty as the concept of the common heritage may come to be or indeed may already be regarded as principles of customary international law binding upon states independently of any conventional provision.

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Finally, we would point out that difficulties could arise from the affirmation that the international seabed area itself, and not only its resources, is the common heritage of mankind. This could be taken to imply that all uses of and activities on the seabed beyond national jurisdiction, and not only those activities directly related to resource exploration and exploitation, should necessarily be regulated by the international regime and machinery to be established. I will return to this question later but I consider it appropriate to sound this note of caution from the outset.

2. "The area shall not be subject to appropriation by any means by States or persons, natural or juridical, and no State shall claim or exercise sovereignty or sovereign rights over any part thereof."

This principle too could be incorporated verbatim into the treaty. It should be noted, however, that its provisions are stated in absolute terms, unqualified by the expression "states parties". In other words, this element also would have to be considered binding both as a treaty disposition and as a principle of customary international law. The need for such a dual validity is obvious and underlines again the importance of achieving virtually universal acceptance of the treaty. In further elaborating this principle it would be appropriate to provide in the future treaty that states (states parties in this instance) shall not recognize attempted appropriations or claims or exercises of sovereignty or sovereign rights. Bearing in mind international experience with various uses of the high seas, as well as potential uses of celestial bodies, it would also be advisable to give a clearer indication in the treaty as to what might constitute a form of appropriation falling short of a claim or exercise of sovereignty or sovereign rights (a question which is closely related both to the scope of activities to be governed by the regime and to the reservation of the seabed for exclusively peaceful purposes). To this

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end "appropriation" might be defined to mean any exclusive use or denial of the right of access not provided for in the treaty.

3. "No State or person, natural or juridical, shall claim, exercise or acquire rights with respect to the area or its resources incompatible with the international regime to be established and the principles of this Declaration."

This principle would require only minor redrafting for incorporation in the future treaty. Thus the treaty might state that no rights to the area and its resources "incompatible with this treaty" shall be acquired, or that no such rights shall be acquired "except as provided in this treaty". Again the universal applicability of this provision must be noted, although it may be somewhat less pronounced in the formulation "incompatible with this treaty". The essential objective of this provision would be to reserve to the international machinery the exclusive right to license the activities governed by the treaty. It should not, however, be so worded or interpreted as to provide that licensees may not acquire property rights in or ownership of the resources extracted by them from the seabed and ocean floor in accordance with the terms of the treaty.

4. "All activities regarding the exploration and exploitation of the resources of the area and other related activities shall be governed by the international regime to be established."

Translating this principle into treaty terms raises a basic difficulty because the present wording does not make clear whether the international regime is to govern exploitation of mineral resources only or living seabed resources as well, and also because it does not define the "other related activities" to be governed by the international regime. With regard to the first ambiguity, that is whether the international regime should apply

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to mineral resources only or to living seabed resources as well, we would first point out the obvious, namely that both the living and mineral resources of the seabed fall within the exclusive sovereign rights of the coastal state under the 1958 Continental Shelf Convention. Moreover, according to our experts, significant living seabed resources are not found beyond depths of approximately 1800 metres, which in most cases would place them well within the outer limits of the continental margin. Accordingly, the ultimate decision on the limits of the international seabed area will have a direct bearing on the possible extension of the international regime to living seabed resources. Another complicating factor relates to the suggestion advanced in some quarters to the effect that the fisheries jurisdiction of coastal states (over both free-swimming and sedentary species) might, depending upon the ultimate decision on the limits of the international seabed area, be extended to comprise some part of that area (including the superjacent waters). The conclusion which the Canadian Delegation draws from these various factors is that it would be both premature and unnecessary at this stage to commit ourselves one way or another on the possible applicability of the international seabed regime to living seabed resources and that this possibility should be left open for the time being.

With regard to the second ambiguity in the present formulation of this principle, concerning the definition of "other related activities", the Canadian Delegation believes that it would be unrealistic to attempt to have the future regime govern all uses of and activities on the seabed beyond national jurisdiction. The primary purpose of the international regime should be to promote the exploration and exploitation of the resources of the international seabed area for the benefit of humanity and the developing countries in particular. For this purpose it will be necessary for the regime

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to have certain connected regulatory powers which would ensure that other activities would not unduly interfere with the development of seabed resources, and which would guard against pollution of the sea arising from seabed activities. In principle, there should be no bar to giving the regime certain powers with regard to the laying of pipelines, for instance, since this is an activity directly related to the exploitation of seabed resources. It will be desirable, however, to define these connected regulatory powers with the greatest possible precision, and to confine the scope of the regime to those functions necessary to ensure an orderly, efficient and equitable system of exploration and exploitation of seabed resources. Caution is required in defining the scope of the regime not only because we are aware of the complex and far reaching problems involved in attempting to regulate all uses and activities, but also because of the danger that the establishment of a regime for resource exploration and exploitation might otherwise be indefinitely delayed.

5. "The area shall be open to use exclusively for peaceful purposes by all States, whether coastal or land-locked, without discrimination, in accordance with the international regime to be established."

I shall comment on the provision which might be made in the future seabed treaty on the question of peaceful uses when I come to principle 8 which makes substantive provision for this question. With regard to the other aspects of the present principle, it should first be noted that the phrase "in accordance with the international regime" again raises the question whether the regime will govern all seabed uses and activities. The essential provision to be made in the treaty on the basis of this principle, however, relates to equal access to and equal use of the seabed by all states. This, of course, raises the problem of equality of access by landlocked states which

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has been so carefully reviewed in the report of the Secretary-General A/AC.138/37 of June 11, 1971. Access to the seabed beyond national jurisdiction by landlocked states could conceivably involve not only problems of transit through the land territory and internal waters and territorial sea of neighbouring states but also problems of supplementary shore-based facilities (for storage or processing purposes, for example) and marketing in the territory of such neighbouring states, and perhaps even in the territory of non-neighbouring states in the vicinity of the area being exploited by the landlocked state in question. As indicated in the Secretary-General's report, problems of transit may largely be resolved under existing multilateral and bilateral treaties and by further arrangements of this kind. Existing treaties provide less guidance on the more difficult question of supplementary shore-based facilities and marketing arrangements, but here again the answer may lie in regional and sub-regional arrangements as suggested in the Secretary-General's report. These same problems, it should be noted, could arise if the international machinery itself were to conduct seabed operations or arrange for them to be carried out by contractors, although in that event they would involve relations between the international machinery and the coastal state in the vicinity of its operations, rather than relations between a landlocked state and the coastal state.

6. "States shall act in the area in accordance with the applicable principles and rules of international law, including the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by the General Assembly on 24 October 1970, in the interests of maintaining international peace and security and promoting international cooperation and mutual understanding."

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This principle could be included verbatim in the future treaty. However, as recognized in the preamble to the declaration, the phrase "in accordance with applicable principles and rules of international law" should not be interpreted to mean that the future seabed treaty should in some way be based on the regime of the high seas through a sort of reverse application of the theory of "creeping jurisdiction". The treaty must, on the contrary, be based on the entirely new concept of the common heritage of mankind, while taking into account the necessarily intimate relationship between activities on the seabed and those in the superjacent waters. In other words the treaty should provide for a sort of "peaceful co-existence" between surface activities and bottom activities.

7. "The exploration of the area and the exploitation of its resources shall be carried out for the benefit of mankind as a whole, irrespective of the geographical location of States, whether landlocked or coastal, and taking into particular consideration the interests and needs of the developing countries."

While this principle might be included verbatim, it will of course require further elaboration (which is provided in part by principle 9 in its references to the "equitable sharing of benefits"). Provision will have to be made for payments to the international machinery at levels designed to ensure that they contribute significantly to the economic advancement of the developing countries without at the same time blocking the very high flow of investment required for the development of seabed resources. Provision should also be made for the use of seabed revenues to cover the operating expenses of the international machinery; to provide for the protection of the marine environment; to advance the growth of knowledge of the seabed beyond national jurisdiction; and to provide technical assistance to states for these purposes.

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Even more fundamental questions arise as to whether the particular consideration of the needs and interests of the developing countries should entitle them to some form of preference not only in the distribution of revenues but also in the allocation of licenses and in marketing arrangements. On this latter point the view of the Canadian Delegation is that the regime should facilitate to the maximum possible extent the participation of developing states in seabed exploration and exploitation activities, but that the particular emphasis on the interests and needs of developing countries should relate to the distribution of revenues. It must also be decided whether the distribution of revenues should be made via appropriate international development agencies or directly to the individual developing countries themselves; in the latter event there is the further question of the criteria upon which the distribution should be based. Here we have a very relevant precedent in the arrangements made within the specialized agencies of the UN with regard to the scale of contributions and the allocation of technical assistance.

Finally, the treaty might provide for contributions to be made to the international machinery by coastal states from revenues accruing from seabed resource exploitation within the area under their national jurisdiction. This possibility would undoubtedly be tied to some extent to the ultimate decision on the limits of the international seabed area.

8. "The area shall be reserved exclusively for peaceful purposes, without prejudice to any measures which have been or may be agreed upon in the context of international negotiations undertaken in the field of disarmament and which may be applicable to a broader area. One or more international agreements shall be concluded as soon as possible in order to implement effectively this principle and to constitute a step towards the exclusion of the seabed, the ocean floor and the subsoil thereof from the arms race."

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This principle could be included virtually verbatim in the future seabed treaty, with appropriate modifications reflecting the endorsement by the General Assembly of the treaty prohibiting the emplacement of nuclear weapons and weapons of mass destruction on the seabed and ocean floor. A difficult question that arises here is whether the international seabed machinery should be granted at least the same powers of verification of suspect activities as are granted to states parties under the seabed arms control treaty. In the view of the Canadian Delegation such a provision, on preliminary consideration, would appear appropriate and desirable. We do not believe, however, that the same can be said for suggestions that the future seabed resource treaty should attempt to ensure that seabed resources be used for peaceful purposes only, not because we disagree with this objective but because we must realize that it would be unrealistic and unenforceable except in the context of a world order which would guarantee that all resources from whatever source were devoted to plough-shares and not to swords and shields.

While further seabed arms control measures are essentially beyond the scope of the forthcoming law of the sea conference, such further measures will be crucial to avoiding the possibility of conflict not only between individual states but also between states and the projected international machinery. They will also be crucial from the point of view of assuring non-nuclear coastal states that military activities on the seabed will not threaten their security and that even permissible defensive activities on the continental shelf are limited to the coastal state concerned.

9. "On the basis of the principles of this Declaration, an international regime applying to the area and its resources and including appropriate international machinery to give effect to its provisions shall be established by an international treaty of a universal character, generally

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agreed upon. The regime shall, inter alia, provide for the orderly and safe development and rational management of the area and its resources and for expanding opportunities in the use thereof and ensure the equitable sharing by States in the benefits derived therefrom, taking into particular consideration the interests and needs of the developing countries, whether land-locked or coastal."

The first sentence of this principle is, of course, in the nature of a directive which we are in the process of carrying out. The second sentence, however, could be included virtually verbatim in the treaty establishing the regime whose essential objectives it so aptly summarizes.

In the view of the Canadian Delegation the single most important factor in achieving these essential objectives of the international regime will be the creation of a seabed resource management system which will provide for the encouragement and maintenance of investment on a continuing and orderly basis, without which there will be no benefits accruing for humanity as a whole and the developing countries in particular. This would involve:

(a) the establishment of an impartial, enlightened and streamlined regulatory and administrative climate for seabed resource development, devoid of unnecessary red tape;

(b) striking a balance between maximum benefits for the international community on the one hand and adequate returns for entrepreneurs on the other, in particular by keeping pre-exploitation costs at a reasonable level and instead taking major benefits primarily in the form of rentals and royalties on production;

(c) setting and implementing terms and conditions for the granting of rights to explore and exploit seabed resources which will involve the minimum risk of political or other discrimination;

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(d) providing security of title or tenure for exploitation, while at the same time requiring that resource development programmes be actively and progressively pursued upon penalty of forfeit of rights;

(e) devising various types of terminable offshore licenses and permits to cover different minerals and different stages of development;

(f) controlling and supervising seabed resource activities to ensure safety of human life and the protection of the marine environment;

(g) regulating the production of seabed resources to maximuze physical and economic conservation, in particular through the promotion of unitization of operations and the prevention of over-production, over-drilling and the dissipation of reservoir pressures;

(h) promoting scientific research with respect to the seabed and marine environment, under appropriate conditions;

(i) minimizing possible conflicts between seabed resource activities and other uses of the seabed and marine environment, as well as conflicts between resource activities in the international seabed area and the interests of coastal states in the region of these activities;

(j) minimizing and providing the means for settling disputes concerning the interpretation and application of the treaty;

(k) providing for compensation for damages resulting from seabed resource activities;

(l) regulating the production, marketing and distribution of raw materials from the seabed in order (in the words of the preamble to the declaration of principles) "to foster the healthy development of the world economy and balanced growth of international trade, and to minimize any adverse economic effects caused by the fluctuation of prices of raw materials".

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It would be appropriate at this point to turn to the question of international machinery to give effect to the form of regime I have just described. Before doing so, however, I propose to discuss the remaining principles affirmed in the declaration, that is, principles 10 to 15, which I have already briefly noted as being elements to be provided for in the international regime.

10. "States shall promote international cooperation in scientific research exclusively for peaceful purposes:

(a) By participation in international programmes and by encouraging co-operation in scientific research by personnel of different countries;

(b) Through effective publication of research programmes and dissemination of the results of research through international channels;

(c) By cooperation in measures to strengthen research capabilities of developing countries, including the participation of their nationals in research programmes.

No such activity shall form the legal basis for any claims with respect to any part of the area or its resources."

The Canadian Delegation would agree that the future seabed treaty should contain a provision along these lines. The present formulation of this principle, however, should be amended to provide that it applies to states parties only, and to delete the reference to peaceful purposes since principle 8 already makes a general provision for the reservation of the seabed for exclusively peaceful purposes.

With regard to part (b) of this principle, it should benoted that the provision for the publication of research programmes and the dissemination of results reflects -- appropriately, in the view of the Canadian Delegation -- an essential principle incorporated in the Continental Shelf Convention concerning scientific research, namely that there should be access to informa-

tion in return for access to areas where research is to be carried out. If it is true that freedom of scientific research must be sacrosanct, then it is only true to the extent that such research contributes to the universal pool of human knowledge, freely available and fully shared by all. For the results of scientific research to be fully shared by all, however, requires that the developing countries should have adequate numbers of trained personnel to understand and utilize the information acquired. It is for this reason, of course, that provision should be made for international cooperation in measures to strengthen the scientific capabilities of developing countries so that they may profit from, and ultimately make a greater contribution to, research programmes. A reasonable interpretation must be given, however, to the provision for the dissemination of research results, in order to avoid placing unduly onerous burdens on those sponsoring the research concerned. What matters, after all, is that results genuinely be made available.

As a last point in connection with this principle, the Canadian Delegation considers that provision should be made in the future treaty for the regulation of scientific research on the same basis as commercial exploitation with regard to anti-pollution requirements, where such research involves the drilling of deep core-holes into the seabed or other projects with a similar potential for pollution of the marine environment.

11. "With respect to activities in the area and acting in conformity with the international regime to be established, States shall take appropriate measures for and shall cooperate in the adoption and implementation of international rules, standards and procedures for, inter alia:

(a) The prevention of pollution and contamination, and other hazards to the marine environment, including the coastline, and of interference with the ecological balance of the marine environment;

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(b) The protection and conservation of the natural resources of the area and the prevention of damage to the flora and fauna of the marine environment."

While we agree whole-heartedly with the intent behind this principle, the Canadian Delegation believes that the future treaty will have to make more adequate provision for the prevention of pollution arising from seabed resource activities. In particular, the treaty should establish safety standards, and provide for their effective enforcement, with respect to blow-out prevention and mud circulation systems; casing practices; testing and plugging programmes; seaworthiness of platforms and other facilities; recognition of seabed geological hazards in the positioning of production and storage equipment; anchoring of drilling vessels; laying of pipelines; and so on. Authority should also be granted to the international seabed machinery to prohibit the dumping or deposit of harmful material on the seabed and ocean floor (having due regard, however, to the provisions which might be made with regard to ocean dumping in other treaties to be adopted by the 1973 Law of the Sea Conference).

A point to note here is that the international seabed regime and machinery may eventually be subject to the same conflict as between conservation interests on the one hand, and economic interests on the other, that has already marked debates on national resource development policies at the domestic level. It is only through the elaboration and acceptance of stringent safety standards from the very outset that such a development can be avoided or minimized.

12. "In their activities in the area, including those relating to its resources, States shall pay due regard to the rights and legitimate interests of coastal States in the region of such activities, as well as of all other States, which may be affected by such activities. Consultations shall be

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maintained with the coastal States concerned with respect to activities relating to the exploration of the area and the exploitation of its resources with a view to avoiding infringement of such rights and interests".

This is obviously an important and controversial principle. Coastal states occupy a special position and have special interests in matters relating to the uses of the sea. They bear the brunt, for instance, of pollution damage arising from incidents both within and beyond their national jurisdiction (as coastal populations dependent on home-water fisheries suffer most from the depletion of fisheries resources by roving factory fleets). The future seabed treaty must recognize these special rights and interests of coastal states. While the present principle goes some way in this direction, it does not, in the Canadian view, go far enough. Indeed, the effect of the language used in the formulation of this principle is to put the interests of coastal states in the region of activities in the international seabed area on the same footing as the interests of all other states. Canada cannot accept this attempted equation of patently different interests. We consider, moreover, that the obligation to consult with the coastal state concerned, at least upon the request of that state, should apply to any activity that might infringe its rights and interests, and not only to those activities relating to the exploration of the seabed beyond national jurisdiction and the exploitation of its resources, although we recognize that the future treaty can impose an obligation to consult only with respect to those activities governed by the treaty. My delegation would suggest, therefore, that there should be some mechanism to allow coastal states a degree of special rights within an adjacent zone beyond the limits of national jurisdiction at least with regard to the prevention of pollution arising from seabed resource

operations. This can be achieved in part through principle 13(b), which should be incorporated in the present principle in somewhat different terms, as I will indicate in a moment.

13. "Nothing herein shall affect:

(a) The legal status of the waters superjacent to the area or that of the air space above those waters;

(b) The rights of coastal States with respect to measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution or threat thereof or from other hazardous occurrences resulting from or caused by any activities in the area, subject to the international regime to be established."

With respect to part (a) of this principle, we would agree that nothing in the future treaty should affect the legal status of the waters superjacent to the international seabed area or that of the air space above those waters. We believe , however, that this principle should be expanded to provide that all activities in the marine environment shall be conducted in such a manner as to avoid unjustifiable interference with the exploration and exploitation of the resources of the area, and conversely that exploration and exploitation of these resources must not result in any unjustifiable interference with such other activites.

With regard to part (b) of this principle, we have serious reservations about the negative formulation adopted in the declaration. It represents, in our opinion, a watered down version of the rights of coastal states. Although we participated in the negotiation of this principle, and accepted it as a compromise, my Delegation believes that it should be phrased in a positive manner, for instance, "coastal states may take measures to prevent, mitigate or eliminate grave and imminent danger etc.", and be made part of principle 12 as I suggested a moment ago.

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14. "Every State shall have the responsibility to ensure that activities in the area, including those relating to its resources, whether undertaken by governmental agencies, or non-governmental entities or persons under its jurisdiction, or acting on its behalf, shall be carried out in conformity with the international regime to be established. The same responsibility applies to international organizations and their members for activities undertaken by such organizations or on their behalf. Damage caused by such activities shall entail liability."

The Canadian Delegation agrees of course with the substance of this principle but considers that it requires elaboration to make clear and express provision for: (a) the responsibility of each contracting party to enforce compliance with, and punish violations of, the provisions of the future sea-bed treaty; (b) the responsibility of each contracting party for the maintenance of public order on manned installations and equipment operated by that party or under its sponsorship; (c) the liability of each contracting party to pay compensation for damages caused by activities carried out by it or under its sponsorship, whether such damages occur within or beyond national jurisdiction, and, quite apart from compensation paid for damages, the further liability of each party for clean-up measures which may be required. We would point out here that inherent in these provisions is an element of delegation of responsibility or authority by the future international machinery to the sponsoring state, and that this device may represent a practical and effective manner of dealing with a variety of matters involved in the implementation of the seabed regime, subject to the agreed rules and standards to be fixed by the treaty and with provision being made for required supervision.

15. "The parties to any dispute relating to activities in the area and its resources shall resolve such dispute by the measures mentioned in Article 33 of the Charter of the United Nations and such procedures for settling disputes as may be agreed upon in the international regime to be established."

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The Canadian Delegation agrees that the future seabed treaty should provide for the resolution of disputes in accordance with Article 33 of the UN Charter. We also agree that further procedures for the settlement of disputes should be included in the treaty, and I will comment on these in discussing the question of international machinery, to which I shall now turn.

Before discussing the actual structure of the international machinery to be established to give effect to the international regime, I should like to outline what my delegation considers should be the fundamental attributes of that machinery:

The international machinery should be a wholly new institution having juridical personality and the capacity to contract, to hold property, and to initiate legal proceedings. The question of privileges and immunities for the international machinery is a difficult one, particularly with respect to immunity from judicial process. Whatever may be the status of the machinery within the UN family, it is clear that the nature of the task it is to perform is so radically different from anything now being undertaken in the UN system that this new institution will require a new approach not tied to traditions and practices intended for wholly different purposes. In a sense this machinery may be more like an enterprise than an ordinary UN agency. For this reason, it may be necessary to provide, at least in respect of certain of its functions, that the international machinery should have the capacity to be sued. This question will depend to some extent on the nature of the functions and powers to be assigned to the machinery; for instance, if the machinery were to have the capability itself to exploit the resources of the seabed or undertake ventures of a commercial nature, then it would seem necessary to make it liable to judicial proceedings in the same way that government

vessels on commercial service do not enjoy the same immunities granted to naval vessels and government vessels on non-commercial service.

With regard to the question whether the international machinery should have the legal capacity and the administrative and fiscal power actually to exploit the resources of the seabed, Canada has been inclined to go very slowly regarding this possibility. On the one hand we would be concerned about making the proposed machinery too cumbersome and building up overhead costs which might never be warranted by returns; (in this connection we believe it would be most unrealistic to suggest that investment capital for the conduct of any exploration and exploitation activities by the international machinery should be provided by states parties to the treaty or by the United Nations as a whole). Another factor to be taken into account is the very real possibility of conflict of interests between the international seabed machinery's role as a regulatory body and its possible role as an operating body. For instance, difficult questions could arise with regard to the possibility of giving preferred treatment to the international machinery in the granting of rights and in the enforcement of regulations. Moreover, since states or their nominees would be those most likely to have the necessary offshore expertise, we tend to the view that exploitation should be left to them. On the other hand, however, we recognize that it might be useful to provide the proposed machinery with the power to engage in exploitation at some future stage, particularly if this were to facilitate full participation by the developing countries in the exploration and exploitation of seabed resources by means of joint ventures with the international machinery. However, we believe other methods of facilitating full involvement by the developing countries should also be explored.

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With regard to the structure of the future international machinery, the Canadian Delegation would see it as being organized somewhat along the following lines:

(a) A legislative body or assembly which would be the supreme organ of the international machinery and would have the power to approve its budgets, to elect or appoint members of its executive body, to decide on matters referred to it by that body, and to approve amendments to the seabed treaty (subject perhaps to ratification by states parties). It would be composed of all states parties to the treaty. (Although it has been suggested that agencies other than states might be represented on such a body, Canada for its part could not agree to this proposal). Decisions of the assembly would be taken on the basis of a two-thirds majority.

(b) An executive body or council which would exercise authority delegated to it by the assembly. More specifically, it would have the power to prepare and submit budgets to the assembly; to approve recommendations by other subsidiary bodies of the international machinery concerning regulations and operating rules for seabed exploration and exploitation activities, and concerning marketing procedures and possibly the distribution of benefits; to propose to the assembly amendments to the seabed treaty; and to make appointments to other subsidiary bodies as I will specify in a moment. With regard to the membership of the council, the Canadian Delegation considers that traditional formulae used within the UN for representation on the basis of geographic groupings would be completely inapplicable in determining the composition of the

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executive body of the international seabed machinery. In this context the ranges of national interests cut clear across traditional groupings, and it is the proper balance of these national interests which must be taken into account in fixing the membership of the council. In achieving this the essential criteria could be the level of state expertise in offshore technology and resource management, the length of coastline, area of continental shelf, landlocked or shelf-locked status, and level of economic development. It is these criteria which must be adequately taken into account -- pro or con -- and to do so, in the view of the Canadian Delegation, will require the creation of two classes of membership, the first being composed of states parties designated by the assembly, and the second of states parties elected by the assembly. Various permutations and combinations would offer themselves in determining which of the criteria I have just described should be used as a basis for the designation or election of members of the council and the relative proportion to be maintained between the two classes of membership. It need only be added that the council should be a small body and should probably not exceed a maximum of 30 states. Decisions of the council should be made on the basis of a two-thirds majority vote. The Canadian Delegation has grave reservations concerning proposals for weighted voting or double majorities. It would be incongruous, and incompatible with the fundamental principle of the UN of the sovereign equality of states, in an international regime intended to benefit humanity as a whole, to give a virtual right of veto to any particular state or group of states.

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(c) A recording or advisory body or secretariat headed by a secretary-general who would be appointed by the council and in turn would appoint his own staff in accordance with guidelines fixed by the council. The secretary-general would report to the assembly and the council on the work of the international seabed machinery as a whole, and would collect data on seabed research and technology and publish and disseminate information on the seabed and its resources with a view to furthering the objectives of the international regime. Other functions might be assigned to him by the assembly or council, including the hiring of expert staffs for the operating commission. The most important provision to be made with regard to his office would be to ensure respect for its international character and freedom from influence from states parties. Other approaches to this particular function of the machinery offer themselves, along the lines of the IAEA precedent. These approaches, of course, also merit consideration.

(d) An administrative or regulatory body which might be known as the resource management commission. This would consist of a small board of experts appointed by the council (and reporting to it) plus the necessary staff to perform the following functions:

(i) to issue non-exclusive licenses for exploration and exclusive permits for exploitation of seabed resources, and approve or disapprove such programmes as deep drilling and dredging;

(ii) to supervise and inspect seabed resource operations and enforce agreed rules and regulations, including work requirements and the submission of reports;

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(iii) to issue stop-work orders in the event of violations of such rules, regulations and safety standards, and to initiate proceedings before the tribunal proposed to be established under the international regime;

(iv) to exercise control over the method and volume of production in order to prevent waste of resources;

(v) to collect fees and royalties; and

(vi) to recommend amendments to the regulations, operating rules and safety standards established by the treaty.

(e) Further administrative and regulatory bodies as required. Consideration should be given, for instance, to the desirability of establishing a commission to deal with the marketing and distribution of raw materials, and perhaps yet another to review the precise demarcation of boundaries. The question also arises as to whether the international machinery could have the potential to embrace regional insititutions if and when these might be considered necessary. My Delegation believes that regional institutions within the framework of the overall machinery, provided that their constitutions and working rules were compatible with the regime as a whole, could possibly be an effective means of enabling the developing countries to work together in their mutual interests, to offset the disadvantages of gaps in technology. We would suggest accordingly that this possibility at least be left open in the drafting of the treaty. As the Canadian Delegation has suggested before, there may be advantages in providing the international machinery with some capacity for organic development in

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order to avoid making it more complex than necessary at the outset while still allowing it some possibility to expand in response to proven practical needs.

(f) An administrative tribunal, composed of a small body of legal (and perhaps technical) experts, representing the various legal systems of the world, elected by the council or assembly, to settle disputes arising out of the treaty between contracting parties or between contracting parties and the international machinery. Provision should also be made, however, for the settlement of disputes by negotiation, conciliation or arbitration in keeping with Article 33 of the UN Charter. The tribunal should be empowered to seek advisory opinions from the International Court of Justice in accordance with the UN Charter. Consideration could also be given to allowing appeals from the tribunal to the International Court of Justice on questions of international law, and provision should be made in any event for giving effect to the decisions of the tribunal.

Mr. Chairman, I have come to the end of my discussion of the international seabed regime and machinery. Before concluding, I wish only to outline very briefly those elements of the international machinery that the Canadian Delegation believes would be required to provide, in keeping with Canada's three-part proposal last March, a transitional authority for the exploration and exploitation of mineral resources in the minimum non-contentious area of the seabed beyond national jurisdiction. As we pointed out at that time, the creation of such a transitional authority or machinery would provide the necessary regulation and control over the resource activities that are likely to be undertaken in this area in the near future. It would also

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encourage the development of seabed operations, in keeping with one of the most widely recognized objectives of the international regime to be established, by providing a climate that would allow business enterprises to commit themselves to exploration schemes. These enterprises have been waiting uncertainly in the wings for guidance as to the rules that might be applicable to the licensing and conduct of their operations. They are seeking assurances that the areas they might select for prospecting will not be subject to encroachment by competing agencies. In the field of deep sea mining of nodules containing manganese, copper, nickel and cobalt, the technology of recovery and beneficiation has now advanced to the stage where one multinational company has actually announced a tentative timetable of production. Indeed, reports indicate that it may be ready to file a claim on a specific deep sea area at this time. The announcement of this corporation's plans is tempered with the cautious note that, unless it can be assured security of tenure over the portion of the seabed it wishes to exploit, it would not be able to proceed with its programme as scheduled.

It appears, therefore, that technological developments will not await the outcome of the 1973 Law of the Sea Conference. While the present legal vacuum has the disadvantage of frustrating the development of seabed operations, still greater disadvantages may be involved if, as may well be the case, enterprises and their investors become impatient and even decide to proceed without awaiting for the law to catch up with technology. If we do not provide an immediate, albeit transitional, administrative and regulatory system for the orderly and safe development of seabed resources, there may ensue a free-for-all among the giant corporations of the major industrialized powers, with the inherent danger that resources will be wasted, the environ-

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ment will suffer degradation, and traditional world markets may be disrupted by an unprogrammed distribution of raw materials.

We recognize, of course, that it is impossible to develop a full-fledged international seabed regime and machinery until an appropriate treaty has come into force -- which, let me remind you, may be some years after 1973 if normal delays of ratification are taken into account. Nothing prevents us, however, from proceeding to the early, indeed almost immediate, establishment of a transitional machinery which would incorporate in skeletal form the immediately essential elements of the final machinery to be created by the future seabed treaty.

In the view of the Canadian Delegation the critical units of machinery required to meet the present situation would be as follows:

(a) an ad-hoc executive council to be appointed by the UN General Assembly, and

(b) a transitional resource management commission to serve as a temporary body, with its head and other members appointed by the ad-hoc executive council on the basis of their competence and expertise in the field of offshore resource management. This machinery would operate on the basis of the 1970 declaration of seabed principles which would thus serve as a sort of provisional statute.

The functions of the transitional resource management commission might be defined as follows:

(a) to register and record on appropriate charts the continental shelf claims of coastal states, without prejudging the ultimate decision on the limits of the seabed beyond national jurisdiction;

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(b) to maintain a registry of offshore exploration and exploitation activities authorized by coastal states within the areas claimed by them as within their national jurisdiction;

(c) to issue non-exclusive licenses for exploration in the non-contentious international seabed area as approved by the ad-hoc executive council;

(d) to grant exclusive exploitation permits to states or their nationals on a first-come-first-served basis, with these permits entailing an obligation to carry out evaluation work on an escalating basis culminating in full-scale production within a specified time limit;

(e) to collect fees and rentals at the pre-production stage for the purpose of covering administrative costs;

(f) to approve or disapprove applications for permits for deep drilling or seabed mining operations on the basis of compliance with prescribed anti-pollution measures, taking into account, inter alia, the sea-worthiness of vessels to be employed and seabed installations to be erected, in relation to the natural meteorological and geological hazards to be anticipated in the permit area;

(g) to ensure that all operators comply with rules and regulations approved by the council, either by carrying out required inspections or, as would more often be the case, by delegating such authority to officials of sponsoring states;

(h) to collect royalties, on ad valorem basis, on oil, gas or metals recovered from the non-contentious area of the seabed, but not at such a rate as to preclude economic operations;

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(i) to monitor the marketing of raw materials recovered so as to identify or predict any tendency towards deterioration of prices caused by the production of minerals from the non-contentious international seabed area, thus permitting adjustments to be made, if necessary in the scale of operations or issuance of new exploitation permits if and when production were to exceed demand by a significant amount;

(j) to collect voluntary contributions from coastal states based on a fixed percentage of the revenues derived from the exploitation of seabed mineral resources within the limits of national jurisdiction claimed by them, perhaps beyond the outer limit of their internal waters or some other appropriate cut-off point.

This transitional machinery would provide an invaluable fund of experience for the full-fledged international machinery to be established by the treaty, and indeed it could be transformed into that permanent machinery upon entry into force of the treaty. During the transitional period, disputes arising out of the operations of the transitional machinery could be referred to the International Court of Justice for adjudication, in the event that they could not be resolved by negotiation, conciliation or arbitration.

Mr. Chairman, to those who might object that Canada's three-part proposal is impractical or unworkable, or that it would encourage the widest national claims to the seabed, I would ask first of all what suggestions they have to make that would help us out of our present impasse and would provide an immediate solution to the immediate problems of seabed resource exploration and exploitation in those areas which we all know full well, even without a formal definition of all coastal state claims, to be beyond the

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limits of national jurisdiction. I would then remind them of the following facts:

-- A resolution of the General Assembly already exists, imposing a moratorium, albeit ineffective, on national seabed claims; all we propose is that this resolution be given real effect.

-- General agreement already exists that the future seabed treaty should require coastal states to notify the international machinery of their limits of national jurisdiction; all we propose is that this procedure be put into effect immediately, without prejudging the ultimate decision on the limits of the international seabed area.

-- A survey is already under way by the Secretary-General to determine, inter alia, national claims to the seabed; all we propose is that precise and comprehensive replies be given to the Secretary-General.

-- The idea that coastal states should report to the future international machinery on resource activities conducted within their national jurisdiction already appears to be generally accepted; all we propose is that all states now adopt this procedure.

-- A real need already exists for the immediate establishment of an administrative and regulatory authority governing resource exploration and exploitation activities in areas well known to be beyond the limits of national jurisdiction; all we propose is that this need be met, for the benefit of humanity.

-- The nucleus of a seabed resource treaty already exists in the General Assembly's declaration of principles which can serve as the basis for a transitional regime and machinery; all we propose is that it be made to serve this purpose.

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-- A system of state contributions to the United Nations from revenues entirely within the national jurisdiction of member states is already in effect; all we propose is that states should volunteer to make similar grants from revenues accruing from seabed resource exploitation within the limits of national jurisdiction claimed by them.

Perhaps it is this suggestion of voluntary contributions more than any other that arouses objections. Why? Because it was suggested that such contributions should come not only from the continental shelf but also from the seabed underlying the territorial sea, and because it is felt that this constitutes in some way an infringement of the sovereignty of coastal states? If so, surely it should be possible to have the contributions begin from the outer limit of a 12-mile coastal belt in accordance with the formula adopted in the seabed arms control treaty. Or is it the main objection that these voluntary contributions would be expected from developing as well as developed countries? If so, surely it would be possible to take contributions on the basis of ability to pay and to distribute benefits on the basis of need, exactly as is done in the specialized agencies of the United Nations. Or, again, is the objection simply that such a concept of voluntary contributions is a novel one? If so, surely it must be recognized that it is in fact no more voluntary or no more novel than the scale of assessments in the United Nations and its specialized agencies. And if the contributions must be regarded as voluntary, then perhaps so much the better since this prevents any suggestion of interference with state sovereignty and allows countries whose offshore development is wholly or substantially within a 12-mile coastal belt to contribute to the benefit of humanity.

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Mr. Chairman, we have endeavoured in all humility to outline Canada's views as to how we might approach our task in this sub-committee. We are most interested in hearing the view of other delegations on these questions and in beginning as soon as possible with the task of drafting concrete proposals.