INTERGOVERNMENTAL CONFERENCE
ON THE CONVENTION ON THE DUMPING
OF WASTES AT SEA

London, 30 October to 10 November 1972

STATEMENT DELIVERED BY MR. J.A. BEESLEY, HEAD OF CANADIAN DELEGATION, ON 31 OCTOBER, 1972

Mr. Chairman,

I think it is increasingly evident that the law of the future must reflect environmental considerations, as well as the continuing need to ensure freedom of transport and communications. This conference provides us with a unique opportunity to bring together these considerations in one effective instrument -- the proposed Convention for the Prevention of the Pollution of the Sea by Dumping.

We are acutely aware, Mr. Chairman, of the pressure of time under which we must operate. We have only two weeks in which to carry forward to conclusion the drafting of an agreed convention on the prevention of pollution from ocean dumping. Fortunately, we have the advantage of the tremendous amount of preparatory work that has already been done on this matter at the first meeting in London one year ago and at the Ottawa meeting of the Intergovernmental Working Group on marine pollution just a year ago, followed up at the Intergovernmental Meeting in Reykjavik in April of this year and pursued further in London in May. We have before us precisely drafted articles and annexes which have been formulated through a whole series of lengthy and difficult negotiations resulting, in our view, in a carefully balanced draft. I am sure there is no delegation here that does not consider that there are ways in which the convention could be improved. It is obvious to us, however, that if we are to succeed in producing general agreement on draft articles in the brief period at our disposal, we shall each of us have to exercise on the one hand a genuine spirit of conciliation in responding to the views of other delegations on the issues under discussion, and at the same time the greatest restraint and self-discipline in putting forth proposed amendments. We face, in our view Mr. Chairman, a great opportunity of succeeding or a real danger of failing in our mandate to carry forward to successful fruition one of the major pieces of follow-up action to the Stockholm Conference on the Human Environment. The Stockholm Conference has laid down for us very clear guidelines in its recommendations on marine pollution

principles and in the Declaration on the Human Environment. We also have before us a draft convention on which we have all had time to reflect. I should like to make clear, therefore, at the outset of our discussions that insofar as Canada is concerned, the draft is generally acceptable in its present form as a working basis for our discussions, subject to certain minor textual amendments. We hope that other states are able to make known at a very early stage this same position.

If I may explain briefly why we are able to accept the Convention substantively in its present form, it is because, in our view, it now contains the basic provisions essential for an effective instrument for the protection of the marine environment. It is, in our view, adequate in meeting the two major tests of effectiveness -- effectiveness from an environmental point of view and effectiveness from a jurisdictional point of view. With respect to the first test of effectiveness, we are gratified that the Convention now embodies the "black-list/grey-list" Oslo Convention approach, absolutely forbidding the dumping of some substances and strictly regulating the dumping of others. We are indebted to the authors of the Oslo Convention for pioneering this new approach.

We are aware, of course, of genuine difficulties produced by the rapid escalation of technological advances in choosing as between the generic and the specific approach in establishing in the annexes of the Convention the list of substances which may not be dumped or which may be dumped only subject to strict regulation. Our own view is that an essentially generic approach followed by the naming of specific substances provides a sensible and pragmatic solution to this problem. Our delegation will be consulting with all other interested delegations on this issue in the course of the work of the technical working group, but we do not envisage any major difficulties.

With respect to the second test of effectiveness, we are satisfied that the Convention meets the imperatives concerning jurisdictional issues which confront us at this transitional stage in the development of the Law of the Sea, in that it closes no options and prejudges no jurisdictional issues. It is obvious that no Convention intended to be global would be effective if it were merely a flag state convention, enforceable only by flag states against their own ships operating in far distant waters well beyond the knowledge and real control of the flag state. Such a convention would never attract the support of the many coastal states which are not also maritime powers, which are represented at this Conference. I refer, of course, not only to developing countries, but to countries such as Canada which has extremely lengthy and vulnerable coasts, but does not have a major maritime fleet. On the other hand, a convention which simply left it only to coastal states to enforce would not

attract the support of the major maritime powers. Clearly, what is required is an accommodation between the seemingly conflicting interests of flag states and coastal states. Mr. Chairman, I say "seemingly conflicting interests" because in our view there is no real conflict. There is, on the contrary, a common interest, becoming more obvious with each passing day, in preserving the marine environment from further degradation and rationalizing its various and diverse uses. The solution, as we see it Mr. Chairman, is exactly that reflected in the draft articles, namely the concept of universal jurisdiction, permitting enforcement of the convention by all parties to the Convention, both flag states and port states. This would not be the first such instrument to so provide. Both slavery and piracy are also subject to the concept of universal jurisdiction. I would refer also to recent and current developments concerning air law aimed at combatting hijacking and sabotage of aircraft, which are also based on the concept of universal jurisdiction. We must, understandably, leave it to the Law of the Sea Conference to make definitive treaty-law laying down precisely how and in what circumstances coastal states and flag states can enforce conventions such as this. Attempts to spell out the precise rights of coastal states to enforce the Convention in areas beyond the territorial sea would undoubtedly be met by opposition by the major maritime powers here represented. On the other hand, attempts to confine enforcement by flag states only would undoubtedly be met by strong opposition by the coastal states here represented. If we are to produce an agreed convention, we must, in our view, leave the basic jurisdictional issues for ultimate resolution by the Law of the Sea Conference. We must also ensure, in our view, that the Convention we produce forms an integral part of a coordinated and comprehensive approach for the preservation of the marine environment. The Canadian view on the essential elements of such a comprehensive approach and the relationship of this proposed instrument to the other essential kinds of concrete action required in developing a coherent, uniform and all-embracing treaty system for the preservation of the marine environment is set out in a working paper tabled by Canada in the Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction. I refer to UN Document A/AC138/SC.III/L.26 dated August 31, 1972. I propose to table that working paper at this conference for circulation to all delegations in the four working languages of the conference, but initially only in English and French, with my apologies, and I earnestly commend that paper to the consideration of delegations as a summary of the existing provisions of relevant international instruments; a resumé of the essential components of a future treaty system; and an indication of the Canadian view as to how we might

achieve these objectives by a process of accommodation of interests.

Turning now to the discussion of Article I concerning which the Chairman has offered us the opportunity to make general statements, my delegation is very receptive to the point made in the very thoughtful interventions by India and Chile on the need to ensure a comprehensive and unitary approach to the problems of marine environment and the role of Article I in meeting this objective. We agree that the proposed Anti-Dumping Convention represents only a first step in such an approach, but it is an essential first step.

The first point I would like to make with respect to Article I is that there exists at present no multilateral treaty provision explicitly laying down the general obligation of States to preserve the marine environment and to prevent its pollution from all sources, although Articles 24 and 25 of the Convention on the High Seas and Article 5, paragraph 7, of the Convention on the Continental Shelf represent specific applications of this fundamental principle. But the first expression of a more general formulation, albeit in a limited context, is found in Article I of the Draft Dumping Convention. Guidelines for the formulation of the general obligation of States to preserve the marine environment are provided by Principles 7 and 21 of the Declaration of the United Nations Conference on the Human Environment, and by the Principles on the Marine Environment endorsed at Stockholm (Principles 1, 2, 3, 5 and 17). Some consolidation of these principles will, no doubt, be necessary for the purpose of translating them into draft treaty articles for consideration by the Conference on the Law of the Sea.

Principle 7 of the Declaration of the United Nations Conference on the Human Environment reads as follows:

> "States shall take all possible steps to prevent pollution of the seas by substances that are liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the sea."

This principle reflects not only the duty of States to protect the marine environment, but also in effect a definition of marine pollution, based on that adopted by the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). It is very close to Article I of the Oslo Dumping Convention (but stated in more mandatory terms) and also similar to the definition of marine pollution agreed upon by the Ottawa session of IWGMP.

Mr. Chairman. In the light of the foregoing it can be seen how important and substantive a provision Article I compromises. It can be argued that it is redundant in that we are concerned here with a limited environmental protection measure, but it may also be argued that it is vital in orienting our work on the whole Convention. My own delegation considers that it is important to retain this provision. It may be that some delegations would prefer to see it transformed into a preamble and my delegation wouldbe willing to consider this possibility, and would wish to note merely at thistime that such a move would, of course, weaken the effect of the provision.

Turning briefly to Article II which is also before us for discussion, my delegation agrees with that of Brazil that it would be desirable to retain that paragraph for the reasons outlined so persuasively by him.

Mr. Chairman, I wish to conclude by pledging the full support and cooperation of my delegation in this collective effort, the success of which is so important to all ofus and indeed to humanity as a whole. Let us maintain the momentum and the spirit of the Stockholm Declaration. Let us seek not merely to advance our respective national interests as we see them, but work towards the community interest in preserving the marine environment. The best way of achieving this objective, Mr. Chairman, is to build further on the progress already made, and accept the Reykjavik text as the basis of our work, confining ourselves to as few amendments as possible.