TEXT OF A STATEMENT BY MR. J.A. BEESLEY,
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UNITED NATIONS SEABED COMMITTEE
SUB-COMMITTEE III

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Last year at this time the Canadian delegation made a statement before this Sub-Committee which we based on the draft Declaration on the Human Environment which Canada had put forward in connection with the preparations for the Stockholm Conference. In that statement we reviewed four basic principles from the Canadian draft declaration and gave our views as to how they related to the marine environment in particular and might be reflected in a marine pollution treaty to be negotiated at the Third Law of the Sea Conference.

Since the Seabed Committee's session of July/August 1971 the international community has passed an important milestone which must and inevitably will give a new thrust and impetus to the work of the Seabed Committee, as happened in the past when the 25th General Assembly decided to convene a Third Law of the Sea Conference, adopted a declaration of principles on the seabed, and endorsed the seabed arms control treaty. That milestone is the successful conclusion of the Stockholm Conference on the Human Environment some few weeks ago. The results of that conference, in the view of the Canadian delegation, have a direct and fundamental bearing on the work of the Seabed Committee and the Law of the Sea Conference to which our work must soon lead. I refer in particular to:

1. the Declaration on the Human Environment;
2. the statement of objectives concerning the marine environment;
3. the principles on the marine environment;
4. the principles on the rights of coastal states; and
5. the draft articles and annexes on ocean dumping.

I propose to comment now on each of these important instruments. Before doing so, I should like to suggest that all of these documents be tabled as official Stockholm Conference documents as soon as possible as this Sub-Committee has urgent need of them. The Declaration on the Human Environment is attached to this statement. The statement of objectives and the 23 principles on the marine environment, and the 3 principles on the rights of coastal states, can be found in Document A/Conf.48 IWGMP.II/5 distributed to the Seabed Committee in March 1972. The draft articles and annexes on ocean dumping can be found in Document A/Conf.48/8/Add.1 distributed today.

(1) Declaration on the Human Environment

The Declaration on the Human Environment adopted by the Stockholm Conference represents an achievement of vital importance. As the Canadian delegation pointed out at Stockholm, that declaration is not merely a plea for cooperative action, nor is it merely an inspirational message or an educational vehicle. It is nothing less than a basic charter laying down the foundation for the future development of international environmental law. As such it constitutes a major step in that development. As we made clear at Stockholm, the Canadian Government accepts the legal principles embodied in the declaration as reflecting existing rules of customary international law. I should now like to review those principles which we consider to be customary rules of law with a view to bringing out their implications for the work of the Seabed Committee and Sub-Committee III in particular.

Principle 21 of the Declaration on the Human Environment reads as follows:

> "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction".

The Canadian delegation to the Stockholm Conference stated that Canada accepts this principle as reflecting existing customary international law. It will be noted that the first element in this principle stresses the rights of states while the second element makes clear that these rights must be limited or balanced by the responsibility to ensure that the exercise of rights does not result in damage to others. This balancing of rights and responsibilities is fundamental to the Canadian approach to the whole range of problems of the law of the sea. We have advanced the concepts of custodianship and delegation of powers as illustrations of this need for balance. We have done so in an effort to help find an accommodation not only as between national interests, which is

essential to the successful outcome of our work, but as between national interests and the interests of the international community, which is equally essential if we are to produce solutions which will stand the test of time. The responsibility not to damage the environment of other states has been recognized by the landmark decision in the Trail Smelter case. A broader injunction against extra-territorial damage has also been embodied in the 1963 Nuclear Test Ban Treaty which prohibits nuclear explosions which might cause radioactive debris to be present outside the territorial limits of the state conducting the explosion. This existing rule of customary international law must, in our view, be the starting point for the work of the Seabed Committee in developing a regime for the protection of the marine environment, including in particular coastal areas. It has, of course, important implications for the broad range of issues of the law of the sea since it necessarily affects the rights of both coastal and flag states in territorial waters and fishing zones, in international straits, on the continental shelves, and perhaps above all on the high seas where the environmental limitations on the rights of states must apply with even greater force than within state territory.

Principle 22 from the declaration is a necessary consequence of Principle 21 with which I have just dealt. The Canadian delegation to the Stockholm Conference stated that Canada accepts Principle 22 as reflecting an existing duty of states under customary international law. Principle 22 reads as follows:

> "States shall co-operate to develop further the international law regarding liability and compensation for the victims of pollution and other environmental damage caused by activities within the jurisdiction or control of such States to areas beyond their jurisdiction".

The Trail Smelter case again gives support to the view that under existing customary law the polluting state must pay for any extra-territorial damage caused by activities under its control or jurisdiction. It was recognized at Stockholm, however, that international law in this field requires further development and that states must cooperate to this end. While the right to compensation

for pollution damage undoubtedly exists, difficult questions arise in relation to the satisfaction of that right, especially with regard to compensation for damage suffered in areas beyond the limits of national jurisdiction. Here, as elsewhere, action is needed at both the bilateral and multilateral levels.

The principles I have referred to should not be regarded as academic abstractions. I should like to illustrate what I mean. Action to implement Principles 21 and 22 is already being taken by Canada and the United States with regard to bilateral environmental problems arising from activities along the common border of the two countries and their east and west coasts. Canada and the USA have been concerned that incidents could occur which would pollute each other's shores and affect marine life with consequences for both conservation and the fishing industry. Just such an incident involving an oil spill on the west coast has very recently occurred, although fortunately on a small scale. In a communiqué issued on July 13, 1972 the Canadian and United States governments explicitly reaffirmed their support for Principle 21 of the Declaration on the Human Environment as a basis for their discussions on common environmental problems. The communiqué acknowledged further that the application of this principle to environmental questions which may arise between the two countries necessarily raises Principle 22 regarding cooperation between states in the development of arrangements respecting liability for damage and compensation for the victims of pollution. The communiqué recognized that these two principles were of particular importance to activities along the border and the coasts of the two countries. The communiqué stated that these principles provide the basis for the development of law and procedures for the settlement of disputes of an environmental nature so as to ensure prompt and appropriate compensation for damage to either side by the activities of the other. The Canadian and United States governments are now in the process of working out these arrangements, following the precedent they established in the Trail Smelter case and the Gut Dam case, in both of which cases Canada recognized its obligation to pay compensation for damage caused in the United States by activities within Canada. This

example of bilateral cooperation should, we hope, spur the Seabed Committee in its own work to ensure the multilateral practical application of Principles 21 and 22 of the Stockholm Declaration on the Human Environment.

It was a matter of regret for the Canadian delegation at the Stockholm Conference that the conference was unable to agree on another principle which, in our view, flows necessarily from Principle 21, namely the duty of states to inform one another concerning the possible environmental impact of their actions upon areas beyond their jurisdiction. This principle on the duty of notification had been embodied in the draft declaration first brought before the plenary session of the conference but unfortunately was not retained in the final text. The principle was not rejected, however, but merely sent to the General Assembly for further consideration. It is our hope and expectation that it will be possible to reach agreement on a text for this principle, since the principle itself, if not its precise formulation, was widely accepted in the working group at Stockholm. The Canadian Government for its part accepts that this principle reflects an existing duty of states under existing customary law to provide relevant information to interested parties concerning activities or developments within their jurisdiction or under their control whenever there is reason to believe that such information is needed to avoid the risk of significant adverse effects on the environment in areas beyond their national jurisdiction. It is worth noting that the Canada-USA communiqué I have already referred to also stressed the importance of communication of environmental information.

One further principle adopted by the Stockholm Conference related explicitly to the marine environment, namely Principle 7. That principle 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. It is obviously of fundamental importance to the work of the Seabed Committee and Sub-Committee III in particular as it is our responsibility to define and elaborate rules and measures to give effect to this principle.

(2) Statement of Objectives

I should now like to turn to another signal achievement of the Stockholm Conference, namely the adoption of Recommendation 25? on marine pollution principles and the related statement of objectives. The Stockholm Conference endorsed as guiding concepts for the Law of the Sea Conference and the 1973 IMCO Conference on Marine Pollution the 23 principles agreed to at the Ottawa session of the Intergovernmental Working Group on Marine Pollution, as well as the statement of objectives agreed to at that same meeting. The conference also took note of the 3 principles on the rights of coastal states also discussed at Ottawa but neither endorsed nor rejected by the Working Group, and referred these principles to the 1973 IMCO Conference for information and to the Law of the Sea Conference for appropriate action.

Dealing first with the statement of objectives endorsed by the Stockholm Conference, this reads as follows:

> "The marine environment and all the living organisms which it supports are of vital importance to humanity and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired. This applies especially to coastal nations, which have a particular interest in the management of coastal area resources. The capacity of the sea to assimilate wastes and render them harmless and its ability to regenerate natural resources is not unlimited. Proper management is required and measures to prevent and control marine pollution must be regarded as an essential element in this management of the oceans and seas and their natural resources".

The importance of this statement cannot be over-emphasized. It recognizes the particular interests of coastal states with respect to the marine environment. It recognizes that there are limits to the assimilative and regenerative capacities of the sea. And it recognizes the inevitable consequential conclusion that it is necessary to apply management concepts to the marine environment, to marine resources, and to the prevention of marine pollution. These are points on which Canada has long insisted in the Seabed Committee and elsewhere. In a statement before the Plenary Committee on August 5 last year, we suggested that the law of the sea is now at a stage where it must become environmentally oriented as well as commercially oriented and resource oriented. We also pointed out that future law must reflect the primary interests of the coastal state, particularly as regards activities adjacent to its shores. And we urged that future law must also be based on resource management concepts. We are gratified that these points are reflected in the statement of objectives endorsed at Stockholm. The essential concept of ocean space management applies, of course, not only to marine pollution but to such other aspects of the law of the sea as fisheries and scientific research. It is thus of fundamental importance not only to the work of this Sub-Committee but to the work of the Seabed Committee as a whole.

(3) Marine Pollution Principles

The 23 principles on marine pollution endorsed by the Stockholm Conference must, of course, be viewed in the light of the statement of fundamental objectives on which I have just touched. I wish now to comment very briefly on each of those principles in turn.

1. "Every State has a duty to protect and preserve the marine environment and, in particular, to prevent pollution that may affect areas where an internationally shared resource is located".

This principle represents a particular application to the marine environment of Principle 21 of the Declaration on the Human Environment. Like Principle 21 of the Declaration, it reflects, in our view, an existing duty under customary international law. Its emphasis on the duty not to pollute areas where an internationally shared resource is located brings out clearly the need for the law of the sea to protect community interests as well as to accommodate

national interests. This dual accommodation of national and community interests is basic to the approach which the Canadian delegation has advanced with respect to the broad range of issues of the law of the sea.

2. "Every State should adopt appropriate measures for the prevention of marine pollution, whether acting individually or in conjunction with other states under agreed international arrangements".

This principle recognizes the need for both national and international measures for the prevention of marine pollution in implementation of the duty of each state to protect and preserve the marine environment. It refrains from traditional doctrinaire approaches based on mutually exclusive jurisdictions, and represents instead a flexible functional approach based on the concrete objective of environment preservation. This is the Canadian approach.

3. "States should use the best practicable means available to them to minimize the discharge of potentially hazardous substances to the sea by all routes, including land-based sources such as rivers, outfalls and pipelines within national jurisdiction, as well as dumping by or from ships, aircraft and platforms".

This principle recognizes that marine pollution problems are part of a vastly complex overlapping set of problems of the human environment as a whole. As the Canadian delegation pointed out in this Sub-Committee last year, marine pollution problems have their peculiar characteristics and can best be dealt with in the context of the law of the sea, while taking into account, however, the totality of environmental problems. As to what might be characterised as a marine pollution problem for the purpose of selecting the forum in which to deal with it, the Canadian delegation considers that the most appropriate test might be the extent to which a particular form of pollution is directly caused by some direct use of the sea itself. Where marine pollution is brought about by substances entering the sea via the atmosphere or continental run-off as a result of land-based activities, this problem might best be dealt with through a combination of national action and international cooperation in other fora. Questions as to the sources of marine pollution with which

the Law of the Sea Conference can effectively attempt to deal, and the fora for dealing with land-based pollution, are important ones which perhaps have not yet received sufficient attention.

4. "States should ensure that their national legislation provides adequate sanctions against those who infringe existing regulations on marine pollution".

While states naturally tend to enforce their own national regulations, they do not always necessarily show the same vigour in enforcing internationally agreed regulations, as is indicated by the experience of states in relation to such agreements as the 1954 Convention on the Prevention of Pollution of the Sea by Oil. This principle emphasises the duty to enforce all regulations alike and, while self-evident, is nonetheless important.

5. "States should assume joint responsibility for the preservation of the marine environment beyond the limits of national jurisdiction".

This principle affirms the shared responsibility of all states in respect of the preservation of the marine environment beyond the limits of national jurisdiction. It should be noted that it does so without specifying what those limits are in relation to marine pollution or prejudicing that question in any way. It is especially important therefore that this principle be read in the light of the recognition of the particular interests of the coastal state in the statement of objectives and in the light also of Principle 2 regarding national and international measures for the prevention of marine pollution.

6. "The States at higher levels of technological and scientific development should assist those nations which request it, for example by undertaking programmes either directly or through competent agencies intended to provide adequate training of the technical and scientific personnel of those countries, as well as by providing the equipment and facilities needed in areas such as research, administration, monitoring or surveillance, information, waste disposal, and others, which would improve their ability to discharge their duties consisting of protecting the marine environment".

The Canadian delegation is gratified that the Stockholm Conference recognized in this principle the special problems of developing states in carrying out their duties to protect the marine environment and affirmed the duty of technologically developed countries to provide assistance to help overcome these problems. This principle represents another important step in elaborating the special provisions that must be made for the needs of developing countries with regard to various aspects of the law of the sea. It is only a first approach to the problem, however, and it is quite clear that we must go much further in elaborating and later implementing this principle.

7. "States should discharge, in accordance with the principles of international law, their obligations towards other states where damage arises from pollution caused by their own activities or by organizations or individuals under their jurisdiction and should cooperate in developing procedures for dealing with such damage and the settlement of disputes".

This principle is in effect a restatement of Principle 21 of the Declaration on the Human Environment. Like Principle 21, it reflects, in our view, the existing duty of states to compensate the victims of pollution damage suffered outside the limits of the polluter's jurisdiction as a result of activities under its jurisdiction. We consider that this principle will require further careful elaboration in order to devise means of enabling responsibility to be fixed with states or international organizations or agencies for any damage caused by them. It will be necessary, in our view, to work out international agreements which would provide for compensation to be payable in such instances and would also establish tribunals to settle disputed cases. This whole area of the law is seemingly procedural in nature but it has considerable substantive implications which will require much serious hard work.

8. "Every State should cooperate with other States and competent international organizations with regard to the elaboration and implementation of internationally agreed rules, standards and procedures for the prevention of marine pollution on global, regional and national levels".

The development of internationally agreed rules and standards is fundamental to the Canadian approach not only to the prevention of marine pollution but to the broad range of issues of the law of the sea and goes hand in hand with the recognition which we consider must be given to the rights and interests of the coastal state. We have emphasized that marine pollution can effectively be attacked only by a combination of global, regional and national rules and standards, with the global ones fixing the minimum provision to be made for the preservation of the marine environment, and the regional and national ones laying down particular and perhaps stricter provisions as may be required to deal with such special situations as that prevailing, for example, in the waters and ice of the Arctic.

9. "States should join together regionally to concert their policies and adopt measures in common to prevent the pollution of areas which, for geographical or ecological reasons, form a natural entity and an integrated whole".

This principle represents a further development of Principle 8 and recognizes important geographical and ecological realities without detracting in any way from a comprehensive approach to the problems of marine pollution.

10. "International guidelines and criteria should be developed, both by national governments and through intergovernmental agencies, to provide the policy framework for control measures. A comprehensive plan for the protection of the marine environment should provide for the identification of critical pollutants and their pathways and sources, determination of exposures to these pollutants and assessment of the risks they pose, timely detection of undesirable trends, and development of detection and monitoring systems".

In the view of the Canadian delegation it will be the responsibility of the Seabed Committee above all to provide the policy or overall legal framework for marine pollution control measures at the international level. However, this principle also

recognizes that a multi-disciplinary and multi-agency approach is required for a comprehensive plan for the protection of the marine environment. Thus, for instance, the identification of critical pollutants and their pathways and sources will require the co-operation of such agencies as the World Health Organization, the Intergovernmental Oceanographic Commission, the Food and Agriculture Organization, and others including in particular the newly-established environmental secretariat.

11. "Internationally agreed criteria and standards should provide for regional and local variations in the effects of pollution and in the evaluation of these effects. Such variables should also include the ecology of sea areas, economic and social conditions, and amenities, recreational facilities and other uses of the seas".

This principle is closely related to Principles 8 and 9 which I have just discussed and needs no further comment.

12. "Primary protection standards and derived working levels - especially codes of practice and effluent standards - may usefully be established at national levels, and in some instances, on a regional or global basis".

This principle, too, represents a further development of Principles 8 and 9 from the scientific and technical point of view.

13. "Action to prevent and control marine pollution (particularly direct prohibitions and specific release limits) must guard against the effect of simply transferring damage or hazard from one part of the environment to another".

This principle reflects the concern of many states, including Canada, that effective provision must be made to guard against what might be called the export of pollution problems. It points out the importance of ensuring that national and regional measures for the prevention of marine pollution are consistent with global measures. This concern was significant in determing the position of the Canadian Government with respect to early drafts of the dumping convention approved by the Stockholm Conference, which I will refer to later in this statement.

14. "The development and implementation of control should be sufficiently flexible to reflect increasing knowledge of the marine ecosystem, pollution effects, and improvements in technological means for pollution control and to take into account the fact that a number of new and hitherto unsuspected pollutants are bound to be brought to light".

This principle reflects the importance of establishing review mechanisms at the national, regional and global levels to ensure that new threats to the marine environment can be promptly identified and that national legislation or multilateral agreements can be conveniently and speedily amended to provide against such new dangers. Such review mechanisms are particularly important with respect to such agreements as the 1954 Convention on the Prevention of the Pollution of the Sea by Oil and the draft dumping articles which were passed on by Stockholm for further action.

15. "Every State should cooperate with other States and with competent international organizations with a view to the development of marine environmental research and survey programmes and systems and means for monitoring changes in the marine environment, including studies of the present state of the oceans, the trends of pollution effects and the exchange of data and scientific information on the marine environment. There should be similar cooperation in the exchange of technological information on means of preventing marine pollution including pollution that may arise from offshore resource exploration and exploitation".

This principle recognizes that the problems of marine pollution cannot be resolved by the development of international law alone but necessitate cooperative action among states and international organizations in the scientific and technological fields. In light of the emphasis which is usually placed in the Seabed Committee on legal and political issues it is especially important for us in the discharge of our own mandate to be reminded and to take into account this need for a multi-disciplinary approach and for the extra-legal expertise which other fora must bring to

problems of the law of the sea such as marine pollution, scientific research and fisheries. While the legal strategy is essential, it cannot alone resolve all the issues in this new and complex field.

16. "International guidelines should also be developed to facilitate comparability in methods of detection and measurement of pollutants and their effects".

This principle represents a further development of Principle 15 and needs no further comment.

17. "In addition to its responsibility for environmental protection within the limits of its territorial sea, a coastal State also has responsibility to protect adjacent areas of the environment from damage that may result from activities within its territory".

This principle represents a particular application of what the Canadian Government considers to be the existing customary rule against extra-territorial damage resulting from activities within the territory of a state. Although Principle 17 is limited to the responsibilities of coastal states, the prohibition against extra-territorial damage should, in our view, apply with equal or greater force to the vessels of flag states operating on the high seas or within the territorial waters of other states. It should also be noted that Principle 17, while dealing only with the responsibility of the coastal state to protect areas adjacent to its territorial sea from damage resulting from activities within its territory, does not prejudice the rights of the coastal state to protect its territory from damage that could result from activities by other states in such adjacent areas. Those rights are dealt with in the three principles discussed at the Ottawa session of the Intergovernmental Working Group on Marine Pollution, to which I shall turn shortly.

18. "Coastal states should ensure that adequate and appropriate resources are available to deal with pollution incidents resulting from the exploration and exploitation of seabed resources in areas within the limits of their national jurisdiction".

This principle is a practical one which recognizes that pollution incidents may arise in connection with the exploration and exploitation of continental shelf resources. As the Canadian

delegation noted in its statement before Sub-Committee III on August 5 last year, it will be necessary to establish internationally agreed standards with respect to the anti-pollution measures which coastal states are obliged to undertake in respect of seabed resource exploitation even within the limits of their national jurisdiction. Such national measures have already been developed by a number of states and should be of assistance in working out an agreement on safety measures for the exploitation of seabed resources beyond the limits of national jurisdiction.

19. "States should cooperate in the appropriate international forum to ensure that activities related to the exploration and exploitation of the seabed and ocean floor beyond the limits of national jurisdiction shall not result in pollution of the marine environment".

As already noted, the development of anti-pollution measures in respect of seabed resource exploitation could and should proceed in a coordinated way - in tandem so to speak - as regards areas within the limits of national jurisdiction and areas beyond those limits. This is indeed the approach being followed by Canada. The measures developed for the international seabed area should, in the view of the Canadian delegation, represent the minimum measures to be adopted by states in areas within their national jurisdiction.

20. "All States should ensure that vessels under their registration comply with internationally agreed rules and standards relating to ship design and construction, operating procedures and other relevant factors. States should cooperate in the development of such rules, standards and procedures, in the appropriate international bodies".

In providing for the responsibilities of flag states with respect to the operation of their vessels on the high seas and elsewhere this principle represents an essential first step in tempering the traditional freedom of navigation with concern for the protection of the marine environment in general and the coastal environment in particular. A further step which we believe must be taken is to provide for the rights of coastal states where inter-

nationally agreed rules and standards for the operation of ships have not been complied with or have not been established. I shall turn to this question later in discussing the three coastal jurisdiction principles referred to the Seabed Committee.

21. "Following an accident on the high seas which may be expected to result in major deleterious consequences from pollution or threat of pollution of the sea, a coastal state facing grave and imminent danger to its coastline and related interests may take appropriate measures as may be necessary to prevent, mitigate, or eliminate such danger, in accordance with internationally agreed rules and standards".

The right of intervention of coastal states on the high seas, in the view of the Canadian delegation, represents another existing rule of customary international law. This principle was enunciated by the Institute of International Law at its Edinburgh meeting in September, 1969. The 1969 IMCO Brussels Convention provides for such a right of intervention in respect of oil pollution casualties. Further evidence that this right of intervention has achieved the force of a customary rule of law is provided by the British precedent in the Torry Canyon incident and also by the British legislation incorporating this rule in advance of the coming into force of the IMCO Brussels Convention. While this right of intervention is an extremely important one, its value is of course limited by the fact that it provides only for action that can be taken by the coastal state after a maritime incident has occurred; what is needed above all is to seek to prevent such incidents from occurring in the first place. I shall refer to the coastal state right to take such preventive action a little later.

22. "Where there is a need for action by or through international agencies for the prevention, control or study of marine pollution, existing bodies, both within and outside the UN system, should be utilized as far as possible".

This principle simply reflects a legitimate concern - which I assume we all share - to avoid an unnecessary proliferation of international agencies and to ensure that existing agencies are

utilised to the maximum advantage with respect to the problems of the preservation of the marine environment. An outstanding exception to this principle is the new secretariat for the environment endorsed at the Stockholm Conference which is a most valuable institution that was urgently needed to deal effectively with environmental problems.

23. "States should assist one another to the best of their ability, in action against marine pollution of whatever origin".

The Canadian delegation is pleased to state that the governments of Canada and the United States are already in the process of implementing this principle. In a communiqué issued by the two governments following the bilateral talks held on July 13 which I referred to earlier, it was noted that good progress is being made in developing joint contingency plans for the water boundary areas between the United States and Canada which would be available in the event of a spill of oil or other noxious substances. It was also noted in the communiqué that agreement has been reached on a joint contingency plan for the Great Lakes, and that a proposed plan for the Atlantic coast has been drafted and that further discussions were to be held to complete the drafting of a similar plan for the Pacific coast. It is to be hoped that these and similar arrangements entered into by other countries will set a pattern for cooperation that will give global effect to the principle endorsed by the Stockholm Conference.

(4) Principles on Rights of Coastal States

I should now like to turn to the three principles on the rights of coastal states considered at the Ottawa session of the Intergovernmental Working Group on Marine Pollution and which the Stockholm Conference has now referred to IMCO for information and to the Law of the Sea Conference - and hence the Seabed Committee - for appropriate action. These three principles were submitted by the delegation of Canada to the Intergovernmental Working Group on Marine Pollution. As is noted in the November, 1971 report of that Working Group, the general concepts contained in these three principles and

in similar suggestions by the delegation of Spain were supported by a number of other delegations, including those of Algeria, Argentina, Barbados, Brazil, Chile, Colombia, Cuba, Ecuador, Ghana, Guatemala, Iceland, Ivory Coast, India, Kenya, Malta, Mexico, Peru, Portugal, Spain and the United Republic of Tanzania. Other delegations disagreed with these principles and still others considered that the Intergovernmental Working Group on Marine Pollution was not the forum for their discussion and accordingly reserved their position. They are now before us for appropriate actio

The first of the three principles in question reads as follows:

> "A state may exercise special authority in areas of the sea adjacent to its territorial waters where functional controls of a continuing nature are necessary for the effective prevention of pollution which could cause damage or injury to the land or marine environment under its exclusive or sovereign authority".

This principle represents, in our view, the logical extension of the particular interests of the coastal state recognized in the statement of objectives endorsed by the Stockholm Conference which I discussed earlier in this statement. In positing coastal state authority it represents the logical corollary of the heavy emphasis on the obligations of coastal states which is found in most of the 23 agreed principles on marine pollution. If it is recognized that rights must be balanced with responsibilities, then surely it must also be recognized that responsibilities must be balanced with the necessary rights and powers. In practical terms this principle signifies that coastal states have or should have the right to establish zones of specialized jurisdiction in areas adjacent to their territorial sea for the prevention of pollution of the coastal environment and the marine environment in general. Every state surely must ultimately have the right to protection under the law against pollution damage within its territory from activities by other states, and to protect that right coastal states should have the right and the responsibility to assume necessary

maritime jurisdiction beyond traditional limits, taking into account the degree of danger and special circumstances which may be involved. In our view, the Law of the Sea Conference will fail to provide the necessary accommodation of national and international interests if it fails to give effect to this principle.

The second of the principles in question reads as follows:

> "A coastal state may prohibit any vessel which does not comply with internationally agreed rules and standards or, in their absence, with reasonable national rules and standards of the coastal state in question, from entering waters under its environmental protection authority".

As I noted a few moments ago, one of the principles actually endorsed by the Stockholm Conference provided that all states should ensure that their vessels comply with internationally agreed rules and standards relating to ship design and construction, operating procedures and other relevant factors. To give practical effect to this agreed principle, it seems to us essential that the coastal state should have the right to prohibit vessels not complying with internationally agreed rules and standards from entering areas where it exercises jurisdiction for the protection of the environment. Measures will have to be worked out to solve the problems of inspection, but inaction is not acceptable on this issue. Similarly, where internationally agreed rules and standards have not been established, the coastal state must have the right to enforce its own reasonable national rules and standards against all vessels in the areas in question. As the Canadian delegation has pointed out in the past, it has become necessary to modernize the concept of innocent passage and to extend its application to areas adjacent to the territorial sea.

The third principle in question reads as follows:

> "The basis on which a state should exercise rights or powers, in addition to its sovereign rights or powers, pursuant to its special authority in areas adjacent to its territorial waters, is that such rights or powers should be deemed to be

delegated to that state by the world community on behalf of humanity as a whole. The rights and powers exercised must be consistent with the coastal state's primary responsibility for marine environmental protection in the areas concerned: they should be subject to international rules and standards and to review before an appropriate international tribunal".

This principle, of course, reflects the general Canadian approach to the whole range of problems of the law of the sea and to marine pollution in particular. I wish to emphasise, however, that we do not attach any particular importance to terminology for its own sake. I refer to such terms as "custodianship" and "delegation of powers". Such terms should not, in any event, be thought of as suitable for draft treaty articles, but rather as illustrations of our conceptual approach to the problem. What is fundamentally important is that the necessary recognition of the rights of coastal states should also make adequate provision for the vital interests of the international community and that, to attain this end, the rights in question be exercised on the basis of internationally agreed rules and standards and subject to appropriate dispute settlement procedures. Otherwise we could fail not only to protect the interests of the international community but fail as well to achieve an accommodation among conflicting national interests.

(5) Draft Dumping Articles and Annexes

Before concluding, Mr. Chairman, I should like to touch very briefly on one further result of the Stockholm Conference, namely the decision to refer draft articles and annexes on ocean dumping to this session of the Seabed Committee for information and comment, and to a conference of governments to be convened by the United Kingdom before November, 1972 for further consideration and, we hope, final adoption.

In the view of the Canadian delegation, the draft articles and annexes contained in the report of the intergovernmental meetings in Reykjavik and London earlier this year represent the basis for an effective convention on ocean dumping both from an environmental and jurisdictional point of view.

As members of this Committee are aware, Canada has consistently opposed, along with other states, a dumping convention which would amount to little more than a licence to dump or to export pollution problems from one area to another. Active Canadian participation in putting forth the present draft articles in Stockholm was prompted by our belief that they no longer reflect earlier tendencies towards a licence to dump approach but now represent an effective approach to the prevention and control of ocean dumping.

From an environmental point of view the draft is effective since it adopts the black-list gray-list approach taken by the drafters of the Oslo Convention which forbids dumping of certain highly toxic substances and restricts the dumping of other substances under a regulated system. From the law of the sea legal-political point of view we consider that the draft articles do not beg any questions of jurisdiction, leaving them for final decision by the Law of the Sea Conference without closing any options. However, the draft articles in their present form lay a basis for an accommodation of interests which may have implications going far beyond the question of ocean dumping. The articles no longer represent simply another IMCO or flag-state type of convention enforceable only by flag states against their own ships. Neither do they abandon the concept of flag-state jurisdiction, nor should they, for someone must assert control over ships on the high seas. The draft articles, however, would by their terms be enforceable also by coastal states parties against ships "under their jurisdiction". This reflects, in our view, the very kind of accommodation consistently urged by Canada whereby jurisdictional problems could be resolved by an approach analogous to the universal jurisdiction approach accepted by all states with regard to slavery and piracy. Canada was thus especially pleased when the delegation of Australia was able to expand further the ambit of the universal enforcement approach to the dumping articles by having included in the action proposal reference to enforcement by states against ships in <u>areas</u> under their jurisdiction (as well as by <u>ships</u> under their jurisdiction).

Canada views it as a major achievement of the Conference to have produced draft articles not merely of a cosmetic value which would leave states in fact and in law free to dump. This is an area where nothing can be gained by confrontation between flag states and coastal states but where effective measures can be established by cooperation. Canada and many other states have consistently offered that cooperation and we are hopeful that all states represented here will do the same in the further steps needed to bring the draft dumping articles and annexes into force.

Mr. Chairman, the results of the Stockholm Conference provide us with an opportunity to work together here in a spirit of conciliation and cooperation and in the light of what must be one of the most important meetings ever organized by the international community. More specifically, these results represent the basis for the legal principles which we are charged to formulate in the Sub-Committee. By way of a question more than a suggestion, the Canadian delegation wonders whether the Sub-Committee could not soon consider establishing a working group which could begin by examining the concepts that have emerged from the Stockholm Conference, and other concepts as well, with a view to their ultimate inclusion in draft treaty articles. We should be grateful to have the views of other delegations on this possibility. For our part, we had hoped at this session to submit our own draft comprehensive treaty on marine pollution but the interval between the Stockholm Conference and the present meeting did not allow us sufficient time to review and revise the work we have already done on our draft so as to ensure that it would take into full account the results which emerged from Stockholm. We have thought too that it might be more appropriate for the Sub-Committee as a whole to review those results before we or anyone else prepares particular draft articles.

Having outlined the Canadian delegation's views on the substance of the work accomplished at Stockholm and how it relates to our work in the Seabed Committee, we cannot conclude without saying what a remarkable achievement the whole conference represented

This success, we feel, must be attributed in no small measure to the skills and dedication of the Secretary-General of that conference, Mr. Maurice Strong, and his dedicated and hard-working secretariat. That so many states were able to work so effectively in such a spirit of cooperation and goodwill and to work out agreement so expeditiously on such important principles as those enunciated in the Declaration on the Human Environment and the marine pollution principles constitutes an outstanding success for the United Nations. It is not only the substance of those important principles that we should be guided by in this Committee, Mr. Chairman, but also the manner and the spirit in which they were negotiated. It was necessary for every delegation and for the secretariat to work very hard in Stockholm under great pressure but in a spirit of genuine cooperation and conciliation. The problems were extremely complex and many thought the Conference had undertaken an impossible task. But the Conference discharged its mandate and achieved its high objectives. This pattern - this precedent - is one which the Seabed Committee and the Law of the Sea Conference could well emulate.

Mr. Chairman, I have taken so much of the Committee's time because of the importance and complexity of the subject under discussion. Before concluding, I might add that the Canadian delegation considers that it might be useful to devote the first part of the present session of Sub-Committee III to the treatment of marine pollution and then go on to the treatment of scientific research and transfer of technology. The latter questions have not received sufficient attention so far and the Canadian delegation has produced a working paper on marine scientific research principles which we hope to be able to submit to the Sub-Committee shortly.