

Statement by J. Alan Bessley,
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to the Third International Conference on

POLLUTION CONTROL IN THE MARINE INDUSTRIES

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INTERNATIONAL ASPECTS OF MARINE POLLUTION: CANADIAN POSITION

When Maurice Strong spoke to the delegates in Stockholm in June last year at the close of the Human Environment Conference, he characterized the results of the Conference as "the first steps on a journey of hope for the future of mankind". While June 1972 may have been a starting point of historical significance in terms of the global environment and the threat to it, the year 1973 may well prove to be the turning point in the direction mankind will take in embarking upon this journey which in turn will determine whether the "hope" generated by the Stockholm Conference can truly be realized. The calendar this year is studded with events of environmental significance. Immediately following this Conference, the first session of the Governing Council of the UNEP will take place in Geneva. In July and August, the UN Seabed Committee, preparing for the forthcoming Law of the Sea Conference, will meet in Geneva. In October, a Diplomatic Conference on Marine Pollution under the auspices of the Intergovernmental Maritime Consultative Organization (IMCO) will take place in London. In December, the opening session - albeit for organizational purposes only - of the Law of the Sea Conference will take place in New York. Each of these events will be an important test of the continued determination of the international community to build upon the guidelines provided by the Stockholm Conference, and to build upon the guidelines that have emanated from other sources such as this Conference in which we are participating today. The timing of this meeting is, of course, no accident. The organizers are well aware of the imminence of the events I have mentioned. We are here to listen and to learn as well as to contribute,

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and I compliment the organizers in taking this initiative in bringing us together here today - today in particular since it is World Environment Day.

Canada's interest in the marine environment is self-evident. I need hardly emphasize to this audience the special characteristics of Canada's Arctic waters, the length of Canada's coastline, the importance of Canada's coastal fishing interests and the extent of Canada's continental shelf. I should emphasize, however, that it is not these factors alone that have motivated Canada in adopting an active interest in the protection of the environment. It is widely recognized today that the quality of the environment is everybody's problem. The protection of the oceans in particular requires action at the global level. The approach of the Canadian Government, which I am about to outline to you, is therefore both a natural outgrowth of this long-standing broad concern for the environment as a whole, and a reflection of years of work aimed specifically at the protection of the marine environment of direct concern to Canadians.

As efforts multiply to intensify and to diversify the use and exploitation of the oceans, it has become increasingly evident that there must be a parallel effort to ensure that developments relating to the productivity and utility of the marine environment do not conflict with but are wholly consistent with the need to protect and to preserve the marine environment. To this end, therefore, in the course of the work of the United Nations Seabed Committee and in the course of the

preparations for the Stockholm Conference, Canada has advocated the development of a comprehensive approach to the preservation of the marine environment and the prevention and control of marine pollution. Comprehensive in terms of the levels of action, that is to say both national and international action; in terms of the sources of pollution, that is to say activities both on land and on sea, and in terms of the disciplines involved, that is to say a multi-disciplinary approach which would take into account all the relevant scientific, economic, legal and other considerations.

At the national level, the action Canada has taken is well-known. The Clean Air Act, the Canada Water Act and the proposed Environment Contaminant's Act are examples of domestic control measures designed to prevent pollution internally which in turn, as these control measures are implemented, will limit the likelihood of activities in Canada causing pollution externally. The Arctic Pollution Prevention Act, the Canada Shipping Act, the Fisheries Act and the Territorial Seas and Fishing Zones Act taken together are examples of Canadian legislation designed to ensure that activities within coastal areas under Canadian jurisdiction are pursued in a manner consistent with the preservation and the protection of the marine environment in those areas. Because in some instances they involve extension of jurisdiction, albeit for limited and functional purposes, they necessarily entail international implications. In this legislation, we have laid the basis for the sound and proper management of Canada's ocean areas; the task before us now is to build upon the foundation by improving Canada's capacity to manage such

areas, thereby improving Canada's capacity to contribute to international or global action to protect the marine environment. In so doing, it is essential to take into account the already existing international guidelines which Canada has helped bring into being.

In the preparations for the Stockholm Conference last year, Canada made a point of drawing attention to the relationship between the Stockholm Conference and the various other meetings concerned with environmental and marine problems, in particular the Law of the Sea and IMCO Conferences. The Stockholm Conference was viewed as an opportunity to reach agreement, in principle, on basic environmental requirements and responsibilities with respect to the marine environment. The Law of the Sea is regarded as the appropriate forum for the translation of such principles into legally binding rules, while the IMCO Conference is regarded as the competent authority to develop technical regulations on the prevention of pollution from ships. With these considerations in mind, the Canadian Government sponsored the Second Session of the Intergovernmental Working Group on Marine Pollution (IWGMP) in November 1971 which was part of the preparatory machinery for the Stockholm Conference. At this meeting in Ottawa, on the basis of a proposal put forward by Canada, a body of principles on marine pollution was elaborated and sent forward to the Stockholm Conference. At Stockholm, these principles were endorsed by the Conference and, along with three principles on the rights of coastal states also proposed by Canada, were referred to the Law of the Sea Conference for action, and the IMCO Conference for information. The draft articles Canada has submitted to

the Seabed Committee are based on these principles and the principles embodied in the Declaration on the Human Environment also adopted at the Stockholm Conference, in particular Principle 21 which in parts I quote:

"States have.... 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".

Canada has now put forth a proposal in the Seabed Committee for the elaboration of an international convention on marine pollution as the best means of obtaining agreement on the international application of the comprehensive approach to ocean management. It is not intended that such a Convention should attempt to deal with all aspects of the marine pollution problem; rather it would take the form of an "umbrella" treaty consisting of fundamental legal principles which taken together with other conventions on specific pollution problems would constitute a coherent, uniform and all-embracing treaty system. A number of the components of this treaty system are already in place. I have in mind, for example, the Convention on the Prevention of Marine Pollution from Dumping of Wastes and Other Matter which was elaborated at the London Conference in October last year. Canada has signed this Convention and is now preparing for ratification of it. I have in mind also, the International Convention on the Right of Intervention on the High Seas which was produced by the 1969 Brussels Conference on marine pollution. I should point out that the IMCO Conference in October this year will be examining this Convention with a view to broadening its application to pollutants other than oil. Indeed, the proposed Convention on the Prevention of Marine Pollution from Ships, which will be the main

undertaking of the IMCO October Conference, will form another important component of this treaty system. However, to ensure that this evolving system develops in a coherent and a consistent manner, it is essential that they relate to a common agreement on certain fundamental legal principles. This is the main purpose of the proposed Comprehensive Convention. In the Seabed Committee, Canada has tabled draft articles for a comprehensive convention which would establish the rights and responsibilities of states to protect and preserve the marine environment and would require states to achieve this objective through the prevention of marine pollution and through the adoption of appropriate control measures. In the event of a failure to fulfil these obligations with resulting damage to the marine environment beyond the limits of national jurisdiction or to the environment of other states, the Convention would also establish the consequences that would flow from such a situation.

It is intended that the Comprehensive Convention on the Preservation of the Marine Environment will be negotiated in the course of the preparations for and at the forthcoming Law of the Sea Conference. In fact, this process has been under way for some time and there is already a considerable measure of international agreement on the substance of the Convention.

At IMCO, Canada has participated actively in the preparations for the October Conference where we have been pursuing the adoption of a convention that will be not only environmentally sound - through the establishment of effective standards on the transportation of pollutants

by ships - but also jurisdictionally effective - through the establishment of new rules for the application of international standards. Not only flag states but coastal states have a part to play in ensuring adherence to measures for the prevention of marine pollution by ships. It is hoped that this can be achieved by establishing jurisdiction in ports to prosecute violations of the Convention wherever such violation may have occurred and by recognition of the right of states to enforce navigation standards in waters under its jurisdiction. This "shared" jurisdiction approach appears for the first time in the Convention on the Prevention of Marine Pollution by Dumping. Under the terms of this Convention, states may apply the measures in it, on the control of dumping not only in respect of vessels flying its flag, but also in respect of vessels, aircraft and fixed and floating platforms "under its jurisdiction" believed to be engaged in dumping. It is not intended that this sharing of responsibility should hinder navigation or other uses of the sea but rather it is intended to ensure that use is not abuse and that more than lip-service is paid to maintaining standards - standards, which have been internationally agreed or where necessary, because of oceanographic or ecological characteristics of some coastal areas, standards established by the coastal state or states concerned.

Against the background of Canada's active legislation programme in the environmental field, it is not surprising that Canada has been a vigorous proponent of the development of internationally agreed environmental control measures for the oceans. Control measures which must prove equal to the challenge to health of the ocean posed by the

growing economic and technological pressure on the oceans. Legal techniques have been used by many countries as a logical corollary to the utilization of other techniques, be they scientific, technological or managerial, for the protection of the environment. This approach is equally relevant at the international level and the development of international environmental law has been and will continue to be featured by Canada as an essential component in the strategy to combat environmental degradation.

At Stockholm, only Canada affirmed that the principles I have mentioned, that is Principles 21 and 22 of the Declaration on the Human Environment - were a reflection of customary international law. Other states, however, reserved their position and, in the light of discussion since Stockholm, it is clear that reaching agreement on a comprehensive scheme for the protection of the marine environment based on these principles will not be easy. We can expect that at the Law of the Sea Conference some delegations will continue to debate the validity of the Stockholm consensus as the agreed basis for the development of international environmental law in this area. However, it remains the Canadian view - as pointed out in my statement to the Plenary in Stockholm at the close of the Conference - that the legal principles of the Declaration, taken together with the important and closely related marine pollution principles that I have mentioned and the Draft Articles for a Comprehensive Convention, on which we have already taken some action, as well as the recently elaborated Ocean Dumping Convention provide the international community with an opportunity to work together in a

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Principle 22

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.