Speech by

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Well, I think I should begin by telling you what a delightful experience it is to be here. I don't mean that as a crack at Canberra. I have been pleased to find several people here already who have been to Canberra, and that is another pleasant surprise. You know, I want to lay to rest one of the stories that has been told about Canberra, although I have only been there six months. It is said to be the only city in the world where you can find a dog chasing a cat down the street and they are both walking. That's not true. I know. We have a dog and a cat and I know that's not true. As a matter of fact, the origin of that story is the city I come from - Victoria, British Columbia. There it's true. I was warned by Bill not to bore you too much or for too long, and so I offered to give up my right to speak entirely, but apparently he didn't mean it quite that way.

I want to turn to a serious note, to lay the basis for the subject I wish to speak about. I want to talk for just a moment about Australia and Canada and our relationship, and in so doing I am going to quote briefly from one of our recent publications some of you may have seen - it's called "Image Canada". In that article I expressed my own views which I hold very strongly, and interestingly, the more I move about Australia the more I find Australians and Canadians who express similar views, sometimes in different language.

I believe we sometimes have difficulty comprehending one another, but not too often in my experience. I really am committed to the concept of the mutuality of interests of these two countries. I think we tend to take each other for granted a good deal. There's a tremendous fund of goodwill. We like and respect one another. I think we tend to know the myths about one another. You know about the Mounties, the snow, the Eskimos, etc. We tend to know about the kangaroos, the emus, including the wine, and the bronzed ANZACS. We know these myths and these symbols. But there's a surprising lack of concrete information about what makes each country tick. We know that we both are Commonwealth countries. We know that we both have similar institutions which shape our thinking in many, many ways. We know that we both have the Queen as our Queen - Queen of Australia, Queen of Canada. In today's world, however, I find that perhaps the most significant fact of life about each country is the similarity in the range of economic problems which we are both facing. I believe we were ahead of Australia in one respect. I think we had high unemployment and high inflation at the same time before any other developed country, certainly before Australia managed it, and we have been living with that very serious situation for some time since. I find that in day-to-day dealings with Australians, we often tend to think of one another as competitors, whether its wheat, whether it's minerals, in various other fields - potentially, perhaps, that very sensitive issue, uranium. I find more and more, however, that even where we are competitors, it is in our own mutual interests to consult together, because neither of us belongs to any tidy little club or interest group - neither of us is a great power, neither of us is a space power, neither of us is a nuclear power. We both rejected that last option.

If we don't work together a lot more than we have in the past, I think we will find ourselves competing with one another to our mutual disadvantage, and in my brief experience here, but having talked to a large and representative number of people already, - and I intend to go on doing that - I find that by and large, where we do consult, where we do get down to the specifics, we can often work in a complementary way, instead of a competitive way, and that's the basis for what I wish to say to you now about, namely the Law of the Sea.

The Law of the Sea is a subject that may sound terribly remote to many people - you well may ask what's it all about and what's it to do with us? Well, it has a lot to do with Australia as well as Canada, and it raises a lot of very serious economic issues for both countries. I need only mention the vast resources of the oceans, the fisheries, for example, but euqally so, the resources of the Continental shelf, and the resources of the deep ocean seabed beyond the Continental shelf, and these include not merely petroleum that people tend to know about, but other kinds of resources, such as minerals in the shape of manganese nodules, which lay about on the ocean floor waiting to be scooped up and which may, and evidently do, represent trillions of dollars worth of nickel, cooper, cobalt, manganese. We all know that the nickel market is depressed at this time, and it seems silly to think of seabed mining as competition for a country like Australia or Canada. All I can tell you is that I follow these things daily and have done now for approximately 10 years, and seabed mining of manganese nodules is well past the planning stage - several countries are already in the process of developing legislation which would license entities to go out and mine the deep ocean seabed. In several cases there is no doubt whatsoever that this exploration exploitation will be heavily subsidized and the end result will be

competition to land based production. Obviously, manganese and cobalt producers will be the first to be hit, but ultimately nickel producers will also be affected, and I am mentioning that, not because in my view it is the most important aspect of the Law of the Sea Conference, but merely to illustrate that it has some very concrete practical economic reality for all of us sitting here today. Underlying that kind of issue are others which, in my view, are at least as important. I refer, for example, to the environmental question.

We have all heard enough about the environment that we tend almost to feel that we have heard too much about it, but at least we have managed to learn over the last few years that the oceans can't be used as a dumping ground, as a sewage pit for everything that rolls off the land or everything that comes from the atmosphere generated from the land. We have gone a long way in the Conference in which I am involved in drawing up new treaty rules, because that is what we are aiming at, a constitution of the ocean which would oblige States to act in new ways to preserve the marine environment. To my mind, if we did nothing else, it would have been a worthwhile exercise. But underlying that issue again is the obvious clash of interests, the collision of uses of the ocean, if you want, between any attempt to preserve the marine environment and to use the ocean for all the many other purposes, including, in particular, those that we tend to subsume under the phrase "freedom of navigation".

If too much power is given to coastal States, then quite clearly freedom of navigation will suffer. Now that matters to a country like Canada or Australia, because we are major trading nations,

but it matters from another point of view too; in global strategic terms, it's universally accepted now that it is essential to try and preserve the freedom of the oceans and the freedom of navigation on the oceans for military purposes. That may sound like a non-peaceful approach to the problem, but I think the more one considers the issue, the more one tends towards the conclusion that freedom of navigation is essential if we are going to have a stable and peaceful world. It is so easy for a country, or group of countries, to interfere with the rights of navigation of another state, a group of states, whose political views they may not share, that I think that it is perhaps one of the most fundamental issues at stake at the Conference, so I find it peculiarly appropriate that I should be meeting to talk to you about a subject in which I have spent well over 15 years of my life, 10 of which have been in a kind of marathon conference. Fortunately, I am a jogger, but I never expected to be one by trade, but it's peculiarly apt and appropriate, I think, that we have the Navy represented here and represented so well, I might say, having had a chance to get to know some of the officers. What I propose to say now, I will attempt to abbreviate and condense, because I would like to leave some time for Captain Riddell and myself to answer any questions you may wish to pose, so what I say, with apologies to experts here present, such as Professor Johnson, will be in summary form.

In brief, the laws we had when we began this exercise were based on two fundamental principles of international law, which really have had the force of law for approximately 300 years. Although we all tend to make fun of the U.N., or make fun of international law, especially if we've practised law privately, as I did. The fact is, however, that States do tend to act in accordance with their perception

of the law, and nowadays the easiest way to make sure that they all perceive the law in the same way is to reduce it to treaty form, and that's what we are trying to do in the U.N. It's not a question of passing resolutions, however important that process may be. We are drafting a global constitution of the ocean. When we began, the two fundamental principles I mentioned,were simply state sovereignty and freedom of the high seas; sovereignty being the status that applied to the territorial sea, thought by many to be 3 miles, by others 4, some 6, some 12, and recently more than a few began to say that perhaps it should be extended to 200 miles, but in any event over that area states asserted sovereignty subject only to the right of innocent passage. Beyond the territorial sea the concept of the freedom of the high seas applied. That concept of a narrow marginal belt of sea subject to coastal sovereignty originated at a time when states were arguing the same kinds of issues we are now arguing in the U.N., namely, how far out should our jurisdiction go, and for what purposes?. I happily leave it to Professor Johnson and others to explain how Grotius won the debate. Gratius is often referred to as the Father of International Law; he's certainly the Father of the Law of the Sea. We had to go through the process, meaning we Canadians and we Australians, of defrocking Grotius, because we felt that people were absolutely committed psychologically to the concept that any jurisdiction for coastal states beyond three miles was automatically a bad thing. Having done that, we are now rehabilitating Grotius, because we don't want to go too far in that direction. We have reached the stage now where we have negotiated approximately 500 draft treaty articles, and bearing

in mind that there are 150 nation states involved in the process, it's no simple task, I can tell you. Whenever any two diplomats get together there are soon three opinions. Some developments had occurred which reflected a desire for change in the law. We know about the 200 mile claims, but these are not the only developments. In 1958 and again in 1960, an attempt was made in Geneva to codify the international law of the sea. People don't realise how successful that attempt was. In one respect, it wasn't codification, it was the development of a new treaty, a new convention on the Continental shelf. Both Australia and Canada adhered to that convention and each of us took a rather maximal interpretation of it. For the benefit of those few who might not be fully familiar with every aspect of that particular convention, it provides that a state has sovereign rights over the resources of that Continental shelf down to a depth of 200 metres or to the point of exploitability. Well, we like that last phrase very much, and Australia and Canada have insisted from the outset of this present conference that we are not about to truncate our Continental shelf.

We have almost won that battle now. I don't think any predictions can be made, but we have won on this issue at the cost of offering to share the fruits of our labours, so to speak to share the actual profits with respect to that area from 200 miles seaward, and I think that will be the compromise on that issue, and it is widely accepted now.

The breadth of 12 miles is now generally accepted even by the territorialists, by whom I mean the 200 milers, as

the acceptable width for the territorial sea, provided, - and this word provided is terribly important because it is a package deal that every state is looking for in this negotiation,- provided the so-called economic zone satisfied the countries that previously claimed the 200 mile territorial sea.

What has developed as a result of these years of negotiations? In 1967, Ambassador Pardo of Malta introduced a resolution in the U.N., and I think it is indicative of what a small state can do when we look at what he has wrought. This resolution was based on the concept of the "common heritage of mankind" applicable to the seabed beyond national jurisdiction. All the seabed beyond national jurisdiction would be reserved for peaceful purposes and would be set aside for the common heritage of mankind, with particular reference to the developing countries. What isn't so well known is that in the same year, 1967, the USSR canvassed many states, including Canada - I don't know if they canvassed Australia - and asked if we were interested in concluding a global treaty providing for a 12 mile territorial sea with a high seas corridor through international straits. I know that proposal has a good deal of significance to all the Naval officers here, but right at the outset in 1967 one could see the point of view of the smaller states, the developing states if you wish, who wanted some guarantee that one day they would be able to share in the resources of the ocean, and the point of view of the great powers whose primary concern was strategic, in ensuring freedom of navigation.

Well, to make a long story short and to compress a good deal of what happened, by 1970 these two initiatives had combined to the point that we were ready to pass two major resolutions in the U.N. One of them was directed to the common heritage, the seabed beyond national jurisdiction, and it laid down a whole series of norms which I think can't really be argued as then representing existing international law, but they certainly pointed the direction in which we have since worked. That was the resolution on the seabed, the common heritage resolution. The other resolution was a more practical 'nuts and bolts' resolution, setting up a conference to codify and develop the Law of the Sea. I had the honour of introducing that resolution, which meant that I had to do a lot of negotiating, and in retrospect one may wonder, if we did the right thing, because we decided to go for a comprehensive treaty - all issues would be included, although there was a point of view being pressed by some states that we should settle for a manageable package of issues. Well, that didn't prove possible. There were too many states who said 'no', - we are interested in the environment, you may be interested in fisheries, they may be interested in the problems of the landlocked, but there is no deal unless it is everything. That is why we have been embarked ever since on this lengthy painstaking exercise which takes me away from home and from my job for as long as eight weeks at a time. I have only just recently returned from the blizzards of New York - and much to my surprise they really did have blizzards - Canadians are very sceptical about that sort of thing, you know. I found that I did have to buy a hat and some gloves, and I wore

those boots that I felt so foolish packing into my suitcase when I took them. Well, we inched along in New York - we didn't make any great break-through, but we are meeting again in Geneva in a month, and I think it is an appropriate time to look at where we have arrived, what we have achieved, and to look also at the consequences of a successful conference and a failed conference, because that is what hangs in the balance now.

We've negotiated successfully on so many issues that seemed absolutely impracticable as recently as a year ago, and we have reached accommodations on issue after issue, the breadth of the territorial sea, the nature of the economic zone, it's not territorial sea, it will be coastal jurisdiction comprising fisheries rights, environmental jurisdiction, jurisdiction over marine scientific research and seabed resource rights. There will undoubtedly be the kind of extended continental shelf claims I mentioned recognized in the treaty, but two fundamental new concepts have emerged from this conference. One is the economic zone, which is the term applied to the range of coastal jurisdiction which are now accepted and which, incidentally, Canada has established as of a year and three months ago. It is worth noting that we have had our 200 mile fishing zone for about 15 months, we have had about 15 prosecutions for offences in that time. That is a question I will come back to, as I know that there will be some who will want to ask questions on enforcement. The other great concept, which has come out of the conference is that of the common heritage, and that has been the one which has proven most difficult; because on the one hand we found that the developing countries saying the whole of the area of the seabed beyond national

jurisdiction should be set aside to be exploited by a new entity, an offshoot of the U.N., an institution called the "International Enterprise", and regulated by an "International authority". The other side of the argument has been that of the major developed states who said "no, we don't mind a little regulation and we don't mind a licencing system, but we have no intention of giving up our existing rights to go up there and mine these areas".

Well, the compromise, interestingly, was one put forth by Australia and Canada called "parallel access" or "joint access". When we first put it forth, it didn't fly. It went up the flagpole, but nobody saluted it but now it has come to life again and I think it is generally accepted as a compromise on that issue. It means that, in effect, there will be an international institution which will regulate the mining of the deep ocean seabed. There will be another one that will actually participate in this mining process. It's a fascinating concept, it's one that almost "blows one's mind", not because of the problems it raises, but because of the opportunities it holds out. It represents the first occasion on which the international community will treat a part of the world that ought to belong to the international community as if it did belong to the international community, and try and develop it jointly. It is possible that we could learn lessons from this process that we could later apply landwards. The compromise I mentioned is that states and private entities, multi-nationals and others will have the right to mine approximately half of this area. Every time a mining site is selected, one half will go to the "enterprise" and the other half will go to one of these.

Now, what we are talking about requires the investment of vast amounts of capital and the use of technology that is very new,very expensive and very scarce. One mine site is expected to cost approximately $800 million to develop. Now, that's about the amount that INCO (International Nickel Co. of Canada) has put into Indonesia. The problem arises, of course, for many countries as to the kind of competition they will have to face from the deep ocean seabed. Left to the purely commercial operation of the Laws of Economics the competition from this new source might not damage land-based producers. However, several countries are heavily subsidising this mining exploration and have made it known that they intend to go on doing so. So it's not going to be an open economic contest between a country like Australia and Canada, or Indonesia, and the mining operations that are going on off-shore, insofaras certain countries are concerned, because of this subsidisation. Now, that issue is one that may wreck the conference.

We have virtually resolved most of the major difficulties excepting the problems of the landlocked countries and those that consider themselves geographically disadvantaged because they don't have long coastlines, but we are on the verge of resolving that one. The major issue unresolved, and a year ago I could not have said this, is the one relating to the regime, the legal rules we will devise that will govern the exploration and the exploitation of these minerals on the ocean. Unfortunately, if the next session in Geneva is not successful, it is quite clear that some countries will take unilateral action. Not the kind we have taken with respect to fisheries, since we have based our action on the draft treaty, which has not yet been accepted, but which is in draft form.

This would be unilateral legislation that would not be based on the treaty and would be viewed by many, however intended, as a direct attack upon the treaty making process, indeed a direct attack upon the U.N., and if that happens, the whole conference could collapse about our ears, and it won't be the same as before. It won't be like it was. It won't be a case of a few countries claiming 200 miles while others say "that's illegal". The trends now are so clearly established that it is absolutely certain that we will have at least a 12 mile territorial sea, but we won't have any guarantees concerning passage through a strait. That can only come by the treaty, because these are new guarantees that are written into the draft treaty, which would allow submarines to navigate submerged, for example, whereas the old law didn't. Another example is that whereas many countries have made clear their willingness to accept an economic zone 200 miles with various kinds of jurisdiction, they have said if the treaty fails they will promptly establish a 200 mile territorial sea. Now, the kind of chaos and confusion that can result from that situation is unbelievable: there would be claims, counter claims, conflicting claims, and court proceedings if we are lucky, and threats to the peace, even breaches of the peace if we are unlucky. What happened between Iceland and the U.K., would I think, be "peanuts" by comparison to what we could face. So we are very hopeful that the countries considering moving unilaterally will hold off and give the conference this one last chance.

This is another case again where Australia and Canada are really in the same corner. It's not simply a narrow selfish nationalistic point of view we have adopted. We both genuinely

believe, and have done from the beginning, in the concept of the common heritage of mankind, and successive governments of our two countries have continued to affirm that approach. At the same time, we know very well that from a national point of view, we will be the first to suffer, among the first,if we have no protection in this treaty against the kind of competition we could face from mining of the deep ocean seabed. That is a question still to be ironed out between Canada and the U.S.A. and a few others of our close friends. It's an ironic situation that a country that tends to be thought of as the honest broker, we have had to play a somewhat controversial role in this particular conference. Our major allies have been, in simple terms, 3 or 4 developed countries, Australia, New Zealand, Norway and Iceland, plus some developing countries, some very responsible developing countries with a very constructive attitude towards the conference, and we have worked together in what is called the coastal group for many years very successfully. Most of the major powers, for understandable reasons, have tended to want to preserve the status quo. A notable exception, I think, in all fairness, is the U.S.A. They have often come up with imaginative proposals which we haven't always liked, but which have represented a very serious and honest attempt to resolve problems, and we have been able to eventually work out a compromise to all these issues. Nevertheless, the fate of the whole Conference hangs in the balance and could be decided over the next few weeks.

I want to close with just one comment as a question of fact. People have asked me about Canada's approach on fishing, and so I thought I'd list very quickly the countries which whom we

signed treaties, in most cases before we established a 200 mile fishing zone. We had no intention of trying to do it the hard way. It is not that we had any doubts about our Navy, we just didn't think we should put them to work in that particular fashion. So we decided to do it by negotiation, by diplomacy instead, and these are the treaties with which we have concluded with various countries, as a result of which, while the operation is onerous, it is not beloved by the Armed services I am sure, and they perform a tremendous task in policing these agreements, it really is much more of a policing action than an enforcement action, as is the case when a country is trying to establish jurisdiction which is contested by the other state.

We have a treaty with Norway since May 11, 1976; Poland May 14, 1976; USSR May 19, 1976; Spain June 10, 1976; Cuba May 12, 1976; Portugal July 18, 1977; Bulgaria September 27, 1977; German Democratic Republic October 6, 1977; Roumania January 18, 1978.

Now, this has meant a tremendous amount of work, a tremendous allocation of resources, human, financial and otherwise, to work these treaty arrangements in such a fashion, but it is working, and we have managed to do it without creating a major international dispute, without getting involved in any shooting incidents, except occasionally between one group of Canadian fishermen and another (and I think that's the hardest kind of dispute to settle).

I'd like to leave you with a message of hope, in that if there's ever a classic case where two relatively small countries, for Canada and Australia are certainly not major

powers, make their weight felt in an international negotiation of real importance, this is one, and I think the fact that it is Australia and Canada that had so much to contribute to the Conference solutions is particularly interesting. We have done it in other cases, such as outer-space. I think it is worth doing, and I think it is worth - while that Australia and Canada make one further try, and that is what I'm sure we will do.

APPLAUSE.