INTERVENTION BY H.E. MR. J. ALAN BEESLEY, Q.C.
IN INFORMAL PLENARY ON
SETTLEMENT OF DISPUTES QUESTIONS - APRIL 25, 1979

Mr. Chairman, at the outset, I wish to congratulate the Chairman of NG5 and the participants for producing the report under discussion.

Canada's position on settlement of disputes issues was set out in a statement made before the Conference on April 12, 1976 by the Secretary of State for External Affairs. In that statement, Mr. McEachen stated that the Government of Canada, as its basic objective, strongly supports the inclusion of a comprehensive system of compulsory dispute settlement procedures in the Law of the Sea Convention. He stressed the importance not merely to Canada, but to all states of a procedure which firstly, provided for recourse by states in the event of disagreement over the interpretation and application of the Convention to an impartial judicial or arbitral body, and secondly, one which ensured against the perpetuation of the disagreement or dispute by leading to a final binding decision and consequent resolution of the conflict. These continue to be the fundamental principles which are at the root of Canada's position on the matter. The importance which Canada attaches to these principles is reflected in the recent Canada/USA treaty on submission to a chamber of the ICJ on the maritime boundary dispute in the Gulf of Maine.

Canada agrees, of course, that particular consideration must be given to certain subject matters requiring treatment of a different type, and in this respect, I refer to the matter of the exercise of agreed discretionary powers by coastal states in respect of their sovereign rights in the exclusive economic zone. In his April 12, 1976 speech, the Secretary of State for External Affairs made clear that while Canada

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was concerned that there be no undue restriction placed upon coastal states in the exercise of their rights and discretionary powers accorded by the Convention in respect of the exclusive economic zone, Canada was prepared to consider third party adjudication in respect of gross abuse or abus de pouvoir by coastal states in the exercise of such rights or powers. User states would, of course, be subject to the same type of provision in respect of the exercise of their rights and duties. This proposal was consistent with Canada's general objectives concerning compulsory dispute settlement referred to earlier.

Nevertheless, the Conference has come a long way since 1976. The notion of abuse of power did not prove generally acceptable and has not been included in the ICNT or in the report of the Chairman of NG5. In its place, the Chairman of NG5 has presented a proposal in NG5/15 which in his view offers a reasonable prospect of consensus in accordance with the criteria outlined in Document A/Conf. 62/62. Canada accepts this assessment of the general degree of support for the compromise contained in the revised texts in NG5/15.

On the question of settlement of disputes regarding maritime boundary delimitation issues, we have made known our views repeatedly - most recently yesterday during the meeting of Committee II - on the report of the Chairman of Negotiating Group 7 contained in NG7/39. It is the considered view of the Canadian Government that settlement of disputes procedures on maritime boundary issues cannot be considered in isolation, but must be considered in a comprehensive manner.

Consistent with this position of principle, we hold to the view that it is essential that there should be objective criteria included in the new Law of the Sea Treaty in order to allow states to

settle their maritime boundaries in a manner which is free from subjective considerations and thus from differences of view over the applicable legal rules. The farther we go from setting out in specific manner concrete legal rules embodying objective delimitation criteria, the greater are the possibilities of differences over the applicable rules in settling maritime frontiers. The further we go towards the elusive concept of "equitable principles" divorced from straightforward and objective criteria, the more essential it is that we ensure the creation of a third-party binding dispute settlement mechanism to give legal content to such elastic criteria. Otherwise, the parties can remain forever at odds, as they each form their own conceptions of what is "equitable" - a conception that lies in the eye of the beholder in the absence of a final third-party compulsory settlement process.

In Canada's view, the Chairman's proposal in NG7/39 on a new text for Article 297(1)(a), while meritorious in other respects, fails to meet the essential necessity of assured procedures for resolving conflicts once and for all in respect of maritime boundaries. While his suggested text may serve as a basis for further discussions, the final determination as to the acceptability of a provision of dispute settlement and on any exceptions to the compulsory and final nature of the dispute settlement process must be viewed hand in hand with the inclusion of objective delimitation criteria in a new Law of the Sea Treaty as integral and interrelated components of a package.