CANADIAN DELEGATION

DÉLÉGATION DU CANADA

LAW OF THE SEA CONFERENCE

Complete Text of the Statement by H.E. Mr. J. Alan Beesley, Q.C., Vice-Chairman of the Canadian Delegation, in Plenary, on Wednesday, 2 April 1980, at the First Part of the Ninth Session of the Third United Nations Law of the Sea Conference, held in New York.

Mr. President,

May I begin by congratulating you and the Chairman of Committees I, II and III as well as the Chairmen of the Working Groups on the difficult and demanding work you have all done again on behalf of the Conference as a whole. There is no doubt, Mr. President, that the degree of consensus reflected in the Reports as a whole have moved the Conference a major step closer to consensus.

I am aware, Mr. President, that the purpose of this debate is to determine whether the changes proposed by you and by your respective Chairmen in the ICNT/Rev.I meet the test of our Conference decision 62/62, namely "Any modifications or revisions to be made in the Informal Composite Negotiating Text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the Plenary and found, from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus." I shall direct my comments to that issue.

Mr. President, before speaking to the new texts proposed for reconsideration I wish to say a brief word about the principle of consensus itself. It will be recalled that my delegation conducted the negotiations leading to the original "gentlemen's agreement" that the Conference would work by consensus. It will be recalled also that in explaining the meaning of "gentlemen's agreement" I made clear that it was understood as meaning neither the tyranny of the majority nor the veto of the minority. I wish to emphasize, Mr. President, that at this crucial juncture of our Conference procedures, coming after nearly twelve years of negotiations, it is vital that we be absolutely scrupulous in applying Conference decision 62/62 in such a way that we insure against either the tyranny of the majority or the veto of the minority.

I should like at this time to specifically associate myself completely with the statement of the Distinguished Representative of Trinidad and Tobago on the importance of scrupulous adherence to the letter and spirit of Conference decision 62/62.

I shall deal now with the balanced and informative Report of the Chairman of Committee I. As a general comment, I find, with one important exception, that the new text proposed by the Chairmen of the various working groups of Committee I provides

an adequate basis for discussion and even, in many cases, for Conference decision making. Although there are a number of provisions on which my delegation entertains reservations, they are not so serious that we cannot accept the proposals of the Chairmen of Negotiating Groups 1, 2 and 3 as a basis for discussion.

Rather than take the time of Plenary to outline each of these reservations in detail I shall circulate the text of my statement in which these reservations are spelled out.

The one proposal emanating from Committee I which is not acceptable to my delegation even as a basis for discussion is the proposal which emerged from the small negotiating group on production policy. I should like to pay tribute to the efforts of Ambassador Nandan in attempting to produce an addition to the production ceiling formula already contained in Article 151, Rev. 2 which would command as widespread support as does the ICNT/Rev.1. The fact that he was unable to do so was no fault of his. The difficulties he faced were tremendous and it simply did not prove possible to overcome the "veto of the minority" who have demanded a floor well in excess of what is acceptable to the vast majority of the states represented at this Conference. The Chairman of the Coordinating Group of the Group of 77 made clear yesterday in Committee I that unless substantial changes were made either to the floor figure contained in the Nandan proposal or in the percentage figure in the clause intended as a safeguard, the proposal would not be acceptable to the Group of 77. I made clear that in my own view the proposal would not be widely acceptable unless the both kinds of changes were made. We heard statements also from the major industrialized powers that even a 3% floor was not high enough for them. In these circumstances it is clear that the Nandan proposal does not meet the tests of 62/62 for inclusion in any revision of ICNT/Rev.I.

In considering whether and why we should accept any proposed changes to Art. 151 of the ICNT/Rev.I it is important to note that Art. 151 already provides for a substantial floor through the 5-year build-up period providing for more than five mine sites immediately at the commencement of production. Indeed, it is clear that Art. 151 of the ICNT/Rev.I achieves a delicate balance between the requirements of the Enterprise, private or state seabed miners, existing land-based producers and potential land-based producers. These varying interests are balanced over the 20-year period during which seabed production is phased-in in a manner that is least disruptive for existing and potential land-based producers of the metals of concern.

The Nandan proposal is clearly a genuine and sincere attempt to provide an accommodation of interests. Its major difficulties are that:

1. The 3% floor is so high as to allow the over-supply of nickel when market growth at the lower half of the future growth range estimated by the USA Bureau of Mines as between 2.2 and 3.8 per cent;

2. The proposal requires clarification before it can be determined with certainty the precise effect of the provision intended as a safeguard.

3. The provision intended as a safeguard in low market growth situations permits seabed production to take up 100% of the world market growth, at the very time when potential land-based miners would have most need of access to world markets; and

4. The proposal intended as safeguard could clearly have the effect that in low market growth conditions it could permit seabed mining to take up more than 100% of world market growth and thus force land-based producers to cut back their production.

Mr. President, I understand why today's major consumers who wish to become tomorrow's seabed miners and thus their own suppliers would like to become self-sufficient in nickel, copper, manganese and cobalt. There is every likelihood that they would be able to do so in any event eventually because of the provision in other parts of the ICNT/Rev.I which would enable 5 mine sites to be developed by private means for every mine site by the International Enterprise. In these circumstances, however, it is essential that seabed mining be phased into production in such a way that it does not totally disrupt existing markets and, in the process, damage or destroy the economies of countries partly or mainly dependent upon export earnings from mining. Surely this is not too much to ask. No one wants to restrict or delay seabed mining. My own country has companies interested in seabed mining. Indeed, International Nickel Company of Canada is the leader of a consortium which, to my knowledge, is the only one which has actually proven out its seabed mining technology. It follows, of course, that the Canadian Government can support only solutions which are equitable from the point of view of the International Enterprise, other potential seabed miners, and land-based producers including potential land-based producers. I believe we are close to just such a solution but we have not yet reached it.

It seems clear, Mr. President, as pointed out in Ambassador Nandan's footnote and confirmed by Chairman Engo, that we have not yet finished our negotiations on this issue and that we must continue to negotiate in good faith. I have no objection to the Nandan proposal being used as one of the discussion papers leading to consensus but I cannot agree to its inclusion in any new revision of the ICNT/Rev.I. If, however, there is sufficiently widespread support to satisfy the criteria of 62/62 for the Nandan proposal being included in the new revision, in spite of the serious reservations expressed about it by the Group of 77, the major consumer countries and the land-based producers, then the percentage figures for the floor and the percentage figures for the so-called

safeguard clause should be left blank since fundamental objections have been raised to both figures. To do otherwise would do violence to the fundamental principle reflected in Conference decision 62/62. Mr. President, not one delegation to my knowledge has expressed support for the figures in the Nandan proposal. In these circumstances the only proper procedure is the one we used at an earlier stage in Committee I of deleting the figures since they are not supported by anyone.

Mr. President, I would like to turn now to the new proposals of Committee II. As a very general comment, the proposals taken together are acceptable to my delegation as the basis for future discussion and we would not object to their inclusion in the new revision of the ICNT/Rev.I in spite of certain reservations we entertain. I will not spell out these reservations in detail in that part of this statement that I am delivering orally, but will leave them to the written text of my complete statement which will be circulated later today. There are some issues of sufficient importance, however, that I must take this opportunity to make known the views of the Government of Canada.

I wish to refer now to Article 76 and the series of related articles on the continental margin limits and the closely associated question of revenue sharing.

As stated by the Honourable Allan J. MacEachen, then Secretary of State for External Affairs, in Geneva on May 8, 1975, "My country is one of those which has a longstanding position concerning the nature and extent of the continental shelf. We are a Party to the 1958 Geneva Convention on the Continental Shelf which recognizes coastal state rights to the point of exploitability. Our position is based also on the decision of the International Court in the North Sea Continental Shelf Cases which repeatedly referred to the continental shelf as the submerged natural prolongation of the land territory of the coastal state. In addition, our position is based on longstanding state practice including the extensive issuance of oil and gas permits on the Canadian continental margin and similar action by other coastal states. Canada does not intend to give up its existing sovereign rights to the edge of the continental margin. At the same time we are conscious of the need to work out equitable arrangements with respect to those countries which either are landlocked or do not have a continental shelf. Canada is maintaining its position that it is entitled to exercise sovereign rights over the continental margin beyond 200 miles out to the edge of the margin. But we are prepared to explore the possibility of financial contributions related to the net revenues derived from the resources of the continental shelf between 200 miles from shore and the seaward edge of the continental margin. We are prepared to explore that possibility and we are prepared to support that principle in order to promote an accommodation. The two conditions - and I am underlining this - the two conditions on the basis of which Canada would be prepared to support such a principle would be: firstly, that any agreement worked out would in no way derogate from our established

sovereign rights out to the edge of the margin; and secondly, that the financial contributions would go primarily to the developing countries, particularly the least developed amongst them."

My statement on the Committee II Report, in Geneva on April 27, 1979, read in part, "The new text also contains a proposed amendment to Article 82 of the ICNT under which the rate of contribution in the revenue-sharing scheme is increased from 5 to 7%. My Delegation was the first to suggest a system of revenue sharing as an essential and equitable part of any overall compromise on the definition of the outer edge of the continental margin. Clearly, any system of revenue sharing must be without prejudice to the sovereign rights of the coastal state in respect of the resources of the continental margin beyond 200 miles. Neither must it impose an unreasonable burden on the coastal state, bearing in mind the enormous costs of exploiting offshore resources. My Delegation therefore reserves its position for the time being on this part of the text, not out of any lack of generosity but because the suggested rate could make it uneconomic for Canada to explore and exploit its continental margin in deep, cold water areas unless some safeguard provision is developed to ensure that any revenue-sharing formula we can agree upon is practicable.

"Undoubtedly, when we resume our work in New York this summer, the question of revenue sharing will require further discussion with a view to ensuring that the formula and the rate of contribution are both equitable and viable from the standpoint of both potential contributors and beneficiaries, but in the meantime, my Delegation does not object to the text going forward in its present form."

Mr. President, the position of my delegation remains as stated in Geneva on April 27, 1979.

We have been encouraged to see that the rights of coastal states to the outer limits of the continental shelf have been reaffirmed in the proposals of the Chairman of Committee II, reflecting his judgment as to the text which best reflects the Conference consensus. However, Mr. Chairman, it would be extremely dangerous for the legal position thereby recognized if we were to allow the erosion of these fundamental rights by the back door. One provision in particular, Art. 76, para. 8, which is related to the proposed Boundary Commission, can be regarded as eroding the sovereign rights of coastal states which have unmistakably been recognized by the basic article, Art. 76. The Boundary Commission is primarily an instrument which will provide the international community with reassurances that coastal states will establish their continental shelf limits in strict accordance with the provisions of Art. 76. It has never been intended, nor should it be intended, as a means to impose on coastal states limits that differ from those already recognized in Art. 76. Thus to suggest that the coastal states limits shall be established "on the basis" of the Commission's recommendations rather than on the basis of Art. 76, could be interpreted as

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giving the Commission the function and power to determine the outer limits of the continental shelf of a coastal state. We are assured on all sides that this is not the intention of the amendments you have introduced, Mr. President. Such an interpretation would be contrary to the very principles established in Art. 76 which is and must remain the cornerstone on which the whole compromise is founded. In these circumstances I must reserve the position of my delegation with respect to the suggested change in para. 8 of Art. 76.

Turning to other Committee II issues, the Chairman of Committee II referred in his report to proposals put forward which are in the process of revision in light of the comments and observations made during the discussion.

One such proposal was the Argentine proposal concerning Article 63. Bilateral consultations are taking place concerning a text to resolve the problems with which the Argentina proposal was concerned.

I wish at this stage, Mr. President, to avail myself of the procedure followed at our last session in Geneva when agreement was reached in Plenary for the inclusion of new written texts which had not emerged in the usual way from negotiating groups. I will, however, be very brief.

The Canadian Delegation wishes to express its continuing concern about protection on the high seas for stocks which overlap the 200 mile limit.

Together with a number of other states, we consider the existing provisions in the ICNT Revision I to be inadequate to provide for the conservation of these stocks.

We have welcomed and supported the Argentine proposal in Committee II to amend the text in a manner which will provide adequate protection for these stocks. We have noted the support of 30 countries* We have tried to take these critical comments into account in a compromise proposal which we would be pleased to give to any other interested delegation, and which is appended to this statement.

This question must remain open, Mr. President, for consideration intersessionally and at the Geneva session, before the text is formalized. We believe that opposition to a change in this article is short-sighted. Leaving these resources open to plunder, on a come-one-come-all basis, will serve neither the interests of countries which fish on the high seas nor those of the world community looking to the sea for food.

The Canadian Delegation believes that a balanced text can be developed along the lines of the Canadian proposal, which will protect endangered fish stocks by requiring an international tribunal to take action in response to a threat to conservation, and will give due weight to the most important interests concerned.

*for the Argentine proposal, and the critical comments ... 7
another 20 countries.

We ask those countries who have opposed any change in Article 63 to reconsider their positions, and to be prepared to come to Geneva with a mandate to agree to whatever changes to the text are necessary to provide for the conservation of fish stocks.

Mr. President, I wish now to address myself to the report of the Chairman of the Third Committee. May I first say that I wish to congratulate him on the efforts he has made over the years and the major contribution these efforts have made to the progress of this Conference. I have had one opportunity to say this previously in the context of the conclusion of the debate on the development and transfer of marine technology and protection and preservation of the marine environment which my delegation believes to be a signal achievement.

We have now come close to the conclusion of the Committee III debate on the final issue on that agenda, marine scientific research. I would now like to address myself to certain specific issues raised in the Annex to the Chairman's report, and in particular to the regime for marine scientific research on the continental shelf beyond 200 miles, as contained in Art. 246 (6). As delegations will recall, my delegation was one of those who viewed the regime for marine scientific research as negotiated in the ICNT (Rev. I) as a regime which, while not perfect from any individual delegation's point of view, nevertheless represented for us the best balance between the protection of the rights of coastal states regarding their resource and other interests, and the encouragement, facilitation and cooperation of all states in the conduct of marine scientific research to the benefit of all mankind.

Nevertheless, it appeared evident in Committee negotiations that one or two delegations did not share this view. My delegation therefore and others agreed that further negotiations continue to find that ever-elusive "real compromise", particularly as it applies to the regime for the conduct of marine scientific research on the continental shelf beyond 200 miles and the related provisions governing dispute settlement and suspension and cessation provisions.

As in the case of other issues in the Third Committee, my delegation would have much preferred a solution with more specific, concrete provisions clearly affirming the rights of coastal states relating to the conduct of marine scientific research on the continental shelf beyond 200 miles. Nevertheless, the Chairman and some other delegations seem to prefer a solution which incorporates a more subjective and interpretative approach. If this is indeed the will of the majority, then my delegation is prepared, albeit reluctantly, to give serious consideration to this approach in the spirit of compromise, in spite of the potentially serious interpretation problems we may be building into the proposed treaty with yet another Committee III example of "constructive ambiguity". We do so, however, on the following understanding.

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My delegation has raised questions throughout the course of the debate in the Third Committee regarding the potentially serious legal implications an approach such as that put forward in Art. 246 (b) requiring coastal state designation of specific areas of that shelf that it would publicly designate in order to preserve its right to refuse marine scientific research. We have been concerned to preserve the pre-existing coastal state sovereign rights over the resources of the shelf beyond 200 miles. We have been repeatedly assured both by the Chairman of Committee III, the Chairman of the relevant Working Groups and by those delegations seeking to narrow the coastal states right to refuse requests for scientific research that the regime envisaged by Art. 246 (b) would not in fact have any effect whatsoever on those sovereign rights. We have been further assured that nothing in the approach suggested by the Chairman of Committee III would prohibit a coastal state from managing and protecting its vital sovereign rights with regard to the resources on the basis of its own development timetable and in the manner that it determines for itself, and that indeed the "compromise" proposed in the name of greater freedom of scientific research would not hamper or restrict these vital activities nor oblige the coastal state to reveal any proprietary information. My delegation is prepared to give careful consideration to these proposals in this spirit and with these express assurances, with a view to making our final position known at the next session, but in the meantime we specifically reserve our position on Article 246. My delegation would like it clearly understood that, in any event, the Government of Canada will continue to exercise its sovereign rights with respect to the resources of the continental shelf in accordance with its own policies and priorities based on its pre-existing sovereign rights reflected in both the 1958 Geneva Continental Shelf Convention and the ICNT/Rev.I.

In particular, my delegation would like it clearly understood that we interpret these provisions as in no way restricting the right of the coastal state to refuse requests to conduct marine scientific research which in its view is for military purposes or which would in any way interfere with our own management of our own continental shelf resources. Moreover, as already indicated, and depending on the course of the debate on these particular questions, we would reserve our right to make formal amendments in Geneva.

Mr. President, as I have already indicated, I shall be circulating later in the day the full text of this statement together with an explanation of the reservations to which I have referred.

ANNEX

STATEMENT OF

INTERPRETATION, COMMENTS, RESERVATIONS AND PROPOSALS

Proposal by Canada:

ARTICLE 63

Stocks occurring within the exclusive economic zones of two or more coastal States or both within the economic exclusive zone and in an area beyond and adjacent to it.

2. Where the same stock or stocks of associated species occur both within the EEZ and in an area beyond and adjacent to the zone, the coastal state and the States fishing for such stocks in the adjacent area shall seek either directly or through appropriate subregional or regional organizations to agree upon the measures necessary for the conservation of these stocks in the adjacent area and, in any event, shall adopt, or cooperate in adopting, such measures. In the event that agreement is not reached within a reasonable period, and proceedings are instituted before the appropriate tribunal pursuant to article 286, that tribunal shall determine the measures to be applied in the adjacent area for the conservation of these stocks and shall determine provisional measures if definitive measures cannot be determined within a reasonable period. In establishing such measures, the tribunal shall take into account those measures applied to the same stocks by the coastal state within its EEZ and the interests of states fishing these stocks..

Article 65

The current USA proposal for a change to the existing text of Article 65 in the ICNT, Rev. I, would require states to "work through the appropriate international organizations" for the conservation, management and study of cetaceans. The Canadian delegation supports the text proposed by the USA as an improvement over the current text in providing a better basis for the conservation of marine mammals, and wishes to have recorded the following interpretation of the second sentence of the proposed text.

a) the obligation for any particular state is to "work through" an appropriate international organization. In other words there is no obligation on any state to "work through" more than one appropriate international organization.

b) the obligation to "work through" an appropriate international organization as regards individual stocks of cetaceans arises as regards any particular stock only when the status of the stock is such that the attention of the appropriate international organization is necessary to assist in the conservation, management and study of the stock.

c) the obligation to "work through the appropriate international organizations" can be fulfilled through consultation with the scientific bodies of such organizations in the process of development of measures in accordance with the sovereign rights and obligations of coastal states within their 200 mile zones.

Article 74, paragraph 1
Article 83, paragraph 1

The Conference is deeply divided on this issue and a formula is needed which represents a genuine balance of interests. The text proposed by Judge Manner, while not entirely satisfactory to any delegation, including my own, would seem to provide a basis for moving closer towards consensus.

Unfair Practices

The Chairman of Committee I flagged in his report the question of unfair practices, raised separately by Australia and certain land-based producers. While some consideration was given to this issue even while the Chairman's report was being prepared, it would seem essential that a fundamental term of all contracts issued by the Authority should require States parties not to provide subsidies, including those of a financial, fiscal, commercial, trade or industrial nature, to contractors in respect of the exploitation of seabed resources that have the effect of furnishing to such contractors a competitive commercial advantage over land-based producers of similar resources. While the words may need adjusting to reflect different social and economic systems, the principle should be clearly embodied in a treaty obligation.

Article 151, Paragraph 2

Issuance of Production Authorization

The introduction to paragraph 2 of Article 151 in the Chairman's Report is a significant improvement in defining a production authorization and is the result of long dialogue.

Article 151, paragraph 2(a)

Interim Period

Paragraph 2(a) is also clear in its intent which is to provide a definition of the interim period.

Article 151, paragraphs 2 (c), (d) and (e)

Enterprise Preference, Re-Application for Production Authorization and Variable Production

Paragraphs 2 (c), (d) and (e) are items upon which delegations have been negotiating in good faith and if there are still differences these show promise of resolution.

Article 151, paragraph 2 (f)

Level of Production of Other Metals

Paragraph 2 (f) is a useful clarification as to level of production of copper, cobalt and manganese in relation to plan of work.

Article 151, paragraph 3

There are still some ambiguities in the power assigned to the Authority in limiting production of minerals from the Area, other than minerals from nodules, which should be eliminated.

Article 151 paragraph 4
Compensatory Financing

The Canadian delegation reserves its position on the text contained in Article 151, paragraph 4, proposing the establishment of a system of compensation because the proposal is discriminatory, vague and open-ended concerning the nature and scope of the market effects which should justify the establishment of such a mechanism. In our opinion, the proposal for establishing a compensatory financing mechanism should take into account the applicability of existing international systems of compensation relating to export earnings instability.

Annex III, Article 10, paragraph 3.f.

Finance

The Canadian delegation has reservations on the proposed text dealing with the repayment of interest-free loans. In our opinion, the repayment period should not exceed the economic life of the project financed with interest-free loans. We sincerely hope that the issue will be further discussed during the next session.

Annex III, Article 10, paragraph 3.a.

Finance

The Canadian delegation wishes to stress that revision of ICNT/Rev.I should provide for the establishment of a schedule of financial contributions to the Enterprise. We strongly object to the concept that States Parties would provide the Enterprise with a yet-to-be-agreed-to amount of capital in one instalment; irrespective of its actual need for capital spending.

Annex III, Article 12, paragraph 4.d.

Legal status, immunities and privileges

The Canadian delegation objects to the text contained in Annex III, Article 12, paragraph 4.d., giving preferential status to the Enterprise similar to the status afforded to developing countries because the granting of the status is not subject to multilateral agreements, and is given to countries and not to companies.

U.N. Conference on the Law of the Sea
Canadian Statement in Committee I
(Ambassador J.A. Beesley) on April 1, 1980
Portion on Seabed Production Policy

Now, when we get to the question of the effect of seabed mining on land-based producers, on potential land-based producers, and particularly the effect of a floor, I think we have to be more specific, and with your permission, Mr. Chairman, I propose to be a little more specific.

Once again, here we have yet another yardstick against which to measure any new proposals, not merely the concepts with which we began this negotiation, but something else; the text with which we began this session, and so it's worth at least noting some of the merits of the existing ICNT formulation, and I undertake to be brief, but a point to make that I think is of relevance to those who would like a floor, a fairly healthy floor, healthy for them anyhow, is that included in the ICNT formulation is an initial guarantee to mount a seabed production equivalent to five years of consumption growth. I don't defend that provision. I accepted it reluctantly when it was negotiated, and I want no misunderstanding here, I am not suggesting any bad faith because the delegate I negotiated with is an honourable man. However, he was unable to make that negotiation stick, and we have had to reopen it.

But these very high tonnages were part of the compromise that allows more than five initial miners, depending on mine capacities, including, of course, the Enterprise. But the interesting thing, is that in that negotiation in every sense, the magic figure that keeps emerging is five, five to one. I have never understood why we must have five private miners or five public miners for every one Enterprise but that's the way the negotiation has always proceeded. It may have something to do with the existence of the group of five, but I don't so allege. I merely say that is the way that the negotiation has developed. It's worth noting, however, that in addition to that existing floor, the seabed tonnage was allowed to produce sixty percent of new growth rather than the fifty percent initially suggested in the Group of 77 position, and of course, the parallel proposal by Canada.

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The compromise also listed the production period limit to twenty five years. Now, that's the proposal that is in Article 151 of the ICNT, and it has been in for quite a while, May 19, 1978, and I suggest, I know that I don't need to emphasize this to you, Mr. Chairman, that we have to have pretty good reasons before we reject that proposal or make substantial amendments to it. So I think it is time to look at some of the changes now being suggested because as I read that proposal, it provides for the possibility of new production, both from the Enterprise and from private or state seabed miners. At the same time, it allows scope for increased production from land-based projects that are still undeveloped and for the development of promising deposits, many of them located, of course, in developing countries, as well as perhaps some developed countries.

Now, although we do feel, and continue to feel, that the ICNT represents a fair and equitable compromise thatbalances the interests of the seabed miner consumer countries, because let's bear in mind that the major consumer countries are the ones who wish to be the major miners, and thus, their own suppliers and their own consumers. It also protected the position of the Enterprise, the potential producer, and the existing producer. Nevertheless, we recognize that there is a continuing demand for an additional floor by the seabed producers, the potential seabed producers, who are at present the major consumers of the seabed nodule metals and who, of course, wish to become thier own suppliers. Now this seems to necessitate, unfortunately in my view, yet another of a series of concessions on this matter. So to clear the air completely, I will say that we do not object to the concept of the floor, in the interest of achieving an overall Conference settlement. We do object to it in principle. We think it is unnecessary, undesirable, and potentially very, very serious. However, we accept it as many delegations have accepted unpalatable concepts as part of the overall compromise.

However, what kind of a floor, what kind of a floor is acceptable, and what kind makes the floor the major element in the whole treaty? The whole treaty that deals with the common heritage. What kind of a floor is one that gives everybody an equitable share? What kind of a floor makes a mockery of twelve years of negotiation? Now, let me also be very clear on this point. I believe that the proposal put forth by Ambassador Nandan is an extremely conscientious effort to meet the demands of all concerned, and to reflect the interests of all concerned. Certainly as explained by him, there is good reason to believe that it might even have gone a long ways to doing just that. An analysis of the actual proposal, of course, showed that it does not stand up against that test, as I will illustrate briefly. But I think that this has already been illustrated in the Nandan group.

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The problem is that the proposal like any other based on some arbitrary growth rate, resulting in a formulation not related to actual market growth, can result in an imbalance where market growth previously available to potential producers and the existing markets of established land-based producers could be taken up by seabed miners. It should be noted that the seabed mining countries, now the potential seabed mining countries, account in the case of nickel, for example, of approximately ninety percent of Western world consumption. Now, if we make the mistake of building a guaranteed right to overproduce into this treaty, and I don't think it's any secret that some of the countries supporting a high floor resist any suggestion of anti-subsidization provision, we must follow the consequences of the over-supply situation that will ensue, and ask ourselves, forgetting for a moment the land-based producer, who will provide the markets for the international Enterprise, who will provide the markets for the potential land-based producers, when the same companies out there doing the mining are the companies that will be utilizing the minerals that came from the seabed. I've asked that question repeatedly. It's never been answered.

But the main difficulty we have with Ambassador Nandan's proposal is not its intent, it's its lack of clarity. We listened carefully to the only discussion that has been held on that proposal and found the results at best confusing, at worse, dangerously obscure. We heard many different interpretations as to what it meant and anyone here can verify that, and with the greatest of respect to all those concerned, there's no suggestion from any corner that we are able to come up with an agreed interpretation as to what that proposal means. So whatever the Group of 77 may suggest as to what improvements might be made in the numbers, I think it would be irresponsible of us, those of us who are lawyers, as well as diplomats, to produce a formula which is subject to at least two, and I believe three, wildly differing interpretations. So as a minimum we must clarify that proposal and preferably simplify it so that a common understanding can be received. And that, I mean as no criticism of the Nandan group and certainly not of the Chairman of that group, who was faced with an extremely difficult and complex series of issues. However, I think we should look at the substance in passing because it does indicate that under certain conditions, namely low growth-rate conditions, seabed miners would take up not merely one hundred percent of the market growth, but more than one hundred percent, and I challenge anyone to differ with us on our discussion of the printouts based on these proposals to show otherwise. One hundred percent is bad enough, we used to talk about fifty percent as a reasonable compromise. Now we are hearing one hundred percent presented as somehow, still a compromise. It's a new use of language. But in any event, I cannot see one hundred percent as being set aside for the seabed, as being a compromise between anyone except those who want to become the major miners.

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Our analysis of that proposal, if we understand the proposal, and indeed, our analysis on the basis of the alternative understandings which are being suggested, still permits seabed to take up more than one hundred percent of market growth depending, of course, on how we determine market growth with the result that existing producers and those who are potential producers now, but will be existing producers by the time these provisions have any bite, would find that they have to cut back on their own production. It was suggested that the mining industry can absorb these things during the Nandan group discussion, and the answer given was that yes, of course, it can absorb them by piling the metal on the ground, and taking all the difficulties that go with it, lay-offs, loss of jobs, loss of development, and indeed, certainly loss of prices. Now the safeguard clause that could be of considerable help in offsetting the impact is part of the lack of clarity that I refer to. So with these comments in mind, I think we would have to suggest with the greatest respect to all concerned, firstly, that the wording must be simplified so that it is understandable, and then can be evaluated on some common basis. Secondly, that the level of production allowed to the seabed would have to be adjusted so as to provide some potential market for potential land-based producers, some market growth for existing producers, and even some better possibilities of markets for the international Enterprise.

In mentioning earlier, the positions my delegation has taken in the past, I might just note in passing that to my knowledge, my delegation was the first in this very group to suggest that something be earmarked for the Enterprise, so we welcome that provision but we question whether it is enough.

So, to sum up on the safeguard clause. It would definitely have to be made effective and, and I emphasize this, it would have to be made applicable throughout the whole of the interim period which we do not believe to be the case as it is presently drafted. Now, if all of these considerations are taken into account, and if we build on the position of the Group of 77, I believe we may have the making of a compromise. I think that it is worth bearing in mind what has been said, that either the three percent figure has to be altered or the one hundred percent figure has to be altered. Quite candidly, Mr. Chairman, I believe we have to alter both in order to get something that will work and will be generally acceptable.

I am startled to hear from one delegation in particular, that three percent is too low, knowing that just a few days ago the head of delegation of that same country expressed great pleasure in having achieved a three percent floor in a public statement here in New York. So I am confused about that. I am confused I admit that. Moreover, the same delegation is the one that offered 2.5 percent at the last session, and that confuses me even more. It is hard to know what is acceptable and what isn't in these situations.

.../5

My delegation is at least consistent. We don't like 2.5, we don't like 3 but we are willing to work towards a consensus. If by consensus we mean, for example, the country that still is the biggest nickel exporter in the world we'd like at least to be involved in the negotiations and in the drafting of any kind of agreed formulation.

Now let me sum up on this point. I believe that while we remain opposed in principle to the concept of the floor in the event that such a mechanism is required for Conference agreement, we think that if the above noted points are taken into account, and bearing in mind the Group of 77 position, there is a possibility of working out an agreement. I have no doubt that we could do it in an hour if we had good will on the part of all concerned, and I refer again, and I am afraid I am not referring to the tyranny of the majority, but the veto of the minority. The only way that we see that we can envisage all of these interests being taken into account, would be to combine the two suggestions made by the Group of 77. We wouldn't be presumptuous enough to say how to do it, but we do have some ideas along those lines.

We don't think it is enough to set aside mine sites for the international Enterprise for the parallel access system, nor even to provide financing of one first mine site. We think we have to follow the process through to the point where we have to ask: will the Enterprise ever have any market, or will the markets already be taken up by their competitors who will be out there on a five to one ratio. These are some of the points that trouble me a little bit about the proposal that has been put forth intended, I have no doubt, as an improvement on the ICNT but, in my view, something that goes a long, long way from improving this situation. It takes us further away from a possible accommodation in my view, but I believe that we still have something to build on within the language of the so-called Nandan proposal,and I believe the chairman simply tried to reflect the varying points of view that went on within his committee.

Complete Text of the Statement in Plenary

By H.E. Mr. J. Alan Beesley, Q.C.
Vice-Chairman of the Canadian Delegation

to the United Nations Conference on the Law of the Sea
New York, April 2, 1980

Mr. President,

May I begin by congratulating you and the Chairmen of Committees I, II and III as well as the Chairmen of the Working Groups on the difficult and demanding work you have all done again on behalf of the Conference as a whole. There is no doubt, Mr. President, that the degree of consensus reflected in the Reports as a whole have moved the Conference a major step closer to consensus.

I am aware, Mr. President, that the purpose of this debate is to determine whether the changes proposed by you and by your respective Chairmen in the ICNT/Rev.I meet the test of our Conference decision 62/62, namely "Any modifications or revisions to be made in the Informal Composite Negotiating Text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the Plenary and found, from the widespread and substantial support prevailing in Plenary, to offer a substantially improved prospect of a consensus." I shall direct my comments to that issue.

Mr. President, before speaking to the new texts proposed for reconsideration I wish to say a brief word about the principle of consensus itself. It will be recalled that my delegation conducted the negotiations leading to the original "gentlemen's agreement" that the Conference would work by consensus. It will be recalled also that in explaining the meaning of "gentlemen's agreement" I made clear that it was understood as meaning neither the tyranny of the majority nor the veto of the minority. I wish to emphasize, Mr. President, that at this crucial juncture of our Conference procedures, coming after nearly twelve years of negotiations, it is vital that we be absolutely scrupulous in applying Conference decision 62/62 in such a way that we insure against either the tyranny of the majority or the veto of the minority.

I should like at this time to specifically associate myself completely with the statement of the Distinguished Representative of Trinidad and Tobago on the importance of scrupulous adherence to the letter and spirit of Conference decision 62/62.

I shall deal now with the balanced and informative Report of the Chairman of Committee I. As a general comment, I find, with one important exception, that the new text proposed by the Chairmen of the various working groups of Committee I provides an adequate basis for discussion and even, in many cases, for Conference decision making. Although there are a number of provisions on which my delegation entertains reservations, they are not so serious that we cannot accept the proposals of the Chairmen

of Negotiating Groups 1, 2 and 3 as a basis for discussion.

Rather than take the time of Plenary to outline each of these reservations in detail I shall circulate the text of my statement in which these reservations are spelled out.

The one proposal emanating from Committee I which is not acceptable to my delegation even as a basis for discussion is the proposal which emerged from the small negotiating group on production policy. I should like to pay tribute to the efforts of Ambassador Nandan in attempting to produce an addition to the production ceiling formula already contained in Article 151, Rev. 2 which would command as widespread support as does the ICNT/Rev.I.* The fact that he was unable to do so was no fault of his. The difficulties he faced were tremendous and it simply did not prove possible to overcome the "veto of the minority" who have demanded a floor well in excess of what is acceptable to the vast majority of the states represented at this Conference. The Chairman of the Coordinating Group of the Group of 77 made clear yesterday in Committee I that unless substantial changes were made either to the floor figure contained in the Nandan proposal or in the percentage figure in the clause intended as a safeguard, the proposal would not be acceptable to the Group of 77. I made clear that in my own view the proposal would not be widely acceptable unless both kinds of changes were made. We heard statements also from the major industrialized powers that even a 3% floor was not high enough for them. In these circumstances it is clear that the Nandan proposal does not meet the tests of 62/62 for inclusion in any revision of ICNT/Rev.I.

In considering whether and why we should accept any proposed changes to Art. 151 of the ICNT/Rev.I it is important to note that Art. 151 already provides for a substantial floor through the 5-year build-up period providing for more than five mine sites immediately at the commencement of production. Indeed, it is clear that Art. 151 of the ICNT/Rev.I achieves a delicate balance between the requirements of the Enterprise, private or state seabed miners, existing land-based producers and potential land-based producers. These varying interests are balanced over the 20-year period during which seabed production is phased-in in a manner that is least disruptive for existing and potential land-based producers of the metals of concern.

The Nandan proposal is clearly a genuine and sincere attempt to provide an accommodation of interests. Its major difficulties are that:

1. The 3% floor is so high as to allow the over-supply of nickel when market growth is at the lower half of the future growth range estimated by the USA Bureau of Mines as between 2.2 and 3.8 per cent;

* While the production ceiling in Art. 151 is specifically designed to respond to market conditions, the floor would exist irrespective of market conditions, thus creating the danger of oversupply situations.

2. The proposal requires clarification before it can be determined with certainty the precise effect of the provision intended as a safeguard;

3. The provision intended as a safeguard in low market growth situations permits seabed production to take up 100% of the world market growth, at the very time when potential land-based miners would have most need of access to word markets; and

4. The proposal intended as safeguard could clearly have the effect that in low market growth conditions it could permit seabed mining to take up more than 100% of world market growth and thus force land-based producers to cut back their production.

Mr. President, I understand why today's major consumers who wish to become tomorrow's seabed miners and thus their own suppliers would like to become self-sufficient in nickel, copper, manganese and cobalt. There is every likelihood that they would be able to do so in any event eventually because of the provision in other parts of the ICNT/Rev.I which would enable 5 mine sites to be developed by private means for every mine site by the International Enterprise. In these circumstances, however, it is essential that seabed mining be phased into production in such a way that it does not totally disrupt existing markets and, in the process, damage or destroy the economies of countries partly or mainly dependent upon export earnings from mining. Surely this is not too much to ask. No one wants to restrict or delay seabed mining. My own country has companies interested in seabed mining. Indeed, International Nickel Company of Canada is the leader of a consortium which, to my knowledge, is the only one which has actually proven out its seabed mining technology. It follows, of course, that the Canadian Government can support only solutions which are equitable from the point of view of the International Enterprise, other potential seabed miners, and land-based producers including potential land-based producers. I believe we are close to just such a solution but we have not yet reached it.

It seems clear, Mr. President, as pointed out in Ambassador Nandan's footnote and confirmed by Chairman Engo, that we have not yet finished our negotiations on this issue and that we must continue to negotiate in good faith. I have no objection to the Nandan proposal being used as one of the discussion papers leading to consensus but I cannot agree to its inclusion in any new revision of the ICNT/Rev.I. If, however, there is sufficiently widespread support to satisfy the criteria of 62/62 for the Nandan proposal being included in the new revision, in spite of the serious reservations expressed about it by the Group of 77, the major consumer countries and the land-based producers, then the percentage figures for the floor and the percentage figures for the so-called

safeguard clause should be left blank since fundamental objections have been raised to both figures. To do otherwise would do violence to the fundamental principle reflected in Conference decision 62/62. Mr. President, not one delegation to my knowledge has expressed support for the figures in the Nandan proposal. In these circumstances the only proper procedure is the one we used at an earlier stage in Committee I of deleting the figures since they are not supported by anyone.

Mr. President, I would like to turn now to the new proposals of Committee II. As a very general comment, the proposals taken together are acceptable to my delegation as the basis for future discussion and we would not object to their inclusion in the new revision of the ICNT/Rev.I in spite of certain reservations we entertain. I will not spell out these reservations in detail in that part of this statement that I am delivering orally, but will leave them to the written text of my complete statement which will be circulated later today. There are some issues of sufficient importance, however, that I must take this opportunity to make known the views of the Government of Canada.

I wish to refer now to Article 76 and the series of related articles on the continental margin limits and the closely associated question of revenue sharing.

As stated by the Honourable Allan J. MacEachen, then Secretary of State for External Affairs, in Geneva on May 8, 1975, "My country is one of those which has a longstanding position concerning the nature and extent of the continental shelf. We are a Party to the 1958 Geneva Convention on the Continental Shelf which recognizes coastal state rights to the point of exploitability. Our position is based also on the decision of the International Court in the North Sea Continental Shelf Cases which repeatedly referred to the continental shelf as the submerged natural prolongation of the land territory of the coastal state. In addition, our position is based on longstanding state practice including the extensive issuance of oil and gas permits on the Canadian continental margin and similar action by other coastal states. Canada does not intend to give up its existing sovereign rights to the edge of the continental margin. At the same time we are conscious of the need to work out equitable arrangements with respect to those countries which either are landlocked or do not have a continental shelf. Canada is maintaining its position that it is entitled to exercise sovereign rights over the continental margin beyond 200 miles out to the edge of the margin. But we are prepared to explore the possibility of financial contributions related to the net revenues derived from the resources of the continental shelf between 200 miles from shore and the seaward edge of the continental margin. We are prepared to explore that possibility and we are prepared to support that in principle in order to promote an accommodation. The two conditions - and I am underlining this - the two conditions on the basis of which Canada would be prepared to support such a principle would be: firstly, that any agreement worked out would in no way derogate from our established

sovereign rights out to the edge of the margin; and secondly, that the financial contributions would go primarily to the developing countries, particularly the least developed amongst them."

My statement on the Committee II Report, in Geneva on April 27, 1979, read in part, "The new text also contains a proposed amendment to Article 82 of the ICNT under which the rate of contribution in the revenue-sharing scheme is increased from 5% to 7%. My Delegation was the first to suggest a system of revenue sharing as an essential and equitable part of any overall compromise on the definition of the outer edge of the continental margin. Clearly, any system of revenue sharing must be without prejudice to the sovereign rights of the coastal state in respect of the resources of the continental margin beyond 200 miles. Neither must it impose an unreasonable burden on the coastal state, bearing in mind the enormous costs of exploiting offshore resources. My Delegation therefore reserves its position for the time being on this part of the text, not out of any lack of generosity but because the suggested rate could make it uneconomic for Canada to explore and exploit its continental margin in deep, cold water areas unless some safeguard provision is developed to ensure that any revenue-sharing formula we can agree upon is practicable.

"Undoubtedly, when we resume our work in New York this summer, the question of revenue sharing will require further discussion with a view to ensuring that the formula and the rate of contribution are both equitable and viable from the standpoint of both potential contributors and beneficiaries, but in the meantime, my Delegation does not object to the text going forward in its present form."

Mr. President, the position of my delegation remains as stated in Geneva on April 27, 1979.

We have been encouraged to see that the rights of coastal states to the outer limits of the continental shelf have been reaffirmed in the proposals of the Chairman of Committeee II, reflecting his judgement as to the text which best reflects the Conference consensus. However, Mr. Chairman, it would be extremely dangerous for the legal position thereby recognized if we were to allow the erosion of these fundamental rights by the back door. One provision in particular, Art. 76, para. 8, which is related to the proposed Boundary Commission, can be regarded as eroding the sovereign rights of coastal states which have unmistakably been recognized by the basic article, Art. 76. The Boundary Commission is primarily an instrument which will provide the international community with reassurances that coastal states will establish their continental shelf limits in strict accordance with the provisions of Art. 76. It has never been intended, nor should it be intended, as a means to impose on coastal states limits that differ from those already recognized in Art. 76. Thus to suggest that the coastal states limits shall be established "on the basis" of the Commission's recommendations rather than on the basis of Art. 76, could be interpreted as

giving the Commission the function and power to determine the outer limits of the continental shelf of a coastal state. We are assured on all sides that this is not the intention of the amendments you have introduced, Mr. President. Such an interpretation would be contrary to the very principles established in Art. 76 which is and must remain the cornerstone on which the whole compromise is founded. In these circumstances I must reserve the position of my delegation with respect to the suggested change in para. 8 of Art. 76.

Turning to other Committee II issues, the Chairman of Committee II referred in his report to proposals put forward which are in the process of revision in light of the comments and observations made during the discussion.

One such proposal was the Argentine proposal concerning Article 63. Bilateral consultations are taking place concerning a text to resolve the problems with which the Argentina proposal was concerned.

I wish at this stage, Mr. President, to avail myself of the procedure followed at our last session in Geneva when agreement was reached in Plenary for the inclusion of new written texts which had not emerged in the usual way from negotiating groups. I will, however, be very brief.

The Canadian Delegation wishes to express its continuing concern about protection on the high seas for stocks which overlap the 200 mile limit.

Together with a number of other states, we consider the existing provisions in the ICNT Revision I to be inadequate to provide for the conservation of these stocks.

We have welcomed and supported the Argentine proposal in Committee II to amend the text in a manner which will provide adequate protection for these stocks. We have noted the support of 30 countries for the Argentine proposal, and the critical comments of another 20 countries. We have tried to take these critical comments into account in a compromise proposal which we would be pleased to give to any other interested delegation, and which is appended to this statement.

This question must remain open, Mr. President, for consideration intersessionally and at the Geneva session, before the text is formalized. We believe that opposition to a change in this article is short-sighted. Leaving these resources open to plunder, on a come-one-come-all basis, will serve neither the interests of countries which fish on the high seas nor those of the world community looking to the sea for food.

The Canadian Delegation believes that a balanced text can be developed along the lines of the Canadian proposal, which will protect endangered fish stocks by requiring an international tribunal to take action in response to a threat to conservation, and will give due weight to the most important interests concerned.

We ask those countries who have opposed any change in Article 63 to reconsider their positions, and to be prepared to come to Geneva with a mandate to agree to whatever changes to the text are necessary to provide for the conservation of fish stocks.

Mr. President, I wish now to address myself to the report of the Chairman of the Third Committee. May I first say that I wish to congratulate him on the efforts he has made over the years and the major contribution these efforts have made to the progress of this Conference. I have had one opportunity to say this previously in the context of the conclusion of the debate on the development and transfer of marine technology and protection and preservation of the marine environment which my delegation believes to be a signal achievement.

We have now come close to the conclusion of the Committee III debate on the final issue on that agenda, marine scientific research. I would now like to address myself to certain specific issues raised in the Annex to the Chairman's report, and in particular to the regime for marine scientific research on the continental shelf beyond 200 miles, as contained in Art. 246 (6). As delegations will recall, my delegation was one of those who viewed the regime for marine scientific research as negotiated in the ICNT/Rev.I as a regime which, while not perfect from any individual delegation's point of view, nevertheless represented for us the best balance between the protection of the rights of coastal states regarding their resource and other interests, and the encouragement, facilitation and cooperation of all states in the conduct of marine scientific research to the benefit of all mankind.

Nevertheless, it appeared evident in Committee negotiations that one or two delegations did not share this view. My delegation therefore and others agreed that further negotiations continue to find that ever-elusive "real compromise", particularly as it applies to the regime for the conduct of marine scientific research on the continental shelf beyond 200 miles and the related provisions governing dispute settlement and suspension and cessation provisions.

As in the case of other issues in the Third Committee, my delegation would have much preferred a solution with more specific, concrete provisions clearly affirming the rights of coastal states relating to the conduct of marine scientific research on the continental shelf beyond 200 miles. Nevertheless, the Chairman and some other delegations seem to prefer a solution which incorporates a more subjective and interpretative approach. If this is indeed the will of the majority, then my delegation is prepared, albeit reluctantly, to give serious consideration to this approach in the spirit of compromise, in spite of the potentially serious interpretation problems we may be building into the proposed treaty with yet another Committee III example of "constructive ambiguity". We do so, however, on the following understanding.

My delegation has raised questions throughout the course of the debate in the Third Committee regarding the potentially serious legal implications of an approach such as that put forward in Art. 246 (b) requiring coastal state designation of specific areas of that shelf that it would publicly designate in order to preserve its right to refuse marine scientific research. We have been concerned to preserve the pre-existing coastal state sovereign rights over the resources of the shelf beyond 200 miles. We have been repeatedly assured both by the Chairman of Committee III, the Chairman of the relevant Working Groups and by those delegations seeking to narrow the coastal states right to refuse requests for scientific research that the regime envisaged by Art. 246 (b) would not in fact have any effect whatsoever on those sovereign rights. We have been further assured that nothing in the approach suggested by the Chairman of Committee III would prohibit a coastal state from managing and protecting its vital sovereign rights with regard to the resources on the basis of its own development timetable and in the manner that it determines for itself, and that indeed the "compromise" proposed in the name of greater freedom of scientific research would not hamper or restrict these vital activities nor oblige the coastal state to reveal any proprietary information. My delegation is prepared to give careful consideration to these proposals in this spirit and with these express assurances, with a view to making our final position known at the next session, but in the meantime we specifically reserve our position on Article 246. My delegation would like it clearly understood that, in any event, the Government of Canada will continue to exercise its sovereign rights with respect to the resources of the continental shelf in accordance with its own policies and priorities based on its pre-existing sovereign rights reflected in both the 1958 Geneva Continental Shelf Convention and the ICNT/Rev.I.

In particular, my delegation would like it clearly understood that we interpret these provisions as in no way restricting the right of the coastal state to refuse requests to conduct marine scientific research which in its view is for military purposes or which would in any way interfere with our own management of our own continental shelf resources. Moreover, as already indicated, and depending on the course of the debate on these particular questions, we would reserve our right to make formal amendments in Geneva.

Mr. President, as I have already indicated, I shall be circulating later in the day the full text of this statement together with an explanation of the reservations to which I have referred.

ANNEX

STATEMENT OF

INTERPRETATION, COMMENTS, RESERVATIONS AND PROPOSALS

Proposal by Canada:

ARTICLE 63

Stocks occurring within the exclusive economic zones of two or more coastal States or both within the economic exclusive zone and in an area beyond and adjacent to it.

2. Where the same stock or stocks of associated species occur both within the EEZ and in an area beyond and adjacent to the zone, the coastal state and the States fishing for such stocks in the adjacent area shall seek either directly or through appropriate subregional or regional organizations to agree upon the measures necessary for the conservation of these stocks in the adjacent area and, in any event, shall adopt, or cooperate in adopting, such measures. In the event that agreement is not reached within a reasonable period, and proceedings are instituted before the appropriate tribunal pursuant to article 286, that tribunal shall determine the measures to be applied in the adjacent area for the conservation of these stocks and shall determine provisional measures if definitive measures cannot be determined within a reasonable period. In establishing such measures, the tribunal shall take into account those measures applied to the same stocks by the coastal state within its EEZ and the interests of states fishing these stocks.

ARTICLE 65

The current USA proposal for a change to the existing text of Article 65 in the ICNT, Rev.I, would require states to "work through the appropriate international organizations" for the conservation, management and study of cetaceans. The Canadian delegation supports the text proposed by the USA as an improvement over the current text in providing a better basis for the conservation of marine mammals, and wishes to have recorded the following interpretation of the second sentence of the proposed text.

a) the obligation for any particular state is to "work through" an appropriate international organization. In other words there is no obligation on any state to "work through" more than one appropriate international organization.

b) the obligation to "work through" an appropriate international organization as regards individual stocks of cetaceans arises as regards any particular stock only when the status of the stock is such that the attention of the appropriate international organization is necessary to assist in the conservation, management and study of the stock.

c) the obligation to "work through the appropriate international organizations" can be fulfilled through consultation with the scientific bodies of such organizations in the process of development of measures in accordance with the sovereign rights and obligations of coastal states within their 200 mile zones.

ARTICLE 74, PARAGRAPH 1
ARTICLE 83, PARAGRAPH I

The Conference is deeply divided on this issue and a formula is needed which represents a genuine balance of interests. The text proposed by Judge Manner, while not entirely satisfactory to any delegation, including my own, would seem to provide a basis for moving closer towards consensus.

Unfair Practices

The Chairman of Committee I flagged in his report the question of unfair practices, rasied separately by Australia and certain land-based producers. While some consideration was given to this issue even while the Chairman's report was being prepared, it would seem essential that a fundamental term of all contracts issued by the Authority should require States parties not to provide subsidies, including those of a financial, fiscal, commercial, trade or industrial nature, to contractors in respect of the exploitation of seabed resources that have the effect of furnishing to such contractors a competitive commercial advantage over land-based producers of similar resources. While the words may need adjusting to reflect different social and economic systems, the principle should be clearly embodied in a treaty obligation.

ARTICLE 151, PARAGRAPH 2

Issuance of Production Authorization

The introduction to paragraph 2 of Article 151 in the Chairman's Report is a significant improvement in defining a production authorization and is the result of long dialogue.

ARTICLE 151, PARAGRAPH 2 (a)

Interim Period

Paragraph 2(a) is also clear in its intent which is to provide a definition of the interim period.

ARTICLE 151, PARAGRAPHS 2(c), (d) AND (e)

Enterprise Preference, Re-Application for Production Authorization and Variable Production

Paragraphs 2(c), (d) and (e) are items upon which delegations have been negotiating in good faith and if there are still differences these show promise of resolution.

ARTICLE 151, PARAGRAPH 2(f)

Level of Production of Other Metals

Paragraph 2(f) is a useful clarification as to level of production of copper, cobalt and manganese in relation to plan of work.

ARTICLE 151, PARAGRAPH 3

There are still some ambiguities in the power assigned to the Authority in limiting production of minerals from the Area, other than minerals from nodules, which should be eliminated.

ARTICLE 151, PARAGRAPH 4

Compensatory Financing

The Canadian delegation reserves its position on the text contained in Article 151, paragraph 4, proposing the establishment of a system of compensation because the proposal is discriminatory, vague and open-ended concerning the nature and scope of the market effects which should justify the establishment of such a mechanism. In our opinion, the proposal for establishing a compensatory financing mechanism should take into account the applicability of existing international systems of compensation relating to export earnings instability.

ANNEX III, ARTICLE 10, PARAGRAPH 3.f.

Finance

The Canadian delegation has reservations on the proposed text dealing with the repayment of interest-free loans. In our opinion, the repayment period should not exceed the economic life of the project financed with interest-free loans. We sincerely hope that the issue will be further discussed during the next session.

ANNEX III, ARTICLE 10, PARAGRAPH 3.a.

Finance

The Canadian delegation wishes to stress that revision of ICNT/Rev.I should provide for the establishment of a schedule of financial contributions to the Enterprise. We strongly object to the concept that States Parties would provide the Enterprise with a yet-to-be-agreed-to amount of capital in one instalment, irrespective of its actual need for capital spending.

ANNEX III, Article 12, PARAGRAPH 4.d.

Legal status, immunities and privileges

The Canadian delegation objects to the text contained in Annex III, Article 12, paragraph 4.d., giving preferential status to the Enterprise similar to the status afforded to developing countries because the granting of the status is not subject to multilateral agreements, and is given to countries and not to companies.