TEXT OF A STATEMENT BY
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Mr. Chairman,

I should like to begin with a few brief general comments before discussing the Canadian draft treaty articles I am introducing today.

It is widely recognized today that the quality of the environment is everybody's problem. This was not always so. In the case of Canada, however, we have a long history of active interest in the protection of the environment, and the draft treaty I am about to introduce is both the natural outgrowth of this long-standing broad concern for the environment and the culmination of years of work aimed specifically at the protection of the marine environment.

As early as 1909, Canada and the USA reflected their mutual interest in the protection of the environment by providing in the Boundary Waters Treaty that each country would refrain from polluting the boundary waters of the two countries. That treaty illustrates at one and the same time both the need to adopt a legal strategy in attacking environmental problems and the weakness of relying solely on legal approaches which are not backed up by the necessary economic, social, scientific and political policies required to carry environmental protection commitments into action. The Great Lakes have become polluted and it was necessary for Canada and the United States to negotiate a year ago a second treaty for the purpose of cleaning up the Great Lakes. Nevertheless the 1909 treaty set out a clear legal obligation, and - of particular significance - it established the International Joint Commission which has since pioneered in the development of international cooperative measures for environmental protection.

During the 1940's, Canada and the USA again took action clearly reflecting our common recognition of the importance of protecting our environment in setting up an international tribunal to determine environmental responsibility in the famous Trail Smelter case which had implications of long-term significance for every country. Fumes from a smelter in Canada were drifting across the border and damaging the U.S. environment. The Trail Smelter Tribunal in its landmark decision held that Canada did not have the right to use or permit the use of its territory in a manner such as to cause injury in or to the territory of another state or to the properties or persons therein and that Canada was responsible in international law for the conduct of the Trail

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Smelter. More recently, in the mid-60's, Canada and the United States again set up an environmental responsibility tribunal in the Gut Dam case and Canada again paid compensation for the damage done to the USA and its citizens in this case through the raising of the water level of one of the Great Lakes as a consequence of a dam constructed within Canada.

Canada pressed very strongly for the conclusion of the Partial Test Ban Treaty and the Non-Proliferation Treaty, both of which were regarded by Canada at the time as environmental measures as much as arms control measures, and Canada protests all nuclear tests, whether atmospheric or underground. Even the treaties banning the orbiting in space of weapons of mass destruction and the implanting of weapons of mass destruction on the ocean floor were regarded by Canada in the same way, as both environmental and arms control measures and we played an extremely active role in negotiating those treaties.

In 1970 Canada passed the Arctic Waters Pollution Prevention Act. At that time, Prime Minister Trudeau stated that Canada would be acting multilaterally as well as nationally to develop international law for the protection of the environment. We have since participated actively in the preparatory work for the Stockholm Conference and the Conference itself, and in the work of IMCO and of the London Dumping Conference. In all these fora we have sought to establish three basic principles of international law which we have now translated into treaty form, namely (i) the duty of a state not to damage the environment of another state or of areas beyond national jurisdiction, (ii) the duty to compensate for such damage, and (iii) the duty to consult or give notice before taking action which would have an environmental impact upon other countries. These principles, founded on the Trail Smelter Case, were reflected in the Declaration of Marine Principles and in the Declaration of Principles on the Human Environment tabled by Canada, and they were endorsed either by the Stockholm Conference, the London Dumping Conference or the 27th session of the UNGA.

Mr. Chairman, it is with considerable pleasure that I now introduce the Canadian draft articles for a comprehensive convention on the preservation and protection of the marine environment as found in Document A/AC.138/SC.III/L.28.

As indicated in the introductory note, this document is being submitted for discussion purposes only and does not necessarily reflect the final or definitive views of the Canadian Government. It does, however, reflect the experience which has been accumulated in Canada since we first began taking concrete action for the preservation and protection of the marine environment some years ago. It also reflects and builds on such important international developments as the Stockholm Conference on the Human Environment, the Dumping Conference, the series of conventions or draft conventions which have recently been negotiated or are now under discussion in IMCO,

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as well as other instruments or principles of conventional or customary international law. Finally, it takes into account certain broad trends emerging from the work of the Seabed Committee itself. In short, it represents the translation into draft treaty language of the working paper on the preservation of the marine environment submitted by Canada at the last session of the Seabed Committee (Document A/AC.138/SC.III/L.26 of August 31, 1972).

Before commenting on each of the Canadian draft articles individually, I should like to emphasize two general elements or themes which run through the draft as a whole. First of all, that draft advances and is based on a comprehensive approach to the problems of marine pollution. By this I mean that it attempts to establish a master framework or umbrella which would:

(a) lay down the fundamental obligation of states to protect and preserve the marine environment through the prevention of marine pollution by the implementation of proper control measures based on internationally agreed rules and standards;

(b) affirm a general commitment to the elaboration of and adherence to further national and international measures for the discharge of this fundamental obligation; and

(c) lay down uniform rules for dealing with certain problems arising in connection with such national and international measures, including for instance enforcement jurisdiction, compensation for damage, and settlement of disputes.

The second general element or theme which runs throughout the Canadian draft treaty articles as a whole is that they seek to lay the groundwork for an accommodation between the interests of coastal and flag states on the one hand and the international community on the other. They do not reflect a purely national position on the part of the Canadian Government. They do not simply emphasize coastal jurisdiction at the expense and to the exclusion of flag state jurisdiction. They do not call for the establishment of a super-agency which would take over the responsibilities of states for the preservation and protection of the marine environment. They do, however, call for a departure from old laissez-faire concepts and recognize the need for regulation of the uses of the sea, in the interests of environmental preservation, on the basis of functional management concepts founded on scientific principles rather than the principle of creeping jurisdiction on the one hand or the principle of floating sovereignty on the other.

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And they do contain provisions to guard against the abuse of rights or powers exercised by states for the preservation and protection of the marine environment, and to settle any disputes that may arise.

Mr. Chairman, I should now like to proceed to an article by article commentary on the Canadian draft with a view to (i) showing how various articles relate to the comprehensive approach and the attempt to reach an accommodation, (ii) outlining where appropriate the sources on which the draft articles have been based, and (iii) explaining and elaborating where necessary the practical effect and meaning of certain articles. I should add at this point that the draft articles have been submitted without prejudice to the question whether they might form part of a broader treaty on the law of the sea as a whole or instead constitute an independent instrument on marine pollution only.

PREAMBLE

States Parties to this Convention,

Convinced that the marine environment and all the living organisms which it supports are of vital importance to humanity, and all people have an interest in assuring that this environment is so managed that its quality and resources are not impaired;

Convinced that coastal nations have a particular interest in the management of coastal area resources;

Recognizing that the capacity of the sea to assimilate wastes and render them harmless and its ability to regenerate natural resources are not unlimited, and that measures to prevent and control marine pollution must be regarded as an essential element in the management of the oceans and seas and their natural resources;

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

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Noting that marine pollution originates from many sources, including discharges through the atmosphere or from rivers, estuaries, outfalls and pipelines and from dumping, and that it is important that states use the best practicable means to prevent such pollution;

Being convinced that the duty of states to protect the marine environment requires effective action, either individually or jointly, for the prevention of marine pollution through the elaboration, implementation and enforcement of appropriate control measures, taking into account existing international agreements on the protection and preservation of the marine environment, the need for elaboration of further agreements in this field at global and regional levels, and especially the need to ensure that these agreements, together with relevant national measures, comprise an effective comprehensive approach to the protection and preservation of the marine environment,

While it may not be strictly essential to provide a preamble for a draft comprehensive treaty on marine pollution, my Delegation has considered it useful to do so in order to set the background for the operative articles and provide an indication of the scope and nature of the problems with which they deal and the objectives they set out to achieve. However, I would hope that this part of the Canadian draft does not lead to any extensive discussion and that at this stage we need not debate the issue as to whether or not a preamble is needed at all.

The first three paragraphs of the preamble are based on the statement of objectives concerning the marine environment which was endorsed by the Stockholm Conference. These three paragraphs recognize the special interests of coastal states with respect to the management of coastal area resources; they recognize that there are limits to the assimilative and regenerative capacities of the sea; and they state the consequential conclusion that it is necessary to apply management concepts to the marine environment, to marine resources and to the prevention of marine pollution.

The fourth preambular paragraph is based on principle 21 of the Stockholm Declaration on the Human Environment. The fifth is based on principles 3 and 17 of the principles on marine pollution endorsed by the Stockholm Conference and reflects also the approach adopted in the recently negotiated Dumping Convention. The sixth preambular paragraph reflects principles 2 and 5 of the Stockholm principles on the marine environment; in effect it spells out the basic objective of the Canadian draft articles and emphasizes the need for the elaboration of further agreements

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on the preservation and protection of the marine environment with a view to ensuring a comprehensive approach to the problem.

ARTICLE I

BASIC OBLIGATION

States have the obligation to protect and preserve the marine environment.

This article is based on principle 1 of the Stockholm principles on the marine environment. It simply lays down the basic obligation of states to protect and preserve the marine environment. All the other provisions of the Canadian draft, of course, flow from this basic obligation which may seem so self-evident as to need no articulation. Simple and self-evident as it may sound, however, it represents a radical if not revolutionary departure from the traditional laissez-faire regime which has so long prevailed in the law of the sea. It represents too the very essence of the custodianship concept advanced by Canada and other countries. At present there exists no treaty provision laying down this basic obligation in such general and comprehensive terms, although the Dumping Convention comes close to doing so. The importance of pledging states to such a general treaty obligation cannot be overemphasized. It would provide the binding element or organic link between the comprehensive treaty and other treaties or national measures dealing with particular aspects of marine pollution. It would help to establish a general commitment to the elaboration of and adherence to such particular treaties. It would provide a new and environmentally-oriented basis for the work of such specialized agencies as IMCO which so far have not generally succeeded in elaborating truly effective regimes for the prevention of marine pollution because they have been circumscribed by and bogged down in somewhat outworn notions of a freedom of the seas which were tantamount to a license to pollute. Finally this basic obligation represents not the lowest but the highest common denominator for an accommodation on the many troublesome issues that arise in connection with efforts to prevent marine pollution because it states the overriding objective on which the international community is in universal agreement and lays down the supreme guideline or yardstick with which to judge the efficacy and appropriateness of measures taken in the name of environmental protection.

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ARTICLE II

MEASURES FOR PREVENTION OF POLLUTION

Paragraph 1.

> States shall take measures, either individually or jointly, as appropriate, to prevent pollution of the marine environment by substances or other matter liable to create hazards to human health, to harm living resources and marine life, to damage amenities or to interfere with other legitimate uses of the marine environment. In particular, states shall, to the best of their ability, take measures to ensure that activities under their jurisdiction or control do not cause damage to other states, including the environment of other states, by pollution of the marine environment. Such measures shall include measures (a) to control the release of the above substances or other matter from all sources within their jurisdiction, in particular land-based sources, (b) to minimize the release of toxic or dangerous substances, especially if they are persistent substances, to the fullest possible extent until it is demonstrated that their release in larger quantities or greater concentrations will not cause pollution, (c) for the prevention of accidents and the safety of operations at sea in accordance with agreed international standards including, (i) the design, equipment, operation and control of vessels, in particular those engaged in the carriage of substances whose characteristics or quantities are likely to cause pollution of the marine environment if accidentally released, (ii) the design, equipment, operation and control of installations and devices for the exploration or exploitation of the natural resources of the sea-bed or any other installations and devices operating in the marine environment.

This paragraph sets out the obligation of states to take measures either individually or jointly to prevent pollution of the marine environment, pursuant to their basic obligation to preserve and protect that environment. In this it reflects principle 7 of the Stockholm Declaration on the Human Environment as well as the definition of marine pollution adopted by the Joint Group of Experts on the Scientific Aspects of Marine Pollution (GESAMP). It also sets out the obligation of states to avoid damaging the environment of other states by pollution of the marine environment, in keeping with principle 21 of the Stockholm Declaration and the analogous

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rule established by the Trail Smelter case and the Corfu Channel case. Finally it goes on to illustrate some of the sorts of measures states should take to prevent marine pollution, and in this reflects principle 21 of the Stockholm Declaration as well as Stockholm Recommendation 71, the Edinburgh principles elaborated by the Institute de Droit International in September 1969, the General Assembly's Declaration of Principles on the Seabed, and various IMCO resolutions.

These provisions of paragraph 1 of Article II are fundamental to a comprehensive approach to the preservation of the marine environment in that they posit the duty to make a concerted attack on all sources of marine pollution, whether marine-based or land-based. Such an attack would involve a broad range of national and international measures, with the national measures relating to such problem areas as land-based sources of marine pollution and pollution hazards from continental shelf resource exploitation. The comprehensive draft treaty articles do not themselves spell out these measures in detail but rather leave them to be developed through the forms of cooperation called for in Article III.

Paragraph 2.

> In taking measures pursuant to their obligations under this Convention, states shall take into account: (a) any international convention the purpose or effect of which is to protect and preserve the marine environment; (b) the relevant principles, standards, recommendations, procedures, guidelines, criteria, including water quality criteria, and action plans proposed by competent international organizations.

This paragraph is based on Stockholm Recommendations 72 and 92 (b) and lays down that measures taken by states for the preservation of the marine environment should be based on or take into account relevant international conventions and the relevant principles and standards proposed by competent international organizations. In negative terms, the purpose of this paragraph is to guard against abuse of powers by individual states and, in positive terms, to ensure appropriate harmonization between national and international measures, and also to ensure that states which may not be parties to a particular marine pollution convention should at least take its provisions into due account even if they are not strictly speaking bound to comply with them. Again this is an essential element and part of the very raison d'etre of a comprehensive approach and is intended to serve as a sort of cement binding a series of national and international measures into a coherent, uniform and all-embracing system.

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ARTICLE III

DEVELOPMENT OF MEASURES

States should cooperate on a global basis and as appropriate on a regional basis, directly or through competent international bodies, to elaborate and implement conventions, rules, principles, standards, recommendations, procedures, guidelines, criteria, including water quality criteria, and action plans for the purpose of the prevention of pollution of the marine environment.

This article sets out the duty of states to cooperate in the development of internationally agreed measures for the prevention of marine pollution pursuant to the obligations imposed by Articles I and II. It is based on Stockholm Recommendation 92(b) and in varying degrees reflects also Stockholm principles 8 and 9 on the marine environment. Together with paragraph 2 of Article II, Article III stresses the overriding importance of internationally agreed rules and standards. The development of such rules and standards is fundamental not only to the prevention of marine pollution but also to the broad range of issues of the law of the sea, and goes hand in hand with the protection of the rights and interests of both coastal and flag states. It is only with the development of internationally agreed rules and standards that it would be possible to reach an accommodation on these issues and on these rights and interests. I cannot overestimate the importance of this point. Much of the opposition to coastal state environmental protection measures is based on the fear of a series of dissimilar, uncoordinated measures by different states. This fear is alleviated if we develop internationally agreed rules and standards, and that is what we are calling for in this treaty.

ARTICLE IV

SPECIAL MEASURES

Paragraph 1.

Nothing in this Convention may be interpreted as preventing a state from taking such measures as may be necessary to meet the obligation under Article I within the limits of its national jurisdiction, including environmental protection zones (maximum limits to be determined) (a) pending the establishment and implementation of internationally agreed measures contemplated by this Convention or, (b) following the establishment or implementation of any internationally agreed measures if such measures fail to meet the

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objectives of this Convention or if other measures are necessary in the light of local geographical and ecological characteristics.

This provision recognizes that states must retain the right to take measures within the limits of their national jurisdiction, including environmental protection zones, where internationally agreed measures are either non-existent or ineffective or where other measures are necessary in the light of local geographical and ecological characteristics. Just as it is essential that measures for the prevention of marine pollution generally be based on internationally agreed rules and standards, so it is essential also that within certain limits states can take account of special local or regional problems. Marine pollution can be effectively attacked only by a combination of global, regional and national rules and standards, with the global ones fixing at least the minimum provision to be met for the preservation of the marine environment and the regional or national ones laying down other and perhaps stricter provisions as regional or local conditions may determine. The need to allow for this sort of limited freedom of individual state action was recognized in the Edinburgh principles of the Institut de Droit International and, to some extent, in Article 8 of the 1973 draft IMCO Convention on Marine Pollution as well as Stockholm principles 11 and 12 on the marine environment.

Paragraph 2.

Measures taken in accordance with this article must remain within the strict limits of the objectives of this Convention and must not be discriminatory in their application.

This provision is intended to ensure that any national action by individual states in the circumstances outlined in paragraph 1 above is non-discriminatory and genuinely addressed to the objective of preservation of the marine environment. It provides a further safeguard against arbitrary national action, in addition to those incorporated in other draft articles, again with a view to securing an accommodation between various national and international interests.

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ARTICLE V

INTERNATIONAL PROGRAMS

States should actively support and contribute to international programmes to acquire knowledge for the assessment of pollutant sources, pathways, exposures and risks, and those states in a position to do so should provide educational and technical and other forms of assistance to facilitate broad participation by states in such programmes regardless of their economic and technical advancement.

This article provides for international cooperation and technical assistance in the acquisition of knowledge concerning marine pollution problems. It is based on Stockholm Recommendation 73 and Stockholm principle 6 on the marine environment. The objective, of course, is to help ensure that all states are able to carry out their obligation to preserve and protect the marine environment. Difficulties arise for states in fulfilling this task in the absence of the necessary technical knowledge and expertise, and accordingly the question of the transfer of technology is central to a comprehensive and coordinated attack on environmental problems.

ARTICLE VI

MONITORING

Paragraph 1.

States which permit or engage in activities resulting in the release of substances or other matter into the marine environment likely to cause pollution shall take measures, consistent with the rights of other states, to determine the effects of such activities on the marine environment, having particular regard to those harmful effects referred to in Article II.

This provision reflects principle 20 of the Stockholm Declaration, Stockholm Recommendation 87, and Stockholm principles 15 and 16 on the marine environment. It represents a particular application of scientific management concepts to the preservation of the marine environment in requiring that states shall conduct such surveys and investigation and establish such monitoring systems as may be necessary to determine the effects of potentially harmful discharges into the marine environment. It also provides that such surveys and investigations are to be conducted in a manner "consistent

with the rights of other states", in order to ensure that they do not infringe on the rights of other states within the limits of their national jurisdiction.

Paragraph 2.

> Wide dissemination should be given to appropriate data and information respecting activities resulting in the release of substances or their matter into the marine environment, the measures taken to determine harmful effects, and measures or procedures adopted to minimize or eliminate such harmful effects.

This provision provides for the dissemination of data and information respecting activities relating to the release of substances into the marine environment. It represents a further application of paragraph 1 of this article and is related in some measure to the principle on the duty of notification which had been embodied in the draft Declaration on the Human Environment presented to the Stockholm Conference and was subsequently adopted by the U.N. in the form of a separate resolution. The same principle is also incorporated in the London Dumping Convention in the article providing for the duty to consult other countries likely to be affected in cases of emergency dumping. The objective of this provision in the Canadian draft, somewhat like the objective of the notification principle, is to ensure that states inform one another concerning the possible environmental impact of their actions on the marine environment and hence to help ensure that appropriate remedial or preventive measures are taken.

ARTICLE VII

COMPENSATION FOR DAMAGE

> 1. States are liable for damage caused in or to areas under the jurisdiction of other states, including the environment of other states, by pollution of the marine environment attributable to them, and they shall cooperate in the development of international law relating to procedures for the assessment of damage, the determination of liability the payment of compensation and the settlement of related disputes.
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> 2.(a) With respect to damage caused in or to areas under the jurisdiction of a state, including the environment of that state, by pollution of the marine environment which is not attributable to another state, but which has

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been caused by persons under the jurisdiction of that other state, states undertake to provide recourse with a view to ensuring equitable compensation for the victims of marine pollution caused by persons under their jurisdiction, which will include procedures for the assessment of damage, the determination of liability and the payment of compensation.

(b)Following the exhaustion of local remedies or where no such recourse is available, the state of the damaged party may present to the state having jurisdiction over the person or persons responsible for the damage in question, a claim for the damage caused. If no settlement of the claim is arrived at through negotiations, the states concerned shall submit, at the request of either of them, the claim to arbitration or adjudication in accordance with a procedure to be determined by agreement or by a third party nominated by them.

3. With respect to damage caused in or to areas beyond the limits of national jurisdiction by pollution of the marine environment, states undertake to cooperate in the development of international law relating to procedures for the assessment of damage, the determination of liability, the payment of compensation and the settlement of related disputes.

This article deals with the highly complex problem of compensation for damage suffered as a result of pollution of the marine environment. It is based in varying degrees on principle 22 of the Stockholm Declaration, Stockholm principle 7 on the marine environment, Article 10 of the London Dumping Convention, the 1969 Brussels IMCO Convention on Civil Liability, the IMCO International Compensation Fund, the Outer Space Liability Convention and the precedent of the Trail Smelter case. It recognizes as a consequence of the obligation of states to ensure that activities under their jurisdiction or control do not cause damage to other states (as provided for in Article II of the Canadian draft), the need to ensure that compensation should be available to the victims of pollution damage where this obligation has not been met. The three paragraphs of draft Article VII envisage that a variety of means could be devised for ensuring such compensation, ranging from international compensation funds or insurance schemes to private rights of action established under the laws of each state in accordance with

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internationally agreed obligations, and, in the appropriate circumstances, to direct compensation by the responsible state. What is important is that compensation be readily available and adequate to cover the damage suffered, and this is the objective which draft Article VII is intended to achieve both in immediate terms and in terms of the longer range development of international law. That objective is of obvious importance both in terms of ensuring a comprehensive approach to the problems of marine pollution and an accommodation on those problems. That we are approaching such an accommodation is suggested by the very encouraging fact that both the USA and the USSR have publicly indicated their willingness to accept strict liability for environmental damage which might be caused by their flag vessels in passing through international straits. There would appear to be no ground for limiting this principle in this way, but this nevertheless represents a very major step in the right direction.

The three paragraphs of draft Article VII deal respectively with:

(a) damage involving state liability, that is damage caused by one state to areas in or under the jurisdiction of another state as a result of pollution of the marine environment attributable to the first state;

(b) damage not involving state liability(at least in the first instance), that is damage caused to areas in or under the jurisdiction of one state as a result of pollution of the marine environment which is not attributable to another state; and

(c) damage caused to areas beyond the limits of national jurisdiction by pollution of the marine environment.

In the case of damage suffered by one state as a result of marine pollution attributable to another state and hence involving state liability, paragraph 1 of Article VII provides that states shall cooperate in the development of international law relating to procedures for the assessment of damage, the determination of liability, the payment of compensation and the settlement of related disputes. While there already exists a considerable body of jurisprudence on the question as to the responsibility which may or may not be attributable to a state (such as for instance, the Trail Smelter case), this is an area which requires still further development owing, for instance, to the increase in ultra-hazardous activities or other activities of a continuing nature likely to result in environmental damage. An interesting example of the way in

which the law may be developing in this connection is provided by Articles 13 and 14 of Chapter IV of the preliminary draft European Convention on the Protection of Trans-frontier Waters against Pollution prepared under the auspices of the Council of Europe. These two articles of that draft read as follows:

> "Any contracting party which, in contravention of Article 3 of this Convention, or of regulations, referred to in Article 6(c) of this Convention and which it has approved [or of other rules of public international law] commits, authorizes or tolerates acts which, by polluting waters, cause damage to others, is responsible towards the other contracting party or parties on whose territory the damage is sustained."
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> "In the case of a sudden increase in the level of pollution, even if unforeseen and not authorized or tolerated, the contracting parties interested in a same drainage basin, are under a duty to take immediately, unilaterally and, if necessary, jointly all measures in their power to prevent consequences causing damage or to limit its extent, and, if they fail to do so they will be liable to the other contracting party or parties on whose territory the damage is sustained."

As regards damage suffered in areas in or under the jurisdiction of one state as a result of pollution of the marine environment which is not attributable to another state, paragraph 2 of draft Article VII obliges states to provide recourse with a view to ensuring equitable compensation for the victims of marine pollution caused by persons under their jurisdiction. The objective here is to ensure that foreign pollution victims have prompt access to equitable compensation either through the courts of the state having jurisdiction over the polluter or through some special compensation or insurance scheme established by the state in question. Where the state having jurisdiction over the polluter does not discharge its obligation to provide prompt access to equitable local remedies, the claim for damage becomes a matter to be dealt with directly between the governments of the two states concerned, namely the state of the pollution victim and the state having jurisdiction over the polluter. In other words these two states assume responsibility for settling the claim either through negotiations or through arbitration or adjudication in accordance with an agreed procedure.

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As regards damage caused in or to areas beyond the limits of national jurisdiction by pollution of the marine environment, paragraph 3 of draft Article VII simply provides that states shall cooperate in the development of international law relating to any claims which may arise in these circumstances. A similar approach is adopted in the Australian draft principles on the preservation of the marine environment for similar reasons, namely, the technical difficulties surrounding compensation for damage to areas beyond the limits of national jurisdiction.

ARTICLE VIII

ASSISTANCE

In the case of damage caused by pollution of the marine environment in areas beyond the limits of national jurisdiction, a state or group of states, in cooperation with any competent international organization or agency or otherwise, may present to the state under whose jurisdiction or control the activities causing such pollution were conducted, through diplomatic channels, a request for the termination or restriction of such activities and the restoration of the damaged environment.

This article provides that where pollution damage is caused to the marine environment beyond the limits of national jurisdiction, a state or group of states may request the termination or restriction of such activities and the restoration of the damaged environment by the state under whose jurisdiction or control the damaging activities were conducted. Any dispute arising in this connection would be dealt with under dispute settlement procedures envisaged in draft Article XIII.

ARTICLE IX

MINIMIZATION

A state which becomes aware of circumstances where the marine environment is in imminent danger of being damaged or has been damaged by pollution shall notify other states likely to be affected by such damage and these states shall cooperate in taking measures to minimize damage.

This article provides that states should notify each other of any imminent danger of marine pollution damage likely to affect them and should cooperate in minimizing such danger.

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This reflects Article V of the London dumping convention and similar provisions of the North Sea Agreement for dealing with Pollution by Oil.

ARTICLE X

ENFORCEMENT

1. States may enforce measures adopted pursuant to this Convention for the protection and preservation of the marine environment within the limits of their national jurisdiction, including environmental protection zones (maximum limits for the purpose of this Convention to be determined and expressed in this Convention) adjacent to their territorial sea.

2. Where vessels or aircraft registered in one state are in areas within the limits of national jurisdiction of another state, including environmental protection zones, the state of registry shall also have the duty to ensure compliance with the measures adopted pursuant to this Convention for the protection and preservation of the marine environment in such areas.

3. States shall enforce measures adopted pursuant to this Convention for the protection and preservation of the marine environment in respect of (a) vessels and aircraft registered in their territory operating beyond the limits of national jurisdiction, and (b) man-made structures or platforms operating in areas beyond the limits of national jurisdiction over the sea-bed where such structures or platforms are under the authority and control of a state (pursuant to the international sea-bed regime to be established).

This Article deals with the question of enforcement jurisdiction. It lays down provisions which are vitally important in a comprehensive approach to the preservation of the marine environment since jurisdictional conflicts have arisen with respect to virtually all international and some national efforts to combat marine pollution. These provisions are vitally important also because no accommodation on the problems of marine pollution or perhaps on the whole range of issues of the law of the sea can be reached without an accommodation on the question of jurisdiction to enforce anti-pollution measures.

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The three paragraphs of draft Article X are based on the three principles on the rights of coastal [illegible] considered at the Ottawa session of the Intergovernmental Working Group on Marine Pollution and were neither endorsed nor rejected by that group but were referred by the Seventh Session of IMCO and the Seabed Committee for appropriate [illegible]. They also reflect the approach adopted in the Santo Domingo Declaration on Problems of the Sea, the report of the Yaounde Seminar on the Law of the Sea and the Kenyan proposal for an economic zone, all of which documents have been submitted to the Seabed Committee.

In essence, the three paragraphs provide respectively for:

(a) enforcement of environmental preservation measures by the coastal state within the limits of its national jurisdiction, including environmental protection zones (in addition to the coastal state's authority to promulgate national measures in these same zones as envisaged in draft Article IV);

(b) concurrent or shared responsibility of the flag state to enforce environmental preservation measures in areas under the jurisidiction of another state; and

(c) enforcement by flag states in respect of their vessels and aircraft beyond the limits of national jurisdiction, and by the responsible state in respect of man-made structures or platforms beyond these same limits (subject to whatever provisions may be established by the international seabed regime in this regard).

It has always been the Canadian view that if agreement is reached on the basic obligation of all states to preserve the marine environment and to prevent marine pollution by the implementation of appropriate control measures based on internationally agreed rules and standards, the jurisdictional issues involved could be viewed from a new perspective. In other words, it becomes easier to adopt a more flexible attitude to the choice of enforcement authority when agreement has been reached on the measures to be enforced, even where there remains a limited right to adopt national measures in certain restricted circumstances (as provided for in draft Article IV). In the same way that the coastal state would have a residual authority to promulgate rules within the limits of its national jurisdiction in cases where international rules did not yet exist or where special local circumstances prevail, the coastal state would also have a similar residual or concurrent authority in these same areas to enforce both the internationally agreed rules and any special national rules it adopted pursuant to Article IV. This reflects the kind of accommodation whereby jurisdictional conflicts would be resolved by an approach somewhat analogous to the concept of universal jurisdiction accepted by all states with regard to slavery and piracy and would not constitute undue interference with the responsibility of flag states for their vessels.

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ARTICLE XI

RIGHT OF INTERVENTION

1. Any state facing grave and imminent danger from pollution or threat of pollution, following upon an incident or acts related to such an incident in areas beyond the limits of national jurisdiction, which may reasonably be expected to result in major consequences, may take such measures as may be necessary to prevent, mitigate or eliminate such danger.

2. Measures taken in accordance with this article shall be proportionate to the damage which threatens the state concerned and shall not go beyond what is reasonably necessary to achieve the objective referred to in paragraph 1.

The first paragraph of this article provides for the right of a state to intervene in cases where it faces grave and imminent danger from pollution following upon a maritime incident in areas beyond the limits of national jurisdiction. The second paragraph provides that measures taken in connection with such intervention shall be proportionate to the threatened damage and not go beyond what is reasonably necessary for the preservation and protection of the marine environment. These two paragraphs are based on the 1969 Edinburgh principles of the Institut de Droit International, the 1969 Brussels Public Law Convention, Stockholm principle 21 on the marine environment, and national legislation already adopted by the United Kingdom.

ARTICLE XII

SOVEREIGN IMMUNITY

This Convention shall not apply to those vessels and aircraft entitled to sovereign immunity under international law. However, states shall ensure by the adoption of appropriate measures that such vessels and aircraft owned or operated by them act in a manner consistent with the object and purpose of this Convention.

Article XII provides for the soverign immunity of government vessels in accordance with the usual practice in maritime conventions. At the same time it provides, like the London Dumping Convention, that these vessels should act in a manner consistent with the object and purpose of the draft article and in this sense bring them within the coverage of the articles. The importance of such a provision both in terms of

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a comprehensive approach to marine pollution and the effort to secure an accommodation on these problems is self-evident.

ARTICLE XIII

SETTLEMENT OF DISPUTES

> Where any dispute arises relating to the interpretation or application of this Convention, the states concerned shall, if such dispute is not resolved by negotiation, submit the claim to arbitration, at the request of any of them, in accordance with a procedure to be determined by agreement or by a third party nominated by agreement among the states concerned.

This article provides (more by way of example than as a definite proposal) for the procedures to be followed for the settlement of disputes relating to the interpretation or application of the draft articles. It is intended to provide the ultimate safeguard, in addition to those incorporated in other draft articles, against abuse of powers by any state and to ensure that measures taken pursuant to these articles correspond to the interest of the international community in the preservation and protection of the marine environment. Again the importance of this article from the point of view of securing an accommodation on the problems of marine pollution cannot be over-emphasized. It reflects one of the most fundamental elements of the custodianship concept advanced by Canada and other countries.

Mr. Chairman, I apologize for the length of this statement - a length which was made necessary by the complexity and importance of the subject with which the Canadian draft articles deal. My Delegation would be pleased to provide any further clarification of the general approach and the specific provisions incorporated in these draft articles in the content of discussions within the Working Group on Marine Pollution of Sub Committee III.

Mr. Chairman, it is the view of the Canadian Delegation that this Sub Committee and its Working Group on Marine Pollution have an obligation to develop international environmental law. The Honourable Jack Davis, Canadian Minister of the Environment, reported to the Canadian Parliament that the Stockholm Environmental Conference (where he led the Canadian Delegation) had taken "a giant step forward in the development of international environmental law". Mr. Chairman, the time has now come for us to take another such giant step and to translate principles of international environmental law into binding treaty obligations. That is the purpose of the treaty I have introduced today. There is no special or narrow Canadian interest in this treaty. Our interest is the broad one of every country,

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every government, every people, in the preservation of the human environment on which we all depend for survival. We sincerely hope that the spirit of conciliation, accommodation and inter-dependence which prevailed at Stockholm will be carried forward in our work here. May I conclude with the theme from the Canadian film on the sea which many of you have seen. Mr. Chairman, "We haven't much time."