

*Aim at declaration
of principles
as a framework
for environmental
law*

the functional approach to such issues as marine pollution, fisheries control and the seabed beyond national jurisdiction will be discussed in subsequent issues of *International Perspectives*. But it may be useful at this point to explain the relation, in the Canadian view, between the UN Conference on the Human Environment held in Stockholm in June, the IMCO Conference in 1973 and the Law of the Sea Conference, also scheduled for 1973.

It has been the Canadian position since the decision of the UN to hold an environmental conference in Stockholm this year that such a conference could provide a unique opportunity to adopt a multi-disciplinary approach to the future development of international environmental law. Such law has been virtually non-existent until now, and it was the Canadian view that it would be a major achievement if the conference could reach agreement on a declaration of principles that would not only provide guidelines to states for their future action but lay down the framework for the future development of international environmental law. What was proposed by Canada to achieve this end was the adoption and endorsement by the Conference of marine pollution control principles and of a declaration on the environment which would embody principles of international environmental law founded on the Trail Smelter case.

Stockholm guidelines

Canada therefore argued strongly that the Stockholm Conference should produce legal principles as well as exhortations to co-operative action. Canada argued that these legal principles should then be referred by Stockholm to the 1970 IMCO Conference for information and guidance and translation into technical rules for the safety of navigation, since only IMCO has the necessary expertise to carry out such a task. Canada has argued further that the Stockholm principles should be referred to the Law of the Sea Conference for action. Only the Law of the Sea Conference provides a forum for the major redevelopment of the Law of the Sea so badly required, particularly that relating to the protection of the marine environment. (IMCO is not by its constitution a law-making forum, and it is the Canadian view that no attempt should be made to redevelop the Law of the Sea under the aegis of IMCO.)

With these considerations in mind, Canada was the first (and only) state to table a declaration of marine pollution control principles in the Inter-Governmental Working Group on Marine Pollu-

tion that was preparing for the Stockholm Conference. At the same time, Canada began to work with the United States and other countries to develop a convention to forbid dumping into the sea of certain toxic substances carried from land to sea in ships. Canada was also the first country to table a declaration on the human environment, and the Canadian declaration had a high degree of legal content, analogous to the UN declarations on human rights and on outer space.

The marine principles elaborated in the Working Group on Marine Pollution at Ottawa in November 1971 and the draft Convention on Dumping (first submitted by the United States at that Working Group and later redeveloped at a meeting in Reykjavik) have now been referred forward by the Stockholm Conference for action by the Seabed Committee (the preparation committee for the Law of the Sea Conference) and for the information of the IMCO Conference (in the case of marine-pollution principles), and to a separate conference to be held in London (in the case of the draft articles for a dumping convention).

Three principles endorsed

It is worth noting that not only the 23 marine-pollution principles agreed to at the November 1971 UN Working Group meeting in Ottawa were endorsed by the Stockholm Conference and referred to IMCO and the Seabed Committee but the three controversial Canadian coastal state jurisdiction principles were also referred to the Seabed Committee. It should be noted also that the draft Dumping Convention articles "blessed" by Stockholm are now no longer a "licence to dump" as was the case with the earlier drafts. The articles now provide the basis for an effective draft convention. It is effective for two reasons: first, environmentally, in that it specifies a "black list" of toxic substances that cannot be dumped at all and a "grey list" of other toxic substances that can be dumped only under strict controls, and, second, from a jurisdictional point of view, because it would permit enforcement by all parties to the Convention against ships "under their jurisdiction". (The action proposal actually approved at Stockholm read — "against ships in areas under their jurisdiction".) Thus the draft Convention may represent a real breakthrough in that it may lay down a basis for an accommodation between flag states and coastal states, enabling both to enforce the Convention against offending parties, much as is the case with respect to slave ships and pirate ships.