

Committee III

1. Preservation of the Marine Environment

Discussion of outstanding marine pollution issues at the Sixth Session proved to be largely a repetition of the debate at the previous session, although positions of different countries and groups of countries became more clearly defined. Two issues of major concern to Canada are the standard setting powers of coastal states in the territorial sea and coastal state enforcement powers in the 200-mile economic zone. On both these issues, some progress was made, although the results as reflected in the ICNT were not satisfactory from the Canadian point of view. With respect to the legislative competence of the coastal state in the territorial sea, Canadian efforts to obtain deletion of Article 20(2) of Part II of the RSNT, which restricted the powers of the coastal state to pass laws affecting design, construction, manning or equipment of foreign vessels, were unsuccessful. These restrictions, which represent a significant erosion of sovereign rights which coastal states have traditionally exercised within their territorial sea under existing international law, were thus carried over into Article 21(2) of the ICNT. As a result of extensive consultations between sessions with other governments and close collaboration with like minded governments during the course of the session, Canada was able to obtain recognition among a broad cross-section of delegations of the unacceptably restrictive language in Article 20(2) of the RSNT. Article 21(2) of the ICNT thus incorporates less restrictive language. While the prohibition of the application of national design, manning, construction and equipment standards in the 12-mile territorial sea for foreign vessels is retained, coastal states would be granted the right to give effect to generally accepted international rules and the reference to prohibition of national laws relating to all other "matters" is deleted.

The amended text, while representing some improvement on the previous language, still creates serious difficulties for Canada. Although preferring the total deletion of Article 21(2), the Canadian delegation had also worked actively to find suitable alternative language which would represent a reasonable accommodation between coastal and flag state interests. In Canada's view the proposal put forward by Morocco and Kenya (which in addition to the deletion of "matters" would reserve to a coastal state at least the residual right to apply national design, construction, manning and equipment rules to foreign vessels in the territorial sea in the absence of international rules), while falling short of meeting its concerns, might offer a better basis for compromise than the text now incorporated in the ICNT. This will be a matter for further consideration in the intersessional period.