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A Statement in the First Committee of the United Nations General Assembly on November 30, 1972, by the Canadian Alternate Representative, Mr. J.A. Beesley.

As we meet here for the fifth successive year to take stock of the results of our collective efforts to develop the Law of the Sea along new and progressive lines, one can detect a feeling of regret and disappointment that we have not accomplished more, coupled with a mood of caution and optimism concerning our future work. The time has come for us to decide whether, when and where to commence the Third Law of the Sea Conference. Resolution 2750-C of the twenty-fifth General Assembly requires of us that we make this decision at this time. It is, therefore, important that we be quite clear as to the nature and extent of the work requiring completion before the Law of the Sea Conference can commence with any reasonable assurance of a successful outcome.

As we pointed out in the concluding days of the last session of the Seabed Committee in Geneva last August, it is obvious that the preparatory work of the Seabed Committee has not been completed and that much remains still to be done. We do not, however, share the view expressed by some that it is premature to attempt to decide at this session of the General Assembly on the Third Law of the Sea Conference. As we made clear in Geneva, we share the widely-held view that the preparatory work of the Seabed Committee has progressed to the point where one can foresee with some confidence sufficient further concrete progress from two more sessions of the Seabed Committee to enable us to commence the Conference.

A number of delegations have referred to the importance of the agreement we have reached on the "list of issues". My own delegation attaches considerable significance to this achievement, since we recognize that the negotiations on that question triggered the process of substantive negotiations on the underlying issues. It is true that no single item on the list will attract the same degree of support from all delegations, but it is equally true that no delegation can any longer have justifiable fears that any issue of importance to it will not be considered at the Law of the Sea Conference. We have, therefore, gone from a decision in principle two years ago in favour of a comprehensive approach to the future Law of the Sea to the specific application of that principle to a range of separate but closely interrelated issues. During the negotiating process, we have all become much more keenly aware not only of the nature and extent of the problems facing us

but of the respective national interests of various states as they see them with respect to each of these issues, and, I would suggest, the general interest of the international community as a whole in the resolution of these problems. Side by side with these negotiations, there have been on-going negotiations on the broad outlines of solutions to a number of specific problems, which I shall refer to a little later. It is thus a truism that the Law of the Sea Conference has, in a sense, already begun.

It is important to note also, as a number of delegations have reminded us, that we have embarked upon a major restructuring of the Law of the Sea, not a mere codification exercise, as was in large part the case in 1958. As a consequence, our task is more complex, the situation more fluid, and it is less easy to determine the precise extent of the progress on any single issue. A further complicating factor is that much of the substantive negotiation goes on outside the Seabed Committee. I refer, for example, to the results of the Stockholm Environmental Conference, the Afro-Asian Consultative Committee meeting of last year, the Santo Domingo Conference of Caribbean States, the African States' Regional Seminar in Yaoundé, the recently-concluded London Conference on Ocean Dumping, and the preparatory meetings for the IMCO Pollution Conference, as well as to the many proposals on specific issues advanced in many different forums, be they governmental or private.

Taking all these developments into account, it is clear that, while we do not have existing draft articles on all of the issues before us, nor even generally-accepted draft articles on any single problem area, we do have clear evidence of developing trends on particular issues which provide us with what a number of delegations have termed a "blueprint" for the future structure of the Law of the Sea.

What are these trends?

In the view of the Canadian delegation, the general willingness of states to reconsider their rights and obligations as they are affected by both new and traditional uses of the seas is the major development in the field of international law over recent years. Only developments in the law of outer space and of the environment can come close to ranking in importance with this trend. The Law of the Sea has for centuries reflected the common interest in freedom of navigation. Only in the past two decades has it begun to reflect the common interest in the resources of the seabed. Only in the last decade has it begun to reflect the common interest in conserving the living resources of the sea. Only in the past few years has it begun to reflect the common interest in the preservation of the marine environment itself. Only in the past few years have we even begun to think of an international regime for the area of the seabed beyond national jurisdiction. The law is, however, beginning to change. It has already been altered by state practice and it will be transformed further by any successful Law of the Sea Conference. No more radical or more constructive concept can be found in international law than the principle of the "common heritage of mankind". Only in the field of outer-space law can we find an analogous example of a common commitment to the negation of sovereignty in the common

interest. Only in the field of environmental law on such issues as the duty not to create environmental damage and the responsibility for such damage can we find examples of concepts having at once such serious and yet encouraging implications for the development of a world order based on the rule of law.

One of the most encouraging trends in the process of progressive development of international law is the increasing evidence that, for the first time in 300 years, large numbers of flag states, on the one hand, and coastal states, on the other, are prepared to accept limitations upon their pre-existing rights -- and the acceptance of corresponding duties -- coupled with the recognition of a need to work out accommodations between their respective interests and those of the international community as a whole. While there are those who lament the death of the traditional unrestricted freedoms of the high seas, there are more who rejoice that the traditional concept of freedom of the high seas can no longer be interpreted as a freedom to over-fish, a licence to pollute, a legal pretext for unilateral appropriation of seabed resources beyond national jurisdiction. No one has suggested an end to freedom of navigation on the high seas. No one has suggested an end to an innocent passage through international straits. No one has suggested an end to flag-state jurisdiction. But no one can any longer seriously argue that these traditional rights can remain unrestricted by law and divorced from corresponding duties.

The Canadian delegation has suggested the concepts of "custodianship" by coastal states and of "delegation of powers" by maritime states as the possible basis of the new regime for the Law of the Sea. Whether or not these terms find their way into the emerging doctrines of international law, the conceptual approach they reflect is, in our view, already embodied in such proposals as the "economic zone" and the "patrimonial sea". These proposals illustrate clearly that ocean space will no longer be divided in an arbitrary fashion between two distinct zones, one under national sovereignty, the other belonging to no one. No longer will the Law of the Sea be based solely on conflicting rights. No longer will the high seas be subject only to the roving jurisdiction of flag states. The concept of management of ocean space reflected in the decisions at Stockholm, in the proposals in the Seabed Committee, and the Convention drafted at the London Ocean Dumping Conference are a clear indication of the direction of the future Law of the Sea.

It is worth noting that the Stockholm Conference was in itself a preparatory conference for the proposed IMCO Pollution Conference, the London Ocean Dumping Conference and the Third Law of the Sea Conference. The London Ocean Dumping Conference and the IMCO Pollution Conference will, in turn, each have further contributed to the preparation for the Law of the Sea Conference. A classic example of the way the law is being developed can be seen in the interrelation between these various conferences:

> The Stockholm Environmental Conference affirmed the principle, for example, that no state has the right to damage the environment of other states or the area beyond national jurisdiction. The London Ocean Dumping Conference translated this principle into binding treaty law.

> The London Conference even translated into treaty form the controversial principle on the duty to consult, on which it had proved impossible to reach agreement at the Stockholm Conference, in Article 5 of that Convention, which makes clear that states wishing to avail themselves of the right to dump noxious wastes in an emergency situation must consult both with the proposed organization and with states likely to be affected by such action.
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> Similarly, the Stockholm principle on the duty of states to develop procedures for the determination of liability and compensation for such damage is translated into binding treaty form in the London Convention.
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> The Canadian delegation hopes and expects that the IMCO Conference, which will be considering both the control of intentional discharge of noxious waste from ships and the rights of coastal states to intervene on the high seas in certain emergency situations, will carry the Stockholm principles another step forward in translating legal principles into binding treaty obligations.
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> Thus we see here the phenomenon of a number of separate but interrelated conferences all leading towards the Law of the Sea Conference and, at the same time, the recurrent theme in all of these conferences of recognition of the need to preserve the marine environment, not merely through new rights of states but through the imposition of new duties upon states.

I can think of no more encouraging development for the future Law of the Sea. It is obvious that the Third Law of the Sea Conference can draw upon and build upon these precedents. It is equally obvious that all of these developments must be harmonized in one great global settlement.

In applying these new trends and emerging concepts to other basic issues requiring resolution at the Law of the Sea Conference, it seems evident that the embryo of an overall accommodation lies in agreement upon a very narrow band of coastal seas, subject to complete sovereignty and a wider band of specialized jurisdictions, extending as far as necessary to meet particular objectives, which in principle could have varied limits but in practice might well together comprise a single "economic zone" or "patrimonial sea". The narrow band of sovereignty or territorial sea could be established as extending only to 12 miles, as so many states, including my own, have already accepted. But no one should regard the figure "12", which is, after all, a simple multiple of three, as sacrosanct, and it may be that an even narrower, generally accepted limit might -- if coupled with the "economic zone" concept -- facilitate the resolution of this and other related difficulties, such as, for instance, passage through international straits.

To put it simply, we consider that the concept of "economic zone" is the keystone to any overall accommodation on the Law of the Sea. Differences of view may exist concerning the precise nature and extent of jurisdiction to be asserted but it is evident that there can be no solution which is not based on the "economic zone" approach. This presupposes a willingness on the part of major maritime powers to acquiesce in new forms of jurisdiction by coastal states embodying both rights and obligations, elaborated in treaty form, and subject, we would hope, to third-party adjudication concerning the application of these rights and obligations. With respect to coastal states, such an accommodation would presuppose, as a minimum, a willingness to recognize the interests of the international community as a whole, and particularly the major marine states, in freedom of navigation through such zones. Undoubtedly such an economic zone would have to include jurisdiction over the living resources of the sea, which, if not exclusive, would at least include coastal-state preferential rights, plus pollution-control jurisdiction and sovereign rights over the resources of the seabed of the economic zone. It may be that the continental shelf would extend in some areas beyond the economic zone. In return for acquiescence by other states in these forms of jurisdiction by coastal states, coastal states would accept a narrow territorial sea.

A further developing trend, not so readily perceived as the others just mentioned, perhaps, but nonetheless apparent for those who care to look for it, is the growing recognition of the need to seek accommodations which will reconcile not only conflicting interests but conflicting uses of the sea. The London Conference on Ocean Dumping provides an interesting precedent on this issue as well as others. A number of major maritime powers, who are also major industrialist states and thus major dumpers, joined together with a large number of coastal states and voluntarily agreed to accept self-denying treaty obligations prohibiting their right to dump certain noxious substances into the oceans of the world and seriously curtailing their rights to dump other such substances. That they did so reflects great credit upon them, but the implications go well beyond the particular example, in terms of the future development of environmental law and the Law of the Sea. Of equal importance is the willingness of the major maritime states to join with these coastal states in sharing the enforcement of this Convention. Of no less significance was the willingness on the part of coastal states at that conference to work out such accommodations with the major maritime powers on the delicate jurisdictional issue of coastal states' rights of enforcement. The solution adopted of shared or "universal" jurisdiction -- that is to say, enforcement by all parties to the Convention -- augurs well for the success of the Law of the Sea Conference. Such a solution does no violence to the interests of any state. Such a solution is quite clearly based upon the common interest of all states in the preservation of the marine environment.

It is worth noting, for example, that the Working Group on the Seabed Regime has done much valuable work based on the clear precedent of the Declaration of Principles on the Seabed Beyond National Jurisdiction, and one may wonder how much further concrete progress can be achieved short of the highly-intensive negotiating atmosphere which will prevail only at the

Law of the Sea Conference. Understandably, states may be reluctant to make the crucial "trade-offs" on these questions until they are in the final and definitive negotiations. A Working Group on Marine Pollution has been established, which, although it has as yet produced little concrete result, has the preparatory work of the Stockholm Conference to draw upon, including in particular the 23 principles on marine pollution endorsed by the Stockholm Conference and also the three coastal-state jurisdiction principles referred to the Law of the Sea Conference by the Stockholm Conference for appropriate action, and now the Ocean Dumping Convention. It may reasonably be assumed that the comments from states requested by the Working Group will be extremely useful in translating the Stockholm principles on prevention of marine pollution into binding treaty form. The Canadian delegation intends to table at any early date a comprehensive draft treaty on marine pollution that, we hope, will further contribute to the process of developing accepted rules of law on the preservation of the marine environment.

There are a number of proposals on fisheries that, while divergent on a number of issues, have in common one fundamental principle -- namely, the need to manage and conserve the living resources of ocean space. On this issue, as with the seabed regime, final conclusions will almost certainly have to await the negotiating situation which will exist only in the Law of the Sea Conference. It is important to note, however, that a further encouraging trend for the future can be detected from recent decisions of ICNAF establishing quotas over several species of fish in the North Atlantic region, including even ground fish.

In examining the state of preparations for the Law of the Sea Conference, it is important to note also the many constructive contributions consisting of working papers on a variety of subjects. These working papers illustrate very clearly that preparations need not take the form only of draft treaty articles. The Canadian delegation, for example, has itself proceeded over the last five years from a series of conceptual statements on various problem areas to a series of position statements on specific issues to the tabling of four concrete working papers on the seabed regime, fisheries conservation, scientific research principles and the preservation of the marine environment. Many other delegations have also submitted working papers on a variety of questions.

One is bound to note the lack of tangible progress on international straits and certain other issues, but even here there has been progress of a sort during the negotiations on the list of issues. Moreover, as I have previously suggested, imaginative approaches to the problems of coastal jurisdiction, such as the combination of rather narrow territorial seas and more extensive economic zones, may well produce solutions here where more traditional attitudes have failed.

I have referred to a number of encouraging trends but, in so doing, we accept that much remains to be done. A trend is not a draft convention. The way has been paved, however, for an attempt to draft concrete conventions. My delegation therefore shares the view expressed by so many others that there is no need to postpone the commencement of the Conference until we have completed draft articles on all the many issues requiring resolution.

To sum up, the Canadian delegation is neither discouraged about the state of our present preparedness for the Third Law of the Sea Conference nor pessimistic about the prospects for the Third Law of the Sea Conference. In these circumstances, we are fully prepared to support the holding of two further sessions of the Seabed Committee in the spring and summer of 1973, the convening of the organizational session of the Law of the Sea Conference in the fall of 1973 and the commencement of the substantive work of the Conference early in 1974. We are pleased also to express our appreciation to the Governments of Chile and Austria for their offers to host the Conference, and we fully endorse the convening of the first session of the Conference in Chile, to be followed, if necessary, by a further session either in Chile or in Austria.

May I conclude by expressing also our warmest congratulations to the Chairman of the Seabed Committee and to the respective Chairmen of the three sub-committees, all of whom have laboured hard to make our work a success? We, for our part, will continue to co-operate to the utmost in seeking new solutions to problems, both old and new, concerning the future Law of the Sea.

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