Statement by Mr. J. A. Beesley
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to the enlarged United Nations Committee on
the Peaceful Uses of the Seabed and
the Ocean Floor Beyond the Limits of
National Jurisdiction

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Mr. Chairman,

You know full well that it is not necessary for the Canadian Delegation, and particularly for me personally, to offer you congratulations upon your election as President of this Committee, the more so because we share the view expressed by so many delegations that it is the Committee which is to be congratulated. I shall therefore heed your exhortation and plunge immediately into deep waters and attempt to take arms against what appears to be a sea of troubles facing us all.

I need not repeat what has been said so eloquently by so many delegations concerning the marked change since the 1958 and 1960 conferences in the range, complexity and variety of problems facing us, some as ancient as international law itself, some so new and so perlexing as to be barely understandable let alone soluble. My purpose in intervening in this debate is to outline in very general terms the basic Canadian position on the central substantive issues before us without, at this stage, attempting anything so presumptuous as to suggest substantive solutions. We welcome the tendency already evident in our debate for delegations to express their positions clearly and frankly and we share the view that this is the necessary first step in delimiting the parameters of the problems and then seeking accommodations.

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We shall also comment on certain procedural matters. The extent of progress achieved at this first session of the expanded Preparatory Committee does not in the Canadian view give us much cause for self-congratulation. In spite of the intensive negotations carried out in February in New York, it did not prove possible because of procedural problems for the Committee to have its first formal meeting until after another two weeks of negotiations here in Geneva. Even now, the sub-committees have barely begun their substantive work. It seems clear that there is no hope of making the 1973 deadline or any other deadline unless we make some radical changes in our methods of work and indeed in our basic conceptual approach to some of the key issues. At a later stage in my statement I shall indicate what we have in mind in that respect.

We recognize, however, if there is some cause for discouragement, there is also some proof of tangible progress. The recent session of the UN General Assembly has taken three major steps forward in our advance towards the objectives which the international community fixed for itself almost four years ago: the reservation exclusively for peaceful purposes of the seabed and ocean floor beyond the limits of national jurisdiction, and the establishment of an international regime governing the exploitation of their resources for the benefit of all mankind, taking into particular consideration the interests and needs of the developing countries. Firstly, in the course of its 25th session the General Assembly endorsed and recommended for signature an arms control treaty prohibiting the emplacement of nuclear weapons and weapons of mass destruction on the seabed not only beyond but also within the limits of national jurisdiction, as had been urged from the outset by Canada. Secondly, the General Assembly adopted Resolution 2749 incorporating a

declaration of principles governing the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction. Thirdly, the General Assembly adopted Resolution 2750C calling for an international conference on the law of the sea to be convened in 1973 and instructing this preparatory committee, inter alia, to draft treaty articles embodying the international seabed regime and machinery on the basis of the declaration of principles contained in Resolution 2749. Furthermore, the General Assembly also adopted Resolutions 2750A and B calling for studies of the economic implications of seabed resource development and the problems of land-locked countries.. These decisions of the General Assembly represent a landfall of the greatest importance. With the seabed arms control treaty we have taken an essential first step towards reserving most of the earth's submarine surface for exclusively peaceful purposes. With Resolution 2749 we have established the foundation and framework for the international seabed regime and machinery. With Resolution 2750C we have fixed a provisional deadline and determined the modalities for the law of the sea conference at which we hope to achieve final agreement on the precise nature and form of that regime and that machinery, and have agreed on the broad terms of reference for a comprehensive law of the sea conference. We have also been able to resolve the difficult problem of the mandate, size and composition of the Preparatory Committee for that conference.

At first sight the Committee may seem to be labouring under a considerable handicap arising out of its very size. It is our hope and expectation, however, that provided we establish efficient working methods, a point to which I will return later, the size of the Committee will, in the long run, prove its greatest strength, since it gives some assurance that solutions acceptable to the Committee are likely to be acceptable to the United

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Nations as a whole, not merely because of the numbers of delegations involved, but because our increased membership better reflects the diversity of interests of UN member states. The Canadian Delegation is not therefore frightened by the size of the Committee. We welcome the new members wholeheartedly and offer to work together with them in the general interest, in a spirit of cooperation.

Mr. Chairman, in spite of the size of our Committee, as large as the whole conference in 1958 and 1960, we think it behooves us all to remind ourselves that we are each of us here not only as representatives of our own states but in another representative capacity on behalf of other states not members of this Committee. We have made the point before and will not belabour it. We are pleased to note how many other delegations have stressed the need to work not only in our respective national self-interests and in the interests of regional and other groupings but also, ultimately, in the interests of the international community as a whole. I think we all recognize that any decisions arrived at which do not reflect a balance of the divergent and often conflicting interests of member states will prove no true and lasting solution. It is with this perspective that we in the Canadian Delegation propose to approach every one of the issues facing this Committee. We have noted with pleasure the many statements by other delegations expressing a similar approach. We will make no secret of the Canadian national position on every issue. Indeed, we have already taken pains to spell out our position in the predecessor Seabed Committee and in the First Committee in New York. I refer in particular to the two most recent statements made by Canadian representatives in the First Committee of the 25th UNGA, on December 1 and December 4, 1970. We do not intend to repeat the points made in those two statements. We will instead attempt to touch very

briefly, but we hope not superficially, on some of the substantive issues now facing the Committee and go on to make certain observations on our procedure.

Seabed regime: resource mangement system

The first set of issues, together comprising some of the most novel and challening problems now facing the international community, arise out of our mandate to establish an equitable international regime including international machinery for the seabed and ocean floor beyond the limits of national jurisdiction. We know of no problem comparable in the demands which it places upon the international community for innovation, imagination and accommodation. We are all here keenly aware of the basic issues embedded deep in the seabed problem, namely the requirement to develop a regime which will prove equitable both to developing and developed states. We do not consider this problem insurmountable nor even the most difficult part of our seabed mandate. We see this from the viewpoint of a country which is in some respects both developed and developing in this field - developed in having already acquired a certain amount of practical experience and even expertise in the field of offshore resource management, developing in that we lack the huge amounts of risk capital required for the development of our own offshore resources.

A priority task for the Committee in our view, and one to which all too few delegations have thus addressed themselves, is the tackling of that part of the regime problem consisting of the detailed elaboration of operating regulations, which are essential to any effective resource management system. Much good work has already been done on this subject in the economic, technical and scientific sub-committee of the original Seabed Committee, and we note with pleasure the comments of the Indian Delegation on this issue. We are, of course, aware of the overriding importance of building into our total approach a sound and workable basis for equitable sharing of

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benefits, and that extremely important economic as well as political and legal considerations must be taken into account in any such arrangements. That after all is the raison d'etre of the Seabed Committee and the fundamental purpose of our seabed mandate. As many delegations including our own have already stressed, nothing is more important than the need to ensure that the results of our labours will contribute to the lessening of the gap between developed and developing countries. There will be no benefits, however, for many years to come, if ever, unless we begin very soon to face up to the difficult and highly technical issues raised by the need to develop an offshore resource management system which achieves the right balance between the need for control over operations and the sometimes competing need to encourage development and exploitation.

We, in Canada, have learned the hard way about the problems of coping with huge foreign-based multi-national or state-owned corporations. It was not that long ago, in fact less than a generation ago, that the modern oil industry began in Canada, with the Leduc discovery in Western Canada in 1947. Prior to this, although Oil Springs in Eastern Canada had been the first commercial oil discovery in North America almost a century earlier, oil and gas production had been **minimal.** Consequently, there was not a great deal in the way of Canadian expertise and competence either in the field of oil and gas exploration and exploitation or in the field of resource management and conservation. Not only was it necessary for Canada to look elsewhere for the capital needed for oil and gas development, it was necessary to rely heavily upon foreign personnel for the necessary expertise and competence, and upon education elsewhere than in Canada for the specialized training of our own nationals.

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Today, as the direct result of becoming actively engaged in the oil and gas field ourselves, both on the exploration and exploitation side and on the resource management and conservation side, we do have Canadian offshore managerial and technical competence. We know from experience, then, that the realistic way for a country to build up such expertise and competence is for it to become actively involved in the management of its own areas of immediate interest. One now finds Canadian managers, scientists and technicians working in the offshore oil and gas field throughout the world, including such active offshore regions as the Bass Strait off Australia, offshore from California, and in the North Sea.

However, Canada is by no means a major economic power. We lack the large amounts of investment capital necessary to develop our offshore mineral resources. We have no major Canadian oil companies to explore and exploit the mineral resources of the continental shelf areas off our sea coasts. We must contract with foreign corporations to accomplish this. Although these corporations set up subsidiaries in Canada that act in good faith under our laws, their headquarters are foreign-based and in dealing with them we are not really dealing with Canadian nationals. It is most important to Canada to maintain a clean-cut authoritative interface between these powerful foreign entities and our Government authorities who manage the agreements under which they operate off our coasts and who exercise controls over the activities they carry out in this vulnerable multi-resource environment. By the same token, and for just such reasons, we consider it imperative to ensure that equally effective controls are built in to the resource management system for the seabed beyond national jurisdiction. We are pleased to note that a number of other delegations have, like the Canadian Delegation, included within them special experts in this field and we shall be happy to collaborate with other delegations on this question.

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Thus, the Canadian approach to the whole range of seabed issues is, in brief, that of a non-nuclear middle power with extensive coastlines and a deeply glaciated continental shelf but no maritime fleet, with offshore managerial and technical competence but inadequate risk capital. As in the case of certain other states represented in this Committee, no one group of states reflects all of Canada's interests, while each group reflects some aspect of our interests. While this may appear to be a disadvantage, we tend to find that it does assist us in gaining understanding of the positions of other delegations.

<u>Territorial sea and International straits</u>

Mr. Chairman, I should like now to turn to another substantive question, namely the bredth of the territorial sea and the related question of international straits. This problem was considered sufficiently important to warrant specific reference in UN General Assembly Resolution 2750C (XXV). Nevertheless we are aware that the issue does not appear equally compelling to all members of the Committee. We understand, however, the importance attached to it by the great powers and other major maritime powers, and we consider that it would be very foolish for the rest of us to downgrade the importance of this issue, if we are sincere in our desire to achieve a comprehensive settlement of law of the sea problems. Merely to state the issue - the need to strike a balance between the legitimate necessity of coastal states to exercise sovereignty over a belt of waters adjacent to their coastlines and the competing needs of all states for passage - is to illustrate the close inter-relationship of this issue with the problem of fisheries jurisdiction, pollution control and preservation of the marine environment for the better conservation of the living resources of the sea. Even the question of scientific research can be affected by the approach taken to

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this problem. Once again, on this issue, as with others, the Canadian position cannot be categorized as fitting neatly into any particular group approach. We have established our own territorial sea unilaterally - the same way, so far as we know, as has been done by every other state - and at a breadth which is neither as narrow as that of some states nor as broad as that of some others. Canada, however, in addition to being a coastal state with a marked concern for the protection of its own environment, is a nation dependent upon international trade which in turn is dependent upon free, certain and uninterrupted passage by sea. We have no difficulty, therefore, in recognising the need to ensure that the rights of shipping states are not asserted to the disadvantage of the coastal states whose shores they pass, while at the same time the rights of coastal states are not over-protected to the point of interfering with free trade. To the Canadian Delegation,it appears that the traditional concept of "innocent passage" is in need of clarification and even redefinition. What we envisage is not a new formulation which would impose undue restrictions on seafarers, since we continue to regard as an absolute necessity the faculty for all nations to use the seven seas to communicate and to trade, but the notion of "innocence" must be modernized. It is our own view that agreement or failure to agree on this issue could make or break the conference. It is, therefore, essential as we see it to give early consideration to means to resolve the problems posed by the imposition of modern technology upon traditional concepts fashioned for an earlier age. The time has come to arrest the trend towards bipolarization of positions on this question. We have long felt that bipolarization in this field leads to further bipolarization. Overly conservative attitudes can produce radical responses, and unduly radical responses can in turn contribute to ultra-conservatism. We are, however encouraged by expressions of views of

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representatives of states reflecting various shades of opinion on this issue of the territorial sea and straits, which lead us to hope for a possibility of mutual cooperation in seeking out the basis for a solution to one of the thorniest and most long-standing problems in the whole field of law of the sea. It is our view that not only is the time ripe for the settlement of this issue, we think that unless it is settled soon the very real dangers inherent in its continuance could threaten our work on other seemingly unrelated issues. I shall return to this point a little later in commenting upon the pollution problem.

Fisheries

With respect to another important point included within the mandate of our Committee, namely fishing and conservation of the living resources of the high seas including preferential rights of coastal states, Canada was one of the many delegations which stressed the importance of including this item on the agenda of the proposed conference of the law of the sea. Not only does this question stand on its own right as one of increasing importance to the international community but its secondary importance lies in that in failure to resolve it may jeopardize possible solutions to other related issues. Canada was the first state to put forth a proposal for a contiguous fishing zone adjacent to a coastal state's territorial sea. We are all aware of how close that proposal and a later variation of it came to acceptance at the 1958 and 1960 conferences on the law of the sea. The basic element in our proposal at that time remains, we think, valid, namely the separating out from the total bundle of jurisdictions, together comprising sovereignty, which are subsumed within the concept of the territorial sea, of particular jurisdictions such as exclusive fisheries control and conservation. The dimensions of the problem of fisheries conservation have changed so radically, however, since 1960 that new and radical approaches may be required to resolve the problem.

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As we pointed out in our statement in the First Committee of the 25th UNGA, a rational system of fisheries conservation, management and exploitation is required in the common interests of all concerned. Canada is a coastal fishing state and not a distant water fishing state. We are therefore particularly conscious of the rapidly accelerating threat to the continued existence of the living resources of the sea in the light of the rapid depletion of those resources. Fishing has become as we expressed it in the First Committee, "transformed from a harvest to a mining process". We have no doubt that if effective multilateral action is not taken, state after state will find it necessary to respond to international inaction by national action, as Canada and many other states have already been obliged to do. When we think also that even in developed countries one can find whole fishing communities dependent for their livelihood upon the living resources of the sea adjacent to their coasts, when we consider the importance of ensuring a share of the total living resources of the sea for developing countries which have not yet achieved an effective fisheries capacity, when we witness the continuing investment in huge fishing fleets accompanied by the most modern and efficient factory ships, we can readily perceive that there is no alternative to an early attack by this committee upon this crucial problem. Delegations have spoken of the need to preserve options concerning the seabed. At least one option will not be foreclosed with respect to the seabed for some time to come, because whatever means states devise for the purpose of exploiting the mineral resources of the seabed, there is no immediate danger of the actual disappearance of those resources. However, states which have not already developed a fisheries capacity may find that they need never do so since the resource itself may disappear before they are in a position to share in it. Quite clearly restraint must be exercised by the major distant water fishing nations in the

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divising of any attempted solution to this problem. Coastal states on the other hand will have to accept that there is at some point a limit to the distance to which coastal states can extent exclusive fisheries jurisdiction, and begin to work out together with distant waters fishing states, a system of high seas living resource management and exploitation.

While we realize the complexity of the problem we are nevertheless wary of some of the highly complex remedies that have been proposed in the past, and which may be proposed for consideration by the next Law of the Sea Conference. From the point of view of a coastal state any proposed solution which entails endless discussions by fishery scientists who, however objective they may be, find much room for disagreement because fishery science has not yet become aprecise science, is not a satisfactory solution to the immediate and urgent problems of a government in protecting the livelihood of its fishermen and the industries dependent on fishing. Even if the fishery scientists come to agree on scientific assessments, the adminstrators representing their governments on anyany commission or other regulatory body that may be set up may not accept the recommendations of the scientists, and the governments themselves may not accept the recommednations of their adminstrators because of political pressures. Any complex proposals based on proof by a coastal state of economic necessity for its industry, or on preferential rights based on amount of investment, on sharing of quotas, etc., will involve endless disputes which will be difficult to settle, while in the meantime the fishery resources of a coastal state will be disappearing. Furthermore the coastal state being only one of a number of fishing states, may be outvoted by the distant-water states. We therefore consider that any proposal for the solution of the fisheries problems must be realistic in according the coastal state a degree of control in the conservation of the

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living resources of the sea lying off its coasts. The Canadian Delegation hopes to make concrete proposals in this sphere at future meetings of the preparatory committee.

Marine Pollution

The Canadian Delegation, like all other delegatins here present, is seriously concerned about the threat of marine pollution and convinced of the urgent need to protect the marine environment from further and perhaps irreversible degradation. There also appears to be general recognition that steps must be taken to ensure close coordination of the various international studies and activities being undertaken in this field, particularly those related to the 1972 Stockholm Conference on the Human Environment, the 1973 IMCO Conference on the Prevention and Control of Marine Pollution, and the Law of the Sea Conference previsionally scheduled for 1973. The Canadian Delegation does not, however, consider that there is sufficient general awareness on the part of the international community of the intimate inter-relationship between the problem of marine pollution and a number of the crucial outstanding issues of the law of the sea.

It is precisely in connection with the prevention and control of marine pollution that the most direct conflict could arise between coastal and maritime interests. On the one hand, freedom of peaceful navigation is indisputably the overriding interest in the uses of the sea which is shared by all states of every description, for that freedom is essential to the network of commerce and communications which is the economic and even the cultural lifeblood of the countries of the world. Yet, on the other hand, the freedom of peaceful navigation cannot be exercised in an irresponsible manner or under a laissez-faire system which threatens the very existence of the marine environment upon which all depend. An effective regime for the

prevention and control of marine pollution must be devised and must inevitably lay down internationally agreed restrictions with respect to the maritime transport of pollutants and contaminants. Such a system would have to go beyond remedial and compensatory measures, and would have to provide preventative protection of the interests of the international community as a whole and the coastal states in particular. Because the coastal states are those which suffer the most immediate and drastic effects of marine pollution damage, future conventional law will have to provide adequate recognition of the fundamental right of coastal states to protect themselves against this threat to their environment. The defence of the coastal environment, after all, protects the marine environment as a whole.

It is at this point that we come face to face with the issue of freedom of passage which underlies all of the other issues of the law of the sea. The extension of fisheries jurisdiction by the coastal state normally affects only the fishing vessels of relatively few states. Even the exercise of control measures for traditional security purposes normally affects only the naval or para-military vessels of certain foreign states. The protection of the environment of the coastal state, however, may have serious implications for the activities of all classes of vessels of all nations, in the territorial sea, in exclusive fishing zones, through international straits, and on the high seas proper. It is for this reason that the Canadian Delegation wishes to stress the importance of this question, not only in environmental but in legal, political and economic terms. It is for this reason also that we wish to emphasize that national action, while necessary and justified to meet particular problems, is not alone sufficient either in terms of combatting the marine pollution problem in general or satisfying the wide range of interests involved at both the domestic and global levels.

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Here we are all both coastal and maritime states and must work together to keep the seas both clean and free.

The problem of marine pollution is obviously a problem of the law of the sea and we would be remiss in our duty if we failed to take a comprehensive approach to this problem at the 1973 Law of the Sea Conference. We cannot leave it to the Stockholm and IMCO Conferences alone. The Law of the Sea Conference will provide the only law-making forum in which the international community can undertake the required development of basic principles of international law to bring them into line with present-day needs and conditions. The 1972 Stockholm Conference on the Human Environment will provide the opportunity for the first multilateral interdisciplinary approach to the problem of man's environment as a whole. At Stockholm the international community can, and, we hope, will agree on certain principles derived from interdisciplinary studies which it will carry out, which could serve as general guidelines for the progressive development of environmental law, through the 1973 Law of the Sea Conference as well as by other means. The 1973 IMCO Conference on Marine Pollution can develop specific rules, essentially technical in nature. We should remember that IMCO's functions are limited to the technical regulation of matters relating to shipping. The body of conventional law which has been produced under the aegis of IMCO has, understandably, been concerned with the protection of shipping interests on the basis of traditional principles of international law, and the protection of coastal interest has not been a prime preoccupation of IMCO. For instance, the 1969 IMCO Convention on the right of intervention on the high seas empowers contracting parties to sink a vessel of another, contracting party after an accident has occurred, when the results of that accident pose a threat of pollution, but do not empower the coastal state to regulate the passage of such potentially dangerous ships

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Similarly, while the interests of the flag state are rigorously protected even when its vessels are operating within a few miles from the shores of a coastal state whose own interests may be threatened by those operations, the flag state assumes no responsibility for the damage its vessels may cause to the environment of that coastal state. Flag state jurisdiction is the basis of IMCO law, but the necessary consequences of that jurisdiction find no part in IMCO law. These are some of the anomalies which must be examined and corrected and which could only be examined and corrected at a broad law of the sea conference where the interests of all states are fully represented.

What we envisage is the elaboration of a system of internationally agreed pollution prevention regulations, with enforcement largely in the hands of coastal states, but with the least possible interference of passage. One approach, for example, might be to provide for international pollution prevention certificates which ships would have to possess in order to qualify for "innocent passage".

Scientific Research

The importance of the workload which has been assigned to Sub-Committee 3 has been underestimated, in our opinion, in at least one other way. The great expansion of scientific research in the marine environment in recent years has given rise to growing difficulties with respect to the conduct of scientific investigations on the high seas. While all countries appear to be agreed on the objective value of marine scientific research, there has been increasing controversy as to the recognition and protection of coastal state interests in this field. The Continental Shelf Convention, for instance, provides that the consent of the coastal state is required for research concerning the continental shelf and undertaken there. Whereas certain

countries wish to broaden or at least clarify the requirement for the protection of coastal state interests, other countries are seeeking to ensure the maximum freedom of marine scientific research with the minimum interference from any source. My own country's position on this matter tends to be somewhere between the two extreme points of view. Here as elsewhere we must find a reasonable accommodation between conflicting interests, and Sub-Committee 3 will have to bring a full measure of patience and imagination to this task. Perhaps the key lies in freedom of research in exchange for freedom of information.

<u>Procedural problems</u>

I should like to turn now from substance to the question of procedure. Here again, I shall confine my comments to a few broad issues. Firstly, we recognize the need for some form of general debate not only in Plenary but in the sub-committees in order to provide all members of the Committee, particularly the new members, with an opportunity to define the issues and their approaches to them. We would hope, however, that such debates would be as brief and to the point as possible so as to enable the early setting up of working groups to begin the actual drafting of articles.

With respect to the priority question, the Canadian Delegation concurs with the views expressed by the many delegations attaching importance to maintaining a certain priority for the seabed regime, and we are confident that it will be possible to do so without thereby forestalling or interfering with the commencement of work on other important matters. We are hopeful therefore that our substantive work will not be held up because of differences of views on priorities. The main concern of all of us, we hope, is to develop a concerted, comprehensive and coordinated approach on all of the many closely interrelated problems on our agenda. We are presumably all equally aware of

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this interrelationship and of the undesirability of attempting an independent settlement on any matter which is closely interdependent with other issues. It is not, as we see it, so much a question of the desirability of enabling concessions on one issue to be set off in return for concessions on another, but rather of devising processes which can take into account the very real interplay and interpenetration of issues. For these reasons, in our view it would be unwise, shortsighted and contrary to the general interest to attempt to hive off any question of special interest to any state or group of states from the delicate process of balancing of interests on interrelated issues.

All delegations are, of course, aware of the substantive importance of the declaration of principles adopted in the recent session of the General Assembly. Even from the procedural point of view, however, the implications of Resolution 2749 are more far-reaching than might be realized at first glance. With the adoption of the declaration of principles we must now begin to face up to that very conundrum which complicated and delayed the process of reaching agreement on the declaration and which threatens to block our progress on the development of the actual regime and machinery. That conundrum, which is both procedural and substantive in nature is, of course, the precise definition of the limits of national jurisdiction beyond which the principles will be applied.

Several delegations have referred most eloquently to the compelling imperative to devise solutions striking a balance between the interest of coastal states and those of the other members of the international community. The Delegation of Austria in particular has expressed very clearly and frankly the point of view of land-locked states whose interests lie in the benefits to be obtained for them as a consequence of agreement on narrow coastal state jurisdiction, while the Delegation of Australia has drawn attention to the

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delicacy of the question of what is, to many states, a form of national boundaries. It is, of course, this aspect of the problem - the one of limits - which has hovered over our work at times like the sword of Damocles, at times like a heavy fog obscuring our purposes and at times causing us to lose our direction.

Throughout our discussions it has been noted, not only by the Canadian Delegation, that there was a complex interrelationship between the ultimate definition of the limits of national jurisdiction and the nature of the regime to be developed for the area beyond. Until the question of limits was settled, states were uncertain as to the sort of broad guidelines they wished to lay down for the area beyond national jurisdiction; at the same time, until the question of the regime was settled, states were uncertain as to the precise limits they wished to fix for the area within national jurisdiction. It will evidently not be possible to reach a final settlement on regime, machinery or limits until they are taken up together at the 1973 conference. Nevertheless, the adoption of the declaration of principles has wrought a most significant change in the situation which had prevailed prior to the 25th session of the General Assembly. Until that time, both the existence of an area of the seabed beyond national jurisdiction and the development of legal principles for that area were essentially theoretical considerations which could be and were considered in theoretical, almost abstract terms. Now that the international community has sketched out the broad legal principles applicable to the area beyond national jurisdiction, discussion of that area takes on a wholly new dimension and will proceed in a totally new context. The existence of that area ought no longer be treated as a theoretical and abstract concept. While its precise limits must await the outcome of the 1973 conference, its existence in fact and not only in principle ought in our

view to be clearly established. Having come as far as we have, it may prove most difficult to proceed any further unless we take some immediate step which will give to the concept of the seabed beyond national jurisdiction the same measure of reality which we have given to the international regime with the adoption of the declaration of principles. We must break away from the circular process whereby we cannot consider limits until the regime has been settled but cannot consider the regime until the limits have been settled. It has been said that one of the advantages of going around in this circle is that we can be sure of never losing our way. The disadvantage, of course, is that we can be almost equally sure of never getting anywhere. If we fail to break away from the pattern we have followed so far, we may continue to be working in a vacuum, in an atmosphere of unreality, not only attempting to build a house without knowing the size of the lot on which it will be situated but, worse yet, without knowing if we have any lot at all on which to place it, let alone who will carry out the task, and with what resources, and who will pay the cost.

The Canadian Delegation believes that it would be not only useful but possible to take a step which would enable us to know with certainty what is at least the minimum undisputed area of the seabed beyond the limits of national jurisdiction, without awaiting the results of the law of the sea conference. Moreover, in addition to determining the minimum percentage of the seabed which indisputably forms part of the common heritage of mankind, the Canadian delegation believes there is an immediate need to establish a first stage machinery for the area so determined, and a practical way in which this could be accomplished. By so doing we would break the procedural deadlock which has bedevilled every step forward we have made or attempted to make, and which at this session has produced the unhappy spectacle of a committee of the United Nations which for two weeks was unable even to agree

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to meet or to begin to discharge a mandate of truly historic importance.

What we have in mind, first of all, is the possibility of a new and radical form of moratorium resolution calling upon all states to define their continental shelf claims within a specified time limit, on the clear understanding that these claims would not prejudge the future development of the law on the precise definition of the area of the seabed beyond national jurisdiction. Alternatively, the resolution might specify that as of a named date already past, national claims would be deemed to have been fixed. Either way, the effect would be to define the non-contentious area of the seabed beyond national jurisdiction, leaving the precise final limits to be negotiated later. Those states unwilling or unable to advance clear national claims might instead specify the outside limits beyond which they will make no clamis. Thus, while the limits of the area beyond national jurisdiction could be expanded in the later negotiations, they could not be lessened since states would be estopped in practice if not law from claiming a greater area than that included in the claims or potential claims they have advanced as of the specified date.

To proceed along these lines would be to guarantee the reservation of a very large percentage of the seabed for the benefit of mankind. It would in effect constitute the first true moratorium on national claims to the seabed. Previous attempts to impose such a moratorium have remained in limbo because they have retained the very elasticity on limits which they have sought to resolve and overcome, in that they have called upon states not to carry out exploitation activities beyond national jurisdiction while giving no guidelines as to the nature and extend of that area. Whereas until now the crucial issue of the limits of national jurisdiction has been treated as an abstraction and has been necessarily kept in a state of suspension, the definition of the non-contentious area

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of the seabed beyond national jurisdiction would crystallize and concretize the situation. It would trade uncertainty for certainity and turn a hypothesis into an actuality, a distant hope into an immediate reality. We could by this means clear the way for early progress in the development of the international seabed regime and the setting up of international machinery through overcoming the perennial objection that no decisions can be made on these matters until the problem of limits is settled.

The Canadian Delegation realizes it could be objected that such a step might encourage extreme national claims, and that the minimum non-contentious area of the seabed provisionally defined as being beyond national jurisdiction might tend to become the maximum area permanently defined. For our part we do not believe that this need be the case. We are convinced that national claims have been and will be determined on other grounds, and that the imposition of a true moratorium at the present time will have a beneficial rather than a harmful effect. . It should be emphasized that thus far no state has claimed seabed limits greater than 200 miles or the outer edge of the continental margin. We doubt that any state would attempt to go further than either of these limits even for the provisional purposes of a moratorium. In any event, what we are suggesting is not necessarily that the coastal states should define the maximum limits they now claim but rather, if they prefer, that they define the maximum limits beyond which they will not claim under any circumstances. In other words, the coastal states could waive any possible rights they might have beyond a certain limit, without necessarily actually claiming, now or ever, the whole of the area within that limit. Either way, the international community would be made aware of the general position of each of its members on the issue of limits. The cards, so to speak, would then be on the table for all to see. The Canadian delegation has noted with satisfaction that a number of other delegations have called for a frank identification

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of national interests as being necessary in order to reach an accomodation among those interests. This has been the Canadian view from the outset, and we beleive it to be particularly appropriate with respect to the question of seabed limits.

The definition of the non-contentious area of the seabed beyond national jurisdiction would not only facilitate early progress in the setting up of international machinery but indeed would enable us to proceed simultaneously to the creation of a first-stage machinery for that non-contentious area of the seabed beyond national jurisdiction. The function of such a machinery could be: (a) to register national continental shelf claims, (b) to license exploration and exploitation activities in the undisputed area not claimed by any coastal state, and (c) perhaps also to maintain a record of offshore exploration and exploitation activities authorized by coastal states within the continental shelf areas claimed by them.

The immediate effect of creating such a first-stage machinery would be to give an impetus to the development of effective and practical controls over the already defined non-contentious international area of the seabed and in the process to encourage exploitation and development by ensuring certainity of title. By making the international machinery an immediate reality, our debate on the further development of that machinery would become necessarily practical and concrete.

The Canadian Delegation has previously suggested, in the Seabed Committee and in the 25th session of the General Assembly, that there might be some advantages in practical terms in devising a system of machinery which would have all the essential elements provided for from the outset but which would begin with a skeletal structure, to be fleshed out as progress

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permits. The only element lacking in order to make possible the creation of an interim machinery - and let me emphasize that what we have in mind is an interim machinery and not an interim regime - is a certain and immediate definition of the minimum area over which that machinery would have authority. That, of course, is precisely the element to which we now invite consideration. A major reason for our doing so is that the need for the early creation of an international machinery is rapidly becoming more evident and more pressing. I am sure that no one here needs to be reminded that technology has now progressed to the stage where some forms of commercial exploitation of the deep ocean floor are now feasible. Deepsea Ventures Incorporated, a US-German consortium, has announced the successful recovery of manganese nodules at a commerical rate from the Pacific seabed off the Hawaiian Islands. The company has invested millions of dollars in this undertaking and has announced plans for a full scale deepsea mining operation to commence in the near future. Can the company be expected to await the final outcome of the 1973 Law of the Sea Conference before going ahead with its plans? What would be the implications for the future development of the international seabed regime and machinery if operations of this kind are initiated in the absence of any international authorization and control?

The two-step procedure I have outlined for consideration is self-contained and could be examined on its own merits, which are clear and convincing to the Canadian Delegation at least. These steps would help to resolve immediate procedural problems of a pressing nature. They would facilitate and expedite our preparations for the 1973 conference, and they would help to ensure the success of that conference. They would be in keeping, moreover, with the approach which so often in the past has enabled even the most difficult bilateral or multilateral negotiations to culminate in success.

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That approach, of course, consists first of seeking out and defining the areas of common ground, of non-contention between the parties concerned, and then proceeding to examination of ways and means of resolving differences still outstanding.

The Canadian Delegation at this stage is, of course, not putting forward firm proposals but rather advancing ideas which could be followed up later if the response appeared to warrant such action.

In addition to the two-step procedure of defining the non-contentious international seabed area and proceeding simultaneously with the creation of an interim machinery, there is a third step which might be added, although it is not essential to the implementation of the first two and can be considered on its own merits. That third step would consist of a call upon all coastal states to begin to pay over to the interim international machinery a fixed percentage of all the revenues they derive from the whole of the seabed areas claimed by them beyond the outer limit of their internal waters. one percent of such revenues, for example, could produce many millions of dollars per month for the benefit of the international community and the developing countries in particular, as much as 15 million dollars a month, according to some sources. The contribution of a percentage of their offshore revenues by the coastal states would constitute a sort of "voluntary international development tax" to be paid over in the period pending the adoption of a multilateral treaty on the limits of national jurisdiction and the creation of an international regime for the seabed beyond national jurisdiction.

I realize that this suggested third step is radical and even revolutionary in nature. The Government of Canada for its part would be prepared to take it. I wish to stress, however, that this third step, like

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the first two upon which it would follow, would not prejudge the development of international law but would constitute an earnest of good faith on all sides. It would "prime the pump" by providing immediate operating funds for the interim international machinery, and immediate funds to be used for international development purposes. It would also go some way towards meeting the essential requirement which should provide the basis for any seabed regime, namely the principle of equity. That principle, if it is to be at all meaningful, must apply not only in the sharing of benefits from the seabed beyond national jurisdiction (among the developing countries in particular) but also in the contributions to be made towards building up those benefits. The third step I have outlined would meet this requirement because it would provide an opportunity for all coastal states, whether their continental shelves be wide or narrow, deep or shallow, to contribute to the benefit of humanity as a whole.

To sum up, Mr Chairman, the three-part process I have outlined would, without awaiting the results of the 1973 conference on the law of the sea, involve the immediate determination, as of a stated date, of the minimum non-contentious area of the seabed beyond the limits of national jurisdiction; the simultaneous establishment of an interim machinery for that area; and the simultaneous creation of an "international development fund" to be derived from voluntary contributions made by the coastal states on the basis of a fixed percentage of revenues accruing from offshore exploitation beyond the outer limits of their internal waters.

The Canadian delegation would be most interested in obtaining the reactions of other delegations to these ideas. In the light of those reactions we would be prepared, if it appeared useful, to put forward our ideas in the form of a proposal and ultimately perhaps as a draft resolution

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supported by a working paper on the first-stage international machinery.

Mr Chairman, the Canadian delegation from the outset has made clear its position on the limits of national jurisdiction over the seabed. At the same time, however, we have made clear that we attach the greatest importance to the development of an international seabed regime which would achieve two vital purposes: the reservation of the seabed for peaceful purposes and the diminution of the gap between the standards of living of the developed and developing countries. It is for this reason that we have attempted to find new approaches to the problem of the limits of national jurisdiction, and that we have been prepared to discard traditional concepts which have impeded progress towards the realization of these objectives. While we are anxious to bring about agreement on such new approaches, however, we are not prepared to support selective approaches advocating the rejection or retention of this or that provision of existing law on the arbitrary criteria that it does or does not satisfy the interests of a particular state or group of states. We have insisted and will continue to insist on the principle of a balance of interests as the yardstick for measuring the value of all proposals. Of almost equal importance in the Canadian view are the criteria of practicality, efficiency, effectiveness and immediate progress. It is on the basis of these criteria that my delegation now puts forward for consideration the ideas that I have just described, and it is on the basis of these criteria that I would ask you to consider our ideas.