CANADIAN APPROACH TO THE THIRD LAW OF THE SEA CONFERENCE

By Claude C. Emanuelli*

"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 past 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."[1]

In the long-lasting battle opposing coastal States to flag States over law of the sea issues, Canada has naturally joined the first category of States. Her reasons are obvious:

— Canada has the second longest coastline in the world;[2]
— Her continental shelf is quite large[3] and quite rich in gas, oil and other minerals;[4]
— The waters adjacent to her coasts shelter important fishing grounds[5] and in this relation fishing is still of vital importance to Canada's coastal provinces in both social and economic terms;[6]

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1 Statement by Mr. J.A. Beesley in the First Committee on the Subject of the Law of the Sea, Nov. 30, 1972 at p. 2.

2 It is sometimes said that Canada has the longest coastline in the world. The assessment depends on whether the Arctic archipelago is taken into account or not.

3 Canada's continental shelf is the second largest in the world, and covers an area equivalent to 40 percent of Canada's total land area. Off her west coast Canada's continental shelf is rather narrow, but off her east coast it extends to 400 miles in the area of the Grand Banks.

4 The exploitation of the Canadian continental shelf goes back to the 19th century to the underwater extensions of coal mines in the Cape Breton Island area.

5 Especially in the area of the Grand Banks, east of Newfoundland.

6 See L.H.J. Legault, Maritime Claims, *Canadian Perspectives on International Law*, (1974), 377; and J.A. Yogis, Canadian Fisheries and International Law, *Canadian Perspectives on International Law*, (1974), 398.

— She has a northern climate with all the consequences attached to it with respect to ice hazards in navigation;
— She has a fragile ecology, especially in her northern latitudes.[7]

For these reasons, Canada has, since World War II, been claiming ever-larger rights of control over the waters adjacent to her shores. These claims have been reaffirmed in relation to the preparation of the Third Law of the Sea Conference.[8]

I. GENERAL PRINCIPLES UNDERLYING THE CANADIAN APPROACH TO THE LAW OF THE SEA PROBLEMS:

From the Canadian standpoint, there is an urgent need for a radical change in certain law of the sea principles; especially the principle of freedom of the high seas and its corollary the principle of exclusive jurisdiction of the flag State.[9] According to Canada, these principles are now understood "as a freedom to overfish, a licence to pollute, a legal pretext for unilateral appropriation of seabed resources beyond national jurisdiction."[10] Furthermore, these principles express a division of ocean space "in an arbitrary fashion between two distinct zones, one under national sovereignty, the other belonging to no one,"[11] and reflect the idea that the law of the sea is based solely on conflicting rights, i.e. those of the coastal States and those of States with large fleets.[12]

Canada does not suggest an end to freedom of navigation on the high seas, to flag state jurisdiction, or innocent passage through international straits; but she proposes the adoption of a regime of management of ocean space, under which both coastal and flag States would reconsider their respective rights and obligations as they are affected by traditional and new uses of the seas. In this connection, the traditional rights of both coastal and flag States should be limited by corresponding duties and a new role

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7 At the time of the Manhattan's voyage, it was assessed that the occurence in the Arctic of a pollution casualty equivalent to that of the Torrey Canyon would take 75 years to eliminate. In this question, see R.W. Konan, The Manhattan's Arctic Conquest and Canada's Response in Legal Diplomacy, (1970-72), 3 *Cornell Int. Law Journal*, 189.

8 The convening of the Third United Nations Law of the Sea Conference was decided on Dec. 17, 1970 by resolution 2750C of the General Assembly — Its first meeting was held with little success in Caracas (Venezuela) from June 20 to Aug. 29, 1974 — The Conference is due to resume its work in Geneva (Switzerland) from March 17 to May 10, 1975.

9 See articles 2 and 6 of the Geneva *Convention on the High Seas* adopted in 1958, 450 U.N.T.S. 82.

10 Statement by Mr. J.A. Beesley, *op. cit.* at p. 3.

11 *Idem.*

12 *Idem.*

should be assigned to these States in relation to present needs.[13] Moreover, in Canada's view the regime to be adopted, should represent an accommodation between the respective interests of coastal and flag States on the one hand, and those of the international community as a whole on the other.[14]

To speak of a regime of management of ocean space suggests that the establishment of such a regime be based on a functional approach. This approach is reflected by basic principles intended, in the Canadian perspective, to cover all the different issues of the law of the seas. These principles are intertwined and embodied in the concept of custodianship by coastal States and the concept of economic zone, which is an application of the former concept.

1. *THE CONCEPT OF CUSTODIANSHIP:*

In Canada's view, this concept coincides with the doctrine of delegation of powers to coastal States and has been defined in the following terms: "The essence of the concept is that the coastal State's rights and powers — whether they be sovereign rights and powers or delegated rights and powers — must be balanced with responsibilities and must be exercised in accordance with certain internationally agreed rules and standards for the protection of vital community interests in the uses of the sea."[15]

The basis of such a concept lies in the following ideas:[16]

The interests of the international community in the marine environment are threatened and should be protected. The position of coastal States in this respect is a special one. It reflects and magnifies the position of the international community as a whole. Because of their geographical location, coastal States' interests in the ocean are first to be affected as the marine environment is threatened; again, because of their geographical location, coastal States are in the best position to protect these interests on their own behalf and on behalf of the international community as a whole. The position of coastal States, in Canada's view, is summarized in the idea that coastal States have a special interest and responsibility with regard to the protection of the marine environment.

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13 *Idem.*

14 *Idem*, at p. 5.

15 Statement by Dr. D.G. Crosby to the U.N. Seabed Committee, sub-committee I, March 23, 1972, at p. 6.

16 See Statements by J.A. Beesley and Dr. D.G. Crosby, *op. cit.*, respectively at pp. 3-4 and 6-7.

Accordingly, coastal States should act as custodians of the marine environment on behalf of the international community. In this respect, the concept of custodianship should apply to existing sovereign rights of coastal States, exercised within the limits of national jurisdiction. These rights should be modernized and limited by corresponding duties, exercised on behalf of the international community. Moreover, with respect to the enforcement of the concept beyond the limits of national jurisdiction, new rights and powers should be delegated to coastal States by the international community, and especially by the flag States, which now hold some of these powers. These powers should, nevertheless, be exercised in the interest of the international community as a whole; therefore, they should be balanced with responsibilities toward the international community and their exercise should be submitted to third-party adjudication.[17] Nevertheless, once delegated to coastal States the existence of these rights and powers could not itself be subject to examination, renunciation or review. Furthermore, in return for the burden carried by coastal States in the exercise of these rights on behalf of the international community, preferential rights should be granted to coastal States with respect to the exploitation of the living and non-living resources of the seas. Eventually, the adoption of the concept of custodianship should take place in an international agreement, setting up the standards intended to regulate the exercise of the newly created rights and duties by coastal States.

In Canada's view, this concept represents a master framework applicable to all the different law of the sea issues; especially pollution control, fisheries, exploration and exploitation of the continental shelf or of the seabed, scientific research, etc.

This concept has been embodied in the concept of economic zone.

2. *THE CONCEPT OF ECONOMIC ZONE OR PATRIMONIAL SEA:*

In Canada's view, this is "the keystone to any overall accommodation on the Law of the Sea."[18] This concept creates a new form of jurisdiction over the seas which is specialized in nature rather than general and based on specific rights and duties, rather

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17 The system of third-party adjudication also applies to the concept of custodianship within the limits of national jurisdiction.

18 Statement by J.A. Beesley, *op. cit.*, at p. 5.

than on the principle of sovereignty.[19] Thus, it reflects a functional approach rather than a conceptual approach.

Under the Canadian approach, this concept should be coupled with the agreement of coastal States on a very narrow band of coastal seas subject to complete sovereignty. For instance, the narrow band of territorial waters could be established as extending to 12 miles; nevertheless, no one should regard this figure as sacrosanct, and it may be that an even narrower, generally accepted limit, might constitute a better basis.[20]

On the contrary, the limits of the economic zone could vary since they should extend "as far as necessary to meet particular objectives."[21] In this respect, the recent Canadian proposals with regard to the establishment of such an economic zone cover 200 miles off shore or the whole area of the continental shelf, whichever is larger.[22]

In accordance with the concept of custodianship, the economic zone proposed by Canada provides for exclusive fishing rights, pollution control rights, sovereign rights with respect to the exploration and exploitation of the continental shelf, in favor of the coastal State. In return, Canada "recognize(s) the interests of the international community as a whole, . . . in freedom of navigation through such zones."[23] Moreover, the economic zone should, in Canada's view, be established by an international treaty dealing with the rights and duties of coastal States and providing for third-party adjudication.[24]

If adopted, such a concept would recognize the existence of a major role to play by coastal States, with respect to most law of the sea issues.

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19 Applied to the recent Canadian proposal with regard to the adoption of an economic zone, it is nevertheless difficult to see what distinguishes the rights of coastal States under such a concept from sovereign rights. In this respect, Canada is seeking the extension of a revised version of the concept of innocent passage to economic zones. See *infra*, footnote 43.

20 Statement by J.A. Beesley, *op. cit.*, at p. 5; it is nevertheless difficult to imagine that Canada would abandon her 12 mile territorial sea, adopted in 1970.

21 *Idem.*, at p. 4.

22 See *Third United Nations Conference on the Law of the Sea*, Department of External Affairs (1973) at pp. 12, 14, 22; see also Statement in Plenary by His Excellency Mr. J.A. Beesley, Third United Nations Conference on the Law of the Sea, July 29, 1974, especially at p. 7.

23 Statement by J.A. Beesley, Nov. 30, 1972, *op. cit.*, at p. 5.

24 *Idem.*

II. SPECIFIC PROPOSALS FOR SPECIFIC PROBLEMS:

Under the Canadian approach, the concept of custodianship and its corrollary, the concept of economic zone, underly all proposals on specific issues of the Law of the Sea.

1. *POLLUTION*

Canada has long distinguished herself with respect to pollution problems; first, by seeking the recognition at the multilateral level of large powers in favour of coastal States,[25] and then, following the failure of her attempts, by adopting a firm and unilateral stand.[26]

Accordingly, in relation to the preparation of the future Law of the Sea Conference, Canada views the issue on pollution as the cornerstone of any solution dealing with ocean management. Therefore, this question underlies all Canadian proposals on what is an agreeable regime for the seas.

In this respect, Canada has explained her position both vis-à-vis the protection of the environment as a whole and in connection to specific issues.

A. *GENERAL PRINCIPLES ON POLLUTION:*

Here, Canada has defined her position in a draft treaty presented on March 14, 1973 before the U.N. Seabed Committee, sub-committee III.[27]

This draft treaty seeks to establish three basic principles with regard to pollution problems:

— The duty of a State not to damage the environment of another State or of areas beyond national jurisdiction,
— The duty to compensate for such damage,
— The duty to consult or give notice before taking action which would have an environmental impact upon other countries.[28]

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25 For instance with regard to the 1969 IMCO *Convention relating to the right of intervention of coastal States on the high seas in cases of oil pollution casualties.* See J.A. Beesley, The Law of the Sea Conference: Factors Behind Canada's Stand, (1972) *Int. Perspectives*, 28 at pp. 34-35.

26 In 1970 Canada adopted her *Arctic Water Pollution Prevention Act*, R.S.C., 1970, c. 2 (1st. Supp); This Act creates a pollution control zone extending 100 miles north of the 60th parallel. Canada also modified her facultative clause of compulsory jurisdiction of the I.C.J. in relation to the adoption of this legislation. See, R. St. J. Macdonald, The New Canadian Declaration of Acceptance of the Compulsory Jurisdiction of the I.C.J., (1970), 8 *Can. Yearb. of Int. Law*, 3.

27 See statement by Mr. J.A. Beesley to the U.N. Seabed Committee subcommittee III, March 14, 1973.

28 *Idem.*, at p. 2.

Canada has emphasized that these principles are based on the celebrated *Trail Smelter decision*[29] and are in accordance with principles developed by the *Stockholm Conference on the Human Environment*,[30] the *London Convention on Dumping*,[31] and the work of the U.N. General Assembly on pollution questions.

Moreover, in Canada's view the draft treaty reflects a comprehensive approach to the problem, and attempts to establish a master framework covering all the various issues related to pollution.

Accordingly, the Canadian proposal is intended to:

(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."[32]

In this respect, the draft treaty provides "for international cooperation and technical assistance in the acquisition of knowledge concerning marine pollution."[33] It also provides for the establishment of monitoring systems to determine the effects of certain substances on the marine environment.[34]

(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 settlements of disputes."[35]

With respect to compensation, the draft articles deal with 3 questions. In the case of damage suffered by one State as a result of pollution attributable to another State, there is State liability and in this respect, States must 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 disputes; when damage is suffered in areas in or under the jurisdiction of one State, as a result of pol-

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29 I.J.C. Can Sect., docket 76.

30 See D.M. Johnston, International Environmental Law, Recent Developments and Canadian Contributions, *Canadian Perspectives on International Law* (1974), 555 at pp. 561-578.

31 *Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matters*, 11 *Int. Leg. Doc.*, (1972), 1294.

32 See arts. 1, 2, 4, 8, 9, 10, 11 of the proposal.

33 See arts. 3, 5, 6.

34 Statement by J.A. Beesley, March 14, 1973, *op. cit.*, at p. 11.

35 *Idem.*, at pp. 11 and 12.

lution caused by persons under the jurisdiction of another State, that State must provide for recourse with a view to ensuring equitable compensation for the victims, through its courts or through some special compensation or insurance scheme it has established; with regard to damage to areas beyond the limits of national jurisdiction, States must cooperate in the development of the law relating to claims arising in these circumstances.[36]

With respect to enforcement jurisdiction, the draft treaty provides for concurrent jurisdiction of the coastal and flag States over territorial waters and pollution control zones.

With respect to settlement of disputes, the draft treaty provides for a mechanism including negotiation and arbitration procedures:

In Canada's view these principles 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."[37]

Nevertheless, the draft treaty takes largely into account the "special interests" of coastal States confronted with the serious dangers created by flag States. Thus, it lays down rules recognizing large control rights in favour of coastal States: For instance with regard to the adoption of pollution control zones (art. 4), concurrent jurisdiction of coastal and flag States over such zones (art. 10), right of intervention beyond the limits of national jurisdiction (art. 11).[38]

At the time when this draft treaty was presented, Canada emphasized that it was being submitted "without prejudice to the question whether (it) might form part of a broader treaty on the law of the sea as a whole or instead constitute an independent

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36 On the Canadian approach to the question of liability for oil pollution by ships on the high seas, see C.C. Emanuelli, Le droit international et la responsabilité civile pour les dommages dus à la pollution des mers par les hydro-carbures: La Convention de Bruxelles de 1969 et ses développements ultérieurs, 1973, 4 *Rev. de. Droit, Univ. de Sherbrooke*, 25 at pp. 28-30, 53.

37 See arts. 7, 12, 13 of the proposal.

38 Statement by J.A. Beesley, March 14, 1973, *op. cit.*, at p. 3.

instrument on marine pollution only."[39]

Moreover, no limits were attached to the principles included in the draft treaty, as this draft aimed at the protection of the marine environment as a whole.

These proposals have been taken one step further in the recourse to the doctrine of economic zone and specific proposals dealing with various issues of the Law of the Seas.

B. *SPECIFIC ISSUES:*

In relation to her recent proposals for the establishment of an economic zone, Canada envisages full pollution control over such a zone.[40] In Canada's view, such control would probably include rights and powers similar to those covered by her *Arctic Waters Pollution Prevention Act*[41] or suggested under articles 4 and 5 of the draft treaty studied above. Nevertheless, in relation to that treaty, it is important to note that the new Canadian proposal for an economic zone does not refer anymore to any concurrent jurisdiction of flag States over that area.

The question of the extent of control of coastal States over pollution matters raises the issue of innocent passage. In this respect, Canada seeks a redefinition of the concept of "innocence" with regard to the principle of free passage through territorial waters. In Canada's view, such a definition should take into account the threat created to a coastal State's environment by the passage of a ship in its territorial sea. Accordingly, such passage could be forbidden by the coastal State if it creates a danger for the environment of that coastal State.[42] Furthermore, this idea should be extended to pollution control zones established by the coastal State.[43]

With regard to the exploration and exploitation of the continental shelf within the limits of national jurisdiction, Canada proposes that coastal States must take measures "to ensure the

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39 The only limitations to coastal States' rights provided for in the Canadian draft treaty deal with reasonable exercise of these rights and third-party adjudication.

40 Statement by J.A. Beesley, *op. cit.*, March 14, 1973; *op cit.* at p. 9.

41 See measures adopted in application, SOR/71-219; SOR/72-253; SOR/72-303; SOR/72-426; SOR/73-300.

42 See J.A. Beesley, Rights and Responsibilities of Arctic coastal States: The Canadian View, (1971), 3 *Jour. of Marit. Law and Com.*, 1 J.A. Beesley to the enlarged U.N. Committee on the peaceful use of the Seabed and the Ocean Floor beyond the limits of National Jurisdiction, March 24, 1971, at p. 9.

43 See C.C. Emanuelli, La pollution maritime et la notion de passage inoffensif, (1973), 11 *Can. Yearb. of Int. Law*, 13 at pp. 15-19.

protection of the environment of the seabed area beyond the limits of national jurisdiction."[44] In this respect, Canada's approach

> "would be to draw on national experience in the development of measures and procedures to prevent pollution arising from exploration and exploitation of the continental shelf, and to translate such national measures and procedures into international rules intended to prevent pollution arising from exploration and exploitation of the seabed *beyond* the limits of national jurisdiction. Such rules for the international seabed area could then be adopted by international agreement as minimum uniform rules to be adhered to by coastal states with regard to the exploration and exploitation of their respective continental shelf areas."[45]

With respect to the area beyond national jurisdiction, Canada's view is that any agreeable regime "must ensure that the international machinery has sufficiently effective powers and procedures to supervise and control seabed exploration and exploitation activities with a view to the preservation and protection of the marine environment."[46] In this connection, the international machinery would apply rules and standards developed in the way mentioned above and embodied in the general regime covering this area. Furthermore, in relation to the rights and interests of coastal States which might be affected by activities carried out in the area beyond national jurisdiction, "Canada considers that the obligation to consult with the coastal State concerned, at least upon the request of that State, should apply to any activity that might infringe upon its rights and interests, and not only to those activities relating to the exploration of the area beyond national jurisdiction and the exploitation of its resources."[47] In this respect, Canada emphasizes the importance of the recognition of "the rights of coastal States to take measures to prevent, mitigate or eliminate grave and imminent danger to their coastline or related interests from pollution resulting from any activities in the area beyond national jurisdiction."[48]

With respect to fisheries, Canada's concern for the protection of the environment from pollution is part of a general management regime on the conservation of living resources.

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44 Statement by Dr. D.G. Crosby, March 23, 1972, *op. cit.* at p. 3.

II, March 15, 1972, at p. 2.

45 *Idem.*

46 *Idem.* at p. 2.

47 Statement by Mr. R.P. Kaplan, in the First Committee, Dec. 1, 1970 at p. 6; see also statement by L.H. Legault, in the Third Committee, Third United Nations Conference on the Law of the Sea, Aug. 5, 1974.

48 *Idem.*, at p. 7.

2. *FISHERIES*

This question has traditionally been a major factor in Canada's position on the Law of the Seas.[49] Therefore, it is not surprising that, in relation to the Third Law of the Sea Conference, Canada is pressing for the recognition of greater fishing rights in favour of coastal States.

In this respect, Canada's view is that fisheries are threatened with depletion because of the ever-increasing tendency towards over-exploitation and over capitalization of fisheries. This problem has been summarized in the following terms.:

> "The pressure on fish stocks continues to be intensified by the growing demand for fish products coupled with rapid advances in technology. We have reached the point where we now have the economic incentive and the technological capability to reduce fish stocks to commercial extinction. Meanwhile the international legal framework within which fisheries are conducted remains more attuned to the freedom to fish — and overfish — than to the need and the responsibility to conserve. While various regional commissions have promoted certain conservation measures, a more effective and comprehensive approach to fisheries conservation and management is urgently needed."[50]

Here, the Canadian approach has evolved from a management regime based on group species and under which coastal States had preferential rights to a concept of exclusive fishing zone. This change in Canada's position takes the concept of management of fisheries one step further.

A. *MANAGEMENT REGIME:*

The Canadian position lies on three ideas:

I

In Canada's view "(t)he concept of fisheries management forms part of the broader concept of the management of the marine environment as a whole."[51] This idea is based on the conclusions of the Intergovernmental Working Group on Marine Pollution, adopted in November 1971 in connection to the preparation of the *Stockholm Conference on the Human Environment.* According to these conclusions:

> "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. This applies especially to coastal nations,

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49 See Legault and Yogis, *loc. cit.*

50 Statement by Mr. J.A. Beesley to the U.N. Seabed Committee, sub-committee II, March 15, 1972, at p. 2.

51 *Idem.*

> which have a particular interest in the management of coastal area resources. The capacity of the sea to assimilate wastes and render them harmless, and its ability to regenerate natural resources, is not unlimited. Proper management is required and measures to prevent and control marine pollution must be regarded as an essential element in this management of the oceans and seas and their natural resources."[52]

Consequently, Canada proposes the adoption of a sophisticated management regime of fisheries taking into account the interrelationship between the prevention of the degradation of the marine environment and the conservation of its living resources.

The management regime proposed by Canada in this respect is based on a number of biological and economic principles:[53]

a. *Biological principles:*

— Each population or stock within a species has unique biological characteristics, and is ideally managed as a unit,
— Ideally a fishery should be controlled so that production of new age groups or "recruits" to the fishery is at a maximum,
— Each age group of a species, as it becomes available to fishing should be fished at the point when additions in weight due to growth are balanced by natural losses,
— The quality of ocean waters inhabited by various stocks must be maintained.

b. *Economic principles:*

— The yield from a fishery should be allocated among participants in that fishery, on the basis of some appropriate formula, to permit each participant to obtain his share on the most advantageous basis,
— Access to a fishery should be controlled, on the basis of some appropriate formula, to ensure that no more than the maximum biological yield is taken and that it is taken without wasteful investments of capital and manpower.

In accordance with these biological and economic principles Canada proposes the adoption of some general management principles:[54]

— Management must be carried out on the basis of widely recognized and internationally agreed acceptable scientific and socio-economic criteria,
— Management should provide for control of the rate of expansion of fisheries,

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52 U.N. Doc. A/Conf. 48/IWGMP II/5, para II.

53 Statement by J.A. Beesley, March 15, 1972, *op. cit.*, at pp. 4-9; see also statement by L.H. Legault, Committee Three, United Nations Conference on the Law of the Sea, Aug. 7, 1974.

54 Statement by J.A. Beesley, March 15, 1972, *op. cit.*, at pp. 9-11.

— All fish caught should be reported and utilized,
— Any regime for the management of an internationally exploited fishery must be responsible and accountable to the international community,
— All countries participating in an internationally exploited fishery should co-operate with the designated management authority.

II

The various biological, economic and management principles outlined above are in Canada's view applicable to "any system for the rational management of fisheries of every species."[55] Nevertheless, the Canadian approach is that "different species groups require different management regimes."[56]

In this respect, Canada makes a distinction between:[57]

— sedentary species managed under national regimes,
— pelagic fish and marine mammals which can only be managed by an international authority because of their wide-ranging migrations,
— coastal species, i.e. non-sedentary, free-swimming species which live out their lives in mutrient-rich areas adjacent to the coast and can only be effectively managed "by a system under which the coastal State would assume responsibility for their conservation and management as custodian for the international community under internationally agreed principles."[58] In this respect, the principles spelled out above are especially directed to the management of coastal species by coastal States. The primary role of coastal States here is explained in the following statement:

> "The coastal state has the most to lose if adjacent stocks are not soundly managed. Only the coastal state is in a position to take prompt action in response to urgent conservation needs now and in future. By reason of geography the coastal state is in the best position to assume and exercise authority. Such authority would be the natural consequence of the responsibility which the coastal state must already meet with respect to coastal species."[59]

Furthermore, in Canada's view:

> "Certainly the present international management systems for fisheries have been found wanting. The various international fishery commissions have admittedly certain strengths. They have provided a forum for analysis of the statistical and scientific information necessary for

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55 *Idem.*, at p. 11.

56 *Idem.*, at p. 2.

57 *Idem.*, at p. 2 and pp. 11-14.

58 *Idem.*, at p. 2.

59 *Idem.*, at p. 11.

management decisions. They have promoted collaborative research programmes and have established a number of conservation regulations based on the results of this research. On the other hand, however, the international fishery commissions suffer from very serious weaknesses. Not all member countries participate actively in data collection and research programmes. In fact not all countries participating in the fishery are necessarily members of the commission regulating that fishery. The commissions have been unable to control fishing effort. They have been unable to formulate effective regulations because rates of increase in fishing effort have often been too rapid to allow evaluation of the impact of such increases. Regulations have often been too little and too late because unanimous acceptance of scientific evaluations is difficult to obtain, especially when these result in recommendations to reduce fishing effort. In short, the commissions do not have full authority to manage. Their decisions require ratification and unanimous agreement and regulations when finally agreed are often difficult to enforce. While one commission has recently moved in the direction of allocating national quotas, agreement on this measure has been very difficult to achieve despite the fact that the measure applies to only one species in a relatively small corner of the world's oceans. Finally, the international commissions have not been responsive to the special interest and special needs of the coastal state."[60]

Therefore, the role of international fishery commissions with regard to coastal species would be confined to:

"(A)n important advisory role vis-à-vis the coastal state in its discharge of its management functions. The commissions could provide a forum for cooperation and consultation and, in particular, a most useful mechanism for the collection, presentation and analysis of the statistical and biological data required for management purposes. Management authority, however, would clearly rest with the coastal state and would not be open to challenge. The exercise of that authority would be based on internationally agreed principles, including those I have already discussed, and would be subject to review on that basis only."[61]

At the time when these proposals were made, the management of coastal species by coastal States meant in Canada's view that:

"(O)nly the nationals of the coastal state would be allowed to fish for certain species of particular socioeconomic importance to the coastal population. In other cases, the system could involve simply a preferential share in the harvest of certain species."[62]

Moreover, it was emphasized that

"(S)uch a system could also allow a coastal state to share in the benefits from the exploitation of particular coastal stocks without actually fishing for them. This would, for instance, permit developing countries to charge a fee in respect of fishing operations by developed distant-water states and so help underwrite the costs of research and management."[63]

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60 *Idem.*, at p. 12.

61 *Idem.*, at p. 13.

62 *Idem.*

63 *Idem.*

—(a)nadromous species "such as salmon which spawn and start their early life in fresh water but spend some part of their life at sea."[64] Here, the Canadian approach with regard to anadromous species is that "coastal States should have the sole right to harvest salmon bred in their own rivers. In effect, this would represent a special application of the principle that stocks of particular socio-economic importance to the coastal population should be reserved for that population."[65]

III

The primary role of coastal States in the management of certain species lies in the basic principle that:

> "The coastal State has a special interest in and responsibility for the conservation of the living resources of the sea adjacent to its coast and should have the authority required to manage those resources in a manner consistent with its special interest and responsibility, as well as preferential rights in the harvest of such resources."[66]

In relation to this, Canada recognizes that the special interests of coastal States have already been taken into account by the 1958 *Geneva Convention on Fishing and Conservation of the Living Resources of the High Seas;*[67] but in her view, the 1958 convention does not go far enough in asserting the rights of coastal States.[68]

Under the Canadian approach, it is emphasized that the concept of special interests of coastal States is in accordance with scientific knowledge which links coastal species to the nutrients coming from the rivers and estuaries or upwelling from the continental shelf."[69]

In this respect:

> "(A)s stated in the draft declaration of principles adopted by the Intergovernmental Working Group on Marine Pollution. In addition to its responsibility for environmental protection within the limits of its territorial sea, a coastal state also has responsibility to protect adjacent areas of the environment from damage that may result from activities within its territory. The marine environment is susceptible to serious degradation from river-borne pollutants, dumping of refuse, land fill projects and direct and indirect pollution from industrial sources. The protective measures undertaken by the coastal state, sometimes at considerable cost, may benefit resource productivity in areas well outside

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64 *Idem.*

65 *Idem.*, at p. 14.

66 *Idem.*, at p. 4.

67 559 U.N.T.S. 285.

68 Statement by J.A. Beesley, March 15, 1972, *op. cit.*, at p. 4.

69 Especially with respect to anadromous species; see Statement by L.H. Legault, Aug. 7, 1974, *op. cit.*, at pp. 3-6.

> the traditional limits of exclusive fishing rights. Hence, the coastal state should have a right to protect this investment and a right to a preferential share in the return of such investment. In other terms, responsibilities must be balanced by rights and rights by responsibilities. This balance can best be achieved, in our view, through the concepts of custodianship and delegation of powers to the coastal state."[70]

At the time, when these proposals were presented, no limits were attached to the management regime suggested by Canada.

Furthermore, Canada made it clear that her position "did not presuppose exclusive fishing rights by the coastal State with regard to coastal species, but rather the authority to manage those species and the right to a preferential share in their harvest as appropriate in particular circumstances."[71]

B. EXCLUSIVE FISHING ZONE:

The newly adopted concept of exclusive fishing zone proposed by Canada, jointly with India, Kenya and Sri-Lanka, derives from the aforementioned considerations, which it embodies in a concrete system.[72]

Under this concept coastal States exercise full control over fisheries to the edge of the continental shelf and thus have the power to fight pollution and conserve fisheries over this entire area. Also, this concept grants to coastal States exclusive fishing rights at least 200 miles off-shore, or over the entire area of their continental shelf, whichever is the larger.[73]

In this respect, it has been assessed that "(t)his extension of jurisdiction will help to more than double the present catch by Canadian fishermen, by the end of the decade."[74]

Also, in relation to the adoption of such an economic zone Canada envisions joint ventures with long-distance fishing States, like Japan, embodied in partnership arrangements. Under these arrangements, flag States would provide half the money necessary for launching Canadian-based operations and Canadian vessels would do the fishing in the economic zone.[75]

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70 Statement by J.A. Beesley, March 15, 1972, at p. 5.

71 *Idem.*, at p. 2.

72 See *Report of the Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction*, General Assembly, 28th session, supp. no.21 (A/9021), 1973 at p. 82.

73 Same as note 22.

74 *Globe and Mail*, May 26, 1973.

75 *Idem.*

Although this concept meets opposition from the United States, the Soviet Union, European countries and some landlocked States, Canada foresees that it "will have the support of at least two-thirds of the membership of the United Nations (and) will almost certainly carry the day at the new Law of the Sea Conference."[76]

In addition to her action at the multilateral level, Canada has announced that since June 1, 1973 "the size of Canada's offshore scallop fleet would be frozen and a limit placed on the size of scallops taken."[77]

Eventually, the concept of economic zone has also an impact on the question of exploitation of non-living resources of the sea.

3. *CONTINENTAL SHELF:*

In this respect, Canadian proposals are dealing with the definition of the continental shelf within the limits of national jurisdiction and the nature of the regime applicable to the continental shelf area.

A. DEFINITION OF THE CONTINENTAL SHELF WITHIN THE LIMITS OF NATIONAL JURISDICTION:

According to Canada, the juridical definition of the continental shelf adopted under the 1958 *Geneva Convention on the Continental Shelf*[78] should be revised and given greater precision.[79]

Nevertheless, Canada recognizes the difficulty of adopting a new definition of the continental shelf within the limits of national jurisdiction. Indeed, such a definition is related to the definition of an area of the seabed beyond the limits of national jurisdiction and the regime to be applicable to such areas. This idea has been expressed by Canada in the following terms: "(T)here is an organic and 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."[80]

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76 *Idem.*

77 *Chronicle Herald*, May 26, 1973. In relation to fisheries see also Statement by Dr. A.W.H. Needler and Dr. A.W. May to the U.N. Seabed Committee, subcommittee II, March 10 and 29, 1972.

78 450 UNTS 311.

79 Statement by Mr. R.P. Kaplan to the First Committee, Dec. 1, 1970, at p. 14; see also Statement by His Excellency Mr. J.A. Beesley, July 29, 1974, *op. cit.*, at p. 7.

80 Statement by Mr. R.P. Kaplan, Dec. 1, 1974, *op. cit.* at p. 15.

In Canada's view, this matter creates a dilemma since, "because of this interrelationship many governments have hesitated to take definite positions on one question or the other."[81] This problem may be of far-reaching consequences in relation to the preparation of the Third Law of the Sea Conference, for "(u)ntil the question of limits is settled, States will be uncertain as to the limits they wish to see precisely fixed."[82] In Canada's view, this might constitute a circular process likely to hamper any progress with respect to an agreement on the definition of the continental shelf within the limits of national jurisdiction on the one hand and on the other hand the definition of the area of the seabed beyond the limits of national jurisdiction and the regime to be applicable to such areas.

This problem is emphasized by the fact that there is an urgent need for the establishment of an international seabed regime and machinery; indeed, "(t)here are enterprises awaiting guidance as to the rules that might be applicable to the licensing and conduct of their operations."[83] In this respect, it is feared that if States "delay too long in providing such enterprises with guidance as to operational requirements and assurances and licensing procedures, they may well proceed either without authorization or regulation by any national or international body, or under some system of national authorization and regulation by the home Government or that of the nearest coastal State."[84]

Therefore, while the precise limits of the continental shelf and the seabed beyond national jurisdiction must be determined at the Law of the Sea Conference, Canada proposes the adoption of some immediate steps. In this connection, Canada recommends that all coastal States unilaterally define:

> "(T)heir 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 claims. Thus,

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81 *Idem.*

82 *Idem.*

83 Statement by Dr. D.G. Crosby to the U.N. Seabed Committee; sub-committee I, March 23, 1972 at p. 5.

84 *Idem.*

> 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 stopped in practice if not in law from claiming a greater area than that included in the claims or potential claims they had advanced as of the specified date."[85]

In accordance with this position, Canada has defined her continental shelf claims as extending to the margin of the continental shelf (including the slope and rise), in some places more than 200 miles from shore.[86] The regime envisaged for this area is one of sovereign rights.

B. *NATURE OF THE REGIME*

The Canadian position in this respect seems to be pressing for full control of exploitation and exploration rights on the continental shelf.

In Canada's view "both customary and conventional international law recognize that the coastal State has exclusive sovereign rights with respect to the exploration and exploitation of the resources of this area, *ab initio*, by virtue of the shelf being an extension of the land domain into and under the sea."[87]

Nevertheless, according to the concept of custodianship "the coastal State should act as the custodian of community interests in freedom of communication and the preservation of the marine environment, for instance, and should comply with appropriate international rules and standards intended to protect such interests,"[88] in this connection it is believed that "appropriate dispute-settlement procedures should apply in the event that conflicts might arise involving community interests."[89] Furthermore, Canada has proposed the establishment of a "voluntary international development tax on offshore mineral resources within the limits of national jurisdiction seaward from the outer limit of the

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85 Statement by Mr. J.A. Beesley, to the enlarged U.N. Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction, March 24, 1971.

86 In relation to the previous statement one might wonder whether Canada's claims with regard to her continental shelf are provisional or final?

87 Statement by Dr. D.G. Crosby, March 23, 1972, *op. cit.* at pp. 6-7, see also Statement by His Excellency Mr. J.A. Beesley, July 29, 1974, *op. cit.*, at p. 8.

88 Statement by Dr. D.G. Crosby, March 23, 1972, *op. cit.*, at p. 7.

89 *Idem.*

coastal state's internal waters."[90] This tax would be based on a fixed percentage and would provide immediate operating funds for the interim machinery proposed with respect to the seabed beyond the limits of national jurisdiction, and immediate funds to be used for international development purposes, i.e. for the benefit of developing countries.[91]

In respect to the type of licensing system to be applicable on the continental shelf, it is to be expected that if her claims were accepted, Canada would extend the existing Canadian Offshore Resources Management System to the whole area of her continental shelf.

Canada is also proposing the adoption of such a system with respect to the area of the seabed beyond the limits of national jurisdiction.

4. *Seabed:*

In this respect, Canadian proposals cover the legal status of the seabed and the resources thereof, and the establishment of an international regime applicable to the area.

A. *LEGAL STATUS:*

Here, the Canadian position "is in complete agreement with the principle that the area shall not be subject to appropriation by any means by States or persons and that no State shall exercise sovereignty or sovereign rights over any part of it."[92]

Canada also agrees that "the resources of the area should be considered to be the common heritage of mankind."[93] Although Canada does not view this principle as a legal principle at this stage, it considers it to be "a concept to which the international community can give specific legal meaning and . . .can . . . construct the machinery of the rules of international law which will together comprise the legal regime for the area beyond national jurisdiction."[94]

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90 Statement by Mr. J.A. Beesley, March 24, 1971, at p. 26.

91 Although one of the first members of the Seabed Committee to propose a system of revenue sharing, Canada has since abandoned her original position on this question. The new Canadian approach in this respect has been subject to numerous criticisms. See *Globe and Mail*, April 19, 1975.

92 Statement by Mr. R.P. Kaplan, Dec. 1, 1970, *op. cit.* at p. 4.

93 *Idem.*

94 *Idem.*

Nevertheless, Canada does not agree that the area beyond national jurisdiction is itself the common heritage of mankind, because:

> "This statement tends to imply that all uses of and all activities on the seabed beyond the limits of national jurisdiction should be regulated by the international regime to be set up for the exploration and exploitation of the resources of the seabed beyond national jurisdiction."[95]

In Canada's view,

> "the primary purpose of the proposed international regime should be to promote the exploration and exploitation of the resources of the seabed beyond national jurisdiction for the benefit of mankind and particularly of the developing countries."[96]

Therefore, "Canada's preference — could be to confine the scope of the regime to those functions necessary to ensure an orderly, efficient and equitable system of exploration and exploitation of seabed resources."[97] This, because the possibility of a broader regime covering all uses and activities on the seabed beyond national jurisdiction might raise problems in its adoption, likely to delay the establishment of a regime for resource exploration and exploitation.

B. *INTERNATIONAL REGIME:*

The Canadian position provides for two stages in the elaboration of such a prescribed international regime: Firstly, an interim machinery; then a final regime to be established by the Third Law of the Sea Conference.

a. *the interim machinery*

The question here is first "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."[98] In this connection, Canada proposes that coastal States define their continental shelf claims as described above.

Then, in relation 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 deter-

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95 *Idem.*

96 *Idem.* at p. 5.

97 *Idem.*

98 Statement by Mr. J.A. Beesley, March 24, 1971, *op. cit.* at p. 20.

mined."[99]

According to the Canadian position, "(t)he 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 states and, c/perhaps also to maintain a record of offshore exploration and exploitation activities authorized by coastal States within the continental shelf claimed by them.[100]

The advantage of such 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 certainty of title."[101]

The third step to be taken within the interim regime proposed by Canada is the establishment of a "voluntary international development tax" as described above.

b. *final regime:*

In this respect, Canada has expressed her preference for confining the scope of the regime and hence the mandate of the machinery to those purposes and functions which would be essential to an efficient and equitable system of exploration and exploitation of seabed resources.[102]

Moreover, Canada envisages a machinery limited in size in order to avoid that the proposed machinery "become so vast and cumbersome that its operating costs —eat up the profits of seabed resource exploitation, particularly in the early stages of its existence."[103]

For these reasons, Canada proposes a two-phase development of the international machinery. Thus, according to the Canadian approach the international machinery "would begin with a skeletal structure to be fleshed out as progress permits."[104]

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99 *Idem.*

100 *Idem.* at p. 23.

101 *Idem.*

102 Statement by Dr. D.G. Crosby, March 23, 1972, *op. cit.* at p. 2.

103 Statement by Mr. R.P. Kaplan, Dec. 1, 1970, *op. cit.* at p. 10.

104 *Idem.*

At first, the international machinery would provide for a system of registration, notification and if possible control of exploration which would be effective immediately; then, during a second phase of actual exploration and development the international machinery would gradually assume more specific functions and powers as the need arises. In any case, Canada's view is that the international machinery should, at least, have the power to register and license the exploitation of seabed resources.[105]

Furthermore, with respect to promoting resources exploitation of the seabed, Canada emphasizes the need for a resource management system "designed to encourage and maintain investment from whatever sources on a continuing and orderly basis."[106] Canada, suggests her own management system as a possible model for resource management applicable to the deep seabed area.

This system is embodied in the Canadian offshore Resource Management System, which is described in the following terms:

> "The Canadian Offshore Resource Management System comprises three elements. The first is the exploratory licence – or, "hunting licence" as it has been called – which authorizes the licensee to carry out exploration work in any region of the Canadian offshore, short of evaluation work. The basic concept here is the encouragement of work through the granting of exploration rights on a non-exclusive basis for a nominal fee. The second element in the Canadian system is the exploratory permit, which, in contrast to an exploratory licence, relates to and is confined to a specific area. An oil and gas exploratory permit gives the permittee first, the option of acquiring exploitation rights with the permit area, and secondly, the privilege of being allowed to drill wells within the permit area beyond the limited depth allowed under the exploratory licence. Exploratory permits carry work requirements that increase progressively to reflect the progressive increase in expenditures required for the effective evaluation of an area, from relatively inexpensive preliminary geological and geophysical work through more expensive geophysical surveys to high cost drilling operations. The third element in the Canadian system is the exploitation lease. Commercial production cannot be undertaken while acreage is still in permit form; it must first be converted to lease, whereupon Canada receives a rate of royalty on production."[107]

In relation to the issuance of rights Canada has emphasized that it is not "based upon discretionary authority vested in the administering body. The system is not one whereby moninations or applications are invited with the most attractive of these selected by the administering authority. Licenses are issued on a non-discriminatory basis in accordance with objective criteria."[108]

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105 *Idem.*, at p. 11.

106 *Idem.*, at p. 12.

107 *Idem.*, at pp. 12-13.

108 *Idem.*

A somewhat similar basis seems to be desirable in Canada's view with regard to the proposed international regime and machinery. Indeed, in Canada's view, the adoption of such a model would allow the administering authority "to operate in the most objective fashion possible, without the added complication of political pressures to which an administrator may be subjected when granted a wide discretionary power of selecting the parties to whom rights shall be issued."[109] Under the Canadian approach, this is related to the idea that the international machinery should not be "accorded more power than it can exercise effectively."[110]

Eventually, the international seabed regime should be established "for the benefit of mankind and the developing countries in particular."[111] This question is especially relevant in relation to the consideration and determination of the limits of the international seabed area. Here, "Canada considers that the principle of equity should be applied not only to the sharing in the benefits of the common heritage but also to the spatial aspects of the issue in determining the contributions to be made to that common heritage."[112] Therefore, with regard to the question of revenue sharing, Canada suggests"that every ocean basin and every seabed of the world should have similar percentages of its underwater acreage reserved for the benefit of mankind."[113] Accordingly, Canada proposes that coastal states "begin from the centre of every sea and ocean in the world and proceeding landward, reserve out of each some considerable percentage – be it 50 or even 80 percent – of the underwater acreage for dedication to the interests of humanity as a whole."[114] This would apply to every sea and ocean basin including shallow basins and "whether or not riparian States have divided up such areas by a process of unilateralism."[115]

In relation to the structure of the international machinery Canada proposes that it includes "a legislative body or plenary assembly of all States parties, to act as the supreme governing organ; a small executive body or council, to exercise authority delegated to it by the assembly; a recording or advisory body or

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109 *Idem.*

110 *Idem.*, at p. 14.

111 *Idem.*, at p. 16.

112 *Idem.*

113 *Idem.*, at p. 17.

114 *Idem.*

115 *Idem.*

secretariat, a dispute-settlement tribunal; and some type of body to act as a resource management commission."[116]

Furthermore, Canada is in favour of the application of the "one State - one vote" principle throughout this structure.[117]

With respect to the relationship between the international machinery and the United Nations, Canada's position is that the proposed machinery should be "a wholly new institution rather than one developed out of existing organs and agencies of the United Nations family."[118]

CONCLUSIONS

The Canadian position with respect to the Third Law of the Sea Conference is typical of a coastal State. Canada is conscious of the advantages and the possible disadvantages of her geographical and geological situation. In the race for possession of the resources of this world, Canada is prepared to defend her share and protect the natural conditions necessary to her existence. In this respect, the Canadian attitude is in accordance with the trends her policy assumed on Law of the Sea issues ever since Canada was an independent country. In order to defend her position, Canada has developed the concept of custodianship, already included in the doctrine of "dédoublement fonctionnel," well known principle of French Administrative Law applied to International Law by *George Scelle* some 40 years ago.[119] Canada has embodied this idea in the doctrine of economic zone, which is an extreme application of the concept of custodianship, and in various ocean management systems based on scientific principles. However, no matter how sophisticated, the Canadian approach is not always convincing: In this respect, it is easier to see how, under the Canadian approach, coastal States are granted new rights and powers rather than new responsibilities. For instance, from the Canadian standpoint, new coastal States rights should be balanced with an obligation to protect the freedom of navigation, and protect the environment from pollution. Nevertheless, these principles are already covered by well established international law principles as embodied in the concept of freedom of the high seas or recognized

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116 Statement by Dr. D.G. Crosby, March 23, 1972, *op. cit.* at p. 1.

117 *Idem.*

118 *Idem.*, at p. 4.

119 *Précis de Droit des Gens* (1932) at pp. 3 et seq.; Le phénomène juridique du dédoublement fonctionnel, Rechtsfragen des Internationalen Organization: *Festschrift für Hans Wehberg* (1956), 324.

by the *Trail Smelter decision* and the doctrine of abuse of right. The only new developments proposed by Canada in relation to the exercise of these rights and duties deal with third-party adjudication and revenue sharing in favour of developing States.

Moreover, the Canadian approach amounts to creating two zones on the seas: one under a system close to sovereignty and not subject to revision; the other under an international regime covering only a very limited aspect of the issues involved. Also, in relation to this regime the international machinery proposed seems to be conceived as a weak authority. For the rest of the area beyond national jurisdiction, flag States would be under the obligation not to pollute the environment and coastal States would have the right to take measures to protect themselves.

In this respect, it is obvious that if Canada believes in an international management regime for the oceans, she believes even more in residual powers in favour of coastal States. Thus, if coastal States exercised their powers in accordance with internationally agreed rules and standards, coastal States could act at the unilateral level, when such rules and standards are nonexistant or are insufficient.

With regard to present needs, it is true that the right of flag States should be controlled and that coastal States should play a role in this control. Nevertheless, they should not receive more powers than they can handle safely; in this respect, it is suggested that if coastal States have special interest in the marine environment, they might not always have the technological knowledge to exercise the responsibilities attached to these interests. It might also be that some are not prepared to act on behalf of the international community but in their own interests only. In this case, the concept of custodianship could be used against rather than for the international community as a whole, i.e. against its own alleged purpose.