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Statement by the delegation of Canada dated 2 April 1980

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Statement by the delegation of Canada dated 2 April 1980

[Original: English]
[10 April 1980]

1. I would begin by congratulating the President and the Chairmen of the First, Second and Third Committees, as well as the Chairmen of the working groups on the difficult and demanding work they have all done again on behalf of the Conference as a whole. There is no doubt that the degree of consensus reflected in the reports as a whole have moved the Conference a major step closer to consensus.

2. I am aware that the purpose of this debate is to determine whether the changes proposed by the President and the Chairmen of the Committees meet the test of Conference decision A/CONF.62/62,¹ namely "any modification or revisions to be made in the informal composite negotiating text should emerge from the negotiations themselves and should not be introduced on the initiative of any single person, whether it be the President or a Chairman of a Committee, unless presented to the plenary and found, from the widespread and substantial support prevailing in plenary, to offer a substantially improved prospect of a consensus". I shall direct my comments to that issue.

3. Before speaking of the new texts proposed for reconsideration, I wish to say a brief word about the principle of consensus itself. It will be recalled that my delegation conducted the negotiations leading to the original "gentlemen's agreement" that the Conference would work by consensus. It will be recalled also that in explaining the meaning of "gentlemen's agreement" I made clear that it was understood as meaning neither the tyranny of the majority nor the veto of the minority. I wish to emphasize that, at this crucial juncture of our Conference procedures, coming after nearly 12 years of negotiations, it is vital that we should be absolutely scrupulous in applying the Conference decision in document A/CONF.62/62 in such a way that we insure against either the tyranny of the majority or the veto of the minority.

4. I should like at this time specifically to associate myself completely with the statement of the distinguished representative of Trinidad and Tobago on the importance of scrupulous adherence to the letter and spirit of the decision.

5. I shall deal now with the balanced and informative report of the Chairman of the First Committee. As a general comment, I find, with one important exception, that the new text proposed by the Chairmen of the various working groups of the First Committee (A/CONF.62/C.1/L.27 and Add.1) provides an adequate basis for discussion and even, in many cases, for Conference decision making. Although there are a number of provisions on which my delegation entertains reservations, they are not so serious that we cannot accept the proposals of the Chairmen of negotiating groups 1, 2 and 3 as a basis for discussion.

6. Rather than take the time of the plenary Conference to outline each of these reservations in detail, I shall circulate the text of my statement in which these reservations are spelled out.

7. The one proposal emanating from the First Committee which is not acceptable to my delegation even as a basis for discussion is the proposal which emerged from the small negotiating group on production policy. I should like to pay tribute to the efforts of Mr. Nandan of Fiji in attempting to produce an addition to the production ceiling formula already contained in article 151 which would command as widespread support as does the revised negotiating text. The fact that he was unable to do so was no fault of his. The difficulties he faced were tremendous and it simply did not prove possible to overcome the "veto of the minority" who have demanded a floor

well in excess of what is acceptable to the vast majority of the States represented at this Conference. The Chairman of the co-ordinating group of the Group of 77 made clear yesterday in the 47th meeting of the First Committee that, unless substantial changes were made either to the floor figure contained in the proposal or in the percentage figure in the clause intended as a safeguard, the proposal would not be acceptable to the Group of 77. I made clear that in my own view the proposal would not be widely acceptable unless both changes were made. We heard statements also from the major industrialized powers that even a 3 per cent floor was not high enough for them. In these circumstances it is clear that the proposal does not meet the tests of A/CONF.62/62 for inclusion in any revision of the negotiating text.

8. In considering whether and why we should accept any proposed changes to article 151, it is important to note that the article already provides for a substantial floor through the five-year build-up period providing for more than five mine sites immediately at the commencement of production. Indeed, it is clear that article 151 achieves a delicate balance between the requirements of the Enterprise, private or State sea-bed miners, existing land-based producers and potential land-based producers. These varying interests are balanced over the 20-year period during which sea-bed production is phased-in in a manner that is least disruptive for existing and potential land-based producers of the metals of concern.

9. The proposed text is clearly a genuine and sincere attempt to provide an accommodation of interests. Its major difficulties are as follows: first, the 3 per cent floor is so high as to allow the over-supply of nickel when market growth at the lower half of the future growth range estimated by the United States Bureau of Mines as between 2.2 and 3.8 per cent; secondly, the proposal requires clarification before the precise effect of the provision intended as a safeguard can be determined with certainty; thirdly, the provision intended as a safeguard in low market growth situations permits sea-bed production to take up 100 per cent of the world market growth at the very time when potential land-based miners would have most need of access to world markets; and fourthly, the proposal intended as a safeguard could clearly have the effect that in low market growth conditions it could permit sea-bed mining to take up more than 100 per cent of world market growth and thus force land-based producers to cut back their production.

10. I understand why today's major consumers who wish to become tomorrow's sea-bed miners and thus their own suppliers would like to become self-sufficient in nickel, copper, manganese and cobalt. There is every likelihood that they would be able to do so in any event eventually because of the provision in other parts of the revised negotiating text which would enable five mine sites to be developed by private means for every mine site developed by the international Enterprise. In these circumstances, however, it is essential that sea-bed mining should be phased into production in such a way that it will not totally disrupt existing markets and, in the process, damage or destroy the economies of countries partly or mainly dependent upon export earnings from mining. Surely this is not too much to ask. No one wants to restrict or delay sea-bed mining. My own country has companies interested in sea-bed mining. Indeed, International Nickel Company of Canada is the leader of a consortium which, to my knowledge, is the only one which has actually proved out its sea-bed mining technology. It follows, of course, that the Canadian Government can support only solutions which are equitable from the point of view of the international Enterprise, other potential sea-bed

¹Ibid., vol. X.

miners, and land-based producers including potential land-based producers. I believe we are close to just such a solution but we have not yet reached it.

11. It seems clear, as pointed out by Mr. Nandan and confirmed by the Chairman of the First Committee, that we have not yet finished our negotiations on this issue and that we must continue to negotiate in good faith. I have no objection to the proposal being used as one of the discussion papers leading to consensus but I cannot agree to its inclusion in any new revision of the negotiating text. If, however, there is sufficiently widespread support to satisfy the criteria of A/CONF.62/62 for the proposal being included in the new revision, in spite of the serious reservations expressed about it by the Group of 77, the major consumer countries and the land-based producers, then the percentage figures for the floor and the percentage figures for the so-called safeguard clause should be left blank since fundamental objections have been raised to both figures. To do otherwise would be doing violence to the fundamental principle reflected in document A/CONF.62/62. Not one delegation to my knowledge has expressed support for the figures in the proposal. In these circumstances, the only proper procedure is the one we used at an earlier stage in the First Committee, that of deleting the figures since they are not supported by anyone.

12. I should like to turn now to the new proposals of the Second Committee (A/CONF.62/L.51). As a very general comment, the proposals taken together are acceptable to my delegation as the basis for future discussion and we should not object to their inclusion in the new revision in spite of certain reservations we entertain. I shall not spell out these reservations in detail in the part of this statement that I am delivering orally, but leave them to the annex to the written text of my complete statement which will be circulated later today. There are some issues of importance, however, which oblige me to make known the views of the Government of Canada.

13. I wish to refer now to article 76 and the series of related articles on the continental margin limits and the closely associated question of revenue sharing.

14. As stated by Mr. Allan J. MacEachen, then Secretary of State for External Affairs, at Geneva on 8 May 1975:

"My country is one of those which has a longstanding position concerning the nature and extent of the continental shelf. We are a party to the 1958 Geneva Convention on the Continental Shelf which recognizes coastal state rights to the point of exploitability. Our position is based also on the decision of the International Court in the North Sea Continental Shelf Cases, which repeatedly referred to the continental shelf as the submerged natural prolongation of the land territory of the coastal State. In addition, our position is based on longstanding state practice including the extensive issuance of oil and gas permits on the Canadian continental margin and similar action by other coastal States. Canada does not intend to give up its existing sovereign rights to the edge of the continental margin. At the same time we are conscious of the need to work out equitable arrangements with respect to those countries which either are landlocked or do not have a continental shelf. Canada is maintaining its position that it is entitled to exercise sovereign rights over the continental margin beyond 200 miles out to the edge of the margin. But we are prepared to explore the possibility of financial contributions related to the net revenues derived from the resources of the continental shelf between 200 miles from shore and the seaward edge of the continental margin. We are prepared to explore that possibility and we are prepared to support that principle in order to promote an accommodation. The two conditions—and I am underlining this—the two conditions on the basis of which Canada would be prepared to support such a principle would be: first, that any agreement worked out would in no way derogate from

our established sovereign rights out to the edge of the margin; and secondly, that the financial contributions would go primarily to the developing countries, particularly the least developed amongst them."

My statement on the Second Committee report, made at the 115th plenary meeting, at Geneva on 27 April 1979, read in part:

"The new text also contains a proposed amendment to article 82 under which the rate of contribution in the revenue-sharing scheme is increased from 5 to 7 per cent. My delegation was the first to suggest a system of revenue sharing as an essential and equitable part of any over-all compromise on the definition of the outer edge of the continental margin. Clearly, any system of revenue sharing must be without prejudice to the sovereign rights of the coastal state in respect of the resources of the continental margin beyond 200 miles. Neither must it impose an unreasonable burden on the coastal State, bearing in mind the enormous costs of exploiting offshore resources. My delegation therefore reserves its position for the time being on this part of the text, not out of any lack of generosity but because the suggested rate could make it uneconomic for Canada to explore and exploit its continental margin in deep, cold water areas unless some safeguard provision was developed to ensure that any revenue-sharing formula we could agree upon would be practicable.

"Undoubtedly, when we resume our work in New York this summer, the question of revenue sharing will require further discussion with a view to ensuring that the formula and the rate of contribution will be both equitable and viable from the standpoint of both potential contributors and beneficiaries, but in the meantime, my delegation does not object to the text going forward in its present form."

The position of my delegation remains as stated at Geneva on 27 April 1979.

15. We have been encouraged to see that the rights of coastal States to the outer limits of the continental shelf have been reaffirmed in the proposals of the Chairman of the Second Committee reflecting his judgement as to the text which best reflects the Conference consensus. However, it would be extremely dangerous for the legal position thereby recognized if we were to allow the erosion of these fundamental rights by the back door. One provision in particular, article 76, paragraph 8, which is related to the proposed commission on the limits of the continental shelf, can be regarded as eroding the sovereign rights of coastal States which have unmistakably been recognized by the basic article; article 76. The commission is primarily an instrument which will provide the international community with reassurances that coastal States will establish their continental shelf limits in strict accordance with the provisions of article 76. It has never been intended, nor should it be intended, as a means to impose on coastal States limits that differ from those already recognized in article 76. Thus to suggest that the coastal States limits shall be established "on the basis" of the commission's recommendations rather than on the basis of article 76, could be interpreted as giving the commission the function and power to determine the outer limits of the continental shelf of a coastal State. We are assured on all sides that this is not the intention of the amendments introduced. Such an interpretation would be contrary to the very principles established in article 76, which is and must remain the cornerstone on which the whole compromise is founded. In these circumstances I must reserve the position of my delegation with respect to the suggested change in paragraph 8 of article 76.

16. Turning to other Second Committee issues, the Chairman of the Second Committee referred in his report to proposals put forward which are in the process of revision in the

light of the comments and observations made during the discussion.

17. One such proposal was that of Argentina concerning article 63. Bilateral consultations are taking place concerning a text to resolve the problems with which the proposal of Argentina was concerned.

18. I wish at this stage to avail myself of the procedure followed at our last session at Geneva when agreement was reached in plenary for the inclusion of new written texts which had not emerged in the usual way from negotiating groups. I shall, however, be very brief.

19. The Canadian delegation wishes to express its continuing concern about protection on the high seas for stocks which overlap the 200-mile limit. Together with a number of other states, we consider the existing provisions in the revised negotiating text to be inadequate to provide for the conservation of these stocks. We have welcomed and supported the proposal of Argentina in the Second Committee to amend the text in a manner which will provide adequate protection for these stocks. We have noted the support of 30 countries for the proposal of Argentina and the critical comments of another 20 countries. We have tried to take these critical comments into account in a compromise proposal which we would be pleased to give to any other interested delegation, and which is annexed to this statement.

20. This question must remain open for consideration interessionally and at the Geneva session, before the text is formalized. We believe that opposition to a change in this article is short-sighted. Leaving these resources open to plunder, on a come-one-come-all basis, will serve neither the interests of countries which fish on the high seas nor those of the world community looking to the sea for food.

21. The Canadian delegation believes that a balanced text can be developed along the lines of the Canadian proposal, which will protect endangered fish stocks by requiring an international tribunal to take action in response to a threat to conservation, and give due weight to the most important interests concerned.

22. We ask those countries which have opposed any change in article 63 to reconsider their positions, and to be prepared to come to Geneva with a mandate to agree to whatever changes to the text are necessary to provide for the conservation of fish stocks.

23. I wish now to address myself to the report of the Chairman of the Third Committee (A/CONF.62/L.50). I would first say that I wish to congratulate him on the efforts he has made over the years and the major contribution these efforts have made to the progress of this Conference. I have had one opportunity to say this previously in the context of the conclusion of the debate on the development and transfer of marine technology and protection and preservation of the marine environment which my delegation believes to be a signal achievement.

24. We have now come close to the conclusion of the Third Committee debate on the final issue on that agenda, marine scientific research. I should now like to address myself to certain specific issues raised in the annex to the Chairman's report, and in particular to the régime for marine scientific research on the continental shelf beyond 200 miles, as contained in article 246, paragraph 6. As delegations will recall, my delegation was one of those who viewed the régime for marine scientific research as negotiated in the revised negotiating text as a régime which, while not perfect from any individual delegation's point of view, nevertheless represented for us the best balance between the protection of the rights of coastal States regarding their resource and other interests, and the encouragement, facilitation and co-operation of all States in the conduct of marine scientific research to the benefit of all mankind.

25. Nevertheless, it appeared evident in Committee nego-

tiations that one or two delegations did not share this view. My delegation and others therefore agreed that further negotiations should continue to seek that ever-elusive "real compromise", particularly as it applies to the régime for the conduct of marine scientific research on the continental shelf beyond 200 miles and the related provisions governing dispute settlements and suspension and cessation provisions.

26. As in the case of other issues in the Third Committee, my delegation would have much preferred a solution with more specific, concrete provisions clearly affirming the rights of coastal States relating to the conduct of marine scientific research on the continental shelf beyond 200 miles. Nevertheless, the Chairman and some other delegations seem to prefer a solution which incorporates a more subjective and interpretative approach. If this is indeed the will of the majority, then my delegation is prepared, albeit reluctantly, to give serious consideration to this approach in the spirit of compromise, in spite of the potentially serious interpretation problems we may be building into the proposed convention with yet another Third Committee example of "constructive ambiguity". We do so, however, on the following understanding.

27. My delegation has raised questions throughout the course of the debate in the Third Committee regarding the potentially serious legal implications an approach such as that put forward in article 246, paragraph 6, requiring coastal State designation of specific areas of that shelf that it would publicly designate in order to preserve its right to refuse marine scientific research. We have been concerned to preserve the pre-existing coastal State sovereign rights over the resources of the shelf beyond 200 miles. We have been repeatedly assured, both by the Chairman of the Third Committee, the Chairman of the relevant working groups and by those delegations seeking to narrow the coastal States' right to refuse requests for scientific research, that the régime envisaged by article 246, paragraph 6, would not in fact have any effect whatsoever on those sovereign rights. We have been further assured that nothing in the approach suggested by the Chairman of the Third Committee would prohibit a coastal State from managing and protecting its vital sovereign rights with regard to the resources on the basis of its own development time-table and in the manner that it determines for itself, and that indeed the "compromise" proposed in the name of greater freedom of scientific research would not hamper or restrict these vital activities nor oblige the coastal State to reveal any proprietary information. My delegation is prepared to give careful consideration to these proposals in this spirit and with these express assurances, with a view to making our final position known at the next session, but in the meantime we specifically reserve our position on article 246. My delegation would like it clearly understood that, in any event, the Government of Canada will continue to exercise its sovereign rights with respect to the resources of the continental shelf in accordance with its own policies and priorities based on its pre-existing sovereign rights reflected in both the 1958 Geneva Convention on the Continental Shelf¹⁹ and the revised negotiating text.

28. In particular, my delegation would like it clearly understood that we interpret these provisions as in no way restricting the right of the coastal States to refuse requests to conduct marine scientific research which in their view is for military purposes or which would in any way interfere with their management of their own continental shelf resources. Moreover, as already indicated, and depending on the course of the debate on these particular questions, we would reserve our right to make formal amendments at Geneva.

29. As I have already indicated, I shall be circulating later in the day the full text of this statement together with an explanation of the reservations to which I have referred.

¹⁹United Nations, *Treaty Series*, vol. 499, No. 7302, p. 311.

ANNEX

Statement of interpretation, comments, reservations and proposals

Article 63. Stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it

2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek either directly or through appropriate sub-regional or regional organizations to agree upon the measures necessary for the conservation of these stocks in the adjacent area and, in any event, shall adopt or co-operate in adopting such measures. In the event that agreement is not reached within a reasonable period and proceedings are instituted before the appropriate tribunal pursuant to article 286, that tribunal shall determine the measures to be applied in the adjacent area for the conservation of these stocks and shall determine provisional measures if definitive measures cannot be determined within a reasonable period. In establishing such measures, the tribunal shall take into account those measures applied to the same stocks by the coastal State within its exclusive economic zone and the interests of States fishing these stocks.

Article 65

The current United States proposal for a change to the existing text of article 65 of the revised negotiating text would require States to "work through the appropriate international organizations" for the conservation, management and study of cetaceans. The Canadian delegation supports the text proposed by the United States as an improvement over the current text in providing a better basis for the conservation of marine mammals, and wishes to have recorded the following interpretation of the second sentence of the proposed text:

(a) The obligation for any particular State is to "work through" an appropriate international organization. In other words there is no obligation on any State to "work through" more than one appropriate international organization;

(b) The obligation to "work through" an appropriate international organization as regards individual stocks of cetaceans arises as regards any particular stock only when the status of the stock is such that the attention of the appropriate international organization is necessary to assist in the conservation, management and study of the stock;

(c) the obligation to "work through the appropriate international organizations" can be fulfilled through consultation with the scientific bodies of such organizations in the process of development of measures in accordance with the sovereign rights and obligations of coastal States within their 200-mile zones.

Paragraph 1 of articles 74 and 83

The Conference is deeply divided on this issue and a formula is needed which represents a genuine balance of interests. The text proposed by the Chairman of negotiating group 7, while not entirely satisfactory to any delegation, including my own, would seem to provide a basis for moving closer towards consensus.

Unfair practices

The Chairman of the First Committee flagged in his report on the question of unfair practices, raised separately by Australia and certain land-based producers. While some consideration was given to this issue even while the Chairman's report was being prepared, it would seem essential that a fundamental term of all contracts issued by the Authority should require States parties not to provide subsidies, including those of a financial, fiscal, commercial, trade or industrial nature, to contractors in respect of the exploitation of sea-bed resources that have the effect of furnishing to such contractors a competitive commercial

advantage over land-based producers of similar resources. While the words may need adjusting to reflect different social and economic systems, the principle should be clearly embodied in a treaty obligation

*Article 151**Paragraph 2**Issuance of production authorization*

The introduction to paragraph 2 of article 151 in the Chairman's report is a significant improvement in defining a production authorization and is the result of long dialogue.

Interim period

Subparagraph (a) is also clear in its intent which is to provide a definition of the interim period.

Enterprise preference, re-application for production authorization and variable production

Subparagraphs (c), (d) and (e) are items upon which delegations have been negotiating in good faith and if there are still differences these show promise of resolution.

Level of production of other metals

Subparagraph (f) is a useful clarification as to level of production of copper, cobalt and manganese in relation to plan of work.

Paragraph 3

There are still some ambiguities in the power assigned to the Authority in limiting production of minerals from the Area, other than minerals from nodules, which should be eliminated.

*Paragraph 4**Compensatory financing*

The Canadian delegation reserves its position on the text contained in article 151, paragraph 4, proposing the establishment of a system of compensation because the proposal is discriminatory, vague and open-ended concerning the nature and scope of the market effects which should justify the establishment of such a mechanism. In our opinion, the proposal for establishing a compensatory financing mechanism should take into account the applicability of existing international systems of compensation relating to export earnings instability.

*Annex III**Article 10**Paragraph 3 (f)**Finance*

The Canadian delegation has reservations on the proposed text dealing with the repayment of interest-free loans. In our opinion, the repayment period should not exceed the economic life of the project financed with interest-free loans. We sincerely hope that the issue will be further discussed during the next session.

*Paragraph 3 (a)**Finance*

The Canadian delegation wishes to stress that the second revision of the negotiating text should provide for the establishment of a schedule of financial contributions to the Enterprise. We strongly object to the concept that States parties would provide the Enterprise with a yet-to-be-agreed-to amount of capital in one instalment, irrespective of its actual need for capital spending.

*Article 12**Legal status, immunities and privileges*

The Canadian delegation objects to the text contained in annex III, article 12, paragraph 4 (d), giving preferential status to the Enterprise similar to the status afforded to developing countries because the granting of the status is not subject to multilateral agreements, and is given to countries and not to companies.

DOCUMENT A/CONF.62/WS/5

Statement by the delegation of Argentina dated 2 April 1980

[Original: Spanish]
[10 April 1980]

1. The position of the Argentine delegation on the matters dealt with by the First Committee coincides with that set forth by the co-ordinator of the Group of 77. Nevertheless, I should like to mention some of the issues to which my delegation attaches special importance.

2. As concerns production policy, the formula presented by Mr. Nandan (see A/CONF.62/C.1/L.27) is acceptable, subject to a few modifications, but it represents a minimum level below which my delegation cannot go. In order for it to constitute a compromise formula, it must be supplemented by the inclusion