Third United Nations Conference on the Law of the Sea

1973-1982
Concluded at Montego Bay, Jamaica on 10 December 1982

Document:-
A/CONF.62/WS/5

Statement by the delegation of Argentina dated 2 April 1980

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XIII (Summary Records, Plenary, General Committee, First and Third Committees, as well as Documents of the Conference, Ninth Session)*

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 24 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

of a clause designed to prevent the use of unfair trading practices, whether they are called quotas, subsidies, tariff or non-tariff barriers or anything else, as has been stated by the Australian delegation and in the relevant report.

3. In this connexion, my delegation wishes to refer to two points which we believe have not been given sufficient consideration during the negotiations. The first derives from an unalterable law of economics which states that a greater availability of metals leads to increased consumption, both for known uses and for new uses which the greater availability makes possible. The second is that if, in reality, we are referring in the formulation to what will happen in 10 or 15 years' time, we must assume that the world economy, having passed through the recessionary trend, will enter a phase of sound and sustained growth. This will obviously lead to greater utilization of metals, since they are essential to that type of growth. Hence, in anticipation of these conditions and despite the fact that my country, being only a potential producer, is in a relatively poor position, my delegation optimistically believes that the 3-per-cent floor will be only a theoretical figure.

4. With reference to financial arrangements, my delegation regrets the position adopted by some industrialized countries whose aim is to reduce the payments by contractors under the system proposed by Mr. Koh in article 12 of annex II. These countries have tried to achieve the same objective with regard to the formation of the Enterprise's capital. My delegation wishes no one to have any doubts about the fact that in our view, as in the view of the great majority of other delegations, the payments arising from contracts and the financing of the Enterprise are two matters which are inextricably linked if one really wishes to reach a compromise. Moreover, the levels indicated in the proposed formula constitute a minimum below which my delegation cannot go.

5. The Enterprise must be assured the necessary autonomy to enable it to be viable in a competitive commercial situation. In this connexion, my delegation wishes to emphasize two basic principles: the Governing Board must be independent and have broad powers and the Enterprise must enjoy tax exemption for as long as is necessary for it really to carry out its functions in that competitive situation. In that regard, it must be pointed out that, from a financial standpoint, the Enterprise will have to be established in an artificial manner since its capital will be loan capital. As a result, although half of the loans will be interest-free, the Enterprise will have a heavier burden than other mining companies in that it will have to repay the loans in one way or another. Accordingly, one good approach would be to give it temporary tax exemption, which would not constitute discrimination but would simply be a means of placing it on an equal footing with commercial enterprises.

6. Regarding the question of the organs of the Authority, my delegation has repeatedly spoken in the First Committee of the special harmful characteristics which sea-bed mining will have for potential land-based producers. We will not do so again here, as we are convinced that all delegations understand the problem fully. However, we do wish to point out that no provision is made anywhere in the proposed convention for protecting the interests of potential producers. Accordingly, my delegation, which, together with the other countries that are in the same position, feels threatened, proposes that these special interests should be at least recognized and included with those listed in article 161, paragraph 1 (*d*). This would not entail any change in the number of groups represented in the Council, nor would it adversely affect any of the countries represented at this Conference. In that connexion, my delegation wishes to point out that, in any case, the issue remains open in the Group of 77 and that, if a consensus is to be achieved, it will have to be duly resolved during the resumed session at Geneva.

7. I shall now turn to some issues dealt with by the Second Committee.

8. Part II of the revised informal composite negotiating text (Territorial sea and contiguous zone) contains a set of provisions which, broadly speaking, are acceptable to my delegation. Nevertheless, we believe that the failure to include, in section 3, a specific mention of the right of the coastal State to require prior notification or authorization for the innocent passage of warships through the territorial sea is a serious omission. Everyone knows that this right is recognized in existing international law and that many countries have adopted relevant legislation on that basis. It would therefore be advisable for the next revision of the text to contain a specific reference to the issue, thus providing a more precise codification of existing international law and satisfying the requests made by a large number of delegations, both in the Second Committee and in the plenary Conference.

9. I shall now refer to the conservation of living resources in cases where the exclusive economic zone and a zone beyond and adjacent to it contain identical or associated species. During the resumed eighth session, my delegation submitted a proposal for improving article 63, which, as now worded, would not ensure the attainment of the sole objective which we are pursuing, namely, the conservation of a resource which is threatened by the predatory activities of the large fishing fleets. At this session we have submitted a revised proposal, document C.2/Informal Meeting/54, which takes up the comments that were made during the debate of the last session in an effort to bring our various positions closer together. The fact that some 30 delegations support our text demonstrates that our concern is shared by a large segment of the international community. For that reason, we must keep the door open for efforts—based on our text or on others which have been circulated in the Second Committee—to work out a formula offering a better chance of consensus than the present text, since the latter has proved to be unacceptable to more than half of the delegations which have expressed an interest in the problem.

10. As to the outer limit of the continental shelf, the Chairman of negotiating group 6 suggested some amendments to article 76 (A/CONF.62/L.51); these, if incorporated into the negotiating text, would represent a further sacrificing of the legitimate interests of the coastal State. The representative of Ireland has already explained, with his customary precision and eloquence, the position of our country (126th meeting). I should merely like to emphasize that our delegation can reconcile itself to this restriction of the sovereign rights of the coastal State over its shelf—not only in negotiating group 6 but also in the Third Committee—only if it is part of a comprehensive package dealing with all aspects of the legal régime of the continental shelf. Any new draft that sought to erode the rights of the coastal State would force us to revert to our original position, which we believe to have sufficient basis in positive international law.

11. With regard to the criteria for delimitation of the exclusive economic zone and the continental shelf, the representative of Ireland has already set forth the position of a group of countries, including my own, and I therefore need only associate myself with what he said.

12. It is obvious that, notwithstanding the efforts made by its Chairman and by a number of delegations, negotiating group 7 has been unable to make any progress in its search for a formula on which a consensus can be achieved. For this reason, it is regrettable that paragraph 1 of articles 74 and 83 cannot be revised; the paragraph in question is not satisfactory, since it mentions, quite unnecessarily, one of the methods of delimitation—that of the median or equidistance line—when it would have been enough to say that the delimitation must be effected only by agreement between the parties and in accordance with equitable principles.

13. Our delegation also wishes to point out that article 15 as it stands is highly unsatisfactory and that we will withdraw our

objections to that article only if an acceptable solution is found for paragraph 1 of article 74 and 83.

14. As to paragraph 3 of those articles, concerning provisional arrangements, we believe it to be a positive contribution which improves the text.

15. With regard to the only outstanding issue before the Third Committee, namely, marine scientific research, the Argentine delegation—which participated in the negotiations in the Third Committee at the present session—wishes to recall that it has favoured the existing articles of Part XIII, considering them to be balanced formulas which protect the interests of both the coastal State and the countries engaging in research.

16. Nevertheless, in view of the position taken at the last session by the countries that would carry out the research, it was necessary to undertake further negotiations for the purpose of seeking an accommodation of interests through new compromise formulas. The articles submitted by the Chairman of the Third Committee in his report contained in document A/CONF.62/L.50 reflect the results of these negotiations, and my delegation can agree, albeit with difficulty, to their inclusion in the negotiating text on the understanding that they will be interpreted in a manner that is strictly compatible with the sovereign rights and jurisdiction of coastal States over their continental shelf as set forth in Part VI.

17. My delegation deems it necessary, in particular, to state clearly that, according to its interpretation, the régime of consent of the coastal State applies to all scientific research projects or activities to be carried out in the exclusive economic zone and on the continental shelf, in accordance with the provisions of article 246, paragraphs 1, 2 and 3, without prejudice to its right to exercise discretionary powers in the manner provided in paragraphs 5 and 6 of that article.

18. I shall now turn to the question of the settlement of disputes. The Argentine delegation recognizes that Part XV of the negotiating text is the product of a long process of consultation and negotiation, but, at the same time, it notes that precisely because of this the provisions, in general, are not very clear and the interrelationship between the articles is particularly vague. These short-comings are more obvious in section 2, particularly in connexion with the limitations which article 296 places on compulsory jurisdiction and the optional exceptions dealt with in article 298.

19. Accordingly, the Argentine delegation feels that the text should be rearranged so as to make clear the three options available under this Part as currently worded, depending on the kind of dispute involved, namely, disputes which are likely to come under compulsory jurisdiction, those which are not subject to such jurisdiction and, finally, among the latter, those which must be submitted to a compulsory conciliation procedure. The present text covers this last category in article 296, paragraph 3, in referring to disputes relating to fisheries.

20. Similarly, compulsory conciliation is proposed as a compromise in connexion with certain disputes arising with regard to marine scientific research. This solution is envisaged in article 264, paragraph 2, of the report of the Chairman of the Third Committee, which is one of the texts that he recommends for inclusion in the second revision of the negotiating text.

21. Finally, this dispute settlement procedure has been proposed as a compromise formula in connexion with disputes arising with regard to delimitation between States with adjacent or opposite coasts. I shall refer in particular to the substance of this matter when commenting on the proposal made by the Chairman of negotiating group 7. What I wish to point out here, in connexion with the restructuring of Part XV, is that my delegation is convinced that an effort must be made to make the text clearer and more specific so as to prevent disputes from arising in the future not over questions of substance but over the application of the very provisions relating to the settlement of disputes.

22. Following consultations which it is having with other delegations, my delegation hopes to be able to present its proposal in writing at the resumed session. Accordingly, we believe that the reference to this matter made by the President of the Conference in the report contained in document A/CONF.62/L.52 and Add.1 is highly appropriate.

23. I now wish to comment on the proposal made by the Chairman of negotiating group 7 concerning the question of the settlement of disputes. He proposes, in document A/CONF.62/L.47, an amendment to article 298, paragraph 1 (*a*), concerning which my delegation wishes to express its views very clearly. We do not find the proposal entirely satisfactory, because my country has maintained that direct negotiations are the most appropriate means of solving disputes concerning delimitation. Nevertheless, we must concede that this formula is, in the view of many delegations, a more appropriate basis for negotiations than the present paragraph 1 (*a*), which is unacceptable to my delegation and to many others. Accordingly, my delegation does not object to the inclusion of this amendment in the second revision. Nevertheless, we maintain our reservations concerning this subparagraph, in particular subparagraph (*a*) (ii), which may lead to serious misunderstandings.

24. My delegation wishes to state clearly that it will be able to accept only a formula which clearly establishes that no compulsory judicial procedure is to apply to disputes regarding delimitation unless the parties to the dispute specifically agree to it.

DOCUMENT A/CONF.62/WS/6

Statement by the delegation of Peru dated 4 April 1980

[Original: Spanish]
[10 April 1980]

1. Since the preparatory stage of this Conference, Peru has proceeded on the premise that the convention on the law of the sea must establish a new legal order on the use and exploitation of ocean space conceived not as an instrument of hegemony for the benefit of the most powerful States but as one of justice, peace, security, co-operation, development and well-being for all the peoples of the world.

2. With this in mind and beginning with areas of national jurisdiction, we suggested a change in the old institution of the territorial sea established centuries ago as a narrow strip over which the coastal State had sovereignty for the purposes of neutrality and defence. We explained that, in the face of the new uses and abuses of the sea resulting from scientific and technological progress, it was necessary to modify those concepts, which were based solely on the use of force, so as to take account not only of the concern for military defence but also of the economic defence of States and the ecological defence of the marine environment. For this purpose, and taking into account the diversity of the geographical circumstances in the various regions, we proposed recognition of a plurality of régimes so that the States situated on the shores of vast oceans could, within a zone of national sovereignty and jurisdiction not exceeding 200 miles, conserve and exploit their resources, preserve the marine environment, control scientific research and protect their security and other related interests, without prejudice to freedom of international communication.