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Statement by the delegation of Peru dated 4 April 1980

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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.

3. When a majority of the States participating in the Conference accepted as a compromise formula the maintenance of the traditional concept of the territorial sea up to a limit of 12 miles and the establishment of an exclusive economic zone up to a limit of 200 miles, with rights of sovereignty and jurisdiction for the purposes mentioned above, the Peruvian delegation placed on record that it would reserve its final position in the hope that the characteristics of the exclusive economic zone would be defined.

4. Today, as we approach the conclusion of the negotiations, in which we have played an active part, no one denies that the most important achievement of this Conference with respect to areas of national jurisdiction is the acceptance of the so-called "200-mile thesis", which was put forward more than 30 years ago by Peru and other Latin American countries. No one denies that we were right in firmly defending this thesis throughout an unequal struggle in which we had to face threats and reprisals amid sarcasm or indifference on the part of other States.

5. The revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1) recognizes the sovereign rights of the coastal State in the exclusive economic zone for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil, and with regard to other related activities. On this basis, in our basic judgement, the negotiating text endows the coastal State with the competence to determine the maximum allowable catch and its own catch capacity as well as the right to pass laws and regulations on conservation measures and conditions of access for other States, including licensing, payment of fees, determining the species which may be caught, fixing quotas, regulating fishing seasons, the types, sizes and numbers of vessels that may be used and, in general, all other requirements in connexion with fisheries within its zone. Likewise, it would appear fundamental that the text should recognize the right of the coastal State to enforce its laws and regulations in that regard,taking such measures as may be necessary, including boarding, inspection and arrest of fishing vessels and the institution of judicial proceedings in cases of violations.

6. Equally essential is the jurisdiction of the coastal State within the exclusive economic zone, as recognized in the text, from which derive the right to authorize and regulate the construction and operation of artificial islands, installations and structures under the conditions laid down in the text, the right to authorize and regulate scientific research activities, imposing requirements to ensure appropriate information, participation and benefit for the coastal State in the conduct and results of such research, and the right to pass laws and regulations to protect the marine environment from pollution from various sources, including pollution from vessels, in which regard such laws and regulations must conform to generally accepted international laws and standards.

7. With respect to the settlement of disputes, we regard as reasonable the provision under which the coastal State is not obliged to accept the submission to international courts or tribunals of any dispute relating to its sovereign rights with respect to the exclusive economic zone. Only when domestic remedies have been exhausted and the parties have failed to reach agreement may such a dispute be submitted to a conciliation procedure, except that in no case may that be substituted for the discretion of the coastal State.

8. No less important is the innovation contained in the text with respect to the limits of the continental shelf, the provision being that it shall extend to the outer edge of the continental margin or for a distance of 200 miles in cases where the margin does not extend up to that distance. In this way, account is taken of the situation of countries like Peru, whose continental shelf, from the geomorphological point of view, is on the whole very narrow. Likewise, the text protects the sovereign rights of the coastal State over the continental shelf for the purposes of the exploration and exploitation of its natural resources, and it provides that the coastal State shall have the exclusive right to authorize and regulate drilling on the continental shelf for all purposes. All this is consistent with the legal precepts that have already been recognized by international law.

9. With respect to areas beyond the limits of national jurisdiction, which in the case of Peru means beyond 200 miles, we suggest that the concept of the high seas should be replaced by that of the "international sea", reserved exclusively for peaceful purposes, where all States would exercise their rights and fulfil their obligations on an equal footing, taking into due consideration the interests of other States. Although the revised negotiating text retains the term "high seas", its provisions are generally acceptable, except for a few remaining minor shortcomings which we hope will be corrected in the next revision.

10. With regard to the area of the sea-bed and ocean floor and the subsoil thereof beyond the limits of national jurisdiction (or "international sea-bed area", as we believe it should be called), the Declaration adopted in 1970 [20] to the effect that this area and its resources are the common heritage of mankind represents another important achievement in the substantive reform of the law of the sea promoted principally by the developing countries. It will be remembered that, in advocating this principle, we proposed the establishment of an international authority with power to administer the area and to exploit its resources through an enterprise in which all States would participate, in order to ensure that the benefits deriving therefrom would be equitably distributed, taking into account the special needs of the developing countries, both coastal and land-loocked. In addition, we proposed that the international Authority should play a role in transport, producction and marketing and should have the necessary powers to regulate the production of minerals in the area, with a view to preventing adverse economic consequences for the land-based mineral producers.

11. The revised negotiating text incorporates both the concept of the common heritage of mankind and the establishment of the international Authority and Enterprise. However, instead of establishing a single régime for all activities in the area, the text makes provision for a parallel system which will operate for an interim period of 25 years. Under this system, half of each designated area would be exploited by States parties or State entities, or persons natural or juridical, on the basis of contracts or in association with the Authority and under its control, subject to a series of conditions that include payment of fees on extraction, production and net proceeds as well as on the transfer of technology to the Enterprise and to developing countries. The other half would be exploited by the Authority through the international Enterprise, in whatever manner the latter may decide, or on the basis of contracts with developing countries. Although it is impossible to anticipate at this stage whether or not the system will operate efficiently, it represents a point of departure which will be judged on its merits at the conclusion of the interim period.

12. Our initial conclusion from the above is that the revised negotiating text has introduced fundamental changes in the old rules of the law of the sea, incorporating a good part of the demands for the establishment of a more just order to govern the uses and exploitation of the ocean within and beyond national jurisdiction. If we compare the contents of the text with the Geneva conventions of 1958, we must, in all honesty, recognize the extraordinary magnitude of the reforms achieved. However, certain important questions still remain unresolved or are excluded. This is not, as is usually suggested, the fault either of the developing countries or of a number of developed countries, which have done everything in their power to find satisfactory compromises. Frankly, it is because of the reluctance of the major Powers to share their advantages

[20] General Assembly resolution 2749 (XXV).

and to refrain from the competitiveness that sustains the contrasts and tensions in the world.

13. This reluctance was first displayed with respect to the régime for the sea-bed beyond the limits of national jurisdiction, in the face of our proposal for a single system which would encompass all activities in the area on the basis of co-operation and collective effort channelled through the international Authority. The parallel system, would, of course, represent a departure from the principle of the common heritage if its provisions were directed towards simply facilitating the access of the major Powers to sea-bed minerals, without taking due account of the interests of mankind as a whole and to the detriment of the economies of those countries which produce the same minerals within their national jurisdiction. For this reason, the delegation of Peru has warned on a number of occasions that the premise for the negotiation of the parallel system should continue to be the satisfactory fulfilment of conditions that ensure the financing of the Enterprise, the transfer of technology essential for the exploitation of the reserved areas, measures to regulate production in order to prevent economic damage and a genuine possibility of reshaping the system if that should prove necessary in the light of its results.

14. On the other hand, the major Powers have opposed the inclusion of provisions in the text to keep the oceans free of activities that endanger international peace and security; the reason for this is simply that such provisions would affect their freedom to carry out military operations to defend what they term their strategic interests. Thus, the major Powers refused to discuss the question of the peaceful uses of the seas and zones of peace and security, an issue included in the list of questions before the Conference, on the pretext that such issues should be dealt with in other forums, such as disarmament conferences, and we know very well what the situation is there. They have also objected up to now to certain provisions relating to the security of the coastal State within its areas of national jurisdiction, including the requirement of prior authorization or notification for the transit of foreign warships through the territorial sea.

15. As a result of this intransigent attitude, the text which we have before us remains silent on a set of obligations which the major Powers refuse to accept for reasons related to their political rivalries and their ambitions for world power and hegemony. The experience of the distant and recent past has shown that the developing countries are the ones that suffer from confrontations between the major Powers. Our special concern for the perservation of peace in ocean space will be understood in that light.

16. The representatives of some of these Powers have told us that our concern is unfounded, since, in their view, the articles which we question are drafted in such ambiguous terms that they can be interpreted in favour of the coastal State without requiring amendment to make them clearer. Be that as it may, we should prefer a text sufficiently explicit to avert possible disputes, with all their attendant disadvantages.

17. There are other provisions in the text relating to the exclusive economic zone and the high seas which, in our view, should be amended, and we have made proposals to that end in the Second Committee. Among them, I should like to single out our proposals concerning the participation of land-locked States and States with special geographical characteristics in the exploitation of the living resources of the exclusive economic zone of States in the region in which they are situated. We are especially sensitive to the situation of land-locked States, since one of our neighbours is in that position and we are thoroughly familiar with its problems. Accordingly, we have supported that country's just demands and have facilitated its access to the sea through arrangements for free transit and the use of port facilities. We are prepared in the same spirit to conclude agreements with developing countries in those two categories in order to ensure them adequate participation in the exploitation of the surplus of living resources. However, we consider it unnecessary and inappropriate for that participation to be defined as a right: we take that position because of considerations of a legal nature which we have explained in the course of the debates and which, we hope, will be taken into account in the final revision of the negotiating text.

18. For similar reasons, we cannot support the proposal for a common heritage fund as presented by its sponsors. The principle of international justice would be rendered meaningless if we were to require third-world countries to forgo part of the profits they derived from the exploitation of mineral resources in their areas of national jurisdiction, because they will need those hard-earned profits in order to satisfy the development and welfare needs of their peoples. We understand that the aim of the proposal is to reduce the present imbalance between rich and poor countries. If so, it should be the exclusive obligation of the rich countries to contribute to the fund. On that basis, we would support the proposal.

19. This brings us to a procedural question relating to a number of Second Committee issues not referred to negotiating groups 4, 5, 6 and 7 and concerning which there is still no consensus. While all delegations have had the opportunity to consider the texts and introduce and explain their amendments, the objections of a single delegation have in some cases prevented the amendments from being incorporated into subsequent revisions of the texts. Merely considering proposals and listening to comments in the course of a reading of so many articles, without attempting to resolve the existing difficulties with counterproposals or compromise formulas, is not negotiation but rather taking the easy way out. This is what has happened, for example, in the case of various provisions on the territorial sea, the exclusive economic zone and the high seas. Since no appropriate forum such as the four negotiating groups exists, a number of problems which pose difficulties for various delegations have remained unsolved. It has been said that interested delegations can submit formal amendments when the decision-making process is begun. However, as we all know, other delegations object to even that procedure. No Government can accept as an explanation of why its legitimate concerns have been overlooked the fact that there was no way to consider them carefully within a suitable negotiating group. In all honesty, therefore, we believe that we must find a solution to this problem so as to avoid the occurrence of worse situations at a later stage.

20. Another matter which we must settle is the question of safeguard clauses. One of the most serious difficulties posed by the text stems from the general nature of its provisions, which are intended as uniform rules regulating situations which differ greatly from region to region. We understand that this is inevitable whenever an effort is made to draw up a convention that is universal. At the same time, however, we believe that special rules must be provided for specific situations and that special arrangements should be allowed between specific States, provided that they are not detrimental to the interests of other States. We are pleased to note that the texts presented by the group of legal experts on final clauses (FC/20) include an article along those lines that is patterned on the provisions of the Vienna Convention on the Law of Treaties. In view of the support expressed for that article, we are confident that it will be included in the final revision of the negotiating text.

21. Of course, it would be foolish to think that once these changes were introduced, the mere adoption of the new treaty would solve all our problems. The convention on the law of the sea is only a legal framework intended to define the rights and obligations of States with respect to the utilization of ocean space. Because the ways in which the seas are used are constantly evolving under the pressure of a variety of factors —political and economic, scientific and technological —the rules governing the uses of the seas cannot remain static;

they must be readjusted from time to time, without altering the principles on which they are based. Hence our insistence on the need for provisions for monitoring the application of the convention and on the desirability of including in the text suitable procedures for revising its provisions.

22. On the other hand, our job would be only half done if, after defining the rights of States in the different categories of ocean space, we did nothing to provide the essential means to ensure the exercise of those rights as an instrument for promoting the development and well-being of peoples. This is particularly important in the case of the third world countries, which are often rich in marine resources but poor in financial, scientific and technological resources. We must begin now to think about helping States to develop their own capacities, starting with marine scientific research, without which there would be no basis for even the transfer of technology. Let us, therefore, look forward and strengthen international co-operation both under the auspices of the United Nations and of regional and subregional organizations and through multilateral and bilateral programmes. That is a challenge which justifies our efforts to promote the utilization of the seas and oceans for the benefit of future generations.

23. In putting forward these ideas, the Peruvian delegation wishes to state once again, as it did in the formal debate in the plenary Conference, that its remarks should on no account be taken to imply acceptance of the revised negotiating text. Peru's final decision in that regard will have to be taken by a new Government. If that decision is affirmative and the Conference goes on to adopt the draft convention, the latter will have to be submitted to the competent national bodies and the proper domestic procedures will have to be completed in order for it to be approved and ratified. In the meantime, we hope that other Governments will reflect on the problems we have outlined and that at the forthcoming session, at Geneva, an agreement can be reached that will ensure the universality of the future convention.

DOCUMENT A/CONF.62/WS/7

Statement by the delegation of Bahrain dated 4 April 1980

[Original: Arabic]
[10 April 1980]

1. Like other delegations to the Third United Nations Conference on the Law of the Sea, the delegation of Bahrain wishes to record its observations and reservations regarding the reports submitted by the Committees.

2. My delegation supports the positions adopted by the developing countries with regard to matters examined by the First Committee and, in particular, supports the retention of the text of article 155, paragraph 6, regarding the moratorium on exploitation operations, as it appears in the revised informal composite negotiating text (A/CONF.62/WP.10/Rev.1), without replacing it with paragraph 5 of this article, as mentioned in the amendment contained in the annex to the report on the system of exploration and exploitation (see A/CONF.62/C.1/L.27, part II).

3. We also support the retention of the texts requested by the developing countries in article 5 of annex II concerning the transfer of technology. At this stage, however, my delegation has no comments to make on the report on financial arrangements (*ibid.*, part III) since the matters dealt with in that report are purely technical and, as such, must be referred to specialists.

4. With regard to the report on the Assembly and the Council (*ibid.*, part IV), we also support the positions adopted by the developing countries in connexion with the balanced distribution of powers among the organs of the Authority and, in particular, in connexion with voting in the Council, which we believe should take its decisions by a two-thirds rather than a three-fourths majority of the members present, as indicated in paragraph 7 of article 161 of this report.

5. In general, we have no objection to the report on the settlement of disputes (*ibid.*, part V) and hope that a consensus will be reached with a view to facilitating the work of the Conference.

6. My delegation's comments on the report submitted by the Chairman of the Second Committee (A/CONF.62/L.51), can be summarized as follows.

7. We support the position of the Arab States on the definition of the continental shelf as explained to the Conference by the representative of Iraq. In our opinion, the current provisions laid down in article 76, paragraph 5 and article 82 of both the revised informal negotiating text and the report of the Second Committee are complicated, unclear and generally unsatisfactory.

8. With regard to article 76, paragraph 5, we believe that distance should be the sole principle adopted and that the criterion of depth should be totally disregarded in view of its vagueness, the difficulty of its application and the adverse repercussions which it would have on the principle of the common heritage of mankind, since it would result in an undesirable expansion on the part of the coastal States at the expense of the area.

9. With regard to the definition of submarine ridges in article 76, paragraphs 3 and 6, as set forth in the report of the Chairman of the Second Committee, we do not agree with the amendments submitted in connexion with these submarine ridges since they remain vague and do not provide an acceptable legal definition in answer to all the questions raised by delegations.

10. Furthermore, we do not, in general, agree with some of the provisions in the report regarding the commission on the limits of the continental shelf, particularly in connexion with the functions and membership of this Commission. My delegation has already explained its viewpoint in this respect on a previous occasion.

11. We object to the provisions of article 82 concerning payments and contributions with respect to the exploitation of the continental shelf beyond 200 miles since, in our opinion, the payment rates specified in this article should be fully revised in such a way as to increase them in favour of the other States adversely affected as a result of this expansion of the continental shelf beyond 200 miles. We also believe that the text of this article should be amended in such a way as to delete the reference to exemptions during the first five years.

12. With regard to the rights of geographically disadvantaged States, my delegation has objections to the provisions of article 70 as it appears in the revised negotiating text since we support the positions of the geographically disadvantaged States with regard to the legal status of the exclusive economic zone and the rights of these States to an equitable share in the living resources of this zone. We would like to emphasize what we have repeatedly made statements on at this Conference regarding the need to agree on a precise definition of the "geographically disadvantaged States" which would take into consideration the economic interests of coastal States whose special geographical characteristics deprive them of adequate economic zones, in contrast to other coastal States which possess such exclusive economic zones. In our opinion, therefore,