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A/CONF.62/WS/10

Statement by the delegation of Austria dated 26 August 1980

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the reservations expressed by the spokesman for the Group of 77, is acceptable to us, and may be reflected in a revised text.

20. The proposals by the Chairman of the Second Committee (A/CONF.62/L.51)¹⁹, are acceptable to us, on the understanding that with regard to the continental shelf it is definitely decided that "The provisions of this article are without prejudice to the question of delimitation of the continental shelf between opposite or adjacent States".

21. In conformity with our concern about the preservation of the marine environment, we are pleased to note that a solution has been devised for the appropriate protection of marine animals.

22. The intelligent proposals by Mr. Nandan, with certain amendments which provide more appropriate protection for the interests of land-based producers—another of Colombia's priorities—represent an acceptable basis for negotiation.

23. The report by the Chairman of the Third Committee (A/CONF.62/L.50)²⁰ is realistic and although the existing texts of certain articles, such as article 254, do not fully meet our wishes, we can accept them as a basis for negotiation.

24. In accordance with an honourable tradition for Colombia, since it was our country which introduced the principle of "good faith" into the Charter of the United Nations at San Francisco, we now sponsor the most recent revised text relating to good faith and abuse of entitlement, on which there is a consensus for incorporation in the negotiating text.

25. Lastly, on the question of the specific suggestion contained in the report by Mr. Koh on the financing of the Enterprise if the convention should enter into force without being ratified by a considerable number of contributory States, my delegation considers this to be a realistic approach. No State can be expected to enter into financial commitments with regard to the Enterprise before the Enterprise has acquired juridical existence.

DOCUMENT A/CONF.62/WS/10

Statement by the delegation of Austria dated 26 August 1980

[Original: English]
[2 October 1980]

LEGAL RÉGIME OF THE CONTINENTAL SHELF

1. Since the very beginning of deliberations on the new régime of maritime space in the late 1960s, one of the main items of those discussions has turned out to be that of the seaward delimitation of that part of the submarine area where the coastal State should have sovereign rights for exploration and exploitation. A decision on that limit entails consequences not only for the respective coastal State but also for the international community as a whole, since at the same time it determined the size of the area belonging to the common heritage of mankind whose benefits should be distributed among all States. In consequence of such a division of the rights over the entire sea-bed, and thus of the benefits to be gained therefrom among the international community on the one side and the respective coastal States on the other, States without a continental shelf or with a limited one could derive benefits only out of that part of the sea-bed which would be allotted to the international community. On the contrary, a coastal State with a broad shelf would benefit from both parts of the sea-bed, from its respective continental shelf as well as from the international ones.

2. Hence States without any or with only a limited continental shelf have constantly stressed in the negotiations both in the Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction as well as during this Conference, the need to limit the extension of the continental shelf in such a manner as to establish a kind of balance between the coastal States' part of the submarine area and the international part. These States have also emphasized the necessity of an economically meaningful size for the international area.

3. Developments at the Conference seem, however, to run counter to such legitimate demands. The second revision of the informal composite negotiating text (A/CONF.62/WP.10/Rev. 2 and Corr.2 to 5) provides for such an extension of the continental shelf that only States with a broad continental margin gain unbalanced profits. When such inequality in fact is confirmed and even reinforced by law, the principles of justice and equity which are considered to govern the new law of the sea seem to be impaired. Attempts to re-establish some sort of balance and to reciprocate the above-mentioned advantages of some coastal States

resulted in the demand for the establishment of a Common Heritage Fund as well as for the obligation of coastal States to make payments and contributions in respect of the exploitation of the non-living resources of the continental shelf beyond 200 nautical miles (art. 82). Thus, like the establishment of a Common Heritage Fund, the latter provision would—but only to a rather limited extent—ensure that the principle of equity would be respected in the distribution of the benefits derived from the uses of the sea-bed. However, its short-comings are obvious: it is only applicable to the probably least profitable part of the continental shelf and it does not enhance any stimulation of the development of interest by the land-locked and geographically disadvantaged States in such exploitation of the submarine area.

4. A total exclusion of the land-locked and geographically disadvantaged States, by legal terms, from the exploitation of the continental shelf might entail a later interpretation of the respective provisions to the effect that the land-locked and geographically disadvantaged States themselves had voluntarily renounced their interest in such use of the sea. Consequently, the situation might occur that, in future legal and factual developments concerning that part of the sea-bed, the land-locked and geographically disadvantaged States would be deprived of any legal interests. Their legitimate interests might be set aside and, finally, totally ignored.

5. In order to ensure that the interests of the land-locked and geographically disadvantaged States not be excluded from such undertakings, even on commercial terms, and in order that they be respected, the following draft resolution, which has already appeared under the symbol NG6/12, is herewith reiterated:

"The Third United Nations Conference on the Law of the Sea,

"Taking into account the dependency of the economic development of all States on the availability of natural resources and the increasing need to extract these resources also from the continental shelf,

"Bearing in mind the sovereign rights of the coastal States over the continental shelf for the purpose of exploring it and exploiting its natural resources,

"Being aware, however, of the situation of the land-locked and geographically disadvantaged States which due to their geographical location may even be totally deprived from ex-

ploring and exploiting the natural resources of the continental shelf,

“*Convinced* that participation by land-locked and geographically disadvantaged States in the exploration and exploitation of the natural resources of the continental shelf will contribute to the economic development of all States concerned,

“*Considering* therefore that the land-locked and geographically disadvantaged States should also be given the opportunity to participate in the exploration and exploitation of the continental shelf,

“*Calls upon* coastal States to provide for the possibility by land-locked and geographically disadvantaged States of the same region or subregion, State entities or persons natural or juridical which possess the nationality of such States to participate in the exploration of the continental shelf and the exploitation of its natural resources.”

REGULATION OF MARINE SCIENTIFIC RESEARCH

6. Apart from the regulation of the international area, the exploration and exploitation of the natural resources of the exclusive economic zone and the right of transit, the attention of the land-locked and geographically disadvantaged States has been drawn also to the rules on marine scientific research, in particular to article 254. The *ratio legis* of that provision is, to a certain extent, to ascertain that the interests of land-locked and geographi-

cally disadvantaged States in participation in marine scientific research undertaken by third States are respected. However, that goal can only be achieved if the competences accorded to the coastal States in this article are exercised in such a manner as not to amount to the exclusion of the land-locked and geographically disadvantaged States from such marine scientific research. The interest of the land-locked and geographically disadvantaged States relates also to other articles on marine scientific research, namely, to those which provide for the obligation of States to cooperate in fostering and facilitating marine scientific research, i.e. articles 239, 242, 243, 244 and 255. These articles are equally of particular importance to the land-locked and geographically disadvantaged States since they create favourable conditions enabling them to participate in, and carry out, marine scientific research projects by themselves or in co-operation with other States in a more general way, without the need to refer to the participation rights embodied in article 254. By virtue of these articles, land-locked and geographically disadvantaged States too would be in a position to develop their own research capabilities, certainly not only to their own benefit alone, but also to that of mankind as a whole. It is particularly with this prospect in mind and in accordance with the provisions mentioned above that the land-locked and geographically disadvantaged States interpret Part XIII of the negotiating text. Such an interpretation would only render effective the over-all duty governing the work of this Conference to enlarge the opportunities of all States to benefit from the richness of the sea.

DOCUMENT A/CONF.62/W.S./11

Statement by the delegation of Yugoslavia dated 25 August 1980

[Original: English]
[2 October 1980]

1. The Yugoslav delegation stated its position with regard to the most important issues at the Caracas session of this Conference. In this final stage of informal negotiations, the Yugoslav delegation presents its views concerning some of the most significant questions of the future convention on the law of the sea.

2. From the very beginning of the preparatory work for this Conference, Yugoslavia, as a non-aligned and developing country, made a point that it wished to participate actively in the elaboration of a comprehensive convention on the law of the sea. Yugoslavia endorsed the concept of the Area and its resources being the common heritage of mankind and the necessity of the establishment of an international régime, including an appropriate international machinery for the management of these resources and the distribution of benefits in the interest of mankind as a whole, with particular consideration for the interests and the needs of the developing countries, regardless of their geographical location. This revolutionary concept, which has already become a peremptory rule of international law, will be a relevant part of the new international economic order.

3. Yugoslavia has always endorsed the principle of full and permanent sovereignty of all States over their national resources and it is its firm stand that this principle has also to be applied in the development of the new international law of the sea. Yugoslavia, therefore, notes with satisfaction that the concept of the exclusive economic zone of the coastal State as an institution *ovi generis* has been adopted. This régime recognizes sovereign rights of the coastal State over living and non-living resources of the sea adjacent to its coast as well as with regard to other activities for the economic exploration and exploitation of the zone and ensures the jurisdiction of the coastal State over different activities: the establishment and use of artificial islands, installations and structures; marine scientific research; the protection and preservation of the marine environment. At the same time, Yugoslavia stresses that the establishment of the exclusive economic

zone must not be prejudicial to the freedoms of navigation and overflight, as has been affirmed at the fourth Conference of the Heads of State or Government of Non-Aligned Countries held in September 1973 in Algiers.

4. The régime of passage through straits used for international navigation, settled in a compromise solution in Part III of the second revision of the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5), in the opinion of the Yugoslav Government gives the bordering coastal States the right to exercise their jurisdiction in straits in such a way as to effectively ensure their security and safeguard their legitimate national interests. At the same time, passage and overflight in straits are also guaranteed.

5. It is a fact that the rights of coastal States in the exclusive economic zone and on the continental shelf could lead to some restrictions of the freedom of navigation. The jurisdiction of coastal States regarding artificial islands, installations and structures, scientific research as well as the protection of the marine environment, and other rights and duties in the exclusive economic zone may represent obstacles to the freedom of navigation. The exercise of the control by the coastal State in its contiguous zone up to 24 nautical miles could provoke other impediments to the freedom of navigation. All the restrictions in the exclusive economic zone in its full breadth up to 200 nautical miles do not affect navigation to the extent of impeding it. However, when they are applied to relatively narrow parts of the exclusive economic zone in straits used for international navigation, these restrictions may hamper navigation to a larger degree, particularly in straits with intensive maritime traffic, or in the case where the strait is used as the only passage between a semi-enclosed sea and other seas.

6. The régime to be applied to straits in accordance with article 36 has not been drafted clearly enough. Therefore, the Yugoslav delegation proposed its informal suggestion for the pur-