

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/11

Statement by the delegation of Yugoslavia dated 25 August 1980

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

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 *sui 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-

pose of a clearer drafting of article 36. A considerable number of delegations supported the Yugoslav proposal and many others expressed the desirability of improving the drafting of article 36. However, objections made by a few delegations had prevented the Yugoslav amendment from being incorporated into the first two revisions of the informal composite negotiating text without offering an opportunity to settle the differences through concrete negotiations in order to reach a compromise formula. Confident that it is possible to find such a formulation of article 36 that would not be interpreted as affecting either the freedoms of all States under Parts V and VII or the rights and jurisdiction of States bordering straits, the Yugoslav delegation has in this resumed ninth session had the opportunity of having exhaustive consultations to this end with many other interested delegations. These efforts have resulted in a new, compromise formula, to which, to the belief of the Yugoslav delegation, there would be no objection preventing the Collegium from including it in the third revision.

7. The Yugoslav delegation supports the solution, reached after long negotiations, which gives the right to land-locked and geographically disadvantaged States to participate, on an equitable basis, in the exploitation of an appropriate part of the surplus of the living resources of the exclusive economic zone, provided that the surplus is determined by the coastal State.

8. The purpose of the Yugoslav suggestion of 20 August 1979 (C.2/Informal Meeting/1/Rev.1), to amend paragraph 3 of article 62, was to emphasize the requirements of developing countries, as such, in access to the surplus, but to give priority to those in the region and subregion. This suggestion had gained general support, but has not been included in the second revision. The Yugoslav delegation expresses its view that this amendment could be included in the final draft.

9. The comments of the Yugoslav delegation regarding the proposed articles 76 and 82 are the following. The group of Arab States, Yugoslavia and many other States favoured the 200 nautical miles limit of the continental shelf. The flexibility of these States in the negotiations has not been reciprocated by the broad-margin States. Proposals to increase the rate of payment or contribution with respect to the exploitation of the continental shelf beyond 200 nautical miles have not been examined either. In our view, only the substantive participation of the international community in the benefits accruing from the exploitation of the continental shelf beyond 200 nautical miles could justify the extension of the continental shelf régime beyond that limit. The payments and contributions should be made to the Authority. The idea of a common heritage fund established by the Authority for the payments and contributions in respect of the exploitation of the continental shelf beyond 200 nautical miles could play a useful role.

10. The provisions on the setting up of a boundary commission, in our view, have been drafted in a satisfactory manner.

11. Yugoslavia considers that the proposed solution for the determination of the continental shelf of Sri Lanka, as proposed in the statement of understanding of 21 August 1980 (C.2/Informal Meeting/65), represents a satisfactory way of solving this specific problem.

12. The Yugoslav delegation endorsed the inclusion in the second revision of the text on delimitation of the exclusive economic zone and the continental shelf between States with opposite or adjacent coasts suggested by the Chairman of negotiating group 7 which it considered to provide a better basis for consensus than the previous one, contained in the first revision. The informal consultations held at this resumed session on the three issues representing a package (delimitation criteria, interim measures, settlement of disputes in relation to delimitation) have been interesting and useful and have confirmed the view of the Yugoslav delegation that the text of articles 14 and 83, in the second revision, as well as article 298, paragraph 1 (a), should be maintained in the third revision. As regards articles 74 and 83 this conclusion relates to the entirety of their content, including paragraph 4, dealing with agreements in force.

13. In the First Committee matters, the views of Yugoslavia do not differ from those of the Group of 77. Although the Yugoslav delegation may note with satisfaction that considerable progress has been made during the negotiating period, it would like to reaffirm its position on the most important issues.

14. There is no doubt that the decision-making process in the Council is most important and complex, bearing in mind the need for efficient functioning of the Authority, on one side, and, on the other, the presence of national economic interests of the States Parties as well as of the world community as a whole. The Group of 77 has shown utmost flexibility in the negotiations for a balanced decision-making system in the Council. The right of veto or of a blocking minority was unacceptable if we really wish to ensure the efficiency of the Council. The suggestion made in document A/CONF.62/C.1/L.28/Add.1 could be accepted in conformity with the position taken by the Group of 77. The proposed solution is an appropriate one, which could meet an overall consensus notwithstanding some reservations and different suggestions expressed in the Conference.

15. Considerable progress has been made in the negotiations on the transfer of technology. However, the proposed text is still not satisfactory. The definition of the transfer of technology to the Enterprise in article 5, paragraph 8, of annex III in the second revision, in the view of the Yugoslav delegation, should include all stages of activities and at least processing. Furthermore, the Authority as a contracting party must have assurances of the availability of the necessary technology under reasonable commercial terms and, in particular, of effective protection of its rights in the case of delays or non-fulfilment of the contractors' obligations. In article 5 of annex III, the procedure for the application of sanctions for non-fulfilment of obligations of the contractor or of the owner of technology for the transfer of technology is still remote, as provided for in article 5, paragraph 4, while their legal obligations are limited. It would be necessary, in the event of non-fulfilment of the obligation, to enable the Authority as a party to the contract, to protect its interests effectively in suspending or terminating the contract. This is a right which any contracting party enjoys and it is difficult to conceive why this right is denied to the Authority.

16. A satisfactory solution for the problem of the financing of the Enterprise is very important. The text, as it was formulated in the second revision was, in the opinion of the Yugoslav delegation, a far better solution than the one proposed in the new document. Bearing in mind that the Enterprise is an organ of the Authority, the shares of the States members in the free-interest-bearing loan should be paid to the Enterprise on notification without imposing further conditions, in order to enable it to start the exploitation. In that view, the conditions imposed in article 11, paragraph 3 of annex IV in document A/CONF.62/C.1/L.28/Add.1 do not seem to be a guarantee for the availability of the fund to the Enterprise.

17. The functioning of the Authority in the parallel system of exploitation during the first period could necessitate changes. Therefore, great relevance has to be attributed to the provisions on review conference. The solution proposed in article 155, paragraphs 4 and 5 in document A/CONF.62/C.1/L.28/Add.1, including the system of amendments, is acceptable for Yugoslavia as a good one for the purpose of making changes in the system of exploitation. This procedure provides for acceleration of the work of the review conference and has the advantage of being a suitable device for changing the system. Instead of a moratorium, we see a good balance in the adoption of amendment by a two-thirds majority.

18. The common interests of opening the area for production of metals should be balanced with the interests of the land-based producers and should not lead to adverse effects on the world market. Therefore, in respect of production limitation, Yugoslavia, together with the Group of 77, considers that the interests of sea-bed mining, in particular the interest in the production of the Authority, should be protected in an appropriate and balanced

manner. The suggestion in document A/CONF.62/C.1/L.28/Add.1 meets those objectives and is acceptable for the Yugoslav delegation.

19. The Yugoslav delegation believes that the provisions on the protection and preservation of the marine environment when applied in good faith and with full awareness of the responsibility for the environment in which we live and work, could ensure the imperative need to prevent, reduce and control all forms of marine pollution.

20. Yugoslavia maintains the same position also as regards part XIV and other relevant provisions of this convention on the transfer of technology, which we consider of utmost importance for the developing countries.

21. With respect to the legal régime for marine scientific research, the position of the Yugoslav delegation has always been in favour of such a consent régime within the exclusive economic zone and on the continental shelf of the coastal State which would give the coastal State the sovereign right to authorize and regulate foreign marine scientific research therein. Based on the premise that the marine scientific research régime should correspond to the legal character of the area in which marine scientific research is being carried out and on our understanding of the principle of the common heritage of mankind, it is the view of the Yugoslav delegation that the Authority should have a certain role and competence regarding marine scientific research activities in the area and in their co-ordination, harmonization, and also regarding the utilization of research results for the benefit of the entire international community.

22. Among the texts discussed in the first part of this session, the Yugoslav delegation does not oppose new formulations on the cessation or the suspension of marine scientific research. Yugoslavia is also ready to accept the new wording on the rights of neighbouring land-locked and geographically disadvantaged States for it is now more clearly based on the coastal States' consent regarding marine scientific research in their zones.

23. The Yugoslav delegation considers that the system for the settlement of disputes embodied in the second revision re-

flects the reality of international relations today and that nothing amounting to more than that could be achieved. For some categories of dispute, namely, disputes concerning delimitation, conciliation seems to be the furthestmost limit. We believe that what has been achieved in Part XV and the annexes, providing for a well-elaborated system of a number of legal means, procedures and institutions, constitutes a remarkable success and real progress in comparison to the state of positive international law. The Yugoslav delegation has accepted in the over-all consensus the proposed amendment of the title of the Law of the Sea Tribunal to International Tribunal of the Law of the Sea.

24. The Yugoslav delegation accepts in general the report of the President on general provisions (A/CONF.62/L.58). The delegation agrees on the inclusion of the general Provisions in the third revision. At the same time, the Yugoslav delegation considers that the other suggestions have not got sufficient support for giving prospect of consensus and therefore should not be included.

25. Our constant wish has always been to see the Caracas convention come into force as soon as possible, however not by too low a number of necessary ratifications. We considered the figure of 70 as an appropriate figure, but we agreed to 60 as the possibly lowest figure which could still be satisfactory and could also accelerate the coming into force of the convention, at the same time stimulating further ratifications and accessions. For all these reasons in favour of an early entry into force and functioning of the international Authority we consider that any national legislation having for purpose unilateral actions in the area is contrary to positive international law.

26. The Yugoslav delegation considers the establishment of a preparatory commission useful and necessary in the interest of the implementation of the Convention immediately after the entry into force. We also endorse the stand that this commission should be adopted by a resolution of the Conference as a part of the final act for the reason of avoiding the need of ratification. The provisions on the status and competences of the commission should be concurrently agreed upon.

DOCUMENT A/CONF.62/WS/12

Statement by the delegation of Spain dated 26 August 1980

[Original: Spanish]
[3 October 1980]

1. For well-known reasons having their roots in its history and its geography, Spain is a country with very strong links to the sea. That is why almost all the issues discussed at this Conference profoundly affect its interests. The Spanish delegation wishes to place on record its opinion on the major issues under consideration at this Conference, using as a frame of reference the provisions of the second revision of the informal composite negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5) and the results of the negotiations at the present session.

2. Our position with regard to straits used for international navigation is well known. The text as it stands inevitably evokes a number of comments from us. We earnestly hope, however, that the Conference, which is aware how vital certain formulations are for a State bordering straits, such as Spain, will accept our legitimate requests and enable us to join in the general consensus. My delegation would have welcomed the incorporation, as a codifying device, of the traditional systems of rules based on innocent passage without possibility of suspension, as reiterated by the International Court of Justice in the Corfu Channel case.²¹

The Spanish Government feels that that régime satisfactorily safeguards the interests of navigation and of the States bordering straits.

3. It was not, however, that régime that was incorporated into Part III of the negotiating text, which introduces a new régime entitled "transit passage" that involves, *inter alia*, the right of overflight by aircraft over the territorial sea of straits used for international navigation.

4. At the fourth session held in New York in 1976, the Spanish delegation agreed, in a spirit of compromise, that maritime navigation should be subject to this new régime. In fact, with regard to transit passage of ships, the text can serve as a basis for negotiation, although it has serious shortcomings in the matter of the regulatory powers conferred on bordering States, which are inadequately specified, just as the list of military activities prohibited to ships passing through the straits is inadequate.

5. The Spanish delegation, however, remains opposed to the articles on overflight because it holds that in this respect the text is not acceptable. Since that time—1976—it has not had an opportunity to continue negotiations on this matter within the Conference and the informal suggestions it submitted at the seventh session in Geneva in 1978 (C.2/Informal Meeting/4) were not taken into account in either the first or the second revision of the

²¹ *Corfu Channel Case, Judgment of April 9th, 1949*: I.C.J. Reports 1949, p. 4.