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Statement by the delegation of Spain dated 26 August 1980

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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 reflects 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 furthermost 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.

negotiating text. Clearly, therefore, we have serious objections to make with regard to those articles. Specifically, the present text does not specify what the activities prohibited to aircraft are; it does not expressly mention the laws and regulations which States bordering straits may enact in relation to overflight, and it makes no reference to the air corridors which, on the analogy of the sea lanes provided for in the transit passage régime itself, will have to be established.

6. What is causing most concern to my delegation, however, is the fact that, under article 39, paragraph 3 (*a*), State aircraft are subject to practically no regulation since they will only "normally" have to comply with the rules and safety measures established by the International Civil Aviation Organization. The inevitable consequence is that such aircraft in circumstances deemed to be "abnormal" would represent a definite hazard to air navigation, the populations bordering the straits and the safety of the States themselves over which they fly.

7. Moreover, although article 42, paragraph 5, provides for international responsibility to be borne for any loss or damage caused to States bordering straits by ships or aircraft entitled to sovereign immunity, it requires such ships and aircraft to have acted in a manner contrary to the laws and regulations of the said States or to other provisions of Part III of the convention. Such ships and aircraft, while making their transit passage, obviously can create serious hazards and, although making them subject to a régime of objective responsibility would have been the satisfactory course, the addition of a general provision on responsibility has improved the present text.

8. The Spanish delegation must point out that, whereas Section 3 of Part II of the text, on innocent passage, which constitutes a codification of traditional rules, has been formulated precisely and in detail, Part III, which establishes a new régime of passage, lays down no detailed regulations which would be all the more desirable in order to prevent future difficulties concerning its interpretation and application. The important articles 38, 39 and 42 are, in our opinion, inadequate to safeguard the vital interests and, above all, the security of States bordering straits.

9. Unsatisfactory wording also affects articles 221 and 233 in Part XII. Article 221, as it stands, states that coastal States may, in specified cases, take emergency measures beyond 200 miles, but it is not clearly stipulated that they may take similar measures six or seven miles from their coasts when a casualty occurs in a strait whose waters form part of their territorial sea. In order to rectify this situation, which my delegation believes no other delegation will want, one of the following devices should be adopted: either to delete "beyond the territorial sea" or to add the words "within or" before that phrase. Article 233 has to be considered discriminatory against States bordering straits, inasmuch as it is precisely their geographical narrowness that creates greater risks of accidents which could cause irreparable damage to the marine environment. Apart from being unjust, this provision is poorly drafted since what is affected is not the "legal régime" but the "transit régime" of straits.

10. With regard to the exclusive economic zone, my delegation finds that these articles, as a whole, exemplify the delicate balance which, while it contributes to the development of international law, also presupposes some crystallization of rules accepted as customary law in the recent practice of States.

11. Nevertheless, we must point out that the proposed texts do not establish a system which is sufficiently objective to safeguard the legitimate interests of States whose nationals have habitually fished in zones which were formerly considered to be the high seas. The Spanish delegation must refer in particular to the rules on access by developed States with special geographical characteristics to fishing in the economic zones of third countries. There is a contradiction between the obligation of the coastal State to give access to States whose nationals have habitually fished and the right which the text apparently gives those States to access to the aforesaid economic zones of third States. The creation of long-distance fishing fleets necessarily jeopardizes the existence of special characteristics, whether geographical or socio-economic, and there is no reason whatsoever to establish a distinction. Nevertheless, my delegation's interpretation of the negotiating text is that access of the fleets of developed States with special characteristics to fish in that economic zone will in any event be conditional upon the coastal States' having previously granted access to the nationals of the other States who had habitually fished in that zone.

12. Still on the subject of the exclusive economic zone, it must be recognized that the inclusion of the words "discretionary powers" in article 296, paragraph 3 (*a*), upsets the balance achieved in the arrangement of the second revision of the negotiating text. That article, adjective and purely procedural in character, contains value judgments which weaken the character of the substantive rights and duties of coastal States laid down in articles 61 and 62 of Part II.

13. With regard to the delimitation of maritime spaces in articles 74, 83 and 298, paragraph 1 (*a*), my delegation considers that the second revision of the negotiating text provides a better basis than the first for settling the issue. We believe that its inclusion constituted an advance, and that its retention is a prerequisite for a final solution.

14. At this session, for the first time in two years, there were informal consultations between the two interest groups. It is our hope that these consultations and contacts will produce results now or in the near future.

15. In the second revision, a reference to international law has been introduced into articles 74 and 83 and the reference to "circumstances prevailing" has been reworded, whereas in article 298 a system, although an imperfect one, for the compulsory settlement of disputes has been replaced by simple conciliation, confined to specified cases.

16. I must point out that my delegation advocates a comprehensive system, based on a simple objective principle, that of equidistance, adjusted where necessary for the special circumstances of the individual case and complemented by an absolute objective rule in transitory situations, together with a system of dispute settlement providing for decisions having binding force. Not one of these aspirations is reflected, however, in the present text, and in order to make that text acceptable articles 74 and 83 must contain a sufficiently precise and objective form of words, based on a reference to international law, in order to offset the loss of the compulsory dispute settlement that we hoped for.

17. With regard to marine scientific research, there is one article the reasons for which are incomprehensible to my delegation: article 254, particularly the provisions concerning "geographically disadvantaged States". On the one hand, an effort is being made to facilitate research activities and speed up the necessary formalities (implied consent, presumed authorization, facilities for projects of international organizations, assistance to research vessels, etc.) as much as possible, and, on the other hand, obligations are introduced which are difficult to fulfil and for which there are no logical grounds. None the less, my delegation, in a spirit of compromise, is prepared to accept it provided the aforesaid States are described by the wording used and defined in article 70.

18. With regard to Part XI, Spain desires equitable and expeditious exploitation of the resources of the Area. It accordingly accepts the principles of the so-called parallel system which, if it is to be credible and comprehensive, should establish real and not merely formal equality between the activities of the Enterprise of the Authority and the activities of States and their nationals.

19. In fact, unless the Enterprise of the Authority is viable, there is no genuine parallel system since the Enterprise could not compete with highly industrialized States and their nationals. The convention should accordingly lay down detailed rules on the transfer of technology which would ensure that the Enterprise can compete with States and individuals. In order to ensure that

the Enterprise is viable, moreover, it must be given the required financial resources. The primary source of funding should be the system of charges and fees for the activities of States and individuals that have concluded contracts on the subject with the Authority, first, because of the very nature of the compromise on which the parallel system is based, as is demonstrated by the history of the negotiations: access of the industrialized States to the Area in return for making the Enterprise viable, and secondly, reasons of elementary justice support that arrangement.

20. Under the parallel system, the *quid pro quo* for the viability of the Enterprise is the right of access of States and individuals to the Area within a general framework of legal security. In this connexion my delegation advocates that there should be embodied in the convention a substantive and procedural specification of the conditions governing access to the Area and the conduct of activities in it: well-formulated legal rules to ensure the conclusion and execution of contracts, once the applicants have complied with the stipulated requirements, and jurisdictional means of dispute settlement to ensure compliance with those rules.

21. We consider, moreover, that the wording suggested by the Chairman and co-ordinators of the group of 21 at the present session (A/CONF.62/C.1/L.28 and Add.1 and 2), still fails to take account of the interests of intermediate industrialized countries in the matter of the composition of the Council of the Authority. Since heavy financial burdens are going to be imposed on these countries, the equitable course is to give them a reasonable opportunity to participate in the management of the Authority. Paragraph 1 of article 161 therefore needs to be revised, and this can be done without affecting the delicate balance achieved in paragraph 7 of that article on the method of taking decisions. Negotiations to this end should be held at the next session of the Conference, and my delegation accordingly proposes that in the third revision a foot-note should be added to paragraph 1 of article 161 stating that the matter of the composition of the Council is to be the subject of later negotiations.

22. My delegation also wishes to place on record its concern with regard to the provisions on the financing of the Enterprise.

23. With regard to the final clauses of the convention, my delegation wishes to refer in particular to the subjects of reservations and relation to other conventions and international agreements.

24. Some delegations have maintained that the convention should prohibit all reservations. The grounds for that view are that the ideas of consensus and a package deal are incompatible with reservations. My delegation, however, holds that that view is valid only to the extent that genuine, absolute consensus, satisfactory to all delegations, is achieved on all issues. Should this ideal be unattainable, some reservations should be admissible. Such an option would undoubtedly affect the integrity of the convention, but it is nevertheless true that it would be conducive to its universality. The best course would therefore be for the Conference to maintain with regard to reservations a satisfactory balance between the guiding principles of integrity and universality, both of which are mentioned in the "Gentleman's Agreement" incorporated in the rules of procedure as aims to be achieved.

25. With regard to the relationship of the future convention to other conventions and international agreements, particularly the 1958 Geneva conventions, my delegation has already placed on record its view that a clause derogating those conventions does not appear to be a satisfactory course. The Geneva conventions represent a significant effort to codify the customary law of the sea and, as stated in the draft preamble, such customary law would continue to govern matters not regulated by the new convention. Again, the drafting of the new law of the sea takes such customary law as its point of departure. If the Geneva conventions remain in force, there would be no adverse effect on States which did not participate in drafting them and are not parties to them since, as is laid down in article 30 of the 1969 Vienna Convention on the law of treaties,[22] the Geneva conventions would be applicable solely between States Parties to them and to the extent that they were compatible with the provisions of the new convention.

[22] See *Official Records of the United Nations Conference on the Law of Treaties, Documents of the Conference* (United Nations publication, Sales No. E.70.V.5).

DOCUMENT A/CONF.62/WS/13

Statement by the delegation of Honduras dated 25 August 1980

[Original: Spanish]
[3 October 1980]

1. The delegation of Honduras has studied carefully the texts submitted for its consideration both by you, in your capacity as President of the informal plenary Conference on Final Clauses and Settlement of Disputes, and by the Chairmen and Co-ordinators of the First, Second and Third Committees and which, in accordance with the procedure set forth in document A/CONF.62/62,[23] could be incorporated in a third revision of the informal composite negotiating text by the Collegium of Chairmen, taking this debate into account.

2. The delegation of Honduras considers that, generally speaking, the resumed ninth session has maintained the momentum of the negotiations on outstanding issues initiated in 1979 and that we are very probably closer than ever before to the conclusion of the negotiations and the transition to a final stage that will make it possible to adopt a broad, comprehensive and generally acceptable convention in 1981. That is the goal we have set ourselves, and we should not affect its attainment by adopting inflexible positions or taking unilateral action.

[23] *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X.

First Committee

3. Honduras considers that the texts resulting from the negotiations relating to First Committee items (A/CONF.62/C.1/L.28 and Add.1) could be incorporated as a package in the third revision. The negotiation of these texts was arduous and difficult, but the results achieved deserve our support, although we still have some specific doubts about certain articles or the over-all relationship between some of them.

4. Honduras is gratified to note that there is no longer any resistance to article 140 and supports the new compromise texts of article 140 and article 160, paragraph 2 (*f*), concerning the carrying out of activities in the Area for the benefit of mankind and the equitable sharing of the benefits derived therefrom. The delegation of Honduras supports the texts on production policies, but still has misgivings about article 150, subparagraph (*h*), which it would prefer to see deleted. With regard to article 151, paragraph 4, it believes that further studies are required on the system of compensation.

5. The review conference system provided for in article 155 deserves our support, provided that the equilibrium of concessions which it implies is maintained and that it is not altered or weakened further.