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Statement by the delegation of Canada dated 26 August 1980

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1. Last year attention was drawn to the importance of ensuring that the rule of consensus, which has guided our deliberations from the outset, does not become transformed into either the tyranny of the majority or the veto of the minority. The position of the Canadian delegation on the new texts which have been submitted, as well as some earlier texts presented subject to provisos that they require further negotiations is outlined below, and examination of these changes is made against that yardstick of consensus.

First Committee

2. The Canadian delegation shares the feeling that the interested delegations should continue to consult and negotiate face-to-face on unresolved issues such as the nickel-production formula, to which the Chairman drew specific attention.

3. Concerning the development of resources of the area, the first proposal for a production formula appeared as far back as 1976. Since then, Canada and many others have sought to achieve a formula that would assure the complementary development of land and sea-based resources, by developing a formula that would provide for enough nickel for five initial mine sites and would go on to phase in sea-bed mining over a period of years after commercial production begins. Gratitude should be expressed to those who directed their efforts towards such a solution. Our concerns on this matter were directed to reaching a solution equitable to all. During the evolution of negotiations at this session we have supported, together with other delegations, proposals for a suitably amended production formula, and for an effective market access provision. We also sought, together with other land-based producers, an enforceable provision on unfair practices.

4. In the revision of subparagraph (*i*) of article 150 suggested by the co-ordinators (see A/CONF.62/C.1/L.28 and Add.1) there is no provision on unfair practices, and an extremely weak provision on market access. We are particularly surprised and concerned that minerals mined from beyond national jurisdiction would not be treated as imports but would be deemed to be minerals mined from within national jurisdiction just as if they were taken from a land-based mine of the major consumer sea-bed miner in question. It is very hard to reconcile this position with the concept of an area beyond national jurisdiction which represents the common heritage of all mankind. The Canadian delegation is very disappointed with this provision and reserves its position on the text.

5. The Canadian delegation also reserves its position on article 151, paragraph 2 (*b*) relating to the production formula. The production formula proposed by the co-ordinators does not provide an effective mechanism for phasing in sea-bed mining, on the basis of the existing floor-safeguard combination. The safeguard should be reduced to 70 per cent and the floor to 2.5 per cent, as suggested by the delegation of Nigeria. The present combination of a 3 per cent floor and a 100 per cent safeguard favours sea-bed miners in that it allows sea-bed production to exceed total growth on world consumption. Even assuming, for example, a 2.3 per cent cyclical growth trend in world nickel consumption with sea-bed mining starting in 1991, the formula of the second revision of the negotiating text (A/CONF.62/WP.10/Rev.2 and Corr.2-5) would allow sea-bed miners to exceed world growth in consumption over a great deal of the interim period. By year 11, that would allow approximately 370,000 tonnes of sea-bed nickel to be produced while growth in consumption by that year would be only 170,000 tonnes of nickel. By year 18 the formula would allow 528,000 tonnes of sea-bed nickel while the growth in consumption would be only 370,000 tonnes. The balance achieved in the first revision (A/CONF.62/WP.10/Rev.1) ceiling formula has been lost due to the imposition of the current floor-safeguard combination, and the production regulation provisions do not now cover the interests of those they were originally meant to protect.

6. It is our understanding that the text remains open for discussion on the interrelated issues of unfair practices, market access, compensatory financing and the production formula. It is highly desirable that such issues be resolved to the satisfaction of all parties directly affected, including all those delegations concerned to ensure that the interests of the Enterprise are protected on some basis other than the 1 to 5 ratio now provided for. My delegation will be pleased to participate in negotiations leading to a generally acceptable solution.

7. On Council voting and composition, the Canadian delegation is pleased to note that widespread agreement has been reached between major interest groups on this all-important issue which has proved so difficult for so long. This is the first chance other than a brief First Committee meeting where we have been given an opportunity to comment on these provisions. We consider them to be a considerable achievement, although we have concerns about some aspects of the provisions regarding composition. The addition of group nominations set out in article 161, paragraph 2 (*c*) is an improvement towards ensuring representation by those States who will reflect the interests of their groups, provided, of course, the groups referred to are those set out in paragraph (1) (*a*) to (*e*) of article 161 and not only regional groups. It is understood that article 161, paragraph 2 (*c*) is intended to ensure that interest groups would nominate the members of such interest groups, while geographic groups would appoint members from geographic regions, but this provision should be amended to make this point perfectly clear, and Canada associates itself completely with the position of the United States of America on this issue. In addition, since interest groups will be putting forward the nominations, it would be useful to define more clearly how each group is constituted in order to prevent problems in the future. The land-based producer group might usefully borrow some of the language from the first two groups regarding percentages or number of States involved. We are pleased to note that a clarification now makes clear that only net exporters will be eligible for the land-based producer group, but we remain hopeful that the proposal we put forward, together with a number of other delegations, that only land-based mine production should be taken into account will be adopted although it is our clear understanding that this is what is meant by the text in any event. This proposal has been before the First Committee's Chairman for some time and has received the support of a substantial number of land-based producers. These suggestions, mainly aimed at clarifying the text and ensuring representation by the intended group of States, should create no opposition and we look forward to seeing them contained in the third revision.

8. The delegation of Canada is concerned that the Authority be in a position to adopt stringent environmental controls over sea-bed mining to ensure protection of the marine environment. My delegation is thus surprised to see that the latest proposals concerning the powers of the Council (art. 162, para. 2 (*v*) and (*w*)) subject general decisions as to the protection of environmentally sensitive areas to a ¾ vote, and appear to subject the exercise of the power to issue stop-work orders to the ¾ voting rule, and after 30 days to a veto (art. 161, para. 7 (*c*) and (*d*)). In the view of my delegation these provisions are highly undesirable and contrary to the fundamental obligation of all States to preserve the environment, as provided for in article 192. How can we agree that "States have the obligation to protect and preserve

the marine environment'' as a general obligation applicable to all States while at the same time allowing one State to veto measures directed to the attainment of that very objective? This is not acceptable to my delegation.

SECOND COMMITTEE

9. With respect to the text proposed by the Second Committee, my delegation has considerable satisfaction over the equitable outcome of the negotiations concerning the continental margin, although it must continue to reserve its position concerning the precise provisions for revenue sharing and also with respect to the existing language of article 76, paragraph 8 relating to the recommendations of the proposed commission on the limits of the continental shelf. The sovereign rights of coastal States which are confirmed in the text must not in any way be undermined by inconsistent provisions.

10. There is widespread support for a change to article 63, paragraph 2, proposed to all interested parties during this session, so that it will conform more closely to its counterpart provisions in the high seas fisheries articles. There is, in fact, no rational reason why the language in article 63, paragraph 2, should be different from articles 117 and 118, which deal with fisheries on the same stocks in the same area, the high seas. The Canadian delegation supports the concrete proposal made at this session to rationalize and harmonize the text, and requests as a minimum that it be included in the revision currently under way. Indeed, we remain of the view that a relatively simply amendment to article 63 would suffice, as follows:

> ''2. Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the other States fishing for such stocks in the adjacent area shall co-operate either directly or through appropriate subregional or regional organizations in adopting such measures for their respective nationals as may be necessary for the conservation of these stocks in the adjacent area.''

We have heard no persuasive arguments as to why the provisions ought not to be included in our text. On the contrary, we have received extremely favourable responses to this proposal from coastal States, from distant water-fishing States, from land-locked States and from geographically disadvantaged States. We earnestly hope that this proposal will prove so widely acceptable as to constitute a further step towards consensus and thus be included.

11. However, the Canadian delegation wishes to reiterate its view that a significant strengthening of article 63 is necessary, to provide for conservation, in the high seas, of stocks which ''straddle'' the 200-mile limit of coastal States.

12. Concerning the question of maritime boundary delimitation between States with adjacent or opposite coasts, the consultations held at this session between the two interest groups on this issue have proven very useful. They have shown that the two groups are not that far apart. We continue to hope that the two groups can reach agreement. In the meantime, however, and after listening most carefully to the expression of views of all interests concerned, my delegation continues to consider that the provisions of articles 74 and 83 in the second revision, carefully drafted after extremely lengthy negotiations—represent the best basis of consensus achieved to date, even though my delegation continues to have reservations about some aspects of the text.

THIRD COMMITTEE

13. With respect to the provisions emanating from the Third Committee relating to preservation of the marine environment, marine scientific research and transfer of technology, our preliminary examination of the changes proposed by the Chairman of the Third Committee (A/CONF.62/C.3/L.34 and Add.1 and 2) do not give my delegation difficulty, subject, of course, to the recommendations of the Drafting Committee.

14. We remain concerned by the article 246, paragraph 6 reference to detailed exploratory operations as a possible infringement of coastal State sovereign rights over the resources of the continental shelf. My delegation would like to ensure that this potential problem is avoided by substituting ''specific'' for ''detailed'' so that there can be no suggestion that a coastal State may be obliged to reveal proprietary information about exploration and exploitation activities protected by national law.

PLENARY

15. With respect to the extremely significant and highly constructive series of proposals emanating from Plenary, the Canadian delegation wishes to offer only a few comments.

16. The delegation of Canada has studied the results of the President's efforts to improve and tighten the existing provisions on dispute settlement and can support the President's proposals.

17. My delegation has an open mind concerning the preparatory commission, but we have a growing concern over the role of the preparatory commission, a body which has not been fully discussed and which will not be given careful consideration until our next session. There appears to be a tendency in the Conference to assume this commission will function as almost a continuing Conference on the law of the sea—but with very important differences. We do not yet know the composition of the Commission. Will it be representative of all States at this session? Will it adequately reflect the varying interests at the Conference? How will it make its decision? We do not know the answers to these questions, nor will we know them until the terms of reference of the commission are worked out. Despite these concerns, the commission would be given far-reaching powers under the proposed revision of the negotiating text which we are contemplating. Under article 302, paragraph 4 in the final clauses, the rules, regulations and procedures adopted by the commission would apply until formally adopted by the Council and the Assembly. Under article 161, paragraph 7 (*d*) proposed by the First Committee the rules, regulations and procedures of the Authority have to be adopted by consensus by the Council. In the absence of such consensus, the provisional rules prepared by the preparatory commission would continue to apply for some time—perhaps a very long time. We must carefully examine whether we wish to give the commission such sweeping powers.

18. In a similar way the questions of financing the Enterprise, voting in the Technical and Legal and Economic and Planning Commissions, and the sponsorship of private sea-bed mining companies have been referred to the preparatory commission. Also, some States have indicated that they would like the matter of interim protection of investment, which is linked to domestic legislation, referred to the commission. My delegation is concerned to avoid this developing practice of referring controversial questions to the commission in order merely to speedily conclude our deliberations. Some of the important subject areas suggested for the commission are no doubt suitable for it, but we must be scrupulous to avoid referring to the commission difficult or controversial questions more properly determined by this Conference, or, subsequently, by the parties to the convention itself. There is a danger that if the commission is not representative of the States participating in the law of the sea Conference, important aspects of the ''package deal'' will be overlooked and the point of view of a relatively small number of States might predominate. We understand that many delegations here share these concerns, and we will be examining all the questions to be referred to the commission most carefully. In the meantime, my delegation reserves its position on all these questions.

19. In conclusion, we are not yet persuaded concerning any particular method of deciding who should be given membership on the preparatory commission. To put it bluntly, we wish to ensure that the solution is fully consistent with the package deal concept on which our negotiations have been founded and the principle of consensus which has enabled us to achieve such a large measure of progress.

20. We have similar reservations about proposals concerning investment protection for sea-bed miners. We are inclined to the

view that States can choose either of two courses—unilateral legislation or investment protection—but not both.

21. To conclude with a brief comment on the nature of the convention we have nearly completed in the light of the changes proposed at this session:

22. I have been engaged in these Conference negotiations from its outset going back to the days of the sea-bed Committee. I was personally involved in the negotiations leading to agreement on the agenda of this Conference, and had the honour to introduce the resolution agreeing upon the convening of a third law of the sea Conference. I was personally engaged also in the negotiations leading to the adoption of the consensus rule, as well as the negotiations on a range of substantive issues including, for example, the preservation of the marine environment, conservation of the living resources, the development of rules relating to marine scientific research, and the régime for the territorial sea, as well as a number of sea-bed issues. My delegation, together with that of another delegation, was the first to propose the parallel access system on which the First Committee text has since been founded.

23. Throughout our deliberations my delegation has sought to defend its national interests, but at the same time has attempted to take account of the views of other States and other interest groups, and to this end has participated actively in developing compromises fair to all interest groups. It was for this reason, for example, that my delegation was the first to propose revenue sharing with respect to the resources of the continental shelf beyond 200 miles, and was the first to propose that the coastal State accept a duty to allow other States to fish in its economic zone when the coastal State does not have the capacity to harvest the whole of the resources. It was for just such reasons that the Canadian Government decided in the early days of the sea-bed Committee to lend its full support to the concept of the common heritage since it was in this field that we considered that the smaller and poorer countries would have the most to gain.

24. There is no doubt that the draft convention which is emerging will play an important part in the development of the new economic order. The convention will permit, and indeed has already permitted, through State practice, founded on the Conference text, a major transfer of resources from the rich to the poor. At the same time the treaty has benefited industrialized countries, including my own, not only in terms of the interests we all share, developed and developing, such as freedom of navigation, preservation of the marine environment, and conservation of fisheries, but in terms of actual resources.

25. Against this background, I urge all delegations, in reporting back to their Governments, to examine the convention with a view to reaching a judgement as to whether it represents a fair compromise between the powerful and the less powerful, the rich and the poor. In particular, and I refer now to the sea-bed régime, I suggest that the major industrialized countries examine the draft convention proposals to determine whether they would result in the "have" countries become "have more" countries, and the "have not" countries becoming "have less" countries. I wish to make clear that I am not referring merely to the nickel-production formula, but to the whole sea-bed régime.

26. It is necessary only to recall the fate of the 1958 Geneva law of the sea conventions, which did not even last 10 years, because they did not adequately reflect the demands of the developing countries, in order to foresee the possible fate of this draft convention if it does not reflect the will of both sides to the negotiation. An imposed treaty will not be ratified except by those who stand to benefit immediately from it through provisional entry into force, preparatory investment protection, and other such single interest stipulations. We all know the fate of unequal treaties. It is not too late to reconsider some of the proposals before us with a view to better reflecting the interests of the many who are not wealthy, who are not industrialized, who are not technically advanced, but who represent the vast majority of mankind. If we genuinely believe in the concept of the common heritage, the most far-reaching and forward-looking of all the principles which have emerged from this major law-making conference, then it behoves us all to examine the text with a view to determining whether it represents a real accommodation of interests. If it does not, then it will not prove effective, and we will have failed in our objectives.

27. Some of us have spent 12 years of our lives negotiating the basis for a comprehensive constitution of the oceans. Some of us have joined in this important exercise more recently. All of us, however, share a common commitment to achieve a treaty which will govern the uses of the ocean, an area extending over 70 per cent of the surface of the globe—a treaty which may rank in importance with that of the United Nations Charter. We cannot afford to fail in this high endeavour.

ANNEX

Observations, reservations and proposals

The Canadian delegation reserves its position on the text of article 13 of annex III proposing that the production charge be assessed on the market value of processed metals derived from sea-bed mineral resources. In our opinion, the value of the production charge should be based on the value of sea-bed mineral resources, as opposed to the value of processed metals, since the Conference has been dealing with those resources.

Concerning article 11, paragraph 3 (*b*) of annex IV, the Canadian delegation has reservations on the proposed text dealing with the long-term interest-free loans. In our opinion, the loans should bear interest, which should be paid when the Enterprise's cash flows become positive.

With regard to paragraph 3 (*d*), the Canadian delegation wishes to stress that the third revision of the negotiating text should provide for the establishment of a schedule of financial contributions to the Enterprise.

The Canadian delegation has reservations on the proposed text in paragraph 3 (*f*) dealing with the repayment of interest-free loans. In our opinion the repayment period should not exceed the economic life of the project. We hope that the issue will be further discussed during the next session.

The Canadian delegation has concerns about the text contained in annex IV, article 13, paragraph 4 (*d*), giving preferential status to the Enterprise similar to the status afforded to developing countries. Generally, the granting of such status is not subject to multilateral agreements and is given to developing countries and not to companies. With respect to the proposed text providing the Enterprise with a treatment no less favourable than the treatment afforded by States to similarly engaged commercial entities, we understand this provision as preventing Member States from discriminating against the Enterprise as compared to other foreign controlled companies and would have reservations with other interpretations of the provision.