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Statement by the delegation of Colombia dated 1 April 1982

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Statement by the delegation of Colombia dated 1 April 1982

[*Original: Spanish*]
[*5 April 1982*]

Mr. President, I have the pleasure in beginning this statement with a tribute to your ability and competence and to the creative patience and impartiality with which you are guiding the Conference towards the adoption of the convention on the law of the sea in accordance with the prescribed time-table and with the principles on which it is founded.

The delegation of Colombia came to this final session with the intention to collaborate to that end, not to impede overall agreement and to allow the interests of the Group of 77, to which it belongs, to outweigh such dissatisfaction as all of us may feel as is natural in a process so lengthy and complex as that of this Conference. In solidarity with the Group of 77 and disquieted by the stand taken by the United States, we came to this New York session to reaffirm our support for the draft convention already negotiated and to decide on the three pending questions: the Preparatory Commission, the treatment of preliminary investment and participation in the convention.

We support the informal proposals submitted by you in annexes I to III of document A/CONF.62/L.86 because they express a willingness to compromise which has been shared by us. We are gratified that, with regard to the participation of international organizations, the criterion of establishing a rule that can be applied in future with respect not only to the European Economic Community but to the integrationist associations of the developing countries has prevailed. We are pleased that the proposals of the delegation of Colombia have been accepted, notably annex IX, article 2, article 7, paragraph 2, and article 8, the aim of which is to specify the orbit of these organizations and to prevent States that are not parties to the convention to derive unwarranted benefits through them or to give rise to disputes and uncertainty. And bearing in mind the threats of "mini-treaties", which we reject.

With regard to document A/CONF.62/C.1/L.30, we can accept it because we too share the positions of the Group of 77. It represents a compromise solution which takes account of the interests of developing land-based producers of minerals, such as our country. Our delegation has constantly striven for general arrangements to protect land-based producers and potential producers.

We can accept annex II, on preparatory investment in preliminary activities, with the observation that for the developing countries to give guarantees for the investments of developed countries which are exploring maritime spaces before entry into force of the convention is a concession, and on the assumption that these guarantees can be given only to companies and countries that accede to it and that some elements about which we are still worried can be made clearer, such as the so-called "flags of convenience" (para. 10 (*b*)), the treatment of "pioneer investors" (para. 8 (*a*)), the unequal status of developing countries vis-à-vis the "first investor" (para. 1 (*a*)), the low registration fee of $US 500,000 (para. 7 (*a*)) and the excessive allotment of 150,000 k^2 as an exploration area in the Area (para. 1 (*e*)).

We thank the Chairman of the Third Committee, Mr. Yankov, for his efforts (A/CONF.62/L.92). Colombia agrees that the substantive negotiations on Parts XII (protection and preservation of the marine environment, XIII (marine scientific research) and XIV (development and transfer of marine technology) have been completed, and consequently his suggestions are acceptable on the understanding that they refer solely to drafting matters.

We attach suitable importance to the Drafting Committee and support its conclusions (A/CONF.62/L.89) on the understanding that in article 320, on authentic texts, should doubts regarding interpretation arise, article 33 of the Vienna Convention on the Law of Treaties,[42] particularly paragraph 3, will apply.

The statement by the head of one delegation at the beginning of the debate requires us to refer to matters already settled within the Second Committee. Statements in the plenary confirm that it is indeed the common objective of the overwhelming majority of members of this Conference, and first and foremost the Group of 77, to defend the fundamental elements of the draft convention.

The Chairman of the Second Committee, Mr. Aguilar of Venezuela, in his report (A/CONF.62/L.87) made some statements that have received the significant support of members of the Conference, including, of course, the delegation of Colombia. In his words, with which we concur, "these discussions indicate that there is a real consensus on the need to preserve the fundamental elements of the parts of the Convention which are within the competence of the Second Committee".

In pursuance of that guideline, we agree with the Chairman of the Second Committee that "the only proposal that meets the requirements established in document A/CONF.62/62 is"[43] the United Kingdom proposal on article 60, paragraph 3, despite the fact that a number of delegations pressed their proposals on other pending questions.

We note that the position of the Chairman of the Second Committee was ratified in the debate at the plenary meeting and that there is now no possibility that any reopening of articles 15, 74, 83, 298, 121 and 309 could lead to improved texts or bring another consensus closer.

Article 15 has been sacrosanct in the draft convention since the time of Chairman Galindo Pohl. In 1979 the Collegium, when incorporating the compromise text formulated by the Chairman of negotiating group 7, Mr. Manner, endorsed his explicit recommendation that it should not be amended save for two minor drafting changes.

There has been talk of two alternatives: to redraft article 15 with the language of articles 74 and 83, which are recognized as a "neutral formula", or to permit reservations to the convention. Our delegation accepts neither. The problem is not one of drafting because it was with the knowledge that the substance of article 15 had been settled that the delimitation package was negotiated in negotiating group 7 and in the group of 20, both latterly presided over by President Koh himself—in the knowledge, on the assumption, that consensus had been secured on article 15.

The venerable and terrible metaphor of opening Pandora's Box best reflects what would happen if at this stage of the Conference an attempt were made to reopen debate—likewise precluded—on the possibility of reservations to the convention. With regard to article 309, all that is required now is to delete the foot-note, inasmuch as, under the agreed procedure, on the completion of the deliberations on pending substantive questions the article has *ipso facto* lost its provi-

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

[43] See *Official Records of the Third United Nations Conference on the Law of the Sea*, vol. X (United Nations publication, Sales No. E.70.V.4).

sional character and is as definitive as all others in the draft convention. The fact that there is not a single article of the convention subject to reservation provides eloquent proof of the need for consensus.

In the 1958 Geneva Conventions the right to reservations was sanctioned because they were four separate conventions unrelated to each other. The very concept, the quintessence, that which marks the historic difference between those instruments and the Convention we are adopting lies in the very fact that we now have a single convention based on the principle of the unity of all of its subject-matter. The "gentleman's agreement" approved by the General Assembly on 16 November 1973 states that "the problems of ocean space are closely interrelated and need to be considered as a whole". Reservations are therefore not admissible, and to try at the last moment to specify which questions might or might not affect the whole of the convention, apart from being impossible, is patently incompatible with the "gentleman's agreement" and would destroy the assumptions on which the Conference is founded. In a system of "package" negotiation the many sacrifices and dissatisfactions and the reciprocal concessions are adequately safeguarded in article 309 as it stands. In the tidal wave of reservations that would ensue we would all perish.

Article 121, on islands, has been discussed in the Second Committee at every session. In eight years there was never once a suggestion by the Chairman of the Second Committee that would give grounds for thinking, when negotiations were over, that change might improve the prospects for a consensus such as exists today and has secured ratification.

It would be futile to try to summarize all the negotiations concerning the delimitation of marine spaces and the settlement of disputes: all delegations are aware of them. The negotiation continued throughout last year on this, as one of the most intractable obstacles, and the achievement of consensus on the "indivisible package" opened one of the key avenues for the success of the Conference and at the same time debarred renegotiation: Colombia accepted the formula incorporated in articles 74, 83 and 298 as a final accommodation for the sake of a solemn commitment which superseded the proposals of the groups which had until then supported documents NG7/2 and NG7/10.

It was not easy to accept the compromise, and in order to help to preserve it we are refraining from even commenting on it. Let me say only that we continue to believe that compulsory and binding third-party settlement of disputes is the mode of settlement which best ensures the rule of international law, peaceful settlement of disputes with a reasonable period, and the equality of States.

Should anybody try to reduce the scope of the conciliation procedure, that would be a violation of the commitment we all made, and the delegation of Colombia would be compelled to insist on compulsory and binding settlement of disputes.

The delegation of Colombia respects the right of all delegations to raise subjects of interest to them. But we are all likewise bound to respect every consensus achieved in the Conference. The very structure of its universality and integrity cannot be undermined by anyone. In that we concur wholeheartedly with what is apparently the consensus of all the consensuses of the Conference, and particularly of the Group of 77: to maintain the text of the draft convention, incorporating the compromises on the three pending questions in order to be able to sign this year in Caracas a convention concerning which we have made so many solemn statements and on which the hopes of our nations rest.

DOCUMENT A/CONF.62/WS/19

Statement by the delegation of Chile dated 7 April 1982

[Original: Spanish]
[7 April 1982]

The delegation of Chile has taken cognizance of a note, sent to you by the representative of the delegation of Argentina, Enrique Candioti, dated 1 April 1982, which appears in *Conference document A/CONF.62/WS/17 of* 2 April 1982, concerning the statement which the undersigned made at the plenary 164th meeting on 1 April 1982.

In that statement I referred to the subject of the straits used for international navigation, which is dealt with in the draft convention, and to the specific case of the Strait of Magellan. In this connection, the delegation of Chile considers it inadmissible that the delegation of Argentina, by the aforesaid note, should presume to define the waters and territories belonging to Chile.

In particular, the delegation of Chile rejects the assertion, made by the Argentine representative, attributing to his country the status of a State bordering the Strait of Magellan. Under the Boundary Treaty signed in Buenos Aires on 23 July 1881, the Strait of Magellan in its entirety—and certainly including its two shores—is under the sovereignty of Chile.

The foregoing is without prejudice to the reservation in respect of rights which the Government of Chile duly entered with regard to the sea boundary in the region of the eastern *mouth of that Strait, a question which is still pending.*

The delegation of Chile also rejects the assertion in the above-mentioned note that the aforesaid Strait is the only strait used for international navigation on which Chile has a coast. In accordance with international law and the provisions of the draft convention itself, only the Strait of Magellan meets the qualifications, requirements and conditions to be considered a strait used for international navigation, the régime of which was established in the above-mentioned Treaty of 1881. The other water courses under the sovereignty of Chile form part of its internal waters and its navigation is subject to the régime pertaining to that maritime space, a matter which was confirmed by Decree No. 416 of 1977 concerning the system of straight baselines, issued in accordance with Her Britannic Majesty's Arbitral Award, all of which instruments are fully in force.