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/21

Statement by the delegation of Colombia dated 16 April 1982

Extract from the *Official Records of the Third United Nations Conference on the Law of the Sea, Volume XVI (Summary Records, Plenary, First and Second Committees, as well as Documents of the Conference, Eleventh Session)*

DOCUMENT A/CONF.62/WS/20

Statement by the delegation of Turkey dated 17 April 1982

[Original: English]
[17 April 1982]

The Turkish delegation has chosen to devote its initial statement solely to the introduction of its formal amendment in document A/CONF.62/L.120 in order to highlight the crucial importance of securing the minimum conditions under which Turkey would be able to adhere to the new convention.

In asking for the right to formulate reservations, it has never been the Turkish delegation's intention to upset the balance of the package deal, since the Vienna Convention on the Law of Treaties of 1969 has prudently provided that reservations should be permitted if they are not incompatible with the object and purpose of the Treaty. Therefore, the insinuations purporting to prove the contrary are not, in the view of the Turkish delegation, valid or justified. In our opinion, the only route through which universality could be obtained is the flexible approach which can be achieved by allowing the formulation of reservations.

Turning now to the other formal amendments before the Conference, the Turkish delegation supports those contained in document A/CONF.62/L.100 regarding the composition of the Council, of which it is also co-sponsor, as well as in document A/CONF.62/L.103 on the same subject.

The delegation of Turkey also lends its support to the Iraqi amendment contained in document A/CONF.62/L.101 concerning the participation of the national liberation movements and A/CONF.62/L.102 relating to the signature of the convention by the United Nations Council for Namibia.

The Turkish delegation finds the amendment by the United Kingdom contained in document A/CONF.62/L.126 relating to article 76, paragraph 8, reasonable and can go along with it.

The amendment by France contained in document A/CONF.62/L.106 concerning article 60, paragraph 3, of the draft convention deserves, in the opinion of the Turkish delegation, favourable consideration.

With regard to the amendment in A/CONF.62/L.108 formulated by Venezuela, the Turkish delegation supports the main principle on which it is based, namely the possibility to formulate reservations.

The Turkish delegation is strongly opposed to the deletion of paragraph 3 of article 121 as proposed by the United Kingdom in A/CONF.62/L.126.

Article 39 of the draft convention on duties of ships and aircraft sets out in paragraph 3 (*a*) that the State aircraft will normally comply with the Rules of the Air established by the International Civil Aviation Organization. The present drafting of the text is not fully compatible with article 3 (*a*) of the Chicago Convention on International Civil Aviation,[84] signed on 7 December 1944, which stipulates that the provisions of the Convention are not applicable to State aircraft. The Spanish amendment in document A/CONF.62/L.109 aims at exacerbating this incompatibility by deleting the word "normally". For this reason, the Turkish delegation is against this proposal.

On the other hand, the Turkish delegation supports the Spanish amendment to article 42, paragraph 1 (*b*), contained in document A/CONF.62/L.109.

Finally, the Turkish delegation is not able to go along with the amendments contained in documents A/CONF.62/L.97 and L.117 concerning article 21 of the draft convention.

[84] United Nations, *Treaty Series*, vol. 15, No. 102, p. 295.

DOCUMENT A/CONF.62/WS/21

Statement by the delegation of Colombia dated 16 April 1982

[Original: Spanish]
[19 April 1982]

The general debate on the 30 amendments submitted enables us to acquaint ourselves not only with the positions of the various countries but also with the general trends regarding the single body of law constituting the draft convention on the law of the sea. The records of the debate will be useful to those who seek to interpret and implement the work of this Conference in the future. I take this opportunity to reaffirm the position which we set forth in the written statement of 1 April (A/CONF.62/WS/18). We shall support the efforts of the President to consolidate the consensus for which he can avail himself of rule 37 of the rules of procedure and we certainly have confidence in him.

The Conference has been moving ahead step by step, unanimously complying with its own ground rules that are binding on all States which adopt them by sovereign decision. We all decided that document A/CONF.62/L.78[41] is the draft convention. Without a single dissenting voice, we decided, with regard to this finalized text, that the only procedural avenue still open was that provided for in rule 33, in other words, all other avenues were closed by consensus. No change in the draft convention can be made except by consensus and, as we are prepared to accept amendments on which there is consensus, we shall not support anything that departs therefrom or impairs the text.

With regard to the topics dealt with in the First Committee, as members of the Group of 77, we share its general position. We helped to ensure that the negotiations on the topics pending at the start of these meetings would serve to iron out difficulties in a spirit which took into account both the common essential requirements incorporated in the draft convention (A/CONF.62/L.78) and the need for universality which would enable a juridically acceptable, workable and realistic convention to be drawn up to serve all, especially the developing countries. We support the amendment submitted on behalf of the Group of 77 in document A/CONF.62/L.116 and the amendment (A/CONF.62/L.114) to article 63.

Our delegation wishes to comment on the following set of amendments: A/CONF.62/L.108 (Venezuela), A/CONF.62/L.111 (Romania), A/CONF.62/L.120 (Turkey) and A/CONF.62/L.126 (United Kingdom). We are opposed to them, bearing in mind the views of the delegations which expressed their opposition, and we wish to make the following

points: the "gentlemen's agreement" established the procedure which the Conference has followed as a "package deal", and that has been the course consistently adhered to. But there is something else: paragraph 3 of the preamble to the draft convention reads as follows: "Conscious that the problems of ocean space are closely interrelated and need to be considered as a whole". This principle, approved without dissent, reflects the philosophy of the Conference and imbues it, for substantive and not for procedural reasons, with the spirit—the uniqueness—which characterizes it and distinguishes it from the previous conferences in Geneva. In accordance with the preamble, no provision of the draft convention can be considered in isolation from the whole. No one can argue, for example, that the articles on delimitation or the settlement of disputes are "essentially bilateral". There is nothing in the draft convention that is not part of the "package deal", and nothing can be taken out of it because everything has been negotiated as part of this deal and is interrelated.

Article 309 is, precisely, the safeguard and guarantee of the sacrosanct nature of the convention. It develops and specifies the ultimate aims of the convention as set forth in the preamble.

No reservations may be made to the convention for reasons that involve its very essence; the convention is the outcome of our dealing with the problems of ocean space as a whole. If reservations are authorized, this whole is eroded. If there were reservations, there would not be a convention but a collection of conventions to suit each person's taste; instead of a "legal order for the seas and oceans", there would be the risk of legislative anarchy.

We are also against the deletion of article 309 because, as stated in the seventh paragraph of the preamble, which we have all accepted, one of the objectives of the convention is the "progressive development" and "codification" of the law of the sea. The predominant and continuing trend in international law is to disallow reservations to conventions that are designed to codify law, precisely because reservations would be contrary to the purpose of codification which is to achieve a general régime, a situation which may not arise in the case of other types of convention.

As efforts are being made to analyse the reservations in the specific context of this convention, I take the liberty of pointing out that to authorize reservations to some articles and to disallow them for others would be tantamount to legitimizing not a reservation in the traditional sense but an outrageous privilege. We have all made sacrifices and compromises with regard to the common denominator which we call consensus. The convention on the law of the sea is a treaty of reciprocal and interlinked concessions and the concept of reservations which are only bilateral in scope has no place in it. It would be incompatible with the equality of States if one or a few States were able to draw up a specific list of articles subject to reservations and the others, the overwhelming majority, were unable to make reservations on substantive matters other than delimitation and the settlement of disputes.

Whether article 309 is deleted outright or some key articles of the draft convention are singled out as the only ones subject to reservations, in the place of the certainty established in the text uncertainty would arise with regard to reservations under the legal régime to which States would be subjected in their relations. The advocates of reservations have never gone so far as to claim ignorance of certain principles which disappear as a consequence of amendment A/CONF.62/L.108, a proposal which does not include procedures for acceptance or rejection in respect of reservations without which the balance between States would disappear and its very concept would be perverted.

Ground rules must be established for reservations if, in the absence of such rules, they are not to transgress their traditional role and become a kind of *liberum veto*. During discussion of this issue at the Vienna Convention on the Law of Treaties,[42] the representative of Italy noted that: "A reservation may be regarded as a treaty's disease, and the withdrawal of the reservation as its convalescence and treatment". If the amendment in A/CONF.62/L.108 were to be accepted—and we would oppose it—there would be no rules governing the acceptance, rejection or withdrawal of a reservation. In other words, there would be no convalescence nor any way of treating the disease of the convention, namely, that reservation.

The draft convention on the law of the sea was devised, and its articles, which form a single whole, were drafted, negotiated and finalized on the assumption not that there would be reservations but, on the contrary, that there would be none. This is agreed to by States which may be in favour of admitting reservations to other treaties, previous or subsequent to this convention, but which, by adopting article 309, express their desire to uphold the integrity, aims and purpose of the convention.

We are opposed to amendment A/CONF.62/L.111 because it too detracts from article 309 and would create absolute confusion between reservations and declarations which are designed not to preclude or modify the legal effect of the provisions of the convention as they apply to the State Party. We share the views of those who have stated that articles 309 and 310 are sacrosanct and that amending them would affect the convention as a whole.

The representative of Switzerland drew attention to the link between those two articles. As further confirmation of the inadmissibility of reservations to the articles proposed in amendment A/CONF.62/L.108, it is also worth noting that the preamble and the pertinent articles define the Area of the sea-bed and ocean floor constituting the "common heritage of mankind" as the area which is "beyond the limits of national jurisdiction"; under the terms of the convention, therefore, the delimitation of national jurisdictions is not exclusively a bilateral problem. In the last analysis, the common heritage of mankind will consist of what remains once the work of delimiting national maritime spaces, provided for in articles 15, 74, 83 and 121, and the outer edge of the continental margin, provided for in article 76, has been completed.

We reject amendments A/CONF.62/L.108 and A/CONF.62/L.126 for the same reasons; it has been consistently demonstrated during the discussions in the Second Committee that the delicate balance in article 121 is the only possible one and that it effectively protects the common heritage of the oceans. A glance at a map of the Pacific Ocean is sufficient to bring home the consequences which would ensue from the proposed deletion of article 121, paragraph 3, or the proposed reservation. The decolonization of the seas, which many of us have proclaimed as one of the objectives of this convention, would be likely to founder on one of those rocks in the Pacific which someone at the 1958 Conference described as "obstacles to navigation".

Amendment A/CONF.162/L.108 proposes admitting reservations only to paragraph 3 in the case of article 121 but to all of articles 15, 74 and 83.

Article 15 contains a single paragraph on the delimitation of the territorial sea, while articles 74 and 83 have four identical paragraphs, which concern all States and not merely the parties to a bilateral negotiation. The delegation of Colombia refrained from submitting any amendments to the draft, but it now sees that, in accordance with the amendment in document A/CONF.62/L.108, reservations could be made to articles 74 and 83 in their entirety, i.e. all four of their paragraphs. Paragraph 2 reads: "If no agreement can be reached within a reasonable period of time, the States concerned shall resort to the procedures provided for in Part XV".

The adoption of this amendment might mean that any State could make reservations to the procedures provided for in

Part XV of the convention and thus claim exemption from the provisions concerning the settlement of disputes, namely, from a general compromise clause. Part XV starts with article 279, which establishes the obligation to settle disputes by peaceful means, and continues up to article 299; our delegation is opposed to the possibility of allowing reservations to be made to these articles, because they would affect international law. How could reservations to be made to the first paragraph of articles 74 and 83, which stipulates that the delimitation shall be effected by agreement? Could it be effected otherwise? How could a reservation be accepted which denied that the agreement between the parties should be based on international law, as referred to in Article 38 of the Statute of the International Court of Justice? Could any reservation exclude an equitable solution in matters of delimitation?

It would be inadmissible for a reservation to have the effect of nullifying paragraph 3 of articles 74 and 83, which obliges States which have not reached agreement in a dispute "not to jeopardize or hamper the reaching of the final agreement", or paragraph 4.

Might not a reservation to article 15 allow a country to extend, without any limitation, its territorial sea to that of the State with opposite or adjacent coasts? What implications would that entail for enclosed or semi-enclosed seas in different parts of the world?

It may be concluded that the rules applicable to the delimitation of maritime space and the settlement of disputes (articles 15, 74, 83 and paragraph 3 of article 121 and Part XV of the convention), far from being issues of bilateral concern, are key elements of the single system for solving problems of the sea which we have gradually been developing over eight years of negotiation.

Reservations to those articles, the deletion of article 309 or article 121, paragraph 3, and any amendment to article 310 are incompatible with the convention. It must be specified that, before arriving at the compromise on delimitation as set forth in the draft convention, the possibility of there not being any rules on delimitation was discussed but this possibility was ruled out, because agreement was reached. The idea of including article 309 as a provisional article was also rejected. Colombia abides by the ground rules; it favours maintaining the draft convention (A/CONF.62/L.78) and incorporating the consensus reached on topics that were pending at the beginning of the present session as well as any amendments which, by improving the text and having been accepted by consensus, will help to ensure the success of our common endeavour.

DOCUMENT A/CONF.62/WS/22

Statement by the delegation of Benin dated 17 April 1982

[Original: French]
[19 April 1982]

Our delegation wishes to express its concern over the present status of the Conference's work. The number of amendments that has emerged after 14 years of negotiation is hardly conducive to solving the problem before us. We are convinced that your customary discernment will ensure fair treatment of amendments that are truly concrete, realistic and practicable.

Earlier speakers who have tried to explain such amendments have our whole-hearted support. Among the amendments which we consider especially relevant and important for the future convention, we wish to mention those contained in documents A/CONF.62/L.116, A/CONF.62/L.117—which we sponsored—and A/CONF.62/L.106, which refers exclusively to article 60, paragraph 3.

The proposals contained in those amendments provide solutions to a number of questions concerning which, as you have noted, the majority of delegations were still dissatisfied. Document A/CONF.62/L.116, submitted by the Group of 77, is, for the questions it covers, a touchstone for judging the negotiations, since it merely reflects legitimate concerns whose sole objective is the equitable distribution of the resources of the ocean space.

In submitting this document, the Group of 77, of which we are part, is acting in conformity with the guiding principle of the Conference: the interests of all mankind. As was stated in 1966 by the highest executive authority of the United States, we must avoid at all costs a race to conquer and occupy the ocean depths. We must ensure that the sea-bed and the ocean floor become the heritage of all mankind. These noble principles, constructively taken into consideration by the Group of 77 in general and by our country in particular, seem to have been completely ignored in a number of amendments.

Document A/CONF.62/L.121, in all essentials, runs counter to this objective of justice and humanitarian interests.

Article 140, paragraph 1, of that document includes the statement that activities in the Area shall be carried out taking into particular consideration the interests and needs of developing States.

This concern, so laudable and consistent with the spirit of the Conference, is no longer mentioned in other parts of the document. We refer, *inter alia*, to annex III, articles 4 and 5, and annex IV, article 11. Can the specific attributes of a developing State really be reconciled with the obligations imposed by those provisions?

Transfer of technology, as understood in the context of the draft convention, is not reflected anywhere in annex III, article 5.

In annex III, article 8, a parameter which we feel is too subjective is introduced for the allocation of sites to the Enterprise. These few comments which we are drawing to your attention are merely an outline of the numerous contradictions in the document, which gives every evidence of an intent to preserve specific and unconscionable interests that are contrary to the well-being of mankind.

In short, this amendment is in no way conducive to a new international legal order of the kind we envisage, stripped of the defects of international legal machinery which is now disavowed by the developing countries and by all countries which truly love peace and justice.

All peoples are bound to be concerned about such provisions, and for this reason my delegation also supports any amendment aimed at the effective and acknowledged participation of national liberation movements.

It was this concern to guarantee the interests of all that prompted our country to sponsor the amendment in document A/CONF.62/L.117. In conclusion, we reaffirm our strong support for that relevant and just amendment.

The international co-operation to which my country, the People's Republic of Benin, intends to contribute must embody recognition of its full and complete sovereignty. We are well aware that our country cannot in the immediate