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**A/CONF.62/WS/22**

## Statement by the delegation of Benin dated 17 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)*

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

future itself hope to profit from machinery such as that set up by Part XI of the draft convention, but the very least we expect is that our territorial integrity will be preserved in the convention which is finally adopted.

Our efforts are aimed only at guaranteeing the security indispensable to all States. The facilities granted to warships under article 21 do not seem to us to be consonant with the maintenance of peace on the oceans. The developing countries have always opposed this excessive freedom which certain States have arrogated to themselves on the seas.

If, therefore, we wish today to work constructively for real peace, we must make a distinction with regard to the innocent passage of merchant vessels and of warships.

What is *a priori* innocent about the passage of one State's warship through the territorial waters of another in the absence of any military co-operation?

No known international legal norm has so far been invoked against this amendment, which has the prime advantage of limiting the risk of provocation and tension on the oceans.

The retention of article 21 as it stands therefore requires that the above amendment, which makes each State responsible for assessing, in exercise of its sovereignty, the advisability of such passage, be incorporated into article 309.

In conclusion, we wish to express our conviction that you will take full account of the interests of peoples in order to establish a true law of the sea serving mankind, peace and equity.

## DOCUMENT A/CONF.62/WS/23

### Statement by the delegation of Canada dated 16 April 1982

*[Original: English]*
*[22 April 1982]*

My delegation is acutely conscious of the historic nature of this closing session of the Third United Nations Conference on the Law of the Sea, coming, as it does, after nearly 14 years of negotiations, including a year of waiting for the purpose of ensuring that every possible effort be made to ensure that we reach consensus on the tremendous project we undertook—no less than a comprehensive constitution of the oceans.

*Part XI—compromise proposals*

It was in pursuit of this vital but seemingly elusive goal of consensus that my delegation has joined with 10 others in proposing the series of amendments contained in document A/CONF.62/L.104, which suggests amendments on the following articles:

Article 150—Policies relating to activities in the Area
Article 155—The Review Conference
Article 158—Organs of the Authority
Article 160—Powers and functions
Article 161—Composition, procedure and voting
Annex III (Basic conditions of prospecting, exploration and exploitation):
Article 1—Title to minerals
Article 3—Exploration and exploitation
Article 4—Qualifications of applicants
Article 5 (*bis*)—Transfer of technology
Article 6—Approval of plans of work
Article 17—Rules, regulations and procedures

It is our hope that these proposals will still, in the few days remaining to us, provide a possible basis for negotiating agreement on Part XI, the sea-bed mining provisions of the draft convention.

I should like to say a few words about document A/CONF.62/L.104, sponsored by Australia, Austria, Canada, Denmark, Finland, Iceland, Ireland, New Zealand, Norway, Sweden and Switzerland. I wish to recall that these proposals do not necessarily reflect the national positions of the delegations putting them forth. They were initially submitted by heads of delegation in our personal capacity with a view to providing a basis for negotiations and in the belief that such proposals could be useful in bridging the wide gap existing between positions of various delegations, in particular the position of the United States of America and that of the Group of 77.

I would like to draw special attention to the extent to which they specifically address the concerns expressed by the President of the United States on 29 January of this year, while at the same time seeking to preserve the delicate balance of interests resulting from so many years of negotiations. After careful consideration, the authors of the compromise proposals have now decided to introduce the proposals as formal amendments. They do so solely out of their conviction that these amendments, if accepted as a basis for discussion, could play a useful role in achieving the consensus which we achieved, and then lost, and which we are now attempting to regain.

In proposing these amendments, we are very conscious of the fact that every single one of them represents a further concession from the Group of 77, and that they constitute, in essence, unilateral concessions, in that there is no quid pro quo except the possibility—by no means a certainty—of achieving a universally acceptable convention. I urge the sponsors of the sweeping amendments contained in documents A/CONF.62/L.121 and A/CONF.62/L.122 to reflect on this fundamental and unchallengable fact of life.

I do not propose to discuss in detail the series of far-reaching amendments to Part XI contained in A/CONF.62/L.121 and A/CONF.62/L.122, sponsored by a group of major industrialized States. Suffice it to say that they go well beyond the three principles on which we are operating, namely that proposed changes must not alter the fundamental elements of the treaty, they must be negotiated within the time-table and programme of work of the Conference, and they must not damage the interests of other States.

I will address only one example. On the occasion of my statement at the 164th plenary meeting of the Conference on 1 April 1982, at the conclusion of the first phase of this session, I recalled the importance that my delegation attaches to article 151. I emphasized that the deletion of article 151 would irremediably break the balance of Part XI and would seriously alter my Government's perception of the draft convention.

In this framework, it is with some apprehension that my delegation has viewed the amendments proposed to this article by some delegations. These amendments would further reduce the already minimal protection afforded to land-based producers by this article. (Needless to say, this measure of protection is already deficient in many ways.) It is the view of my delegation that the proposed amendments could affect article 151 to such an extent as to render it meaningless except