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Statement by the delegation of Canada dated 16 April 1982

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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

for the floor. They are therefore potentially even more damaging than would be a total deletion of article 151, since the floor would be cited as an invitation—indeed, a virtual guarantee—to over-produce, irrespective of market conditions, and there would be no ceiling to prevent the disruption of markets. My Government would feel less apprehensive if the group of States proposing to truncate the nickel production ceiling by their amendments had been willing to accept a provision forbidding subsidization and other unfair practices. Unfortunately, those who propose that we destroy the only safeguard in the draft convention for the Enterprise, the land-based producers and, indeed, the common heritage itself, are the ones who have consistently rejected any provision which would preclude unfair practices. Given the fact that these same States are the major consumers of the minerals in which they now propose to become self-sufficient, through becoming the pioneer sea-bed miners, the potential consequences of such proposals are serious indeed. What is required is a better balance of interests, not a further imbalance. If the major consumers are now demanding special protection for themselves as "pioneer investors", then we should all look again at the question of unfair practices.

My delegation has sponsored, together with the Australian delegation, the amendment in document A/CONF.62/L.98, which seeks to introduce into the draft convention a provision to the effect that States parties shall avoid unfair economic practices in the production, processing, transport and marketing of minerals and commodities derived from the resources of the Area. This proposal would merely make applicable to minerals derived from the sea-bed the widely accepted principles and rights and obligations already contained in relevant multilateral trade agreements. We submit that such a provision would promote more certainty and security to the international trade interests of all concerned, including in particular the Enterprise. We had hoped, and continue to hope, that those who are already parties to the General Agreement on Tariffs and Trade (GATT) framework will see that the benefits to be derived from this provision will be no less substantive and the obligations no more onerous than those provided in such agreements. To those who are not parties to GATT, we would draw attention to the fact that this amendment provides that recourse to the dispute settlement mechanisms of such agreements cannot be made without their consent. I would hope that all delegations who have previously rejected such provisions will review their positions on this issue and join with us in introducing the unfair economic practices clause into the convention. We hope in particular, of course, that the major champion of the free market approach, whom we have waited for so long to rejoin our negotiations, will lead its major industrialized allies into the fold of agreed rules of acceptable behaviour in the market-place.

I would like now to express the support of my delegation for the amendment to article 138 in document A/CONF.62/L.121 which provides for the enforcement of internationally recognized labour standards regarding working conditions and maritime safety, as defined in the Convention and Recommendations of the International Labour Organisation. It is very important that those who will be working in the Area, both for the Enterprise and the other mining entities, will be working in safe conditions and will thus be covered by the International Labour Organisation Conventions and Recommendations and by the safety standards established by the Inter-Governmental Maritime Consultative Organization.

Canada is one of the sponsors of an amendment to article 63 (2) as contained in document A/CONF.62/L.114. I am sure that many delegations are aware of the importance of the conservation of stocks of fish which straddle the 200-mile limit of the exclusive economic zone. Unfortunately, the fish cannot be trained to recognize the 200-mile limit. It is therefore absolutely essential for the coastal State and the countries of the fishing fleets operating just beyond 200 miles to co-operate in order to adopt such measures for their respective nationals as may be necessary for the conservation of those stocks. That is not an academic problem. There are a number of cases, including one which affects my country seriously, of distant-water fishing fleets which lurk just outside the 200-mile limit, where they overfish without restraint in the area beyond national jurisdiction. No one suggests that coastal States extend their jurisdiction beyond 200 miles. What we do ask is that all States impose acceptable conservation measures on their fishing fleets wherever they may be. It was the abuse of the freedom of the high seas by certain States with huge fishing fleets which led directly to the establishment of the 200-mile exclusive economic zone. Now it is those same States who are flatly rejecting a proposal intended to lay the basis for co-operative conservation measures. I must say with the greatest solemnity that such action endangers the fishing rights now enjoyed by those States within the economic zone of coastal States. My country has no fleets which cross the oceans to fish in the economic zones of other countries. On the other side of the coin, however, some 22 States fish in the Canadian 200-mile fishing zone. Surely there should be some quid pro quo. All we are asking is that these distant-water fishing States agree to co-operate with the coastal States in developing conservation measures. Co-operation is a two-way street. If those who want to continue to fish in the economic zone of coastal States refuse to co-operate to conserve the same stocks just outside the 200-mile limit, they are endangering their continued enjoyment of their fishing privileges within the 200-mile zone.

My delegation has proposed an amendment to article 161 (A/CONF.62/L.113) to ensure representation on the Council of the State which makes the largest contribution to the funds to be distributed by the Authority for the common heritage. In introducing this amendment, I should like to stress that it affects in no way the very delicate balance achieved as regards the composition of the Council: the number of seats would remain unchanged as well as the composition of the various interest groups as defined in paragraph 1 of article 161. The proposal put forward by my delegation would simply ensure that the major contributor is elected from within one of these groups. It provides an element of equity which may have been overlooked in the past and a rectification is, in the view of my delegation, likely to increase the prospects of consensus. It is obvious, of course, which State would benefit from this provision for many years to come, namely the same State which would be protected by the alternative approach of ensuring that the major consumer is continuously represented. The advantage of the Canadian proposal is, however, that if, over a period of time, another State becomes the major contributor, it would be assured of a seat on the Council. There are a number of States, including my own, which might one day qualify under this provision. Surely it would not be a bad thing to have States competing with each other to be the major contributor to the common heritage. If this is an imbalance, as suggested by one delegation, then it is an imbalance which is long overdue.

Perhaps the best way of understanding the essence of the amendment to article 161 which my delegation is proposing is to note its placement, coming after the categories of interest groups, and its explicit cross-reference of article 162 (2) (*n*) (i). This is the provision enabling the Council to recommend to the Assembly rules, regulations and procedures on the equitable sharing of financial and other benefits derived from activities in the Area and the payments and contributions made pursuant to article 82 "taking into particular consideration the interests and needs of the developing States and peoples who have not attained full independence or other self-governing status". If we seek balance in order to ensure equity, then this is the way to do it. In the case of the Cana-

dian delegation, after considerable reflection we were persuaded not so much by the positive argument that the largest financial contributor under the Law of the Sea ought to be given a Council seat, but by the negative argument that it would be exceeding the bounds of equity if the largest contributor were left without a Council seat. That is why my delegation is proposing that an amendment be made to paragraph 2 of article 161 while leaving paragraph 1 of article 161 as it is.

In my statement at the 164th plenary meeting of the Conference, on 1 April 1982, I joined with many others in cautioning against amendments to certain key navigational provisions together forming a part of the fundamental structure of the Convention. I refer in particular to proposed amendments to article 21. While understanding the motivation of the States putting forth those amendments, I again wish to underline the threat to the entire convention if the delicate balance on navigational provisions is destroyed.

By the same token I wish to emphasize again that essential safeguards for freedom of navigation can be achieved only by a universally accepted convention. The debate and amendments on this issue demonstrate, more clearly than any argument I might adduce, that it is a very dangerous fallacy for anyone to think that they can pick and choose amongst the fundamental provisions of the draft convention, accepting those they like, however novel, and asserting them as existing principles of customary international law, while rejecting those they do not like as mere proposals for provisions in a draft convention binding only on those who are parties to the convention.

The time may have come to recall again that this draft convention has been negotiated as a package. It is ironic in the light of recent developments to recall that many of those who argued that the trade-off should be freedom of navigation in return for resources, are now insisting, having obtained the guarantees of freedom of navigation that they demanded, that they are entitled to the lion's share of the resources.

Before closing I wish to draw attention to an issue which can provide the basis for a conference breakthrough or a conference breakdown. I refer to the various proposals on the protection of pioneer investment. I wish to make only one point, namely that the larger the number of pioneer States we recognize, the fewer the mine sites left for others, including the Enterprise, when the convention comes into force. The growing number of "pioneers", some of whom may be likened to a man asking to be awarded the title "Father of the Year" before he has been introduced to the prospective mother, is producing an alarming situation. Many delegations are now agreeing with the thesis that we have long maintained, namely, that the only protection of the common heritage and the only safeguard for the Enterprise is the very nickel production ceiling which many of these same delegations are seeking to emasculate. Surely it is obvious that the nickel production formula reflects the interests of the international community as a whole and must be maintained if we are to ensure an orderly and rational development of these resources.

Very little time is left to us. It is nevertheless encouraging that negotiations are continuing and will undoubtedly do so throughout this weekend. May I take this opportunity of reaffirming the commitment of my delegation and my Government to achieving consensus on a global constitution of the oceans, by voting if necessary, but not necessarily by voting. By far the preferable course is to achieve consensus by negotiation and it is to this process that we remain committed pursuant to the "gentlemen's agreement" negotiated under the chairmanship of the Canadian delegation many years ago.

DOCUMENT A/CONF.62/WS/24

Statement by the delegation of Romania dated 30 April 1982

[Original: French]
[4 May 1982]

On the occasion of the adoption of the draft convention on the law of the sea, the Romanian delegation, on instructions from its Government, wishes to make the following statement:

1. The Convention contains a whole series of provisions governing the access of States to the fishing resources of other countries' economic zones, thereby giving expression to the need to promote international co-operation in this field.

However, the right accorded to countries with special geographical characteristics regarding access to fishing resources is limited to the strictly regional level. Insufficient account is taken of the situation of countries in this category, Romania among them, which are located in regions or subregions with few fishing resources and therefore require access to the fishing resources of the economic zones of countries in other regions or subregions.

My delegation hopes that sufficient account will be taken of Romania's special situation both in the conclusion of bilateral fishing agreements and within the relevant international bodies.

2. The Convention provides that delimitation of the continental shelf shall be effected by agreement between the interested parties on the basis of international law, in order to achieve an equitable solution.

The delimitation principles and criteria contained in the Convention provide a general framework which should be applied on the basis of international law, relevant jurisprudence and State practice. In that connection, in order to achieve an equitable solution, account will have to be taken of all relevant factors, including the fact that small, uninhabited islands with no economic life of their own can in no way affect the maritime spaces belonging to States' coastline proper.

3. With regard to the passage of foreign warships through the territorial sea of other States, we believe that the solution contained in the statement made by the President of the Conference at the 176th plenary meeting of the Conference on 26 April 1982, regarding the amendment to article 21, in document A/CONF.62/L.117, reflects the willingness of the 30 sponsors of the amendment, who represent almost one and a half billion of the world's population, to co-operate in the effort to adopt a convention which conforms to the principles of national independence and sovereignty and the protection of the security interests of all States.

According to that statement, the agreement reached is without prejudice to the right of coastal States to adopt measures to safeguard their security interests.

We hope that this solution, as well as all the other agreements and understandings reached in the course of the Conference, will be applied in good faith, thereby committing the entire Conference and the credibility of the Convention.

4. With regard to declarations on and reservations to the Convention, the Romanian delegation has consistently advo-