1974 # 5
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STATEMENT IN PLENARY BY

HIS EXCELLENCY MR. J. ALAN BEESLEY, Q.C.

HEAD OF THE DELEGATION OF CANADA

AT THE

UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA

CARACAS, VENEZUELA

JULY 29, 1974

STATEMENT IN COMMITTEE II

BY

MR. LEONARD H. LEGAULT

ALTERNATE DEPUTY REPRESENTATIVE OF CANADA

CARACAS, VENEZUELA

AUGUST 7, 1974

WORKING PAPER

A/CONF.62/L.4

Mr. President,

I have the honour to represent one of nine delegations introducing a working paper containing draft articles on basic issues facing this third U.N. Conference on the Law of the Sea. The paper does not attempt to deal with every question under discussion. It adopts instead a broad conceptual approach to the fundamental problems of the contemporary law of the sea. It follows that the paper does not purport to present final solutions. On the contrary, it is intended as a framework for discussion. As a consequence it will be noted that the approach adopted throughout the paper is to confine itself to basic articles leaving it to further negotiation to elaborate the separate chapters which will be required with respect to each of these basic articles. Nevertheless it is the view of the co-sponsors that the process of elaboration may never occur if we do not begin by agreeing at least on certain overriding issues.

A major reason for introducing the paper in plenary rather than in one of the committees is because the subject matter of the paper goes beyond the mandate of any one committee. Indeed one article bears a close interrelationship with an item assigned only to plenary, namely the reservation of the seabed beyond national jurisdiction for purely peaceful uses. There is, however, another equally important reason for the presentation of this paper at this time and in this manner. We are at the half way point of this session of the law of the sea conference and we have yet to agree on a single draft article. It is for this reason more than any other that this paper is being put forward at this time as a possible basis for negotiation.

Mr. President, a point I should like to stress in introducing this paper is that it is co-sponsored by: Canada, Chile, Iceland, India, Indonesia, Mauritius, Mexico, New Zealand and Norway. This is obviously a group of countries from widely separated geographic regions. Equally clearly, it is a group of countries with many shared interests. What may not be so apparent is that this is a group of countries representing also many diverse approaches and embracing a wide spectrum of views on the basic issues facing this conference. Obviously, all the co-sponsors are coastal states, but they include also states with important shipping interests, and states with no mercantile fleet; states largely or wholly dependent upon their coastal fisheries and states which fish in distant waters; states with broad continental shelves and states with narrow geological shelves; states which for many years have adhered to the 200 mile limit and those which have advanced no claims beyond 12 miles; states which are wholly archipelagic and those which are not; states with off-lying archipelagoes, states with fringes of islands and states with hardly any islands. Perhaps most important of all, this group of co-sponsors includes both developed and developing countries. Each of the co-sponsors has thus to varying degrees had to merge its specific national interest with the collective interest in achieving an overall accommodation. To put it differently, Mr. President, there is a broad range of interests represented by this group of co-sponsors. Nevertheless, the co-sponsors recognize that there are other interest groups with whom concrete negotiations should be commenced as soon as

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possible. That is another of our purposes in presenting this paper. It is for the foregoing reasons that, as pointed out in the introductory note to the Working Paper, this document is not intended as a substitution for any of the proposals by one or more of the co-sponsors and is being put forth without prejudice to their declared national position. Most important of all, as stated in the covering note, the paper is not intended as necessarily reflecting the final positions of the co-sponsors. On the contrary, it is intended as the opening of a negotiating process.

It is the view of the co-sponsors and of many other delegations, with whom they have closely consulted in the preparation of this working paper, that it is essential, if we are to produce any concrete results at Caracas, that certain broad trends evident in the deliberations of the seabed committees and the discussions at this conference be reflected in the form of basic articles, on which we might all try to agree before the end of this session in Caracas. It is for this reason that the co-sponsors have attempted to reflect in this paper not merely their respective national positions nor even their collective interests but the fundamental concepts which must be reflected in the convention on the law of the sea of the future if this conference is to succeed.

The point of departure of the co-sponsors, and those with whom they have collaborated in the drafting of this paper, is that the existing law of the sea is incomplete, inadequate and anachronistic. Indeed it seems to be common ground amongst the states represented at this conference that there must be a radical

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restructuring of existing law if we are to ensure a peaceful world and avoid the further deterioration of the present chaotic situation with its conflicting claims, counter claims and disputes. What is required is nothing less than a whole new legal basis for the world order of the oceans.

The present law of the sea, indeed much of international law as we know it, is based on two simple and seemingly mutually exclusive principles, namely the principles of sovereignty and of freedom of the high seas. Quite clearly we cannot abandon either of these principles entirely since the first provides the foundation stone upon which the nation - state and thus the existing international community is structured, while the second reflects a primary need of continuing importance to the international community as a whole, namely freedom of navigation and commerce. Equally clearly, however, a law of the sea based solely on these two mutually exclusive concepts no longer suffices, as pointed out so brilliantly and eloquently by the President of Mexico from this podium on Friday last. It is the firm conviction of the co-sponsors of this paper that the law of the future must be based on new and imaginative concepts, such as the economic zone, the patrimonial sea and the common heritage of man, while at the same time retaining those principles which are as relevant today as they were when they were first devised.

Translating this conceptual approach into practical terms, the paper is based on the principle of a 12-mile territorial sea linked organically with an economic zone or patrimonial sea

extending 200 miles from the base lines of the territorial sea. Thus, while the traditional concept of a relatively narrow territorial sea is retained, it is viable only if linked with an extension of coastal state jurisdiction as reflected in the economic zone and patrimonial sea proposals. It is well known to this conference that each of these latter two proposals is based on the same conceptual approach, namely that of functionalism, whereby a state asserts only that degree of jurisdiction necessary to meet its essential needs. The economic zone and patrimonial sea proposals each embodies three fundamental jurisdictions essential to the coastal state in today's world: sovereign rights over the living resources of the sea; similarly, sovereign rights over the seabed; and the essential rights and duties required for the preservation of the marine environment. In addition to these three basic forms of jurisdiction the two proposals also embody the concept of coastal state regulation of scientific research within the economic zone or patrimonial sea. The working paper is founded upon this economic zone-patrimonial sea concept. We recognize clearly the tremendous contribution to the development of the law of the sea by those claiming a broad territorial sea which at the time they made their claims was the only way in which their interests could have been protected. We consider that now however it is possible to adopt a new approach falling short of complete sovereignty yet still protecting their essential interests.

The paper also accepts as another major developing trend in the conference the doctrine of archipelagic waters both for

oceanic archipelagoes and for coastal states with off-lying archipelagoes. With respect to this doctrine, however, just as is the case with the economic zone-patrimonial sea proposal, the working paper spells out only the basic principles and does not attempt to outline in detail all of the elements reflected in this doctrine. It will be noted, for example, that while the principle of innocent passage through archipelagic waters is embodied in the draft articles, further articles will be required relating to the central issue of the precise regime and rules of passage through specified sea lanes of the archipelagic waters. It is the view of the co-sponsors that this last issue is of vital importance, related as it is so closely with that of the rules of passage through international straits, and the draft articles do not attempt to prejudge the manner in which this central issue will be resolved.

I referred earlier to the need to maintain that which is still relevant in the principle of the freedom of the high seas. Specific articles are therefore directed to ensuring the necessary freedom of navigation in the economic zone, subject of course to the exercise by coastal states of their rights within the area as will be specifically provided in the convention. Further articles have been included to protect other users of the sea on the one hand and the coastal state on the other hand from interference with the exercise of their respective rights in the economic zone.

I also referred earlier to one article which bears on an issue closely related to one which is exclusively within the mandate of plenary, and that is the question of the reservation of the seabed for peaceful purposes. It will be noted that Article 18 provides

that the coastal state shall ensure that any exploration and exploitation activity within its economic zone is carried out exclusively for peaceful purposes. This article is followed by a specific note to the effect that further articles will be required in relation to the economic zone, on such issues, for example, as fisheries and on preservation of the marine environment. On these two important issues I can do no better than refer to the historic statement of the President of Mexico who emphasized the imperative need of the coastal state to safeguard its fisheries and preserve the marine environment of the patrimonial sea.

A further issue, the resolution of which is of crucial importance to the conference, is the doctrine of the continental shelf, which is dealt with in the last article of the working paper. It will be noted that this article reflects not only conventional international law, and I refer to the 1958 Convention on the Continental Shelf, but also customary international law, and thus borrows from the language of the 1969 decision of the International Court in the North Sea continental shelf case in making clear that the continental shelf of a coastal state extends beyond its territorial sea to a distance of 200 miles from the applicable baselines and throughout the natural prolongation of its land territory where such natural prolongation extends beyond 200 miles, that is to say, to the outer edge of the continental margin. It should be noted that the doctrine of the continental shelf is both a legal and a geomorphological concept and the text of Article 19 replaces the elastic and open-ended exploitability criterion .

The co-sponsors are fully aware that some states have questioned the acquired rights of coastal states to the edge of the continental margin but it is the view of the co-sponsors that it would be unrealistic and inequitable to ignore the legal position of coastal states who have long since established their sovereign rights to the edge of the continental margin through state practice, through legislation, through the issuance of permits, through bilateral agreements, and in some cases, even through incorporation into their constitution. Indeed the language of the international court decision is significant in that the judgment refers in more than half a dozen places to the natural prolongation of the land territory of the coastal state. In the states who have legislated to this effect, the issue is one of territoriality and national integrity, a very sensitive question. For this reason, without attempting to foreclose negotiations on various possibilities of resolving the question of the delimitation of the continental shelf, the co-sponsors have considered it essential to include this article on the continental margin.

I have left until the last a reference to an important and closely related question. The co-sponsors have included in the working paper a declaration recognizing the requirement for equitable rights of access on the basis of regional, sub-regional or bilateral agreements for nationals of developing landlocked states and developing geographically disadvantaged states (as may be defined) to the living resources of the exclusive economic zones of neighbouring coastal states. As stated in the working paper

the co-sponsors will shortly be presenting articles to this effect. They do not propose to do so, however, in isolation from the views of the landlocked and disadvantaged states. On the contrary, what is intended, and what this document offers, is a basis of discussion and negotiation on this important question. I said earlier that the theme throughout the paper is that of a functional approach to each of the issues facing this conference. It is quite clear, however, that this conference will not resolve any of the basic issues facing us unless the settlement we reach is based equally firmly upon the principle of equity. There are a variety of ways of achieving an equitable accommodation. What is clear, however, is that the rules we devise will be ineffective unless they carry the judgment of the states represented at this conference. We see no possibility of this occurring unless every state here represented is prepared to negotiate in good faith with the objective of reaching equitable solutions, acceptable to all.

Mr. President, it is the earnest hope of my delegation and that of the other co-sponsors of this working paper that this document will be received in the spirit in which it is offered, namely as an invitation and indeed a plea to begin as quickly as possible to sit down together to determine where our common interests lie. We cannot stifle debate, for a dialogue on any question is enlightening. We must soon, however, move from the discussion stage to actual drafting of concrete articles. It is with this objective in mind that the Working Paper is being presented.

In conclusion, I would like to make one further point, Mr. President. There are other serious questions, touching on the

territorial sea, passage through international straits and the seabed beyond national jurisdiction not touched on in this paper. The co-sponsors do not, therefore, suggest that the principles and concepts embodied in this Working Paper provide a total solution to the problems facing the conference. They do, however, suggest most strongly that there can be no successful conference which does not reflect in one way or another the basic conceptual approach reflected in this working paper, which we know is shared by a very large number of states. Thank you Mr. President.