

OTHER BUSINESS

15.1 The Delegation of Chile stated:

‘The Delegation of Chile recalls the objectives of CCAMLR, which can be identified as the conservation of Antarctic marine resources and the protection of the ecosystem in which they are found (ecosystem approach).

Articles I and II of the Convention convey this very general objective. The conservation of marine resources includes all living organisms, the relationships between these organisms and their environment. The Consultative Parties to the Antarctic Treaty wished to protect the entire ecological chain: krill, birds, seals, penguins, whales, and of course, fish. Thus, the scope of CCAMLR exceeds by far that of a mere fishing agreement, from which it is substantially different.

During the negotiations the decision was made to extend the Area of the Convention beyond that of the Antarctic Treaty to the Antarctic Convergence, in order to encompass the marine ecosystem in its entirety.

In brief, its aim was to apply the activities conducted under the Convention to the whole of the ecosystem, and to develop a set of common regulations for its protection.

With respect to the scope of the Convention, CCAMLR’s activities also include the pursuit of the understanding, as well as the monitoring and protection of the ecosystem as a whole, a task which goes far beyond the mere setting of total allowable catches of fish. In spite of the commendable activity of the Scientific Committee (WG-EMM) and of some, albeit limited, cooperation with other organisations (IWC), much remains to be done by the Commission to fulfil these objectives.

With respect to common regulations which could be applied to the whole of the Convention Area, it should be noted that unfortunately two regimes appear to coexist, with two sets of rules: those of CCAMLR and those pertaining to individual nations, in relation to the general activities pertinent to CCAMLR. This duality seems to be most intense and unfortunate in the areas of greatest fishing activity.

The statement of the Chairman with regard to the Antarctic islands, interpreting the Convention, was of an exceptional character. It was so because such a statement is not a part of the Convention, because it applies only to the islands mentioned and ‘to waters adjacent to the other islands within the area to which this Convention applies over which the existence of State Sovereignty is recognised by all Contracting Parties’, and because, in the intention of the negotiators, the application of national rules to the sub-Antarctic islands would be an exceptional recourse on behalf of the Sovereign States, without prejudice to their sovereignty. The intention appears to have been to exhaust the possibilities of obtaining a consensus before resorting to national legislation.

The Delegation of Chile considers it useful and important for the Commission to reflect upon this fundamental issue, so as to permit a full debate on this question. Therefore, it will propose that at its next meeting, CCAMLR should consider an item on the implementation of the objective of the Convention.

Moreover, it would be useful to consider holding consultations on this subject during the intersessional period.’

15.2 The Delegation of Argentina stated:

‘The Delegation of Argentina shared the comments and reflections made by the Delegation of Chile. It also highlighted its concern about some of the problems described. These problems may lead to differences of opinion and even to disputes, which would have to be settled within the framework of the Convention. By all means, it would be desirable to prevent such a situation.

The Delegation of Argentina stressed its concern about the full and comprehensive application of the Convention and in relation to the need to avoid a fragmentary application of the Convention on the basis of species, areas, subareas, institutions, etc. In this sense Argentina stated that the application of rules and regulations of CCAMLR should have a general and complete scope, avoiding fragmentary approaches or approaches based on individual interests. These approaches are not compatible with the objectives of the Convention nor with the global ecosystem approach that the Convention dictates.

The Delegation of Argentina stressed that the problems conceptually described are of a legal, political and ecological nature, and require a reflection in

accordance with that nature. It also emphasised that CCAMLR is an instrument composing the Antarctic Treaty System and that it is not a regional fisheries commission or a fisheries organisation. It also pointed out the obligation of Members to reflect upon these matters with the view of avoiding the deterioration of the Antarctic Treaty System through the deterioration of any of its components. It finally expressed the commitment of Argentina to the objectives of the Convention and to make all possible efforts to fully achieve them.’

15.3 The Delegation of Brazil stated:

‘As CCAMLR, an intergovernmental organisation, reaches its 20th anniversary and increases its membership, and as the importance of Antarctica’s environment increases, we might look carefully into the concerns expressed by some delegates with regard to the ways and directions in which the Commission has evolved in these two decades. An exercise in reflection about whether CCAMLR has remained faithful to its original concepts, scope and purposes may be timely. The Commission might arrive at the conclusion that it has, indeed, remained faithful to its role. But if there have been distortions, then the sooner they are corrected, the better.

If some CCAMLR Members have had, during these initial years, second thoughts about the means and objectives originally agreed to, the constructive attitude is to come forward openly. In the same way, if there are, nowadays, Members that identify unwelcome changes in the Commission’s operation or structures, they should also come forward. Increasingly, debates in the Commission have tended to lead to the belief that there are now, among Members, more divergences in relation to many aspects than existed when the convergence of concepts that created CCAMLR was crystallised.

To the extent that this situation may exist, and, consequently, that CCAMLR risks sliding into fragmentation, Brazil, an early participant in environmental concerns, believes the Commission should not procrastinate indefinitely about opportunities for an exercise in self-reflection which has the purpose of reducing discord.’

15.4 The Delegation of Australia stated:

‘Australia has listened carefully to the statements of Argentina, Brazil and Chile. Australia does not consider that there is any incompatibility between the exercise of coastal state jurisdiction and obligations of the Convention. The legal position is quite clear.

Subparagraphs (b) and (c) of Article IV of the Convention expressly recognise that Parties may exercise coastal state jurisdiction; and such jurisdiction may be exercised in respect of islands within the area of application of CCAMLR. In respect of those islands, CCAMLR makes provision for a modified regime. The Final Act of the Conference on the Conservation of Antarctic Marine Living Resources includes the text of a statement made by the Chairman of the Conference on 19 May 1980 (‘the Chairman’s Statement’) regarding the application of the Convention to the waters adjacent to islands within the area to which the Convention applies. The statement set out four understandings regarding the application of the Convention to those islands. The Final Act records that no objection to the statement was made. In interpreting the Convention one must have regard to any agreement relating to it which was made between the Parties in connection with its conclusion (Vienna Convention on the Law of Treaties 1969, Article 31(2) (a)). The Chairman’s Statement falls squarely within that provision.

As regards the policy adopted by coastal states, it is of course correct that CCAMLR was created for the purpose of conserving Antarctic marine living resources (which include fish) by means of international cooperation. The Convention defines ‘conservation’ as including ‘rational use’ e.g. fishing. CCAMLR, by its terms and practice, in particular Article IX, unquestionably involves regional fishing regulation. International cooperation involves not only agreeing within CCAMLR on conservation measures, but also requires that the Members of the Commission do what is necessary to ensure that conservation measures are implemented by their national legislation and enforced by national means. CCAMLR has no police force, no fisheries patrol boats. Enforcement rests primarily with those Members of the Commission whose flag vessels fish in the CCAMLR area.

However, as has been demonstrated this year, and in previous years, infringements by flag vessels of Members of the Commission continue, and are

increasing despite the efforts made by flag states. Exercise of coastal state jurisdiction is a most useful additional way of seeking to ensure compliance with conservation measures (including compliance by vessels of States which are Parties to the Convention but not Members of the Commission and non-CCAMLR States).

It has been said that coastal states should only exercise their jurisdiction exceptionally when the consensus mechanism of CCAMLR has failed. Australia would not agree with that interpretation for which in our view there is no basis in the Chairman's Statement. But it is nevertheless clear that we as a Commission do not have effective enforcement of conservation measures.

Australia could not accept any suggestion that our exercise of coastal state jurisdiction is in any way inconsistent with the Convention, or its spirit.

We would be pleased to take up the offer of Argentina and Chile to take part in intersessional consultations on these matters, which would include discussion of all relevant aspects, including the question of compatibility of vessel notification systems with international law.

We would also welcome discussion at CCAMLR-XV on how best to attain the objectives of the Convention.

15.5 The Delegation of France associated itself with the statement made by Australia.

15.6 The Delegation of the UK strongly associated itself with each and every point in the statement of Australia.

15.7 The Delegation of South Africa stated:

'South Africa wishes to state for the record that it fully supports the aims of the Convention for the Conservation of Antarctic Marine Living Resources. In the terms set out in the statement by the Chairman of the Conference on the Conservation of Antarctic Marine Living Resources, and as a Member of the Commission exercising State Sovereignty within the Convention Area, South Africa recognises the unique obligation that it is under to ensure that the spirit of the Convention is preserved in relation to the conservation of marine living resources in the Exclusive Economic Zone of the Prince Edward Islands. In the

exercising of its sovereign rights in its waters around the Prince Edward Islands, South Africa re-affirms its readiness to closely observe and act in accordance with the aims and objectives of CCAMLR, thereby contributing towards conservation of the marine living resources in the area.

Further, as stated in the preamble to the Convention, South Africa sincerely believes that it is the responsibility of all Members of this Commission to remain committed to the ongoing development of suitable mechanisms for recommending, promoting and coordinating the measures and scientific studies necessary for the continued conservation of Antarctic marine living resources in the Convention Area.

It is of deep concern to the Delegation of South Africa, that any potential divergence in the interpretation of the basic principles may undermine the Convention's spirit and purpose. Under the circumstances, South Africa re-affirms its belief in the Convention's aims and objectives. South Africa shares the view expressed by Brazil that any possible divergence amongst Members be addressed soonest in the interests of promoting constructive cooperation. South Africa therefore calls on all Members of this Commission to strive to address this issue in due regard of the provisions and in the spirit of cooperation that is at the heart of this Convention.

The Delegation of South Africa therefore places itself at the disposal of the Commission in any ongoing initiative aimed at improving the Convention's application and in preserving the Convention Area's freedom from discord. Hence, South Africa is ready to participate in any debates the Commission may decide on in this regard, either intersessionally or at the next meeting."

15.8 The Delegation of Norway stated:

'Norway stated that this question is also of great interest and importance to Norway as a coastal state with sovereignty over Bouvet Island.

As this question did not appear as a separate item on the Agenda, but had been raised under 'Any Other Business', the Delegation of Norway had no instruction to pronounce the view of the Norwegian Government in the substance of the matter at this stage.

Norway would, however, welcome the inscription of the question 'El Cumplimiento del Objetivo de la Convención' on the Agenda for next year's meeting.'

15.9 The Delegation of Sweden associated itself with the statement of Norway.

15.10 The Delegation of Chile further stated:

'The Delegation of Chile thanked the Commission for the inclusion, in the Agenda of its next meeting in 1996, of the proposed item. An in depth discussion is important, timely and even necessary, with respect to the compliance with the objectives of the Convention.

With respect to the statement made by Australia, and to those mentioning islands to which States have the right to apply the Statement made by the Chairman, the Delegation of Chile further stated that it never was its intention to place the sovereignty of those States or the validity of such Statement in doubt, nor to pass judgement upon the conduct of those States. This is reflected in the statement that the Delegation of Chile made yesterday.

What is important is the understanding that, south of the Antarctic Convergence, we are committed to the regime of CCAMLR, and that we will carefully and in a mature fashion examine our ways of complying.'

15.11 The Delegation of Argentina further stated:

'The Delegation of Argentina confirmed its view about the need of further examination of this topic given the substance of statements made.

It furthermore expressed it could share several of the remarks made by the Delegation of Australia in relation to Heard and McDonald Islands, and that were also relevant to other islands as referred to by the Delegations of France, South Africa and Norway.

There were other cases or issues which may, however, arise within that context and consequently it will be pertinent to reflect upon them.

In this respect, the Delegation of Argentina coincided with the Delegation of Australia about the appropriateness of consulting interested countries during the intersessional period. The Delegation of Argentina expressed its re-assurance to that end.'

15.12 In conclusion, the Commission agreed that an item should be placed on the Agenda of the next meeting of the Commission, titled 'Consideration of the implementation of the objective of the Convention', in order to address all aspects stated above in the paragraphs.

15.13 The Delegation of Brazil further stated:

'Brazil appreciated the Commission's decision on the opportunity of reviewing at the Fifteenth Meeting, the compliance with the objectives of the Convention.

Since its establishment, the world has changed, issues and concerns have changed. Antarctica may be frozen, but CCAMLR should not.'