

INTERPRETATION AND IMPLEMENTATION OF THE CONVENTION
AND THE 1980 DECLARATION OF THE CHAIRMAN IN RELATION
TO SUBAREAS 48.3 AND 48.4

13.1 The Delegation of Argentina outlined the factors underlying the requirement for this item being placed on the Agenda for the Fifteenth Meeting of the Commission. The exchange of Notes in the intersessional period between Argentina and the UK, which had been distributed to Members, had confirmed the existence of a dispute over sovereignty regarding the South Georgia and South Sandwich Islands. While this dispute did not fall within the purview of the Commission, it has significant effects on the operation of the Convention.

13.2 Argentina maintains that the Chairman's Statement of 1980 very clearly applies only to islands in the Convention Area where:

- (i) State sovereignty exists; and
- (ii) the State sovereignty is recognised by all Contracting Parties.

This is clearly the case with islands over which Australia, France, Norway and South Africa have sovereignty. This is not the case with the South Georgia and South Sandwich Islands, where there is no sovereignty which is recognised by all Contracting Parties.

13.3 Argentina recognises the rights of Australia, France, Norway and South Africa to apply national legislation in the areas over which they have sovereignty, in accordance with the Chairman's Statement. But, as British sovereignty over the South Georgia and South Sandwich Islands is not recognised by all Contracting Parties, Argentina rejects any claim for the UK to apply unilateral legislation with respect to Subareas 48.3 and 48.4.

13.4 Argentina rejects the UK's interpretation that the islands referred to in the Chairman's Statement include also those under disputed sovereignty, among other reasons, because this would lead to a paradox that no islands in the Convention Area north of parallel of 60° south would be excluded by the Statement.

13.5 Argentina pointed out that the dispute between the UK and Argentina preceded the signing of the Convention but, until recently, this had not affected the operation of CCAMLR due to the climate of cooperation which existed between the countries. This climate has been put at risk by recent unilateral actions.

13.6 In particular, Argentina referred to the incident on 6 March 1996 when the UK detained the Chilean vessel *Antonio Lorenzo* and escorted it to the Malvinas/Falkland Islands on the

basis that it did not hold a UK licence for fishing in Subarea 48.3. This not only prevented fishing but also disrupted the work of an observer and thereby had a detrimental effect on the Scheme of International Scientific Observation. Argentina believed that the presence of a UK naval vessel in the area was not conducive to an harmonious atmosphere.

13.7 Management and conservation of resources requires harmonisation to adequately fulfil the objectives of the Convention. Disruption of such harmony is of great concern to Argentina and should be avoided.

13.8 During the year, Argentina has been holding meetings with the UK under the framework of Article XXV of the Convention in an attempt to resolve the dispute and, although no solutions have yet been found, the talks are continuing.

13.9 The use of the mechanisms of Article XXV of the Convention, which refers to questions of interpretation, does not exclude the intervention of the Commission and may be able to contribute to a possible solution to the problem at hand.

13.10 Argentina encouraged discussion of this matter by the Commission, as it is important for the Commission to decide on a course of action to prevent the situation from deteriorating.

13.11 The situation in Subareas 48.3 and 48.4 and the existence of an unresolved question on the interpretation and application of the Convention and the Statement by the Chairman puts a considerable stress on CCAMLR and the whole Antarctic Treaty System, of which CCAMLR is an essential component and is, at the same time, a serious factor of risk which should not be neglected by any Member.

13.12 The Delegation of Argentina is aware of the dangers of the referred situation and is making all efforts within the framework of CCAMLR in order to find a solution to this sensitive issue as soon as possible. In the meantime, and as long as the controversy on interpretation remains unresolved, actions should be analysed in order to stimulate a climate of harmony in the area.

13.13 The summary of the Argentinian position made at this plenary does not substitute the Notes referred to in paragraph 13.1, which contain the substance and legal basis of the Argentine position.

13.14 The Delegation of the UK expressed its surprise that Item 13 was on the Agenda of the Commission. Over the past year, the UK had held a dialogue with Argentina (i) through the

formal exchange of notes which have been circulated to the Commission; (ii) through formal consultations under Article XXV of the Convention; and (iii) through informal discussions outside of CCAMLR. In September both sides proposed ways of managing the fishery around South Georgia and South Sandwich Islands which would cause the least friction. Matters have yet to be resolved and, as far as the UK is concerned, the dialogue continues. In the light of this, the UK saw it as potentially divisive to bring before the Commission a problem which stems directly from a sovereignty dispute, which the Commission has no ability to solve.

13.15 The issues raised by Argentina have been covered by the two Notes of the UK dated 8 May and 6 September 1996. The UK saw no need to repeat them, except to recall the matter of interpretation of the Convention and the Chairman's Statement.

13.16 The UK cannot agree with Argentina that there has to be unanimous agreement within this Commission as to which state has sovereignty over South Georgia and the South Sandwich Islands before the understandings of the Chairman's Statement can apply to them. The right of the UK to exercise coastal state jurisdiction is rooted in Article IV (2)(b) of the Convention and paragraph 5 of the Chairman's Statement. Paragraph 5 includes the critical phrase 'over which the existence of state sovereignty is recognised by all Contracting Parties'. This was most carefully formulated. Its sole purpose was to cover the islands which Parties accept are subject to the sovereignty of some state, even though there may be a dispute as to which. It is the recognition of the existence of state sovereignty which is referred to, not the recognition of the sovereignty of a particular state. There is no doubt that South Georgia and the South Sandwich Islands is sovereign territory, nor that the UK exercises sovereignty over it *de facto* and, the UK of course believes, *de jure*.

13.17 The UK believes the Commission will understand that the Interpretation of the Chairman's Statement is intimately linked to the sovereignty question. The issue of the exercise of coastal state jurisdiction cannot be resolved because of Argentina's claim to sovereignty.

13.18 The UK recalled its note of 6 September 1996, which mentioned its offer to take the sovereignty dispute to the International Court of Justice in the 1950s. Argentina rejected this offer.

13.19 A word commonly used in the debate on Agenda Item 12 was 'harmonisation'. The fisheries legislation of South Georgia is explicitly linked to CCAMLR. South Georgia authorities are required by the legislation to carry out their functions in accordance with the conservation measures.

13.20 In explicit recognition of the Antarctic Treaty regime, the legislation is not applied south of 60° latitude. Within the South Georgia Maritime Zone there is no hindrance of those scientific research activities which have been notified to the Secretariat of this Commission under the provisions of Conservation Measure 64/XII.

13.21 The legislation is complementary to and in no way conflicts with the conservation measures. Enforcement of conservation measures through a licensing regime is nothing new. Since the turn of the century, South Georgia has managed harvesting of marine living resources (i.e., whaling and sealing) through leasing and licensing. Companies involved with this include those from at least three Members of this Commission.

13.22 The UK extended its maritime jurisdiction in 1993 in response to Argentina's 1991 baselines law which purported to claim a 200-mile EEZ for South Georgia. The UK's actions are wholly consistent with UNCLOS and CCAMLR.

13.23 The introduction of fisheries legislation in 1993 was because of the increasing level of illegal fishing of *Dissostichus* spp. by vessels of both Member and non-Member States. Flag States have apparently been unable to deal with the matter with sufficient vigour. Accordingly, the UK was compelled to take action as a coastal state. It is only by use of that jurisdiction that one can combat fishing by vessels of non-Members of the Commission.

13.24 The UK therefore sympathises with South Africa and other coastal states, which are, or may be, facing a similar plundering of their marine living resources. The problems experienced by South Georgia have, it seems, simply moved to another part of the Southern Ocean. The issue of illegal fishing is a very real and worrying problem which this Commission (and in particular its Flag State Members) needs to address if the credibility of CCAMLR is to be maintained. Were the UK to end the effective means of enforcement of conservation measures now established for South Georgia, one would return to the longlining free-for-all that was witnessed until recently.

13.25 The UK remains totally supportive of the aims and objectives of the Convention and of the work of the Commission. But in the spirit of the debate on Agenda Item 12, it is prepared to explore with the Commission and with those Parties who fish around South Georgia whether further harmonisation can be achieved.

13.26 The Delegation of the UK concluded by saying that, for so long as it cannot agree with Argentina on the interpretation of the Convention and the Chairman's Statement, the only way to manage our differences is by continuing the bilateral dialogue outside CCAMLR. The UK will

endeavour to continue to do this in a constructive manner. It is conscious of the need, no doubt shared by Argentina, not to allow the bilateral differences to impinge on the work of the Commission and the effective implementation of the Convention.

13.27 The Delegation of the USA stated that the issue before the Commission concerns the differences arising from a dispute over sovereignty, north of 60°S latitude, in the area covered by CCAMLR. It involves two States, Members of the Commission - Argentina and the UK - with whom the Government of the USA has close and warm relations. As to the substance of the dispute, the USA takes no position. It is strictly neutral.

13.28 The USA is concerned, however, that the differences between Argentina and the UK could have adverse impacts upon the operation of CCAMLR. It understands that the two parties have initiated efforts aimed at resolving their differences: political-level discussions outside of the CCAMLR context, as well as consultations pursuant to Article XXV of the Convention. The USA understands that these discussions and consultations continue.

13.29 The Delegation of the USA, therefore, calls upon - and encourages other Commission Members to join it in calling upon - Argentina and the UK to make every effort to bring their ongoing endeavours to resolve their differences to a successful conclusion. Pending such resolution, the USA calls upon the two parties to act in such fashion as to ensure that cooperation within CCAMLR is not affected.

13.30 The Delegation of Italy, while recognising that this forum was not the most appropriate for discussion of the matter, expressed the concern that the existing controversy should not generate negative consequences on the system of multilateral cooperation in the Antarctic. Italy agreed with the Delegation of the USA that the two parties involved should continue to look for a fair and reasonable solution to the dispute. In reaffirming its commitment to and support for the multilateral system of cooperation established by CCAMLR, Italy also stated that all parties should avoid unilateral measures that might lead to increased tension in Subareas 48.3 and 48.4, along the line proposed by the Resolutions of the UN, under the provision of Article XXV of the Convention and the multilateral action adopted by CCAMLR.

13.31 The Delegation of Norway agreed with the statement of the Delegation of the USA and called on the two parties to continue their bilateral dialogue in order to settle their differences.

13.32 The Delegation of Brazil, while believing that this was not the appropriate forum for discussion of sovereignty issues, agreed with the statement of the Delegation of the USA in recognising that a dispute existed and that it had an effect on the work of CCAMLR. Brazil has noted that the parties involved in the dispute are consulting through Article XXV of the Convention and outside CCAMLR in trying to reach a solution. It awaits the result of these

consultations. It exhorted the parties involved to continue their efforts to find a solution satisfactory to both parties and to CCAMLRL and in the meantime to abstain from taking measures that could adversely affect those negotiations.

13.33 The Delegation of Uruguay supported the statements made in the plenary in relation to the significance of the issue in question, and invited all parties involved to take the necessary steps to prevent, as is the usual practice in such cases, the expansion or introduction of new elements which would create tension or disagreement during bilateral negotiations in order to achieve a definitive solution to this conflict in a time frame which was both reasonable and appropriate.

13.34 The Delegation of Australia stated that it had carefully followed the exchange of Notes between Argentina and the UK. It had made known its views bilaterally to the parties concerned and did not feel it appropriate to comment on the substance of them in this forum. It believed that the two parties were following the correct paths through Article XXV of the Convention and outside of CCAMLRL. In associating itself with the remarks of the USA, it stated that the Commission should urge both parties to make every effort to resolve the dispute.

13.35 The Delegation of Spain said it reserved its legal position on the underlying dispute. However, it associated itself with the statement of the Delegation of the USA in encouraging both parties to pursue their bilateral efforts to reach a solution and to refrain from adopting any unilateral measure which may render that solution more difficult to achieve.

13.36 The Delegation of Chile emphasised that there is clearly a sovereignty dispute affecting two Members of CCAMLRL and that this has implications for the work of the Commission. Regarding the sovereignty dispute, it is well known that Chile supports Argentina's position, and this has been expressed at international forums as well as on a bilateral level, as stated in the joint declaration of Presidents Frey and Menem dated May 1996. Notwithstanding this, Chile does not deem CCAMLRL to be the appropriate forum to resolve the dispute between countries with which Chile maintains excellent relations. Chile urges that bilateral negotiations must continue, and the parties should refrain from taking measures that could negatively affect these negotiations. In this context, Chile fully supports the statement by the Delegation of the USA.

13.37 The Delegations of Japan, the Republic of Korea, Poland, South Africa and Sweden recorded that they wished to be associated with statement of the Delegation of the USA.

13.38 The Delegation of Germany stated the issue concerned problems of sovereignty and they were problems that could not be solved within CCAMLRL. Germany said it agreed with the

statement of the Delegation of the USA in urging the parties to reach bilateral agreement outside CCAMLR, and it hoped further discussions within CCAMLR could be avoided.

13.39 The Delegation of Argentina stated that, naturally, it does not share the British position, which will be the subject of later analysis. At the same time, it reserved its right to formulate the considerations and comments that could be pertinent at a further stage. As a preliminary view, it pointed out the particular effort to adduce reasons of efficiency in relation to unilateral measures. The Delegation of Argentina considered, as well, that in the final paragraphs of the British statement, some elements could be identified for a constructive approach. It expressed its appreciation for the active and constructive participation of numerous delegations which confirmed the awareness and concern shared by all Members of the Commission on this very important issue.

13.40 The Commission noted that several delegations underlined the importance of continuing to use the mechanisms of Article XXV of the Convention as an appropriate means to find a solution to the controversy, and to refrain from adopting any unilateral measure which may render that solution more difficult to achieve.

13.41 The Commission noted the statements made by the Delegations of Argentina and the UK which helped to clarify the issues relating to the waters adjacent to South Georgia and the South Sandwich Islands. It also noted that the two parties were continuing consultations under Article XXV. The Commission:

- (i) recognised that it was not the most appropriate forum in which to seek a resolution of the differences between the parties;
- (ii) encouraged the parties to continue their discussions seeking to resolve their differences in a spirit of cooperation and making every effort to bring them to successful conclusion; and
- (iii) pending resolution of those differences, expressed the hope that the parties would act in such fashion that cooperation under CCAMLR is not affected, and that the goodwill expressed by both parties will continue.