

CONSIDERATION OF THE IMPLEMENTATION OF THE OBJECTIVE OF THE CONVENTION

13.1 Chile presented a paper commenting on various aspects of the implementation of the objective of the Convention (CCAMLR-XVIII/BG/50 Rev. 1). In doing so, Chile first made the following statement:

‘The position of the Government of Chile regarding the sovereign rights of the Argentine Republic over the Falkland (Malvinas) and its so-called ‘dependencies’, San Pedro or South Georgia, as well as the South Sandwich inadvertently omitted from the footnote, has been reiterated in successive Presidential Declarations and in the initiative traditionally taken by Chile at the United Nations. Although such matters are alien to this forum, that is not entirely the case of the correspondence mentioned in the footnote which reflected:

- doubts concerning the right of the United Kingdom to invoke the Chairman’s Statement;
- inconvenience of such invocation, given the *sub lite* character of the concerned territories with regard to which the Argentine Republic would have at least the same rights of invocation, which she has refrained from exercising;
- damage for the claimants’ position in the precedent adopted by the United Kingdom introducing, at least in appearance, a differentiation between areas located to the north and to the south of parallel 60°S; and
- rejection of unilateral actions when, going beyond and contradicting the spirit of the Chairman’s Statement, they disrupt and undermine instead of contributing to the objective of the Convention.

This document concerns exclusively the last of the four points identified in our correspondence with the United Kingdom and I believe that there is yet much to be accomplished both in terms of avoidance of unilateral actions or, when these become necessary, to apply them in a manner not only consistent but also conducive to the strengthening of the multilateral framework.’

13.2 Argentina referred to this statement and responded:

‘The Delegation of Argentina has recently received the document CCAMLR-XVIII/BG/50 Rev. 1. It wishes to recall that during the 1998 Commission meeting various delegations requested that the statement by Chile on this point be circulated during the intersessional period so that it could be considered during the present meeting. The lack of available time has not permitted an in-depth study of the document, although on a first reading of its contents it would seem to be a reflection, in many ways valuable, on a complex issue. However, the document contains certain statements with which the Delegation of Argentina does not concur.

In relation to the point which relates to the application and interpretation of the Convention and to the Statement of the Chairman of 19 May 1980, the Delegation of Argentina reiterates the basic position of its Government which may be found in the notes to the Executive Secretary of 18 July and 3 October 1996 and in other related and complementary notes and documents, paragraphs 13.1 to 13.13 and 13.39 of the Report of the Fifteenth Meeting of the Commission, paragraphs 9.59, 9.60 and 9.66 of the Report of the Sixteenth Meeting of the Commission and paragraphs 4.13 and 4.18 of the Report of SCOI last year.

Given the lack of time referred to above, the Delegation of Argentina does not wish to expand on matters which were, as mentioned above, of great complexity although it would like, by way of example, to recall briefly that, in matters arising from the interpretation of legal texts, legal norms exist which are applicable in international law, specifically, general principles of law, including, *inter alia*, the principle of *effet utile* (recalled in point 13.4 of the Report of the Fifteenth Meeting of the Commission), which is without doubt a norm with compulsory content which should be taken into account when undertaking the corresponding legal analysis.

After this meeting Argentina will analyse the document with sufficient time and will make any comments which may be appropriate through the Secretariat.'

13.3 France expressed a general reservation regarding the text of the Delegation of Chile. Furthermore, the Delegation of France considered that as a priority, CCAMLR should take action against illegal fishing.

13.4 The UK also made reference to the Chilean paper:

'Earlier this week the distinguished representative of Chile introduced his paper (CCAMLR-XVII/BG/50 Rev. 1) on Item 13 (Consideration of the implementation of the objective of the Convention). It confirmed that the 1980 Chairman's Statement applies to South Georgia and the South Sandwich Islands, even if the reasoning may not be fully in accord with our own. The paper had been revised, the day after it was first circulated, by the addition of a footnote to make it clear that, although Chile recognises that the United Kingdom has "control" over the territory, it does not recognise our sovereignty. So far, so good. However, in introducing the paper the Chilean delegate made a lengthy "interpretative declaration" putting a gloss on the footnote. The gloss apparently seeks to cast doubt on the applicability of the Chairman's Statement to South Georgia and the South Sandwich Islands.

Not only does this changing situation indicate a degree of doubt as to the Chilean position, but other matters he referred to also require me to make this statement.

I will make four points. First, South Georgia and the South Sandwich Islands is *not* a dependency of the Falkland Islands. In the past it was, for convenience, administered as such. But since 1985 it has been a separate territory with its own Constitution. Moreover, sovereignty over the territory has a quite different legal basis from that of the Falkland Islands. (And I trust, Mr Chairman, that the Falkland Islands will not again be brought up in this Commission. To do so is unlikely to be conducive to our work.)

Secondly, as I mentioned at the 1996 meeting of the Commission (paragraph 13.18 of the report), in 1955 the United Kingdom commenced proceedings against Argentina in the International Court of Justice for a ruling on sovereignty over the territory, but since Argentina did not agree to accept the jurisdiction of the Court, the case had to be discontinued. The argument that while the sovereignty dispute is unresolved we should not invoke the Chairman's Statement, and not exercise coastal state jurisdiction, is therefore not one we can accept.

Thirdly, the 200 n miles Maritime Zone established around the South Georgia and the South Sandwich Islands extends south of 60°S into the Antarctic Treaty area, but the fishing legislation for the Zone does not apply south of 60°S. This restraint on our part is to avoid any complications with the Antarctic Treaty.

Fourthly, the Chilean statement echoes the view, expressed many times by Argentina, that our exercise of coastal state jurisdiction is “unilateral” and contrary to the “spirit” of the Convention. As I have made clear before (report of the 1996 meeting, paragraph 13.23), the serious threat to toothfish stocks from IUU fishing was the reason we decided to exercise our jurisdiction in what is a crucial part of the CCAMLR area for marine resources. Our action has resulted in one of the few real successes in recent years for the objectives of the Convention. The requirement to fish in accordance with the conservation measures is written into the territory’s legislation. By this means, consistency with the measures is achieved. Furthermore, we have studiously refrained from placing reservations on any measure – as we would be entitled to do under the Chairman’s Statement. This is in contrast to the growing practice of some other Members. Observer programs are commonplace around South Georgia. The System of Inspection is routinely exercised there, and tough enforcement measures are taken. Our fisheries management, which includes, as a priority, scientific research, is barely mirrored elsewhere in the Conventions waters. The net result is a sustainable fishery. These are hardly matters which are inconsistent with the objectives of our Convention.

Lastly, our Argentine and Chilean colleagues may feel the need to make further statements. That is their right. I will only say – as our French colleague has said before – our time is limited and would be better spent tackling the immediate and increasing menace of poaching (including by all too many vessels registered with Members of this Commission), rather than in unproductive exchanges on a matter which is all too well known to us all.

I also request that this statement be reproduced verbatim in our report.’

13.5 Argentina responded:

‘The Delegation of Argentina has heard the declaration made by the United Kingdom on this last day of the CCAMLR meeting. Clearly, the Delegation of Argentina does not share the points of view expressed and, naturally, rejects them. At the same time, Argentina reiterates its basic position, as explained in the notes dated 18 July and 3 October 1996, as well as in complementary and related notes, in the Reports of the Fifteenth and Sixteenth Meeting of the Commission (CCAMLR-XV, paragraphs 13.1 to 13.13 and 13.39, CCAMLR-XVI, paragraphs 9.59, 9.60 and 9.66) and paragraphs 4.13 and 4.18 of the SCOI Report in 1998. The Delegation of Argentina reserves its right to respond *in extenso* to the Declaration of the United Kingdom, at some time after the end of this meeting of the Commission.

On this occasion, very briefly and by way of a preliminary comment, the Delegation of Argentina advises, once more, that the essence of the British argument, the premises upon which it is built and the conclusions derived from it, rest upon repeated hypotheses which are not only unconvincing, but devoid of sound legal grounds. For example, it is sufficient to assert that the British argument precludes elementary criteria and interpretative rules of international law. As if trying, Mr President, by reiterating what is said several times, to turn it into the truth.

Given this, the arguments of the United Kingdom cannot invalidate the position held by Argentina, which is different and well founded. It is also worthwhile to reflect now upon the British offer referred to by the British Delegation, made in the decade of the 50s, which proposed to take this sovereignty dispute before the International Court of Justice. In this respect, the Delegation of Argentina wishes to point out that the British Delegation has forgotten to mention that the offer

included Antarctic areas under the jurisdiction of Argentina, but not the Malvinas/Falkland Islands. As Argentina has already recalled during this meeting of the Commission, the controversy between Argentina and the United Kingdom refers to sovereignty upon the Malvinas/Falkland, South Georgia and Sandwich Islands, that is to say, upon the three Antarctic archipelagos and adjacent waters.’

13.6 Chile advised the Commission:

‘Chile expressed its appreciation for the statements of a number of delegations, and took full account of them in order to direct any future discussions of the subject. Chile also referred to: the United Kingdom’s statement about the administrative structure of the territories concerned, an invocation of the judicial procedure to be followed in Antarctic controversies that was superseded by the Antarctic Treaty, and to an apparent misunderstanding regarding its cooperative and non unilateral approach to decisions within the framework of the Convention.’

13.7 Uruguay stated:

‘The Delegation of Uruguay listened attentively to the statements made in full plenary by various delegations of friendly countries that have promoted and upheld the Antarctic System and, thus, this Convention.

The Delegation of Uruguay also examined the excellent document (CCAMLR-XVIII/BG/50 Rev.1) presented by the Delegation of Chile, and listened carefully to the explanation given by the Head of the Chilean Delegation.

This document gives a comprehensive and profound analysis on which we agree in general but, given the wide scope of the subjects focused upon, they deserve to be given more detailed attention.

In these circumstances, the Delegation of Uruguay reaffirms the opinions expressed at the 1996 meeting of the Commission and hopes that the Parties involved will work towards finding a quick solution to the controversies that contribute nothing towards achieving the objectives of this Convention, either by unilaterally implementing the conservation measures or by making repeated statements about geographical areas which are the basis of controversies of another nature.

Therefore, the Delegation of Uruguay appeals these friendly countries, and pillars of the Antarctic System, either to take the necessary steps towards finding the best solution to their controversies or to remove them from the ambit of the Convention.’

13.8 Chile then introduced CCAMLR-XVIII/BG/50 Rev. 1, stressing that consideration of Agenda Item 13 in a systematic manner should constitute, *mutatis mutandis*, the equivalent within CCAMLR of Agenda Item ‘Operation of the Antarctic Treaty System’ in the Antarctic Treaty Consultative meetings. It considered that, assuming that the illegal fishery may be seen as the main challenge to the objective of the Convention, some inherent weaknesses in the CCAMLR system had allowed such a challenge to develop. But even if the IUU was finally defeated, implementation of the objective could remain an unfinished task.

13.9 The document analysed six areas where Chile believed that cooperation among Members should be intensified and referred as well to other international instruments, such as UNIA, the FAO Compliance Agreement and Code for Responsible Fishing, quoting from the relevant provisions of the three legal bodies to support the emerging consensus on the extent of States’ rights and obligations in the conservation of marine living resources. Chile considered that CCAMLR should also look towards other international and regional fisheries organisations and

willingly cooperate with them in the pursuit of its own objective. The paper indicated that the ecosystem management approach represented CCAMLR's great achievement and Chile thanked the Executive Secretary for enlisting FAO's support for a wider distribution of the book *Understanding CCAMLR's Approach to Management*.

13.10 Several Members noted, in particular, the comments of Chile with respect to interaction with other international organisations. They believed that such interaction was increasingly prevalent and important and that this would require further consideration at future meetings of the Commission. The Republic of Korea considered, however, that increased interaction with CITES would not be appropriate. Both New Zealand and the USA identified certain aspects of CCAMLR's position in the Antarctic system as requiring clarification.

13.11 Spain made the following observation:

'The Delegation of Spain sincerely thanked the Delegation of Chile for the preparation of document CCAMLR-XVIII/BG/50 Revision 1 and considers it to contain many interesting proposals which will have to be extensively considered by Members during the forthcoming meetings of the Commission.

Nevertheless, with respect to item a) of the document, the Delegation of Spain understands that it encompasses assertions which are not devoid of controversy and which thus require a thorough examination.

Therefore, the Delegation of Spain reserves its legal position concerning item a) and requests that Member States can reflect on the entire document during the intersessional period.

On the other hand, with respect to the sovereignty controversy itself between Argentina and the United Kingdom, both claiming jurisdiction over the South Georgia and South Sandwich Islands, the Delegation of Spain wishes to reiterate its position on this question, which was previously explained during the discussions at CCAMLR-XV on the 'Interpretation and Implementation of the Convention and the 1980 Declaration of the Chairman in relation to Subareas 48.3 and 48.4'. The position is explained in the CCAMLR-XV report, item 13, paragraph 13.35.

In this context, the Delegation of Spain still reserves its legal position concerning the essence of the sovereignty controversy between Argentina and the United Kingdom over Subareas 48.3 (South Georgia Islands) and 48.4 (South Sandwich Islands).

Similarly, Spain continues to encourage both parties to persevere in their bilateral efforts, outside CCAMLR's ambit, to reach a solution, and to abstain from adopting unilateral measures which would make it more difficult to reach such solution.'

13.12 Other Members also expressed general appreciation of the fact that Chile had presented so many important and thought-provoking issues to the meeting, but many also noted that the paper being presented had only been available for a day. Due to the lack of time available at the meeting to give full consideration to such complex matters, they therefore found it necessary to advise a general reservation in respect of the issues presented.

13.13 The Commission agreed that this item should continue to be included in its agenda for future years.