

A N N E X

During the session of the Executive Council, two States, namely Spain and Morocco, asked for their comments to be entered in the minutes.

Morocco was disputing the form and manner in which the Secretary-General was elected, whereas Spain wished to make known its point of view regarding its alleged entitlement to vote in the Executive Council.

These comments are hereby entered in the annex to the decisions, bearing in mind that detailed minutes of meetings are no longer drawn up for reasons of economy, pursuant to decision 15 (XXXV).

In the case of Morocco, the comments made deal with the unequal treatment afforded to this country in the voting process, accruing to the acting Secretary-General by virtue of the position and duties he exercises. The Moroccan delegation drew particular attention to the fact that the various movements and meetings had provided this candidate with an equal amount of opportunities to campaign and that, likewise, he has benefited from the facilities provided by the situation to express himself. Morocco also expressed explicit reservations concerning the voting rules and procedures established with a view to these elections, particularly with regard to the possibility of a member country of the Council being represented by another country and the solution adopted concerning the countries to which paragraph 13 of the financing rules annexed to the Statutes apply.

The text which the Spanish delegation subsequently sent WTO in order to make its standpoint known, in accordance with the decision of the Council, is presented hereinafter.

Statement by the Head of the Spanish Delegation (H.E. Ambassador Delfín Colomé) at the fifty-fifth session of the Executive Council of WTO concerning agenda item 8 (Manila, 20 May 1997)

Mr. Chairman,

Acting on the wise advice that you yourself gave us this morning, I shall be perfectly calm and frank in my statement and also strictly observe the Regulations that govern our activity in the Organization.

From this standpoint, I should like to make some remarks, adopting the most constructive of attitudes.

The General Assembly of WTO, which is the indisputable sovereign organ of our Organization, adopted at New Delhi in 1983 an amendment to Article 14 of the Statutes (contained in the blue book that all of us have on our tables) by resolution 134(V), which added a new paragraph 1 bis, with the following text:

"The host State of the Headquarters of the Organization shall have a permanent additional seat on the Executive Council, which shall be unaffected by the procedure laid down in paragraph 1 above concerning the geographical distribution of Council seats."

The same resolution 134(V) provides that the amendment "*will come into force for all Members when two-thirds of the member States have notified the Depository Government of their approval, in accordance with Article 33(3) of the Statutes.*"

The amendment to Article 14 has not come into force, since the figure of two-thirds needed for its approval has not yet been reached.

Nevertheless, the new paragraph 1 bis of Article 14 is being applied provisionally. In actual fact, Spain already occupies a seat on the Council as host State of the Organization. This much is obvious: here you have us sitting on the Council behind a sign bearing the word Spain, and all the members of our delegation are wearing on their lapels a badge saying "Council Member".

To be sure, resolution 134(V) is applied provisionally pending its entry into force. The same holds true for the application of resolution 93(IV) which affects Article 37, resolution 266(VIII) which affects paragraph 4 of the Financing Rules attached to the Statutes and resolution 61(III) which affects paragraph 12 of those Rules. The same does not apply to other amendments which, according to the Statutes - as contained in this blue book that should serve as our guide and reference, as if it were our bible - "have not yet entered into force", which is the case of resolution 208(VII) affecting Article 15 or resolution 61(III) concerning Article 38.

The grounds for this provisional application are contained in General Assembly resolution 208(VII), which endorsed some suggestions made by the Secretary-General to expedite the entry into force of the amendments adopted (document A/7/10(a)) and requested the Executive Council and the Secretary-General to act on them in their respective spheres of competence. Document A/7/10(a) contemplates, among the "general means to accelerate the entry into force of amendments to the Statutes", the provisional application of such amendments (see Section II.A, paragraphs 10-13 of the document in question).

We are fully aware that, on the basis of any legal interpretation, it could be argued that paragraph 13 of document A/7/10(a) refers to "future amendments" to the Statutes, i.e. those that will be approved in the future to the exclusion of those already approved. Nevertheless, Section II.A concerning provisional application comes after paragraph 9 which reads: "it is appropriate to seek means to accelerate the entry into force of the amendments already adopted by the General Assembly." Since resolution 208(VII) makes a general reference to document A/7/10(a), the provisional application of the amendment to Article 14 should be considered approved.

In other words, there is absolutely no doubt that the new Article 14.1 bis is being applied provisionally. And I would like to say to you that this provisional character should not raise any fears, either legal or practical. There can be no legal fears, because the situation is provided for in more general terms, though covering the case that concerns us, in Article 25 of the Vienna Convention on the Law of Treaties. There can be no practical objection either: allow me to remind our respected legal adviser, who is French and, consequently, a man with a rational mentality, of the words that one of his compatriots, Balzac, used so brilliantly in "*Les paysans*": "In France, the provisional is eternal, although the Frenchman is suspected of liking change".

And I would emphasize the following:

Under the terms of Article 14.1 bis, Spain, as the host State of the Organization's Headquarters "shall have a permanent additional seat on the Executive Council". No limitation is placed on this allocation of a seat, and participation in the Council entails all the rights enjoyed by its Full Members, particularly the right to vote provided for in rule 27(1) of the Council's Rules of Procedure, whereby "Each Full Member represented at the Council shall have one vote."

It should be recalled that the Council rule that excludes Members not entitled to vote from meetings of the Council to elect a nominee for the post of Secretary-General refers exclusively to:

- . the Associate and Affiliate Member which, in accordance with Article 14 of the Statutes, do not have the right to vote.

- . Full Members suspended from exercising their rights in accordance with Article 34 of the Statutes.

- . Full Members deprived of the right to vote for being in arrears in the payment of their financial contributions, in accordance with paragraph 13 of the Financing Rules of the Organization.

Quite apart from these cases explicitly provided for in the internal rules of WTO, it is not possible to restrict the rights of membership of the Council, unless there is some stipulation to this effect in the rules. Moreover, any such provision would have to have the same standing and follow the same approval procedure as Article 14.1 bis, approved by the General Assembly by a two-thirds majority of the Full Members present and voting. Any possible decision by the Council setting limitations in this respect could not in any way - and in this, Mr. Chairman, I shall be unmoved in my conviction - contradict a decision of the General Assembly as WTO's supreme organ.

Finally, Mr. Chairman, I should like to refer to the comment that Spain has never previously exercised its right to vote in the Executive Council.

Even if that is the case, it is not a reason for depriving it of the vote here and now. If it has not exercised that right, it must have had its reasons for not doing so. What is clear, moreover, is that Spain has never renounced the very essence of that entitlement which it undoubtedly possesses according to the Statutes.

The fact that it has not exercised that right, probably for circumstantial reasons, does not mean that the right does not exist: it is there, included in the Statutes, following the mandate of the Assembly which is our only sovereign organ.

Mr. Chairman, the Spanish delegation and I myself, convinced that legal reason is on our side, would be more than reluctant to find fault with the General Assembly.

And in any case, our fervent and express desire is that the Spanish position I have just described should appear in the records of this fifty-fifth session of the Council, so that in future we cannot be reproached - even without a legal basis - for having forgone an entitlement that Spain without a shadow of a doubt has.