



# Earth Negotiations Bulletin

*A Reporting Service for Environment and Development Negotiations*

Vol. 7 No. 40 Published by the International Institute for Sustainable Development (IISD) Friday, 16 December 1994

## CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS: YEAR-END UPDATE

Although the next session of the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks will not take place until March 1995, the UN General Assembly has adopted several resolutions related to the Conference and fisheries management. This special year-end issue of the *Earth Negotiations Bulletin* will review relevant activities that have taken place since the third session of the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks in August 1994, summarize the results of the General Assembly's consideration of the Conference and highlight upcoming events. This issue of the *Earth Negotiations Bulletin* is published as part of a series of year-end issues intended to summarize the current state of play in the various sustainable development conferences and negotiations reported on by the *Bulletin* in 1994.

### A BRIEF HISTORY OF THE CONFERENCE

The problems related to high seas fisheries are not new to the UN system. Participants at the Third UN Conference on the Law of the Sea were well aware of the issue, however, attempts to deal with it during the course of the ten years of negotiations that concluded in 1982 were not successful. The negotiators decided to leave such problems to be resolved between States concerned with high seas fisheries in different regions. During the last decade, however, the pressure on high seas fisheries has grown rapidly, and the problems have become more urgent. A number of events in the early 1990s indicated that an international conference should be convened to resolve the issues related to high seas fisheries. One forum where this was discussed was the Preparatory Committee for UNCED. After long and difficult negotiations, participants at the Earth Summit in Rio agreed to "convene an intergovernmental conference under UN auspices with a view to promoting effective implementation of the provisions of the Law of the Sea on straddling and highly migratory fish stocks."

The resolution establishing the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (47/192) was adopted by the UN General Assembly on 22 December 1992. The resolution states that the Conference, drawing on scientific and technical studies by FAO, should: identify and assess existing problems related to the conservation and management of highly migratory and straddling fish stocks; consider means of improving fisheries

cooperation among States; and formulate appropriate recommendations. The resolution also stipulated that the Conference should complete its work "as early as possible" in advance of the 49th session of the UN General Assembly.

The organizational session for the Conference was held at UN Headquarters in New York from 19-23 April 1993. The participants adopted the rules of procedure and agenda, appointed a Credentials Committee and agreed on how its substantive work would be carried out. Satya N. Nandan (Fiji) was elected Chair of the Conference. Nandan was asked to prepare a paper containing a list of substantive subjects and issues as a guide for the Conference, and delegations were requested to submit their proposals to the Secretariat.

### FIRST SUBSTANTIVE SESSION

The first session of the Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks met from 12-30 July 1993, at UN Headquarters in New York. The Plenary addressed the major issues before it, guided by the Chair's summary of the issues. The Plenary held formal sessions on each of the issues outlined and then adjourned to allow informal consultations to continue. At each of these informal meetings, Nandan presented the group with a working paper that summarized the issues raised in the Plenary and in papers submitted by interested delegations.

The major issues discussed at the first session were: the nature of conservation and management measures to be established through cooperation; the mechanisms for international cooperation; regional fisheries management organizations or arrangements; flag State responsibilities; compliance and enforcement of high seas fisheries and management measures; responsibilities of port States; non-parties to a subregional or regional agreement or arrangement; dispute settlement; compatibility and coherence between national and international conservation measures for the same stocks; special requirements of developing countries; review of the implementation of conservation and management measures; and minimum data requirements for the conservation and management of these stocks. At the conclusion of the session, the Chair tabled a draft negotiating text to serve as the basis for negotiation at this session of the Conference.

### SECOND SUBSTANTIVE SESSION

The second session of the Conference met from 14-31 March 1994, at UN Headquarters in New York. The delegates continued their debate on the issues left unresolved at the end of the previous session and their review of the Chair's negotiating text (A/CONF.164/13\*).

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The first day of the Conference consisted of general statements and the Conference then convened in informals until the end of the second week when informal-informals were held to attempt to prepare a new "clean" version of the text. These sessions were held until the middle of the third week, and all NGOs were excluded. As a result, five out of fourteen days of negotiation were carried out behind closed doors. The Plenary resumed briefly on Wednesday when the Chair briefed the Conference on progress made during closed sessions. On the final day of the Conference, the Chair produced a revised negotiating text to serve as the basis for negotiations at the third session.

### **THIRD SUBSTANTIVE SESSION**

The third session of the UN Conference on Straddling and Highly Migratory Fish Stocks was held at UN Headquarters in New York from 15-26 August 1994. During the first week, delegates reviewed the Revised Negotiating Text (RNT) as contained in document A/CONF.164/13/Rev.1. General comments were delivered in the Plenary and consultations were carried out in informal-informals. During the second week, the Chair issued a Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the "Draft Agreement"), based on the comments that delegates had made on the RNT. Informal consultations on the most difficult issues were then carried out between the Chair and interested delegations. Delegates reacted to the text and the last version of the Draft Agreement was issued in document A/CONF.164/22 before the Conference adjourned.

The 31-page Draft Agreement contains a Preamble, 47 articles in 13 parts and three annexes. It is in the form of a legally-binding agreement and some of the distant water fishing States have repeatedly expressed their opposition to such a form. The Preamble is short and concise and recalls the principles of UNCLOS, notes the need to improve cooperation between coastal States and flag States, calls for more effective enforcement measures and commits State Parties to responsible fishing. It does not refer to the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. The 13 ensuing parts deal with the following issues: general provisions; conservation and management of straddling and highly migratory fish stocks; mechanisms for international cooperation concerning straddling and highly migratory fish stocks; compliance and enforcement; port State enforcement; requirements of developing States; peaceful settlement of disputes; non-participants; abuse of rights; non-parties to this Agreement; reports on implementation and review conference; and final provisions. Three annexes deal respectively with minimum standards for collection and sharing of data, suggested guidelines for application of precautionary reference points and arbitration procedures. In the closing session, the Chair encouraged delegations to undertake intersessional consultations in order to facilitate negotiations and help achieve agreement at the next session of the Conference. He said he would continue to liaise and consult with delegations and, in order to maintain transparency and flow of information to all delegations and observers, would report to the Conference at the next session on any developments resulting from such intersessional consultations.

### **INTERSESSIONAL HIGHLIGHTS**

#### **CODE OF CONDUCT FOR RESPONSIBLE FISHING**

Consultations were held on the Code of Conduct for Responsible Fishing at FAO Headquarters in Rome in September 1994. The results of these negotiations were not entirely

satisfactory as coastal States and distant water fishing States seemed to adopt opposite positions on the whole process. On the one hand, some coastal States insisted that the provisions of the draft Code should remain in brackets until the UN effort on straddling fish stocks and highly migratory fish stocks is finalized. Distant water fishing States, on the other hand, saw the two processes as entirely different and actually favor the FAO Code, as based on a voluntary approach. Coastal States would rather see the restrictive measures apply solely to straddling and highly migratory fish stocks and are adamant about encroachments on their national sovereignty in their exclusive economic zones (EEZs). As a result, the FAO process is now being hindered by the UN Conference process and some fear that the FAO is losing some of its edge and taking a back seat rather than proceeding on the fast track. The draft Code and the comments made by the delegates will be transmitted to the Committee on Fisheries (COFI) in March 1995.

### **UN CONVENTION ON THE LAW OF THE SEA**

Under the terms of the United Nations Convention on the Law of the Sea, the International Seabed Authority (ISBA) held its inaugural session in Kingston, Jamaica, from 16-18 November 1994. The meeting, which was attended by 80 member and 17 observer countries, served as both a commemoration of the long and eventually successful negotiations to achieve a widely accepted Law of the Sea treaty and as the initiation of the ISBA as the organization that will oversee activities related to the exploration and exploitation of the resources of the deep seabed. Discussions regarding the implementation of the Convention in other areas continued informally, particularly with regard to the establishment of the International Tribunal for the Law of the Sea.

The November meeting did not grapple with either procedural or substantive issues. Instead, it provided an opportunity for Parties to express their views on both the past and the future. There was universal acceptance of the agreement opened for signature in July 1994, that modified the provisions of the Convention with regard to the deep seabed. This agreement substantially revised the seabed provisions of the Convention and many countries, both developed and industrialized, felt it necessary to reconfirm support for it.

On the Monday following the ISBA session, Parties to the Convention and signatories to the July agreement met in New York to address the creation of the International Tribunal for Law of the Sea. The parties agreed, in light of the fact that many countries are still in the ratification process, to postpone the appointment of members of the Tribunal until 1996.

### **GENERAL ASSEMBLY HIGHLIGHTS**

The UN General Assembly's Second Committee began its consideration of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (Agenda Item 89(c)) from 19-21 October 1994. Delegates had before them a report of the third and fourth sessions of this Conference in document A/49/522.

The following are some of the highlights of the debate.

**Hans Corell**, Counsel for the UN Office of Legal Affairs, presented two reports, one that deals with the issue of drift-net pelagic fishing and the other with the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. On the issue of drift-net fishing, he said that the report of the Secretary General, as contained in document A/49/469, is intended as a follow-up on activities inconsistent with General Assembly Resolution 46/215. This document is intended as an implementation report and will be followed by subsequent annual reviews. In spite of the resolution, the document shows that drift-net fishing is still being carried out.

**GERMANY (ON BEHALF OF THE EU):** Dr. Wolfgang Runge said that the EU believes that it will be able to find solutions to the remaining questions in the Conference on Straddling and Highly Migratory Fish Stocks. The concepts of biological unity of

the fish stocks concerned and the compatibility of conservation and management measures applicable in areas under national jurisdiction and in the adjacent high seas, as well as effective enforcement provisions, are crucial elements to protect the stocks for the next generation.

**ICELAND:** Amb. Ossur Skarphedinnsson, on behalf of the Nordic countries, said that they have been actively participating in the fish stocks Conference and believe that, although there are still outstanding issues, a satisfactory solution can be found and the Conference can be successfully concluded next year. Particular attention should also be paid to the issue of pollution by so-called "persistent organic pollutants."

**ARGENTINA:** Ambassador Raúl Estrada-Oyuela noted that in a world where broad sectors of humanity are deprived of basic sustenance we cannot continue to witness the disorderly exploitation of the high seas. He urged the international community to agree on an international legally-binding instrument that establishes an effective regime for the preservation of living resources in the high seas and the interests of coastal States.

**REPUBLIC OF KOREA:** Wonil Cho stressed the need for the mandate of the Conference to be carried out within the framework of UNCLOS. The Chair's revised draft should reflect greater balance between the positions of coastal and distant water fishing States. The sections dealing with new participants, compliance and enforcement, port State jurisdiction, and the abuse of rights and enclaves should be further improved during the upcoming sessions. He expressed concern about the issue of arrest and detention by coastal States and port States. The outcome of the Conference should be the formulation of appropriate recommendations rather than a legally-binding instrument.

**RUSSIAN FEDERATION:** The representative said that the outcome of the fish stocks Conference should be binding.

**CANADA:** Amb. John Fraser noted that the Conference on Straddling and Highly Migratory Fish Stocks has made progress. The tabling of a draft agreement in convention form reflects the consensus to achieve a binding agreement. An effective regime for high seas fisheries should include effective conservation management measures, appropriate surveillance and control, and binding dispute resolution mechanisms.

**NEW ZEALAND:** John McKinnon expressed satisfaction with the work of the Straddling and Highly Migratory Fish Stocks Conference and concern on the report that drift-net fishing still takes place in the Mediterranean and the Bay of Biscay.

**MEXICO:** The representative said that the elaboration of a new draft agreement should be carried out in coordination with the work of the FAO on the Code for Responsible Fishing.

**CHINA:** Yan Yani said that: the work of the Conference should be consistent with UNCLOS; no agreement has been reached on the form of the final document; developing countries should receive special assistance; coordinated and integrated conservation and management measures should be adopted in the entire range of the stocks; more flexibility should be given to the provisions for regional organizations; no unilateral action should be allowed on the high seas under the pretext of conserving and managing the fish stocks; and there should be greater coordination among UN specialized agencies to avoid duplication of efforts.

**PAPUA NEW GUINEA:** Amb. Utula Samana said that member States of the South Pacific Forum have played an active part in the negotiations of the Conference on Straddling and Highly Migratory Fish Stocks and are also concerned with the issue of transboundary movement of toxic wastes in their region.

**SRI LANKA:** Amb. Stanley Kalpage said that Sri Lanka believes that regional organizations, such as the Indian Ocean Marine Affairs Cooperation, should be utilized in the implementation of the new regime in the high seas.

**INDONESIA:** Marwah Daud Ibrahim supported the draft agreement on straddling and highly migratory fish stocks and said that it should serve as a good basis for future negotiations.

**TRINIDAD AND TOBAGO:** Evans King, on behalf of the member States of the Caribbean Community, said that they had always urged for immediate action with regard to marine living resources on the high seas. He highlighted the progress achieved in the Straddling and Highly Migratory Fish Stocks Conference. UNCLOS provides a broad legal framework for the conservation of those species and the dual regime established for the Exclusive Economic Zones and the high seas should not be compromised by the process. He highlighted the precautionary principle that is prevalent in the draft agreement and the acceptable standards for conservation and management measures that are to take into account the best scientific evidence available. He urged all States to participate in the process so that it reflects a global consensus.

**AUSTRALIA:** Anastasia Carayanides, on behalf of the South Pacific Forum (SPF), said that States have a duty to conserve fisheries resources responsibly and the SPF welcomes the emergence of a legally-binding document on the issue of straddling and highly migratory fish stocks. Some members of the SPF do not have the resources to engage in protracted negotiations and yet remain committed to the process. She also said that a cohesive regional approach had been facilitated by the South Pacific Regional Environment Programme (SPREP). She also expressed concern at reports that drift-net fishing may be continuing in some parts of the world, although no longer in the South Pacific.

**MICRONESIA:** Amb. Yosiwo P. George supported the elaboration of a binding legal document as the outcome of the Conference on Straddling and Highly Migratory Fish Stocks.

**UKRAINE:** The representative said that Ukraine advocates responsible fishing management on the basis of international agreements and cannot accept the attempts made in violation of UNCLOS to legalize unilateral measures and apply them to the high seas.

**NAMIBIA:** The delegate said that although the establishment of an effective high seas fisheries regime is important, the interests of small coastal States must not be compromised in the process.

## GENERAL ASSEMBLY RESOLUTIONS

The Second Committee adopted four draft resolutions on fisheries issues. These resolutions are expected to be formally adopted by the Plenary of the General Assembly before Christmas.

### **UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

The Second Committee adopted the draft resolution on the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks on 23 November 1994. The draft resolution, as contained in document A/C.2/49/L.5, takes notes of the recommendation of the Conference regarding the convening of two further sessions in 1995 to enable the Conference to complete its work. The seven operative paragraphs: note the progress made by the Conference; approve the convening in New York of two further sessions of the Conference from 27 March to 12 April 1995 and from 24 July to 4 August 1995; request the Secretary-General to provide services for those two sessions of the Conference, including facilities for holding two simultaneous meetings; urge the Conference to complete its work before the 50th session of the General Assembly; request governments and regional economic integration organizations to contribute to the voluntary fund; request the Secretary-General to submit to the 50th session of the General Assembly the final report on the work of the Conference; and requests the inclusion of the report of the Conference on the provisional agenda for the 50th General Assembly.

### **UNAUTHORIZED FISHING IN ZONES OF NATIONAL JURISDICTION AND ITS IMPACT ON THE LIVING MARINE RESOURCES OF THE WORLD'S OCEANS AND SEAS**

This resolution (A/C.2/49/L.20) was adopted by consensus, as orally amended, by the Second Committee on 7 December 1994. Co-sponsors include: Algeria, Antigua and Barbuda, Argentina, Australia, Bahamas, Benin, Canada, Cape Verde, Cuba, Ecuador, Eritrea, Fiji, Grenada, Indonesia, Maldives, Marshall Islands, Mauritania, Micronesia, Morocco, Namibia, New Zealand, Nicaragua, Papua New Guinea, Philippines, Samoa, Senegal, Sierra Leone, South Africa, Sri Lanka, Suriname, Togo, Trinidad and Tobago, Tunisia and the United States.

The draft resolution calls upon States to take the responsibility, consistent with their obligations under the United Nations Convention on the Law of the Sea, to ensure that no fishing vessels entitled to fly their national flag fish in zones under the national jurisdiction of other States, unless they are duly authorized by the competent authorities in the coastal State or States concerned. The resolution also calls upon development assistance organizations to make it a high priority to support efforts by developing coastal States to improve monitoring and control of fishing activities and the enforcement of fishing regulations. The Secretary-General is requested to submit to the General Assembly at its 50th session a report on the steps taken and on the problems encountered in the implementation of this resolution.

After adoption, Japan noted that measures in this resolution should not prejudice the work in other fora, including the Conference on Straddling and Highly Migratory Fish Stocks and the FAO. The Russian Federation said that it has faced problems regarding overfishing in its EEZ in the Bering and Barents Seas. Russia has been damaged by overfishing and wants to end unauthorized fishing in zones of national jurisdiction. The Republic of Korea joined the consensus, but noted that other fora and organizations are dealing with unauthorized fishing. This resolution should not prejudice or undermine action in these fora or organizations. China expressed support for the resolution, but noted that at the same time overfishing in zones of national jurisdiction contribute to depletion of fish stocks. Turkey said that it would interpret this resolution to refer solely to the articles on fishing matters in the Law of the Sea.

### **LARGE-SCALE PELAGIC DRIFT-NET FISHING AND ITS IMPACT ON THE LIVING MARINE RESOURCES OF THE WORLD'S OCEANS AND SEAS**

This draft resolution (A/C.2/49/L.24) was co-sponsored by a number of States including: Argentina, Australia, Canada, Marshall Islands, Micronesia, New Zealand, Singapore, South Africa and the United States. It was adopted by consensus by the Second Committee on 7 December 1994.

The resolution reaffirms the importance of compliance with Resolution 46/215 of 20 December 1991, which calls for full implementation of a global moratorium on all large-scale pelagic drift-net fishing on the high seas of the world's oceans and seas, including enclosed seas and semi-enclosed seas. The resolution acknowledges and expresses its appreciation of the measures taken and the substantial progress achieved since 1992 in implementing and supporting Resolution 46/215. Despite the progress made, the resolution expresses further concern that there are reports of continuing conduct and activities inconsistent with the terms of Resolution 46/215, and urges members of the international community to take greater enforcement responsibility to ensure that their nationals and fishing vessels comply with this resolution and impose appropriate sanctions against their nationals and fishing

vessels that act contrary to the terms of Resolution 46/215. The final paragraph of the resolution calls on all members of the international community, intergovernmental organizations, regional economic integration organizations and NGOs to provide the Secretary-General with information relevant to the implementation of Resolution 46/215.

### **FISHERIES BYCATCH AND DISCARDS AND THEIR IMPACT ON THE SUSTAINABLE USE OF THE WORLD'S LIVING MARINE RESOURCES**

This resolution (A/C.2/49/L.50/Rev.1) was adopted by consensus by the Second Committee on 13 December 1994. Co-sponsors included: Argentina, Australia, Costa Rica, Guyana, Marshall Islands, Micronesia, New Zealand, Oman, Papua New Guinea, Suriname, Trinidad and Tobago and the United States.

The operative paragraphs of the resolution note the important role that fisheries play in contributing to a sustainable food supply and livelihood of present and future generations. The issue of bycatch and discards in fishing operations warrants serious attention by the international community and a continued and effective response is necessary to ensure the long-term and sustainable development of fisheries. The resolution invites the FAO to formulate bycatch and discards provisions in its international code of conduct for responsible fishing, taking into account work being done elsewhere. The resolution also invites the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks to elaborate fisheries bycatch and discards provisions, taking into account work being done elsewhere. Finally, the resolution invites relevant subregional and regional fisheries management organizations and arrangements and the FAO to review, within their respective competencies, the impact of fisheries bycatch and discards on the sustainable use of living marine resources.

After adoption, the Republic of Korea, the Russian Federation and Panama said that the General Assembly is not the proper forum for dealing with this issue. This issue should be discussed by the FAO and the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. Mexico said that the draft resolution does not correspond to the importance of this issue and future resolutions should be more specific with regard to measures to decrease bycatch.

## **THINGS TO LOOK FOR IN 1995**

**FUTURE WORK OF THE CONFERENCE:** The Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks will hold its fourth substantive meeting from 27 March - 12 April 1995, and its fifth substantive meeting from 24 July - 4 August 1995. Both meetings will be at UN Headquarters in New York. The Conference is supposed to complete its work before the 50th session of the General Assembly in 1995.

**INTERNATIONAL SEABED AUTHORITY (ISBA):** The ISBA will resume its first session from 27 February - 17 March 1995, and again on 24 July - 4 August 1995. Both meetings will be in Kingston, Jamaica. These sessions will address the adoption of rules of procedure, elections of officers of the ISBA Assembly and the head of the Secretariat, and creation of the Council and the Finance Committee. Responsibility for oversight of seabed mining will be transferred from the UN Office of Ocean Affairs and Law of the Sea to the ISBA after the Secretariat is established. With the adoption of the rules of procedure, watch for the beginning of NGO participation in the ISBA process.