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## FISH CONFERENCE HIGHLIGHTS 27-31 MARCH 1995

The Fourth Substantive Session of the Straddling Fish Stocks and Highly Migratory Fish Stocks Conference completed its first week of work in New York, at United Nations Headquarters. This session of the Conference is scheduled to meet from 27 March until 12 April 1995. The Conference opened with general statements and was followed by debate on the Chair's draft agreement, A/CONF.164/22, which had been presented at the conclusion of the Third Substantive Session of the Conference.

### 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 fish stocks (HMFS) and straddling fish stocks (SFS); 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. 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 that will 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 debate left unresolved at the end of the previous session and their review of the Chair's negotiating text (A/CONF.164/13\*).

The first day of the Conference consisted of general statements and the Conference then convened in informals until the end of the

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second week when informal-informals were held to attempt to prepare a new "clean" version of the text. These sessions, which were closed to NGOs, were held until the middle of the third week. 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 the Revised Negotiating Text (RNT).

### **THIRD SUBSTANTIVE SESSION**

The third session of the UN Conference on Straddling Fish Stocks 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 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.

### **GENERAL ASSEMBLY HIGHLIGHTS**

The UN General Assembly's Second Committee considered the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks 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 Second Committee adopted four resolutions on fisheries issues. These covered: The UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks as contained in document A/C.2/49/L.5; Unauthorized Fishing in Zones of National Jurisdiction and its Impact on the Living Marine Resources of the World's Oceans and Seas, as contained in document A/C.2/49/L.20; Large Scale Pelagic Drift-Net Fishing and its Impact on the Living Marine Resources of the World's Oceans and Seas, as contained in document A/C.2/49/L.24; Fisheries Bycatch and Discards and their Impact on the Sustainable Use of the World's Living Marine Resources, as contained in document A/C.2/49/L.50/Rev.1. These resolutions were formally adopted by the Plenary of the General Assembly at its 49th Session.

## **INTERSESSIONAL HIGHLIGHTS**

### **INTERGOVERNMENTAL CONTACTS**

Two governmental intersessional meetings took place. Distant Water Fishing Nation (DWFN) representatives met in Tokyo from 17-18 January 1995. Representatives from China, European Union, Japan, Korea, Poland, Ukraine and the United States attended to consider the Chair's Draft Document. Like-Minded coastal States met in Geneva from 13-17 February 1995. Representatives from approximately 30 countries attended. Greenpeace International made an intervention. Amb. Satya Nandan attended both meetings.

### **NGO NETWORKING**

NGOs organized two roundtables during the intersessional period. The first was held in London on 3 February 1995. The second was held in Washington, D.C. on 9 March 1995. Both roundtables were attended by academics, international lawyers, diplomats, industry based and environmental NGOs.

## **MINISTERIAL FISHERIES MEETING**

A Ministerial Meeting on Fisheries was held in Rome on 14 and 15 March 1995 at the invitation of the Director-General of FAO, Jacques Diouf, to review worldwide efforts to achieve sustainable fisheries development in preparation for the 1996 meeting of the UN Commission on Sustainable Development. To respond effectively to the current fisheries situation, the Meeting urged governments and IGOs to take prompt action to: reduce fishing to sustainable levels in areas and on stocks currently heavily exploited; adopt policies, apply measures, and develop techniques to reduce by-catches, discards, and post-harvest losses; review the capacity of fishing fleets in relation to sustainable yields of fishery resources; strengthen and support regional, sub-regional, and national fisheries organizations and arrangements for implementing conservation and management measures; continue and, when possible, increase technical, financial and other assistance to developing countries; encourage States to further develop ecologically sound aquaculture as an important contributor to overall food security; strengthen fisheries research and increase cooperation among research institutions; and increase consultation on fisheries with the private sector and NGOs.

## **CONFERENCE DOCUMENTS**

The documents issued during this session include, A/CONF.164/L.47/Corr.1 on the definition of an "adjacent area" by the Russian Federation. Document A/CONF.164/L.48, submitted by the Russian Federation, contains a draft resolution relating to the conservation of straddling fish stocks in areas fully surrounded by the Coastal States' EEZs. Document A/CONF.164/INF/13, submitted by the FAO, contains comments by the Coordinating Working Party on Fishery Statistics on Annex 1 of the Draft Agreement.

## **SUPPLEMENTARY CONFERENCE DOCUMENTATION**

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) report, "Measures to Prevent Incidental Mortality of Seabirds During Fishing Operations", addresses the rising mortality of seabirds as a result of the increased long line fishing activities both inside and outside of the CCAMLR Convention Area. Management measures introduced in 1991 have helped reduce the level of mortality in the Area, but international cooperation is needed to address the effects of mortality outside the Area.

The FAO report "The State of World Fisheries and Aquaculture" reviews the state of fisheries and aquaculture with particular attention to developments since 1989. It details world fish production, the growth in demand for fish, and issues in marine fisheries production. It examines problems related to fleet overcapacity and overinvestment in marine capture fisheries which have led to unsustainable resource use. The report includes an analysis of inland capture fisheries and highlights the increased role of aquaculture in the future food security equation. It also analyzes fish utilization and trade and regional supply and demand prospects. It closes with a survey of the prospects for satisfying the global demand for food fish to the year 2010.

## **REPORT OF THE FIRST WEEK OF THE FOURTH SUBSTANTIVE SESSION OF THE CONFERENCE**

### **GENERAL DEBATE**

Satya N. Nandan, the Chair of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, welcomed delegates

to the fifth session before calling for a moment of silent reflection. The Chairman then advised delegates that the Bureau's proposed work program for the fourth session would proceed immediately with general statements or observations on the text contained in document A/CONF.164/22 addressing substantive issues. Chairman Nandan expressed satisfaction with the intersessional consultations, specifically the meetings held in Tokyo and Geneva. Matters of particular concern in those meetings were: compatibility of conservation and management measures in areas under national jurisdiction and high seas areas; new participants in regional and sub-regional fisheries organizations; enforcement of conservation and management measures in high seas areas by non-flag States; and the desirability of using UNCLOS provisions with respect to dispute settlement.

He expressed concern over the deteriorating state of global fisheries citing a recent FAO Report on the State of World Fisheries and Aquaculture and emphasized the need for practical and effective global solutions that are consistent with UNCLOS. Chairman Nandan underlined the urgency of the task before delegates. Mentioning recent incidents involving fishing vessels, he urged restraint on all sides and immediate action to resolve these important issues.

**CANADA:** The Hon. Brian Tobin, Minister of Fisheries, stated that the condition of the fish stocks on the Grand Banks of Newfoundland has worsened. He chastised the Spanish for their lack of cooperation in Canada's efforts to improve the health of the Grand Banks stocks and stated that without the cooperation of DWFNs these efforts will be in vain. He described recent arrests of fishing vessels (one stateless and one Spanish) involved in the harvesting of undersized fish with illegal gear. Canada has committed itself to negotiations with other States, he said, and when necessary, to unilateral action to end overfishing. Canada has not taken these unilateral measures eagerly but will enforce them until alternatives are found.

He said five Conference goals must be achieved: a legally binding UN Convention; the implementation of a precautionary approach; compatibility between conservation measures inside and outside 200 miles; binding and compulsory dispute resolution measures; and high seas enforcement.

**EUROPEAN UNION:** Fisheries Commissioner Emma Bonino restated the EU's firm commitment to ensuring sound and effective conservation of SFS and HMFS and their responsible and sustainable utilization in full consistency with UNCLOS. She said the priority of scientific aspects in the building up of conservation measures must be acknowledged. Effective conservation can only be achieved by ensuring compatibility between measures taken on the high seas and in EEZs. She said SFS and HMFS involve the rights of more than one State and sound and effective conservation can only be obtained through cooperation among all States concerned.

Referring to the arrest of the Spanish fishing vessel "Estai", she said that only the Canadian authorities saw the fishing net in question. The vessel had been inspected on January 17 and nothing unusual was found. She refuted Canadian statements that there had been abnormal use of the vessel's fishing gear and that catches had been falsely recorded.

**US:** Larry L. Snead said a global agreement must reach the objective of sustainable use of SFS and HMFS and be consistent with UNCLOS. Cooperation in the conservation and management of SFS and HMFS is most effectively achieved through regional or subregional organizations or arrangements. An effective international agreement must have strong enforcement and compliance procedures to achieve effective conservation and management of the stocks in question, and effective and workable dispute settlement procedures that are compulsory and binding.

**AUSTRALIA:** Richard Rowe, speaking on behalf of the member countries of the South Pacific Fisheries Forum Agency (SPFFA) urged delegates to undertake a speedy examination of the draft document with a view to reaching consensus on all remaining differences during this session. He said recent incidents highlighted the tensions existing on the world's oceans, requiring urgent resolution. The SPFFA supported the creation of a legally-binding regime for the conservation and management of SFS and HMFS.

**CHILE:** Amb. Andres Couve said coastal States have special concerns to ensure high seas fisheries do not harm activities carried out in the EEZs of coastal States. The coastal State has the duty and mandate established by UNCLOS to care for such resources. Based on duties and special interests, conservation measures must be taken into account by DWFNs.

**BRAZIL:** Renato Xavier said his country has sought to avoid entrenchment in the coastal States' positions and strongly favors cooperation to deal with SFS and HMFS problems. He said a more constructive attitude is necessary between coastal States and DWFNs. The blurring of the 200 mile boundary acts as a barrier to the implementation of international law. Responsibilities must be developed that include port and flag States.

**JAPAN:** Matsushiro Horiguchi said that issues of concern to Japan include: compliance and enforcement on the high seas; port State enforcement; consistency between conservation and management procedures applicable to areas under national jurisdiction and those applicable to areas of the high seas; as well as data collection and exchange systems. He said the outcome should be non-binding in nature. On high seas enforcement, he pointed to the necessity for strict accordance with international law and UNCLOS, and stated that regional agreements must be used to implement enforcement measures. Safeguarding against excessive enforcement is of high concern.

**PERU:** Amb. Alfonso Arias-Schreiber said current unlawful high seas harvesting cannot be allowed to continue. High seas rules must be compatible with coastal State rules. The draft document goes beyond UNCLOS provisions with respect to seizures of vessels on the high seas. Port State action must protect coastal State interests and prevent illegal catches and landings by flag States.

**THAILAND:** Boonlert Phasuk said Thailand agrees with cooperation between coastal States and DWFNs, especially with regard to exchange of reliable information and data. He urged for the "special needs" of the developing countries to be taken into account through "equitable access" and that "equitable sharing" be applied, enabling new entrants to receive preferential rights of access.

**CHINA:** Shenli Lin said the general guiding principle of the draft agreement should follow the guiding principle of UNCLOS. Referring to recent high seas conflict, China opposes unilateral action taken by any coastal State that harms the fishing rights of flag States on the high seas. UNCLOS provisions should be respected. China will oppose provisions allowing a port State to detain and arrest fishing vessels operating on the high seas. The use of the term "enclave" lacks broad agreement but the conservation and management measures in the specific area should follow the principles of high seas fisheries management.

**KOREA:** Amb. Wonil Cho said Korea desired to participate meaningfully in the Conference but argued that the revised draft agreement clearly leaned in favor of coastal States. An agreement must reflect equity between coastal and flag States and be fully consistent with UNCLOS. Korea remained concerned about the arrest of a fishing vessel on the high seas in contravention of UNCLOS.

**POLAND:** Dr. Stanislaw Pawlak said international cooperation based on the best scientific knowledge is the only way to ensure the



future sustainability of fisheries. Referring to the Grand Banks fisheries conflict, Poland rejected unilateral action. He said it is important to identify management structures by applying effective conservation and management measures that recognize the biological unity of fish stocks. High seas enclaves should not be treated any differently. Poland supports a consensus document that can be translated and applied at the regional level.

**ICELAND:** Amb. Helgi Agustsson said Iceland is willing to cooperate with other States within competent regional organizations in establishing effective management and conservation measures. The result of this Conference should become the basis for such cooperation among States. Referring to the EU/Canadian dispute, he said delegates should not be distracted from the principal issue at stake, which is the need to regulate high seas fisheries globally.

**NORWAY:** Dag Mjaaland said that it is not difficult to understand that the situation in the NAFO regulatory area has created concern, both in respect of the viability of sustainable management and conservation principles, as well as with regard to how such principles should be applied. He said the situation off the eastern coast of Canada underscores the importance of having a set of general rules that can be applied to the numerous vexing problems in this field. What is needed is a multilateral solution and not unilateral action.

**ARGENTINA:** Silvia Fernandez de Gurmendi said it is no longer possible to passively witness the unbridled and disorderly use of the high seas, as coastal States have the obligation to preserve stocks within their EEZs. There are no appropriate international regulations to ensure conservation of fish resources in adjacent areas. This leads to the adoption of unilateral measures when there is a lack of cooperation. She said the Conference must complete an international convention to establish an effective regime for the preservation of living marine resources on the high seas.

**RUSSIAN FEDERATION:** Vladimir K. Zilanov said the central problem is to attain universal and irreversible compliance by fishermen of all States with scientifically-based measures for conservation of fish stocks on the basis of principles of precaution and responsible fishing on the high seas. The Russian Federation would suggest a method for a fair solution to the question of enclaves, thereby implementing the precautionary principle and responsible fishing, taking into account the special responsibility of the coastal State for maintaining the productivity of the fish stocks concerned.

**UKRAINE:** Volodymyr Boudarenko reaffirmed his country's interest in establishing cooperation, taking into account interests of all States in an equal way. In trying to achieve a compromise between coastal States and States fishing on the high seas, the specific interests of the countries with economies in transition must be taken into account. He attached great importance to the work of regional and sub-regional organizations.

**BANGLADESH:** The representative of Bangladesh said the rights and obligations of port States, flag States and coastal States must be clearly spelled out. He supported the precautionary approach to fisheries management and the special requirements of developing countries.

**MEXICO:** Gerardo Lozano said this Conference should promote cooperation among coastal States and DWFNs by means of bilateral agreements or within the framework of existing regional agencies. Measures applied in the EEZs must be compatible with measures on the high seas. Mexico could support a binding instrument, but said monitoring schemes might impinge on State sovereignty.

**ECUADOR:** Amb. Luis Valencia said results can only be obtained through cooperation and precise management measures in the high seas areas adjacent to coastal States' EEZs. Flag State control must be reflected by an obligation to examine infringements and violations. Port States must be able to carry out physical inspections. Freedom of the high seas is not an authorization to abuse international law.

**PERU:** Speaking for a second time, Amb. Arias-Schreiber said cooperation has not worked because cooperation invariably lacks political will. He reiterated that the only alternative is to establish a set of compulsory rules. One cannot tender that the rights and duties of coastal and flag States are equal in the management and protection of SFS and HMFS.

**MOROCCO:** The delegate from Morocco said consensus will be meaningless without effective observation and enforcement measures.

**IGOs:** The representative of the Permanent Commission of the South Pacific (CPPS) said that machinery must be adopted to deal with high seas fishing and a binding agreement established to protect SFS and HMFS. He supported mechanisms for port States to inspect vessels on the high seas. The representative of OLDEPESCA said that irresponsible EEZ management is being used as an excuse to fish in other EEZs.

**NGOs:** Clifton Curtis from Greenpeace International said government intervention resulted when cooperation failed. The provisions of small scale and artisanal fishers must be respected in the final text. The application of the precautionary approach must be binding and the enforcement procedure must include high seas boarding, arrest and the detention of vessels.

At the conclusion of the general statements, the Chair said he was aware of the changes needed in his draft text. He endorsed the comments of Greenpeace and reminded delegates that time is of the essence and a practical approach is required. Nandan suggested that the draft agreement be considered in a selective manner, taking Parts I, II and VIII in the first instance, followed by Parts VI and VII. Consideration of the less contentious Parts III and IV would then follow. He said he would undertake informal negotiations as necessary. Securing endorsement to his proposed work plan, Nandan declared the Conference in informal plenary to undertake detailed consideration of his draft agreement.

## **NEGOTIATIONS ON A/CONF.164/22 (THE CHAIR'S DRAFT AGREEMENT)**

### **THE PREAMBLE**

Peru, supported by the EU, said the second preambular paragraph contained few principles, but noted the relevancy of the provisions. Japan said the word "principle" was used because not all States have ratified UNCLOS.

Bangladesh, supported by Canada, said the phrase "assure conservation and management" should be replaced by "ensure conservation and management". Canada, supported by Poland, said that paragraph one noting "long-term conservation" and paragraph three noting the need for "improved cooperation" should be merged. The Chair, supported by Poland, the Russian Federation, the Republic of Korea and New Zealand, suggested leaving paragraph one as is and changing paragraph three to "resolved to improve cooperation between States". The EU wanted to add at the end of paragraph one "and throughout the entire range of their distribution". The EU, supported by China, sought deletion of reference to Agenda 21, Chapter 17, Programme Area C in paragraph five. Peru, supported by Argentina, Australia and Papua New Guinea, objected to this proposal. Argentina, supported by Poland, the Republic of Korea, Australia and New Zealand, said

that in paragraph seven the word “utilization” should be preceded with “sustainable”. New Zealand supported highlighting UNCLOS in the preamble. Malta, supported by Papua New Guinea, considered it unnecessary to refer to the FAO Code of Conduct, but that reference to the Compliance Agreement would be pertinent. The Chair said that there is no need to refer to every agreement. India especially welcomed the strengthening of paragraph seven in favor of the needs of developing States.

### **PART I — GENERAL PROVISIONS**

Peru argued for the employment of additional definitions in Article 1, which deals with use and terms of scope of the agreement, with respect to “coastal States” and “fish stocks”. He said some resources consist of shellfish, which can also be straddling in nature. The Russian Federation supported the need to include definitions, especially species that constitute a straddling stock, and referred to document A/CONF.164/L.46 which details a composite listing of SFS. The Chair said consideration of a SFS listing might be pertinent and urged delegations with biologists and scientists to convene a small group to identify all such species. Mexico and Canada, supporting the US and New Zealand, said the Conference should not get involved in producing an exhaustive listing.

Reflecting on document A/CONF.164/L.47, the Russian Federation said the definition for an “adjacent region” might include an upper limit of 70 miles distant from the outer edge of the EEZ. Norway said that in the Geneva intersessional it had supported inclusion of few definitions in the draft convention, but an “adjacent zone” definition would impart clarity to the text. Norway questioned the Chair’s reference to coastal States as being all those that are “landlocked”. The Chair replied that he was being literal. Any definition should be viewed in the context of Articles 63 and 64 of UNCLOS. Canada agreed with Peru and Argentina that molluscs and crustaceans should be included, but sedentary species should be excluded. Considerable discussion on this subject ensued, with Chile finally suggesting that the lists contained in documents L.11, L.32 and L.44 be adapted to create a harmonized species listing. With respect to the definitions of “fish stocks” and “straddling fish stocks”, lists always run the risk of being incomplete. Peru proposed that the crustaceans and molluscs migrating between the EEZs and the high seas be covered and that sedentary species otherwise be excluded. Chile said that molluscs of a sedentary nature would automatically be excluded. Argentina said it is appropriate and important to include molluscs and crustaceans in fish stocks.

Japan proposed that conservation and management measures should be authentic and tendered additional text on the definition of “international conservation and management measures”, based on text contained in the FAO Compliance Agreement. Two additional definitions modelled on the Vienna Convention on the Law of Treaties, were proposed by Japan in respect of “subregional or regional fisheries management organizations” and “arrangements”. The US said it would support a definition of conservation and management measures, but could not support the remainder of the Japanese proposal. The EU argued for minimum definitions but supported the inclusion of a working definition of “arrangement”. Argentina, supported by Papua New Guinea, endorsed this point.

Papua New Guinea argued for maintenance of constructive ambiguity within the text. New Zealand said discussions on definitions would erode valuable conference time. Australia preferred to follow UNCLOS with a minimal number of definitions included in the text. Chile, Poland and Papua New Guinea supported the US and Australia on keeping definitions brief and to the minimum. The Chair said many terms are self-explanatory in the context in which they are used.

The Russian Federation, commenting on the Japanese proposal, said that he supported New Zealand’s contention that not all FAO wording is appropriate to the draft agreement. He also said failure to agree on a listing of SFS would not undermine the provisions of the Agreement. China said Article 1 should be as general as possible and said the proposal to include molluscs and crustaceans in SFS is inappropriate. He shared Poland’s view that more time should be devoted to substantive questions.

Uruguay pointed out that the objective definitions set out in A/CONF.164/L.44 were effective in that they used biological and geographical criteria. Uruguay supported the inclusion of both molluscs and crustaceans in the Agreement. The Japanese delegate expressed concern that Articles 63 and 64 of UNCLOS lack definition for the terms “directly”, “organization”, and “arrangement”. Interpretation of these UNCLOS articles as they relate to SFS and HMFS will be extremely difficult. He proposed that these definitions be included in the text to ensure the viability of the binding nature of the Agreement, particularly in reference to Articles 8 and 20. Japan also stated that it is flexible to the inclusion of molluscs and crustaceans in the Agreement. The delegate from New Zealand supported Canada’s proposal that the term “fish” include non-sedentary shellfish such as molluscs and crustaceans. Sri Lanka supported this inclusion as well. India expressed concern over the lack of clarity with reference to inclusions and definitions and said that target fish must be clearly identified and a common understanding reached on inclusions and exclusions. Estonia, while agreeing with the importance of definitions in Article 1, urged that delegates concentrate on substantive issues.

The Chair said that he would leave the initiative of compiling a list to any delegations with scientists. He said there is appreciation of the fact that a problem exists with regard to molluscs and crustaceans. He urged delegates to examine the Canadian proposal more seriously so the definition of “fish stock” can include molluscs and crustaceans but exclude sedentary species.

Poland questioned the use of the word “entities” at the end of paragraph (3) and said that the paragraph should reflect the reality that “entities” must also include those fishing in EEZs. In response, the Chair pointed out that paragraph (3) is a particular reference to the status of China. Article 1 is written in this way to help secure compliance and observation of the standards as set forth by this agreement.

Peru, supported by Poland, Argentina, Morocco, Japan and Uruguay, proposed adding “on the basis of the relevant provisions of the Convention” at the end of Article 2. The Russian Federation said that the use of the word “optimum” is taken from Articles 62 and 64 of UNCLOS. Long-term conservation pursues the goal of long-term utilization of the stocks. Brazil disagreed and said Article 64 refers to HMFS. He said optimum utilization has been superseded by the term “sustainable.” India stated that optimum utilization has a fishery-biological aspect included. The Chair supported Brazil’s interpretation and said that “sustainable use” is not harmful. The EU endorsed the Chair’s comment. The EU, supported by Japan, proposed adding “throughout the entire range of their distribution” at the end of Article 2. Canada said he could not understand the concerns of Brazil, while he reserved judgement on the EU’s proposed amendment.

In consideration of Article 3, dealing with application, Peru emphasized “rights and obligations” to conserve and manage fish stocks. Uruguay proposed alternative text “in the implementation of rights and fulfilling obligations” for paragraph (2). The US said that the application of Articles 5, 6 and 7 should clearly apply to the area of the high seas and the areas under national jurisdiction.

The delegate of Peru expressed concern over the text in Article 4, dealing with the relationship between UNCLOS and the draft

convention, and said it should include reference to the sovereign rights of both coastal States and high seas fishing States and suggested that Article 7, paragraph (1) should be moved to Article 4 to create a chapeau covering these issues.

The Chair said he had examined the possibility of incorporating Article 7, paragraph (1) into Article 4, and that perhaps a clarification could be made stating that in the event of an inconsistency, UNCLOS shall prevail.

## **PART II—CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

Peru said that Article 5, dealing with general principles, should be drafted to include a list of the regimes in which States fish. He proposed an additional subparagraph (k) be added requiring States to refrain from activities on the high seas that are inconsistent with regional, subregional, or global rules and regulations. The Chairman reminded Peru that references contained in Article 18 paragraph (1) effectively incorporate these goals. The Argentine delegate said the language of subparagraph (e) must be strengthened with special reference to juvenile fish. Japan proposed the addition of a new subparagraph (f) that makes reference to the impact of other non-fishing activities on living marine resources. The US said it could support this addition. Poland and Korea expressed concern over the phrase “producing the maximum sustainable yield”, in paragraph (b) and suggested revision to include the concept of long-term sustainability. Korea pointed out that this would be more consistent with Article 22, which addresses the special requirements of developing States. In consideration of the Japanese proposal, Brazil, India and Uruguay asked for clarification of the term “integrated strategy for conservation and management”. The EU supported Japan, but asked that the word “pollution” be deleted from the preceding subparagraph (e) because it is inappropriate to say fishing activities create pollution. Japan said the effects of human activity combined with positive effects of an enhancement programme, was what he meant by “integrated strategy”. Chile said the Japanese proposal covers the impact of fishing in minimizing pollution. Peru said that use of fishing gear does not pollute, but it disturbs the seabed. Greenpeace said he was encouraged by Japan’s proposal as it relates to marine pollution.

The Chair began debate on Article 6, which deals with the application of the precautionary approach, and its supporting Annex 2, on the suggested guidelines for application of precautionary reference points in conservation and management of SFS and HMFS. Amb. Couve (Chile) said that differences exist between Article 6 in the draft document and that which was produced by the Working Group (WG) in March 1994. He stated that in the interests of transparency, it is important to understand these differences and cited a number of instances where the WG text differs in terms of broadness of application, promotion of appropriate conservation measures, and the level of obligation in regard to Annex 2. He expressed concern over the ability of developing States to collect data due to technical limitations. The Chair said that although the WG text lacked unanimity, it served the purpose of expanding the negotiating text. Concerning the use of the term “ecologically related” and “ecosystem”, the Chair recommended use of the least broad term. Uruguay agreed with the substance of Article 6, but suggested some points for restructuring. The precautionary approach should be aimed at setting stock-specific minimum standards. He was concerned that the means for application and minimum standards of the precautionary approach be defined. When scientific data is deficient, it must not be used as an excuse for failing to adopt minimum standards. States shall disseminate and take into account the best scientific data available to improve decision-making processes. Standards must

not be rigid and set in time. In reference to specific stocks, the aims of the precautionary approach should be examined. Subparagraphs 3 (d) and (e) could be merged to include all species under the Agreement. The text of the article must reflect the need to apply the precautionary principle while at the same time providing for the compilation of new data for decision-making.

The US delegate said the precautionary approach text is an important and controversial issue. In referring to the WG report produced one year ago, he regretted that more of the WG’s text was not embodied in the Chair’s Draft Agreement. The US could not fully endorse the Chair’s text but said that the annex must be mandatory for the article to work. Fish stocks need to return to full production and an agreement must be reached on data collection and management techniques. The EU underscored the need for delegates to refer back to the WG reports. He said that only the term “relevant reference points” should be used, and that the word “precautionary” should not be used with “reference points”. Japan said that since his proposal deals with wider areas such as human activity, environmental factors, and stock enhancement programmes, he preferred it not be incorporated into subparagraph (c). Peru said it is important to take into account the use of “dependent stock” and that the WG had looked at this. He agreed with Chile that developing countries cannot move apace and they may be accused of being irresponsible if they cannot comply with all the technical measures of Annex 2. India, supported by Morocco, said that in referring to the precautionary reference points, Article 6 and not the Annex would have to clarify that these are the points below which stocks must not be further depleted. Canada stated that previous debates on the outcome of the Conference and the use of the precautionary principle on the high seas and in EEZs had resulted in agreement among coastal States. But the application of the precautionary approach should not jeopardize the sovereign rights of coastal States in their own EEZs. Canada supported India’s statement on the need to assist developing countries in attaining new and advanced technical goals. The Russian Federation said that he attaches great significance to the precautionary approach in management of SFS and HMFS. He supported India in limiting reference points beyond which fishing would not occur. Papua New Guinea, supported by the Philippines, said that without technical assistance, developing countries would be unable to implement some of the precautionary measures. Poland said that precautionary measures should apply to the whole stock, or the precautionary approach will have no strength. New Zealand said that changing “precautionary reference points” to “relevant reference points” would be an unacceptable change of substance. Peru argued against any reduction of rights of the coastal State due to the imposition of additional international obligations. The representative of the Natural Resources Defense Council said that making Annex 2 mandatory was central to the draft agreement.

The Chair said that Chile’s introductory remarks had set the tone of the debate on Article 6. The Chair wanted to hear the reactions of scientists to Chile’s proposal of substituting “ecologically related” with “associated and dependent species”. After a few moments, the Chair said that silence was consensus. The US said that Annex 2 was a descriptive list that should be mandatory and not be considered as a voluntary application. Uruguay said that evolving science would require periodic review of the reference points and this should be taken into account when considering Annex 2. Peru, supported by Chile, said that rules are compulsory in a binding agreement, while guidelines are orientations. Australia said the focus should be on determining the reference points. The proposal submitted by Chile is vague and avoids setting precautionary reference points by States.



The Chair said the real issue raised by Chile, and supported by Peru, is that allowance must be made for the evolution of science and technology, so the guidelines should be subject to review. It would be helpful to introduce wording in the Annex that clearly states that the guidelines are subject to review, and that the revised guidelines, if adopted, shall become effective immediately.

Poland said he preferred the language of the original draft over the Chile proposal. The US was concerned that the lowest common denominators are being met rather than higher ones. Making the guidelines mandatory recognizes that some States will not be able to bind themselves to the treaty. The US recognizes that there are many developing countries present that do not have the tools to reach those conservation and management measures we are striving for. He said this is a fertile area in which the provision of international technical assistance can be made to developing coastal States. Provision should be made for the Annex to be revisited in 4-5 years' time to identify any need for change. The Chair informed delegates that the FAO report stated that 20% of the fishing States on the high seas harvest half of the world catch.

The Federation of Russia said that Annex 2 needs to be mandated as guideline for use by States. He said that in subparagraphs (b), (d) and (e) where the words "associated ecosystems" or "ecologically related species" are used, guidance should be taken from Article 63 (2) of UNCLOS. The Federated States of Micronesia supported New Zealand and Australia regarding the language of Article 6 and the precautionary approach. The EU commented that it was unclear about the scientific approach and its application and that methodology devices are not necessarily included within the Annex. He also expressed concern over the fundamental principle of the Convention regarding the use of the "best scientific information" and called for clarity in this area. Lebanon noted that several recent international conventions on the environment have given preferential treatment to developing countries, for example, a grace period in order that change may be effected prior to compliance. He said such grace periods were good incentives for joining.

The Chair said some developing countries already have the capability to implement the guidelines, and some do not. He said it is necessary to reflect on these issues. Sri Lanka agreed that lack of scientific data cannot be used as reason for failure to implement appropriate measures. He pointed out the difficulties faced by developing countries involved in capital-intensive activities and stressed that mandatory reference points would impose considerable burden on developing countries.

Chile questioned the cohesiveness of Article 6 and said that subparagraph (d) would make the document difficult to comply with in the near future. Strict management principles that are mandatory would make implementation unworkable. He said there are stylistic drafting problems in subparagraph (d) where the reference points seem to be more important than determining the management strategy. Chile could not accept subparagraph (d). Uruguay said the Chair's proposal is constructive. A paragraph should be included stating Annex 2 can be amended without being subject to an amendment process.

Peru proposed a new Article 6 (bis) on interim measures in cases of an emergency situation. He cited ecological factors such as El Niño, where situations may arise that may make it necessary to introduce provisional measures based on scientific non-discriminatory information to deal with the problem of States who encounter difficulties. It is not an attempt to expand jurisdiction, but to find jointly-agreed solutions for the interim. Uruguay said that it is a necessary supplement to ensure conservation and management of fish stocks when they are imperiled. These measures would not be taken unilaterally. This situation could involve the EEZ of more than one State. CPPS said

this is interesting and mentioned El Niño as a threat to many countries that have suffered from drought and other phenomena. As a regional organization, it greatly valued Peru's intervention. Indonesia, Canada, Colombia, Ecuador, Argentina, and the Russian Federation agreed. Lebanon suggested working with the International Seabed Authority to see how a compromise could be developed. Uruguay said it is a textbook case of developing UNCLOS. Chile said Peru's proposal includes the precautionary concept, and that it deals with an interim measure. The EU, Japan, the Republic of Korea, and Malta could not accept Peru's proposal, based on Articles 117 and 118 of UNCLOS. China asked for clarification on the definition of an "emergency situation" and wanted to know who would sit in judgement. The representative of the Woman's Caucus, Irene Novaczek of the Canadian Oceans Caucus, said that in recognition of the important roles of women in fish harvesting, marine science, and seafood processing, as well as their largely unpaid labor in supporting the fishing industry, States should enshrine in the Draft Agreement the rights of women and other representatives of coastal communities to participate in international and regional bodies dealing with the conservation and management of fish stocks.

In consideration of Article 7, which deals with compatibility of conservation and management measures, Iceland referred to his country's unique situation and proposed a new subparagraph (2)(d) that would "take into account the interest of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources". Kiribati and Thailand supported Iceland's proposal. The Philippines, supported by Thailand, suggested that in subparagraph (1)(b), "optimum" be replaced with "sustainable" for consistency with the objective of the Agreement in Article 2. The Chair said, and Peru concurred, that the language comes from UNCLOS. Subparagraph (1)(a) comes from Article 63.2 and subparagraph (1)(b) from Article 64. Uruguay, with support from Chile, proposed the inclusion of "management" in subparagraph (1)(a) because "conservation and management" are the objectives of the agreement. In subparagraph (2)(b), he proposed the inclusions of "in time and volume", since the volume of stocks fluctuate over time.

The Republic of Korea said the inclusion of "in accordance with Article 61 of UNCLOS" in subparagraph (2)(a) would enhance the guiding principles of coastal States with respect to conservation measures in their EEZs.

Thailand said that Article 23 subparagraph (1)(a), dealing with forms of cooperation with developing States, is well-balanced and should remain unchanged. Chile proposed a concrete application of the precautionary approach that establishes provisional measures to protect fisheries in the absence of formulated measures. New Zealand said UNCLOS language should not be tampered with and the concept of an optimum limit on sustainable use is confusing. Peru said that in (1)(bis), harmonization should fall to the responsibility of the coastal State. Norway said the overall balance of the text is acceptable and is a good basis for general agreement. The proposal by Iceland goes well beyond what can be accepted in this text and that has to do with the specific situation of Iceland. Iceland's capacity to compete for resources on the high seas should not be supported by special provisions. Article 7 is important to all other provisions contained in the draft, whether they concern technical regulations, the establishment of TAC, distribution of quotas, or enforcement. The Russian Federation said the Chair's text reflects consensus, but he wanted fuller recognition of the role of coastal States in the conservation of SFS and HMFS. Indonesia said that he had a problem with Articles 5, 6 and 7 if these apply to areas under national jurisdiction in accordance with Article 3, because many additional obligations would be imposed on the developing coastal States. The implementation of these articles

should be made easier for developing coastal States. Thailand said the objective is the sustainability of fish stocks and not their optimum utilization. Greenpeace said that Articles 5, 6 and 7 are a package for precaution and conservation and are necessary to affect the long-term sustainability of SFS and HMFS. World Wide Fund for Nature (WWF) spoke in support of Indonesia's concerns regarding the imposition of obligations on developing States. Annex 2, he said, contains a general package of guidelines that could provide creative, holistic and less expensive means of monitoring than purely Western sources.

### **PART VIII—PEACEFUL SETTLEMENT OF DISPUTES**

The US introduced amendments on dispute settlement procedures and said the adoption of the dispute settlement provisions of UNCLOS avoids the onerous task of creating a multiplicity of dispute settlement fora and simplifies the draft agreement. States participating in those regions are free to create their own procedures. The US amendments included revisions to Article 7 paragraph (4); deletion of Articles 28 paragraph (1), 29 and 30; revisions to Article 28 paragraphs (2) and (3); and a new final paragraph in Article 28. Canada explained important similarities between the US and Canadian proposals. Canada said its proposed alternative text is based on a synthesis of the US proposal and the Chair's text. It deletes Article 28 paragraph (1). Disputes may arise in a regional context without being related to the application of the regional agreement or arrangement. Paragraph 4 of the Canadian proposal is based on Article 29 of the Chair's text. Canada said that regional arrangements through which decisions are made that are not binding on members need their own internal dispute settlement mechanisms. If it is not possible for parties to a dispute to agree on provisions of a practical nature, any party can request the International Tribunal for the Law of the Sea to prescribe provisional measures. Given the time-sensitive nature of most fisheries disputes, it is preferable to go to a pre-chosen forum rather than to waste time deciding on which forum would hear the request for provisional measures.

The EU said the US proposal was complete. He noted one difficulty with the Canadian text in that Article 7 paragraph (6) is not balanced with respect to the interests of coastal States and those fishing on the high seas. Peru supported both the US and Canadian proposals, but favored Canada's. He said some States are not parties to UNCLOS and that they should be free to adopt more appropriate provisions, but the amendment to said Article 7 paragraph (6) is reasonable. The Russian Federation said the Chair's text was balanced and acceptable. He did not exclude the possibility of retaining two regimes for dispute settlement procedures in the Draft Agreement.

Japan agreed with the logic of the US proposal and gave it general support. He said if the purpose of the undertaking is to simplify text without losing substance, then the text should follow what UNCLOS provides. He reserved indicating preference for any particular dispute settlement procedure as specified in the draft agreement. New Zealand said that the US, Canadian, and Chair's texts have common elements among them. Dispute settlement procedures in Part XV of UNCLOS are important in each of the texts put forward. He supported the streamlining of the text. Poland favored the US proposal and asked for more time to study the Canadian proposal. Chile supported the US proposal but expressed concern over possible conflict with other regimes. The Canadian proposal does not run counter to regional organizations, but a clause is needed that preserves regional organizations. Consideration of regional measures adopted within UNCLOS is needed. Existing measures must not be ignored just because they find their basis in national application. He suggested merging Article 7 paragraphs (5) and (6). Canada, referring to regional

organizations, pointed out that disputes may arise in the regional context because decisions made may not be binding on non-member States. He agreed with New Zealand that Article 297(3) is so important to UNCLOS that it must be referred to in the draft text. Other paragraphs in Article 297 are not related to fisheries and therefore are not relevant here. Thailand stated that it does not favor ambitious provisions that go beyond the requirements of the UN Charter and UNCLOS. Australia was concerned that valuable elements of the Chair's text would be discarded. There is a need for timely setting of provisional measures and the issue is whether or not organizations are required to adopt procedures including a binding dispute settlement mechanism. Australia supported amendments to ensure that provisions encompass a large range of disputes and that there should be reference to Article 297 of UNCLOS. Uruguay said that extent of the scope of application in the US proposal to all disputes of conservation and management of HMFS and SFS is important. He felt that the application of regional and subregional arrangements proposed by the US may offer speedier dispute resolution, but that the Canadian reference to the International Tribunal for the Law of the Sea is more effective. Coordination and the standardization of rules for EEZs and high seas needs to strike a balance. The Canadian draft makes important contributions in this area. The Republic of Korea also spoke in favor of a simpler formulation, and expressed support for the EU position. China stated that the basis must be UNCLOS and that the US text is more relevant. The draft should not be limited to Article 297(3) of the Convention. The US was not sure the Canadian draft for Article 28 paragraph (2) could work for good formulation. He pointed out that the organizations become subject to compulsory dispute settlement under the US proposal. He expressed concern that the Canadian proposal for separate procedures for provisional measures should not undermine the integrity of Part XV of UNCLOS. He had doubts about relying on the International Tribunal. India asked what the term "generally accepted standards" meant and supported the Canadian proposal to amend Article 7 paragraphs (4) and (6). The EU said that if there is no statement of declaration explicitly stating a choice, the EU would follow Article 287(1)(d) of UNCLOS. Article 30 paragraph (6) of the Chair's text draws on reference to measures compatible with UNCLOS. Argentina supported the Canadian proposal because it has a broader scope of application and a greater definition of international law. There is a need to include an obligation to strengthen existing decision-making in some regions and arrangements and a provision on precautionary measures. Mexico supported the use of UNCLOS in dispute settlement and agreed with deletion of Article 28 paragraph (1). He favored maintaining the original drafting of Article 29 and supported redrafting Article 31, as proposed by the US. Japan was concerned that there be equal treatment for dispute settlement in all regional organizations and arrangements. He further stated that the Tribunal should apply not only norms and standards but also the function of international law.

Papua New Guinea stated that it was unable to support the EU proposition. In reference to Annex 3, Articles (7) and (8), the delegate cited the fact that the arbitral body could only issue recommendations and hence was not binding dispute settlement. The Russian Federation emphasized that the international tribunal in UNCLOS was the only body suitable for dispute settlement. He said that the treatment of non-party States under UNCLOS provisions could present a problem, and questioned the effects and rights on States that are not party to the Convention. A balance must be achieved that includes effective implementation for all States without undermining UNCLOS. He supported in principal the use of Part XV and the Chair's text. The Chair pointed out the need to harmonize the Convention provisions and the choice of procedures for dispute settlement. Guatemala said that the



stipulations in Part XV lend themselves to the settlement of maritime delimitations but do not readily resolve the disputes envisioned in Part II, Article 7, paragraphs (4) and (5). The delegate supported a combination of the US and Canadian proposals, taking into account the amendments of the EU. Canada clarified its proposal that if dispute settlement mechanisms established in a region provide provisional measures, then these shall be used as stated in Article 282. If not, then the dispute would be referred to the International Tribunal. China felt that the reference to UNCLOS Article 297 in Article 28, paragraph (8) of the Canadian proposal should only apply to Article 297 (3), which concerns fisheries. India expressed concern with the use in both proposals of the term “generally accepted standards,” and supported the EU wording “other rules of international law not incompatible with the convention”.

#### **PART VI — PORT STATE ENFORCEMENT**

Chile, supported by Peru, began the discussion on Article 21, which deals with the boarding and inspection by port States, by distributing a working paper seeking to assure compliance and enact a broad enforcement regime taking into account the rights of port and flag States. The delegate supported the Chair’s text in Article 21 paragraphs (1), (2) and (3). He pointed to a number of international agreements and stated that when no rule exists guiding landing and discharge, these activities are implicitly prohibited. He repeated his call for States to promulgate domestic legislation supporting this. The text should introduce clear-cut norms and principles that would apply to the conduct of all States. The US, supported by the Russian Federation, Brazil, and others, expressed concern that there be no threat to the sovereignty of port States and said that Article 21 paragraph (3) diminishes the authority of port States. He proposed that international law govern

port State actions. The delegate supported the language in paragraph (2). The EU was concerned that the use of the term “force majeure” might be interpreted to allow unilateral action by port States. The delegate of the Russian Federation cautioned that the EU proposal might grant protection to irresponsible fishing States. Norway supported the US, Chile, and the Russian Federation. Norway had existing legislation to deny landings and access when appropriate. The Japanese delegate restated his view that the port States should retain authority as expressed in UNCLOS. Port State authority on the high seas must be based on agreement between the concerned States. He said that fishing States must be safeguarded against excessive enforcement measures. China, referring to the Chilean proposal, was concerned that port State jurisdiction goes beyond the scope of the Convention. He could not support the Chair’s wording of paragraph (2) because it did not recognize the commercial nature and rights of fishing vessels. He said that access to ports and facilities must be protected as this was a trade issue. Australia expressed support for the US and others with regards to the rights of port States, and agreed with delegates that paragraphs (3) and (4) were not necessary.

Iceland said that port States have a large role to play in enforcement and management. Canada spoke in support of the Chilean proposal and supported reinstatement on landing of catch as in the Chair’s March revised negotiating text. Micronesia supported the US and Australia and said Article 21 must not restrict the rights of the port State. Israel said articles should refer to States that are a party to the regional and subregional arrangements. It is necessary to protect the freedom of navigation and innocent passage through territorial seas in UNCLOS. Belize agreed that paragraphs (1) and (3) could be deleted. Uruguay said the provisions on the port State must supplement and ensure the compliance of the conservation and management measures. Chile said that landing and transshipment should also be subject to conservation and management measures. In referring to the comments by China, he said violations of conservation and management are not related to trade. Papua New Guinea, supported by New Zealand, said the rights of States to carry out action including general inspection under paragraph (2) falls under international law. Rights should not inadvertently be circumscribed under international law. Argentina supported Uruguay on the deletion of paragraph (3) and endorsed the US arguments for deletion of this paragraph. Uruguay said the mere deletion of the paragraph would conceal differences and not provide a clear solution to the problem. The Russian Federation supported India and said that some delegations had suggested that the actions port States might undertake to ensure implementation of conservation and management measures may run counter to GATT. He said that Article 20(g) of GATT provides for general exceptions and that GATT would not be an obstacle when it comes to exhaustion of natural resources. The representative of the International Collective in Support of Fishworkers (ICSF) proposed a new paragraph (3) (bis) that a port State should be vested with the power to take action where appropriate against vessels authorized to fish in the high seas if there are reasonable grounds to suspect they have undertaken unauthorized fishing in areas of national jurisdiction.

#### **PART V -- COMPLIANCE AND ENFORCEMENT**

The Chair said that compliance and enforcement remains one of the most difficult, yet important issues for discussion. Once agreement is reached on the principles for conservation and management measures, governments must ensure compliance and enforcement of those measures. The primary responsibility is that of the flag State, and that is contained in Article 18. Japan said that he had a problem with Article 18, paragraph (1)(c), because of its legal implications. In the Japanese criminal law system, pending the outcome of the court decision, anyone is presumed innocent

### **FISH STOCKS CONFERENCE MATERIALS ON THE INTERNET**

<http://www.iisd.ca/linkages/>

The International Institute for Sustainable Development (IISD) has developed an electronic clearinghouse on the Internet for information related to the Straddling Fish Stocks and Highly Migratory Fish Stocks Conference. *Linkages: A Multimedia Resource for Environment and Development Policy Makers* is a freely accessible World Wide Web site that contains links to official documents in the UN computers, summaries from the *Earth Negotiations Bulletin* and links that lead across the network to other related on-line resources. *Linkages* also includes comprehensive electronic holdings on other issue areas, including the Biodiversity Convention, the Desertification Convention, the Climate Change Convention and the emerging international debate on sustainable production and consumption. For further information on how to access this free service and how to get the *Earth Negotiations Bulletin* delivered electronically, send e-mail to <enb@igc.apc.org>.

until the final judgment is rendered. Basic human rights have to be protected. The EU supported Japan concerning the presumption of innocence. Malta said that his government had not decided on a definitive position on a legally binding instrument, and reserved his position on this Article. Poland, supporting Japan, said that we cannot prejudge anything and suggested deleting subparagraph (1)(c). Peru argued against deletion. For subparagraph (1)(c), he suggested that a vessel should be prohibited from fishing on the high seas until all outstanding penalties have been meted out. Papua New Guinea said that in paragraph (3), sanctions should be of sufficient "severity" instead of the more general word "gravity". Chile supported Article 18. He said the Papua New Guinea amendment moved in the right direction, but that he favored Peru's suggestion of imposition of "penalties" rather than "procedures". The Philippines said sanctions would affect the fishing vessel's crew. Some provision in Article 18 is needed to provide for their protection. Japan said that since a vessel may fish in more than one fishery, sanctions should be limited to the particular fishery involved. Only the flag State may bring offenders to trial and impose penalties.

The Chair turned to Article 19, which deals with international cooperation and enforcement. The Russian Federation said cooperation and enforcement is central to our work. He said the Chair's draft could be strengthened if inclusion were made to limit uncontrolled fishing. Japan introduced an amendment to address a lacuna in the US proposal on compliance and enforcement concerning vessels violating an EEZ and then remaining on the high seas since the US provision does not automatically give the coastal State the right to inspect the vessel on the high seas. Peru introduced a new Article 19 (bis) to strengthen conservation and management measures within the framework of regional or subregional arrangements or organizations.

### **IN THE CORRIDORS**

The Conference is mandated to find solutions to effect improved conservation and management of fish stocks. Central to the replenishment of global fish stocks and their sustainable utilization for future generations is the mandatory application of the precautionary approach.

**Editor's note:** Due to lack of funding for coverage of the Fourth Substantive Session of Straddling Fish Stocks and Highly Migratory Fish Stocks Conference, the *Earth Negotiations Bulletin* will only publish weekly summaries of this meeting. We regret this inconvenience and hope that future funding will allow us to continue coverage of the final session.

For information on how to support the work of the *Earth Negotiations Bulletin*, contact Langston Goree, Managing Editor, at +1 212 888-2737.

Delegates have noted that scientists and technicians were prevented by political posturing from agreeing on a comprehensive set of practical and workable guidelines for the application of a precautionary approach to fisheries management at the Working Group sessions last year. Some said that it was not surprising to hear old Chilean arguments seeking dilution of the Chair's valuable text. Arguments about technical abilities to implement the precautionary approach were abundant. Yet, two main opponents of the Chair's text, it was noted, enjoy third and fourth positions in the world marine catch principal producers ranking order.

It is unclear to some observers whether this political posturing is an attempt to settle old Working Group scores, or if it represents an agenda of the extreme Like-Minded coastal States to pursue creeping jurisdiction upon the high seas. The majority of Chile's artisanal, inshore and offshore fish workers and dock workers, under a Conapach, Congemar and Greenpeace Pacifico Sur document, have endorsed, in full, Article 6 and the mandatory application by States, of Annex 2.

NGOs and delegates perceive that Canada, who has done much to focus international attention on the plight of the world's fisheries, appears to be riding on the backs of the developing countries, by changing tact over the mandatory application of the precautionary approach. Canadian Fisheries Minister Brian Tobin said one of the Conference goals must be the implementation of the precautionary approach. The question floating in the corridors was, "Has Canada diluted its support in favor of maintenance of the Like-Minded and the extreme coastal State partners, or is the precautionary approach still on track?" NGOs and delegates await confirmation that the latter is the case, but they also seem disappointed with the Chilean position.

## **THINGS TO LOOK FOR TODAY**

**CHILEAN WORKING PAPER:** The delegation of Chile submitted a working paper on "Restricting Port Access and Enforcement of Conservation and Management Measures for Marine Living Resources". The paper deals with the issues of port State jurisdiction over foreign vessels while being voluntarily present in its ports. The option of restricting access to ports as a means of enforcing conservation and management measures in the high seas is also examined. Provisions made in bilateral treaties between States for access to ports, multilateral treaties on fishing and conservation of high seas living resources, legislative obligations for States to comply with the obligation to promulgate landing prohibitions, pre-GATT fisheries agreements, and the WTO work programme of its Committee for the Environment are also described.

**INFORMAL PLENARY:** The informal Plenary will resume this morning at 10:00 am in Conference Room 4. The Chair will continue with negotiations on Part V, Articles 19 and 20, dealing with Compliance and Enforcement. Following conclusion of Part V, the Chair will move to negotiations on Part VII, dealing with the Requirements of Developing States.

**NGO ACTIVITIES:** NGO representatives will continue their consultations in Conference Room A.