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## SUMMARY OF THE FOURTH SUBSTANTIVE SESSION OF THE UN CONFERENCE ON STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS 27 MARCH - 12 APRIL 1995

The Conference opened with one and one-half days of general statements and was followed by eight and one-half days of informal Plenary negotiation 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. During the second week, Nandan adjourned the informal Plenary in the early evening to continue with informal consultations, especially on Articles 20, dealing with compliance and enforcement, and Article 14 dealing with high seas enclaves. Plenary reconvened for two hours on Friday morning of the second week, enabling the Chair to speak to the revised text of his Draft Agreement, contained in two conference room papers: A/CONF.164/CRP.6 and A/CONF.164/CRP.6/Add.1. Delegations, especially Chile, were reluctant to enter into any negotiations on the revised text and Nandan was forced to adjourn Plenary until Monday morning of the third week. Despite the Chair's efforts to contain delegates' interventions within a short time frame, a composite review of his revised text was delayed first by the Chilean delegation and later by the EU. Nandan adjourned Plenary on Monday afternoon and cancelled all further informal consultations. Plenary reconvened on Tuesday afternoon to consider the report of the Credentials Committee, and the Chair reported that advance copies of his complete revised text in English would be made available later in the evening. Plenary reconvened on Wednesday morning, when delegates collected the Revised Draft Agreement in all languages and made general statements on the text. Nandan gave the work of the fourth substantive session to a close during mid-afternoon.

### A BRIEF HISTORY OF THE CONFERENCE

The problems related to high seas fisheries are not new to the UN system. Participants at UNCLOS 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 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 HMFS and 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.

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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 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 (A/CONF.164/13) that served as the basis for negotiation at the second substantive 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 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. On the final day of the Conference, the Chair produced his Revised Negotiating Text (RNT) in document A/CONF.164/13/Rev.1.

### **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 Chair's RNT. 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 adopted the following resolutions at its 49th Session: 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/49/116; Fisheries Bycatch and Discards and their Impact on the Sustainable Use of the World's Living Marine Resources, as contained in document A/49/118; The UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, as contained in document A/49/121; 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/49/436. Delegates also had before them a report of the third and fourth sessions of this Conference.

## **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 Agreement. Representatives from approximately 30 States, but predominantly from the Like-Minded coastal States caucus, met in Geneva from 13-17 February 1995. Greenpeace International made an intervention. Amb. Satya Nandan attended both meetings.

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

The FAO hosted a 10-day Technical Consultation on the drafting of the Code of Conduct for Responsible Fishing, in Rome from 25 September to 5 October 1994. Delegates from over 60 countries attended. The Like-Minded coastal State group, led by Canada and Peru, adopted the position that the Code could not be drafted until after the conclusion of the UN Conference. NGOs attended the Consultation and made contributions on the substantive issues. Despite best attempts by the FAO to put a number of key issues before the delegates, coastal State and DWFN posturing did not provide for a meaningful outcome of the Technical Consultation. The draft Code and comments made on it was transmitted to the Committee on Fisheries (COFI) in March 1995.

A Working Group on the draft Code met during COFI from 10-13 March 1995. Over 30 NGOs were invited to the COFI meeting. The meeting was preceded by a one-day FAO/NGO consultation on 9 March.

### **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 (CSD). 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 bycatch, discards, and post-harvest losses; review the capacity of fishing fleets in relation to sustainable yields of fishery resources; strengthen and support regional, subregional, 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.

### **NGO NETWORKING**

NGOs organized two roundtables during the intersessional period. The first was held in London on 3 February 1995 and was sponsored by the World Wide Fund for Nature (WWF) and Save Our North Atlantic Resources (SONAR). The second was held in Washington, D.C. on 9 March 1995 and was sponsored by the Council on Ocean Law and SONAR. Both roundtables were attended by academics, international lawyers, diplomats, and industry-based and environmental NGOs.

## REPORT OF THE CONFERENCE

The United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks concluded its fourth substantive session at UN Headquarters in New York on 12 April 1995. This Conference, one of the major outcomes of the United Nations Conference on Environment and Development (UNCED), was called for by the UN General Assembly in one of a series of resolutions designed to implement the decisions taken in Rio.

The Conference, which brought together many delegates responsible for negotiating the 1982 UN Convention on the Law of the Sea (UNCLOS) with those involved in the UNCED process, addressed the divisive issue of the management of straddling fish stocks (SFS) and highly migratory fish stocks (HMFS) on the high seas. According to UNCLOS, SFS and HMFS include species occurring within the exclusive economic zones (EEZs) of two or more coastal States or both within the EEZ and in an area beyond and adjacent to it. An EEZ is defined as an area extending beyond and adjacent to the territorial sea that shall not extend beyond 200 miles from the baselines from which the breadth of the territorial sea is measured.

Many of these stocks are among the most commercially valuable species and are, therefore, subject to intense and unregulated fishing effort on the high seas. The UN Food and Agriculture Organization (FAO) has recently concluded that over 70% of the world's fish stocks are at maximum exploitation levels or beyond sustainable harvest levels.

Ambassador Satya N. Nandan, Chair of the Conference, opened the session by outlining the programme of work proposed by the Bureau. Nandan reflected on his attendance at two intersessional meetings, the first in Tokyo and the second in Geneva. He indicated that areas of compatibility of conservation measures, new participants, enforcement and the desirability of using the provisions of UNCLOS with respect to the settlement of disputes had involved much discussion.

He underlined the deteriorating state of the world's fisheries as outlined in a recent FAO report and said that in order to facilitate stock rehabilitation, action is needed on: the control of fishing effort and the reductions of the industry's over-capacity; resource allocation decisions; the establishment of more effective users' rights; improved decision-making on resource use; and the adoption of precautionary approaches to fisheries conservation and management.

Nandan reminded delegates that they must find practical and effective solutions so that fisheries resources can be utilized in an orderly and sustainable manner to bring order to the oceans and promote cooperation among States. Recent incidents involving fishing vessels on the high seas underscored the urgency to find solutions and he called for restraint to be exercised so that multilateral solutions can be found to global problems.

## NEGOTIATIONS ON A/CONF.164/22

*Editors note: The Chair adopted a work programme that dealt with the most contentious Parts of his Draft Agreement first. This summation covers sequentially each of the Parts negotiated in the Chair's Draft Agreement.*

### PREAMBLE

The EU wanted to ensure that the long-term conservation and management and sustainable use of SFS and HMFS should be "throughout the entire range of their distribution". Canada and Poland preferred that references to "long-term conservation" in paragraph one and "improved cooperation" in paragraph three to be

merged. The Chair suggested the text in paragraph three could be amended so that States Parties to the Agreement "resolved" to improve cooperation between States.

Peru and the EU said that few principles were contained in paragraph two, but Japan contended that 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".

The EU and China sought deletion of reference to Agenda 21, Chapter 17, Programme Area C in paragraph five. Peru, Argentina, Australia and Papua New Guinea objected to this proposal. Argentina, Poland, the Republic of Korea, Australia and New Zealand said that in paragraph seven, the word "utilization" should be preceded by "sustainable".

Malta and Papua New Guinea considered it unnecessary to refer to the FAO Code of Conduct, but said that reference to the Compliance Agreement would be pertinent. India especially welcomed the strengthening of paragraph seven in favor of the needs of developing States.

### PART I—GENERAL PROVISIONS

Peru argued for the inclusion of additional definitions in Article 1, which deals with use and terms of scope of the Agreement with respect to "coastal States" and "fish stock", because some resources included straddling shellfish. The question of such inclusion invoked considerable debate with both Canada and Argentina supporting the inclusion of shellfish, but that sedentary species be excluded. The Russian Federation supported the need to include definitions, especially for species that constitute a straddling stock, and referred to document A/CONF.164/L.46, which details a composite listing of SFS. Chile proposed that a harmonized listing of SFS could be drawn up from documents L.11, L.32 and L.44. The Chair urged delegations with biologists and scientists to convene a small group to identify all such species, but this suggestion was not taken up.

The Russian Federation said its submission in A/CONF.164/L.47 included a definition of an "adjacent region". Norway supported the incorporation of such a definition to impart clarity in the text.

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 modeled 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 inclusion of a definition on the former, but not the latter. 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, Australia, Poland, the US, and Chile preferred to follow UNCLOS with a minimal number of definitions included in the text.

China said Article 1 should be as general as possible. The Japanese delegate expressed concern that Articles 63 and 64 of UNCLOS lack definition for the terms "directly", "organization", and "arrangement". He proposed that such 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. Estonia supported the inclusion of definitions in Article 1.

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.

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, saying Article 64 refers to HMFS and that the term “optimum utilization” has been superseded by the term “sustainable”. The Chair supported Brazil’s interpretation and said that “sustainable use” is not harmful. The EU, supported by Japan, proposed adding “throughout the entire range of their distribution” at the end of Article 2, which contains the objective.

In consideration of Article 3, dealing with application, Peru emphasized “rights and obligations” to conserve and manage fish stocks. 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 Agreement, and said it should include reference to the sovereign rights of both coastal States and high seas fishing States. He 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 inserted 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. Argentina said subparagraph (e) must be strengthened to incorporate 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 subparagraph (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.

Chile said that differences exist between Article 6, dealing with the application of the precautionary approach, and the draft document 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 he 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 terms “ecologically related” and “ecosystem”, the Chair recommended use of the least broad term. Uruguay agreed with the substance of Article 6, but suggested the

precautionary approach should be aimed at setting stock-specific minimum standards. When scientific data is deficient, it must not be used as an excuse for failing to adopt minimum standards. The article must reflect the need to apply the precautionary approach while at the same time providing for the compilation of new data for decision-making.

The US delegate said the matter dealt with in 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 Annex 2 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 said that only the term “relevant reference points” should be used, and that the word “precautionary” should not be used with “reference points”. Canada said the application of the precautionary approach should not jeopardize the sovereign rights of coastal States in their own EEZs. Canada supported India on the need to assist developing countries in attaining new and advanced technical goals. 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 their application would lack strength. New Zealand said that changing “precautionary reference points” to “relevant reference points” would be an unacceptable change of substance. The representative of the Natural Resources Defense Council said that making Annex 2 mandatory was central to the Draft Agreement.

The Chair failed to secure any reaction to Chile’s proposal of substituting “ecologically related” with “associated and dependent species” and concluded that silence represented consensus. The US said that Annex 2 was a descriptive list that should be applied mandatorily and not be considered as a voluntary application. He recognized that some developing States do not have the tools to attain a high degree of conservation and management. 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. Uruguay said that evolving science would require periodic review of the reference points and this should be taken into account when considering Annex 2.

The Russian Federation said that Annex 2 needs to be mandated as a 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. Lebanon said grace periods were good incentives for joining international conventions.

Sri Lanka 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. Peru proposed a new Article 6 (bis) on interim measures in cases of an emergency situation. This proposal was later amended and re-submitted for further comment. 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 that encounter difficulties. Peru said the proposal did not represent an attempt to expand jurisdiction, but to find jointly-agreed solutions for the interim. 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

judgment. The Canadian Oceans Caucus said that 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.

Iceland referred to his country's unique situation and proposed a new subparagraph (2)(d) in Article 7, 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 Republic of Korea said the inclusion of "in accordance with Article 61 of UNCLOS" in subparagraph (2)(a) would enhance the guiding principles for coastal States with respect to conservation measures in their EEZs. New Zealand said UNCLOS language should not be tampered with and the concept of an optimum limit on sustainable use is confusing. 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. 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) said Annex 2 contains a general package of guidelines that could provide creative, holistic and less expensive means of monitoring for developing countries.

### **PART III—MECHANISMS FOR INTERNATIONAL COOPERATION CONCERNING STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS**

In consideration of Article 8, dealing with cooperation for conservation and management, the US noted that ICCAT, as a regional organization, experienced difficulty in persuading non-members to join, and said States should be persuaded to recognize the principles of such organizations and seek membership. Referring to Article 32, dealing with non-participants, the US said that non-member States that fail to apply such principles should be denied access to the fishery. The Korean delegate suggested "with the rules, procedures and practices already in effect for the participants" be incorporated in the text. The last line should be amended to read "on a non-discriminatory and equitable basis", and should be included in paragraph (3). This would promote the non-discriminatory principles referred to in UNCLOS when determining the rights of States participating in regional and subregional organizations and arrangements.

Chile said that such organizations must be able to elect new members who have genuine interests in fishing and research. Sri Lanka said the Indian Ocean Tuna Commission (IOTC) could provide some background guidance for formulating new text.

Norway and Australia favored incorporating elements of the US proposal into the Chair's text to give it enhanced substance. The Russian Federation asked that paragraph (3) be amended to provide for organizations and arrangements that express a non-harvesting interest in stocks.

Indonesia said the Korean proposal on "equitable allocation" was vague and unclear and could mean a contradiction of terms. Malta supported the Korean and Japanese proposals because they promoted non-discrimination. Fiji said Japan's proposal to amend

paragraph (5) adequately satisfied matters of notification and openness as expressed in the US proposal.

Canada, the EU, Venezuela and Uruguay supported Japan's proposal to include an additional paragraph (6) on action to be taken by IGOs having competence with respect to living marine resources.

In Article 9, dealing with regional fisheries management organizations or arrangements, the Chair said a drafting change had been made in paragraph (b) to delete the relevant provisions "of the Convention" and to replace these words with the relevant provisions of "Article 7, paragraph (1)". This brings the compatibility provisions into focus, which are not included in UNCLOS. Peru proposed an additional paragraph (2) that discriminates against States adopting conservation and management measures that would directly affect the rights and duties of coastal States. The EU said that subparagraph (a) should examine the biological unity of stocks, not the biological characteristics. The Russian Federation said the concept of biological unity is limited and restrictive. The Chair said in Article 9 there is a need to identify objectives that States should agree on when they establish a regional organization, and that in Article 10, having established the organization, there is a need to indicate implementation of those objectives. The Philippines suggested deletion in paragraph (b) of "socio-economic, geographical and environmental factors", since what is being managed is the stock. Morocco expressed support for the Peruvian addition of paragraph (2). Mexico and Iceland also supported Peru and were concerned for the interests of coastal States and the sovereignty over conservation and management of HMFS and SFS in EEZs. Japan felt that the Peruvian proposal appeared to adopt the language of Article 116 of UNCLOS and said this problem was partially dealt with in discussions on Article 7. Japan expressed concern that any new discussion of Article 7 at this juncture would create imbalance in the text. Uruguay and Canada supported the Peruvian amendment. Peru stated there is no specific reference to the rights and duties of coastal States in Article 7, paragraph (2) (a), and thus no repetitiveness prevails in the proposed amendment. The EU said the Peruvian proposal is good in isolation, but doubted its compatibility with the remainder of the text.

The Russian Federation proposed a new subparagraph for Article 10, which deals with the functions of regional fisheries management organizations and arrangements. Peru proposed an additional paragraph (2), but Brazil said that the measures in coastal State jurisdiction should be of primary importance and should not be diluted by subregional, regional or international organizations. The Article should reflect the importance of the coastal State measures and conservation and management experience. China said Peru's proposal is in accordance with Article 119 of UNCLOS, but was concerned about the legitimacy and scientific application of the use of the terms "decisions" and "measures". Peru stated that it is always interested in improving the text to make it harmonious with Article 116. He agreed, in principle, with the Russian Federation and said mechanisms must be found to deal harmoniously with violations.

China, supported by Poland, agreed with the Korean proposal. Japan said that each sovereign State, not the regional organization, should have the final say in the punishment of violations. Mexico, supported by Venezuela, said that in subparagraph (a), conservation and management measures should ensure the long-term viability of the stocks on the basis of acceptable scientific evidence, while subparagraph (c), on responsible fishing, could be covered by a reference to the Code of Conduct for Responsible Fishing. The International Collective in Support of Fish Workers (ICSF) suggested inserting in subparagraph (a) "phasing out of

non-selective fishing gear and techniques". Greenpeace said that in subparagraph (j), exemption clauses made firm conservation measures difficult to implement.

On Article 11, dealing with strengthening existing organizations and arrangements, the US, Canada and Morocco circulated a trade-related amendment. This is a non-binding provision and encourages regional organizations to address multilateral action consistent with trade rules under the World Trade Organization (WTO). The EU said the amendment seemed a useful supplement to conservation and management measures. China, backed by Malaysia, Mexico, Malta and Sri Lanka, said the conservation of fish resources is being confused with trade issues, and objected to the proposal. Japan supported the amendment.

On Article 12, dealing with collection and provision of information, Peru proposed a new Article 12 (bis) on cooperation for scientific research. The Chair said it would be better to incorporate Peru's concerns, and that Article 12 would also be used to strengthen the provisions for developing countries. Malta asked for a cross-reference regarding the obligations of scientific collection and dissemination of data in Article 23, subparagraph (2) (a), and that provisions for developing States should not be optional. He pointed out that in Annex 1, paragraph (2), the use of "should" is not consistent with the main body of the text, which uses "shall", and that this could be interpreted to mean that the Annex is optional.

Opening debate on Article 13, which deals with enclosed and semi-enclosed seas, the delegate of the Russian Federation, supported by Peru, Canada and the US, emphasized that his amendment, tabled in document A/CONF.164/L.47, draws attention to the reference in Part IX of UNCLOS to enclosed and semi-enclosed seas. Due to the geographical, environmental and other particularities of these areas, the special concerns of coastal States should be given emphasis because Article 123 of UNCLOS obliges States with enclosed or semi-enclosed seas to cooperate with other States in conservation and management. Article 13 should be consistent with UNCLOS to ensure such cooperation.

Norway expressed sympathy with the general thrust of L.47 in respect of Articles 13 and 14 because the situations referred to in the Russian proposal are special, and specific provisions should take those situations into account. Poland said he could not accept L.47 because it attempts to introduce new notions into the Chair's text. Considerable debate ensued on this issue and the Russian Federation offered to consider all comments before resubmitting an amendment to Article 13.

Japan could not accept the L.47 text, and said subparagraph (a) of the Chair's text should remain, as all other paragraphs in Article 13 refer to fishing. New Zealand supported the L.47 text because his country has a high seas enclave, and special issues need to be addressed within the Draft Agreement.

Israel said Part IX of UNCLOS is important to Article 13, and Article 123 of UNCLOS should be fully used rather than just subparagraph (a).

On Article 14, dealing with areas of high seas forming an enclave surrounded entirely by areas under the national jurisdiction of one State, the Russian Federation said one of the most complicated and unregulated problems that has arisen is that of conservation of living resources in small portions of the high seas surrounded by the EEZs, referred to as "enclaves". Canada supported the Russian proposal and said it includes rights, responsibilities and interests. Peru said there is a need to prescribe a special rule for a special reality and to aid progressive development of UNCLOS. China and Poland said the international community cannot make exceptions for the special circumstances of one State, and wanted deletion of Article 14. The US supported the Russian

proposal and said it accurately captures the urgency of the issue and focuses attention on the special problems of the area. The EU said Article 14 is unnecessary and the problem should be dealt with in the framework of Article 7 of the Chair's text.

In consideration of Article 15, on transparency in the subregional and regional fisheries management organizations or arrangements, the US proposed an amendment to paragraph (2). The proposal has several objectives: to assure that NGOs have the right to attend meetings of such organizations as "participating" observers; that records of meetings, data and other information be made available in a timely fashion to NGOs; and that such organizations shall be barred from levying excessive fees that would serve to exclude or prevent NGOs from participating. The US reminded delegates that the term "NGO" constitutes a variety of non-governmental organizations that also includes members of fishing communities.

Venezuela supported transparency, but said the US proposal might be unduly restrictive and suggested that the text be amended "to ensure that NGOs have the right to participate in the work of such bodies". The Japanese delegate supported the concept of transparency in decision-making, but said the essence of the US proposal suggested that governments are incapable of acting without assistance from NGOs.

New Zealand and Australia supported the involvement of NGOs in regional meetings and bodies, but noted that the US proposal did not include any reference to IGOs. The Philippines wanted NGOs to participate in discussions, but not in decision-making processes. Argentina supported the Chair's text and said that NGO involvement had not been reflected in a positive manner in the work of the Conference. Malta supported the Chair's text, but objected to some expressions within the US proposal. He did not like reference to NGO rights in treaty text. Peru reminded delegates that NGOs play an important role in the continuing development of the FAO Code of Conduct.

Representatives from Greenpeace International and the ICSF said they were encouraged to hear delegates' support for NGOs. Article 71 of the UN Charter establishes the right of NGO participation. ICSF reminded delegates that southern NGOs cannot raise funds to attend meetings of importance to them, and it is essential that fees should not be levied against them.

On Article 16, which deals with new participants, the delegate of Iceland, supported by Canada, Uruguay, Indonesia, Micronesia, Mexico and the Marshall Islands, said that the list of criteria should take into account the needs of coastal fishing communities. Iceland proposed adding a new subparagraph (d), stating that "the interests of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources" should be taken into account. Norway could not support the Icelandic proposal. Peru and Chile supported the principles of the Icelandic proposal. Papua New Guinea supported the Chair's draft and stated that amendments should be kept to a minimum and, with the Marshall Islands, expressed his doubts about the use of the term "equitable".

#### **PART IV—RESPONSIBILITIES OF THE FLAG STATE**

In Article 17, dealing with duties of the flag State, Canada said the provisions of a national vessel registry in paragraph (3)(c) should be accessible to the public and noted that Article 20, paragraph (5), dealing with enforcement, should be included in Article 17. Mexico objected and said national legislation could not provide for such transparency. The EU said a broad definition of transparency could create problems. The text should better reflect the Vienna Convention and the Flagging Agreement.

Debate ensued after Japan said that the authorization to fish should be taken from the same language as the Flagging

Agreement, but the Chair indicated there could be inconsistency between the Flagging Agreement and UNCLOS.

Australia said satellite monitoring was a good conservation and management tool and was cost effective. Peru said the use of satellite monitoring should not be imposed mandatorily on coastal States. ICSF said that Article 17 should include reference to the implementation of international regulations specific to employment, safety and social security of fishworkers.

### **PART V—COMPLIANCE AND ENFORCEMENT**

The Chair said that compliance and enforcement remains one of the most difficult, yet important, issues; however, 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, as contained in Article 18. Japan said that he had a problem with subparagraph (1)(c), because of its legal implications. Papua New Guinea said that in paragraph (3), dealing with sanctions, the word “severity” should be substituted for “gravity”. The Philippines said sanctions should not affect the fishing vessel’s crew. Japan said that since a vessel may fish in more than one fishery, sanctions should be limited to the particular fishery involved, and only the flag State may bring offenders to trial and impose penalties.

Peru introduced a new Article 19 (bis), dealing with cooperation and enforcement to strengthen conservation and management measures within the framework of regional or subregional arrangements or organizations.

Canada said he supported the proposal made by the US delegation on 31 March, but only on the proviso that the words “without prejudice to Article 111 of UNCLOS” be included. Australia supported this proposed amendment.

China regretted that the US proposal extended unilateral rights to the coastal State, and said enforcement measures on the high seas should be limited to regional and subregional areas. Fishing without authorization should be addressed through regional cooperation and arrangements and, in the absence of such provisions, bilateral arrangements could be substituted. Brazil noted that DWFNs still could not accept the need for inspection in order to enforce compliance, and he thought the CCAMLR regime measures for inspection and observation could be adopted for incorporation into a revised text.

Korea said the flag State should exercise jurisdiction over its vessels that commit offenses on the high seas. Malta said it supported the draft text with modification of some of the Japanese alternative language. Israel supported the Japanese addition, but preferred that it be amalgamated with the EU language. Morocco supported the draft text, but also spoke in favor of the proposed US addition to paragraph (5). Poland said the proposed US addition covered a lacuna in the original text.

Sri Lanka said that without suitable compliance, new legislation would be without benefit. Cooperation between States on compliance and enforcement is important and coastal States have a vital role to play. Thailand said enforcement should be primarily conditioned by approval of the flag State, and that there must be a well-founded reason to believe that vessels have contravened preventive measures. Remedial action should be available if flag States fail to comply.

Panama said that parties must take into account not only the safety of the vessel, but also the rights of any State involved with the vessel. The boarding and inspection of vessels on the high seas should occur only with the agreement of the flag State, with those duties being directly cross-referenced to UNCLOS.

The US said securing access to vessels of non-members is essential to prevent erosion of conservation and management measures. The inspecting State needs obligatory feedback from the flag State, and the text should include this provision. Compliance and enforcement needs to be effective so that fishermen can undertake their duties responsibly.

Japan stated that the uniform scheme for joint-enforcement suggested by the US is unnecessary. Regional organizations should adopt methods that they deem appropriate. In reference to paragraph (4), the Bering Sea Agreement applies to the situation of non-member states, and Article 32, paragraph (3) of the Chair’s text deals with this situation. He also pointed out that the US proposal does not deal effectively with the basic principles of sovereignty and flag State responsibility, and that there are greater international legal implications.

Papua New Guinea, supported by the Federated States of Micronesia, said tougher action should be taken on vessels not flying a flag, as such action constituted a flagrant violation of international law. Korea said there is no uniform rule for punishing a Stateless vessel. Canada said that the range of amendments proposed may make reconciliation difficult, and he asked the Chair if he had considered reviving the “friends of the Chair” to give proponents of different views a chance to compare notes and find a solution. The Chair said he would begin informal consultations in due time, if need be.

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

Chile began the discussion on Article 21, which deals with boarding and inspection by port States, by distributing a working paper seeking to ensure compliance and enact a broad enforcement regime, taking into account the rights of port and flag States. The US, supported by the Russian Federation, Brazil and others, expressed concern that there be no threat to the sovereignty of port States. Japan said that 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, and 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 UNCLOS, and said he could not support the Chair’s text in paragraph (2) because it did not recognize the commercial nature and rights of fishing vessels. Access to ports and facilities must be protected, as this is a trade issue. Israel said it is necessary to protect the freedom of navigation and innocent passage through territorial seas in UNCLOS.

Papua New Guinea said the rights of States to carry out action, including general inspection, under paragraph (2) fall under international law. Rights should not inadvertently be circumscribed under international law. The Russian Federation, in response to the suggestion that the port States’ measures may run counter to GATT, said GATT would not be an obstacle when it comes to exhaustion of natural resources. ICSF proposed a new paragraph (3) (bis), vesting power in a port State to take action 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 VII—REQUIREMENTS OF DEVELOPING STATES**

On Article 22, dealing with the recognition of the special requirements of developing States, Brazil proposed additional text to subparagraph (2)(b) to “ensure access to fisheries by” subsistence, small-scale, “artisanal and women fish workers, as well as indigenous peoples” in developing countries. In subparagraph (2)(c), he proposed that the measures “do not hinder the development of fisheries for SFS and HMFS”, and said the text had been borrowed from an NGO paper.

Uruguay and Indonesia questioned whether the requirements of developing States actually meant “developing coastal States”. The US endorsed comments to improve the text to recognize the needs of small island developing States (SIDS). Papua New Guinea said that in his country, fishing development is not just a matter of economic exploitation, but also one of nutritional exploitation.

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

The US tabled amendments on dispute settlement procedures that 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, and said the provisions of UNCLOS would simplify the Draft Agreement. Canada said its proposed alternative text is based on a synthesis of the US proposal and the Chair’s text, and said disputes may arise in a regional context without being related to the application of the regional agreement or arrangement. 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 agreed with the US proposal, but 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. The Russian Federation said the Chair’s text was balanced, but 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 the provisions of UNCLOS. Thailand said it does not favor ambitious provisions that go beyond the requirements of the UN Charter and UNCLOS. Uruguay said 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. The US was not sure the Canadian proposal for Article 28, paragraph (2) could work for good formulation, and said that the organizations become subject to compulsory dispute settlement under the US proposal.

Papua New Guinea said in reference to Annex 3, Articles (7) and (8), the arbitral body could only issue recommendations and hence was not in itself a binding dispute settlement. The Russian Federation emphasized that the international tribunal in UNCLOS was the only body suitable for dispute settlement. Guatemala said that the stipulations in Part XV of UNCLOS lend themselves to the settlement of maritime delimitations, but do not readily resolve the disputes envisioned in Article 7, paragraphs (4) and (5). The delegate supported a combination of the US and Canadian proposals. 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.

## **PART IX—NON PARTICIPANTS**

The Chair said that Article 32, dealing with non-participants in subregional or regional fisheries management organizations or arrangements, would be placed after Article 16, dealing with new participants in his revised text. Brazil expressed doubts concerning the relationship between Article 32 and the General Principles outlined in Article 1. He stated that as non-participating entities are identified in Article 32, they should be similarly identified in Article 1 to ensure comprehensive coverage. The Chair agreed that a mechanism is needed to develop Article 1, paragraph (3), and that a reference might be included in this Article. Peru, supported by New Zealand, stated that paragraph (1) should end “in accordance with the relevant provisions of UNCLOS and this Agreement”, thus ensuring that non-participants are obliged to participate in the conservation and management of stocks. The Russian Federation, supporting Peru, said that regional and subregional arrangements must not be threatened by non-participating States and that flags of convenience are of particular concern. China expressed concern that the word “obligation” in paragraph (1) should be followed by “in accordance with the relative provisions of the Agreement”. Mexico supported China’s proposal and questioned the reference to non-member and non-participating vessels in paragraph (3). The Chair said something must be done to deal with vessels that are non-members and that do not fish in accordance with regional or subregional measures. Lebanon said international agreements should provide the basis for action concerning “any violation by a non-member”.

The Chair reminded delegates that the safeguard clause in paragraph (3) requires States to take measures consistent with the Agreement and international law. Indonesia said reference should simply be to UNCLOS. China said the Chair’s text in paragraph (2) should remain.

## **PART X—ABUSE OF RIGHTS AND PART XI—NON-PARTIES TO THIS AGREEMENT**

The Chair moved quickly over Article 33, which deals with good faith and abuse of right, and Article 34, dealing with encouragement of accession, since no comments were made by delegations.

## **PART XII—REPORTS ON IMPLEMENTATION AND REVIEW CONFERENCE**

On Article 35, which deals with reports on the implementation of the Agreement, Japan referred to paragraph (1), and asked what would happen if the Agreement enters into force later than the stipulation requires. The Chair said a resolution would be submitted to the General Assembly calling for provisional reporting. Uruguay said that constitutional requirements in his country may not permit acceptance of a provisional application. China said a review should only be effected after the Agreement’s entry into force. The Russian Federation, supported by Indonesia, advocated the Agreement’s earliest possible entry into force, and suggested reducing the number of instruments of ratification to 20. The Chair reminded delegates that provisional application occurred in the case of Part XI of UNCLOS on deep sea-bed mining.

The Chair said that the reference to “implementation” should be changed for the sake of clarity. The Chair pointed out that the same problem arises in dealing with Article 36 with the use of the term “after the adoption”, and said that it would be best to wait until the end of the Conference to identify how to ensure provisional application.



## PART XIII—FINAL PROVISIONS

The Chair said some of the language in Article 37, which deals with signature arrangements, refers to Namibia and is no longer applicable. He pointed out that Articles 37 through 48, which deal with accession, entry into force, relations to other conventions, amendments, denunciation, status of annexes, depositary and authentic text provisions, to a large degree follow the provisions of UNCLOS. He stated that Article 40, paragraph (2) should read "Each State or entity..."

The Chair concluded debate on his Draft Agreement by saying that the changes suggested to Annex 1 on minimum standards for collection and sharing of data, will be integrated in his revised text.

## INFORMAL CONSULTATIONS

### AN OVERVIEW OF NEGOTIATIONS ON ALTERNATIVE TEXTS FOR ARTICLES 14 AND 20.

*Editor's Note: This overview conforms to previous editorial policy when covering informal consultations conducted by the Chair. The names of individual delegations are not revealed.*

**ARTICLE 14:** A number of delegations stated that the four-country amendment proposal of Canada, the US, Peru and the Russian Federation is unacceptable, because coastal State conservation and management measures extending over the high seas are not in line with UNCLOS. They questioned the logical and legal merit of identification of special areas of the high seas. Many delegates pointed out that this case is similar to the Bering Sea Agreement and that general rules of compatibility as set out by UNCLOS should be used.

A delegate supporting the proposal said it was written to reflect the unique situation in those areas, and that cooperation is emphasized in the first two paragraphs. He stated that although the word "enclave" is not found in UNCLOS, neither are the terms "straddling fish stocks" or "biological unity", and pointed out introduction of these terms is part of the development of international law and UNCLOS. One delegate stated Article 14 is unnecessary, and that this situation should be handled using the best scientific data available, the precautionary approach and compatibility. Another stated that Article 13 of the Chair's text is enough to reflect the concerns required of this issue, and that text could be added to by incorporating: "concerned fishing States and coastal States, in accordance with the provisions of the Convention, shall set up multilateral organizations or arrangements in which they will cooperate to have conservation and management of stocks concerned". One delegate supporting the proposal pointed out the urgency of the situation, and that a solution could not be achieved from within existing laws. He said the proposal does not conflict with UNCLOS and international law. Another delegate was concerned that what happened in the "donut hole" should not happen here, and stated that his country has introduced domestic legislation to prevent its vessels from fishing in the Sea of Okhotsk. A delegate speaking against the proposal said that in the new text of Article 13, the reference to "the legal regimes relating to the conduct of fisheries" is unacceptable. He also said Article 14 is unacceptable because it is very close in nature to document L.47 and allows the coastal State control over fisheries in the high seas. Another delegate said in paragraph (1) of the proposal, there is no reference to data collection in the high seas, and this would extend coastal State jurisdiction to this area; in paragraph (2), the proposed text implies that measures taken in coastal State jurisdiction shall be applied in the high seas, and this is not cooperation; in paragraph (3), the reference to "practical measures" does not reflect the cooperation required by UNCLOS. He stated that the

negotiations should be based Articles 116, 163 and 164 of UNCLOS.

In reaction, one of the countries responsible for the proposal stated that it is possible to have cooperation in all of these cases as reflected in UNCLOS, and that many of these measures have in fact been in place in the Sea of Okhotsk for the last 12 years. Another delegate, speaking about the interventions, said the reference in paragraph (1) to "best scientific data" refers to both coastal State jurisdiction and the high seas. He pointed out that the use of "no less effective than" in paragraph (2) (a) does not mean "identical to". Measures implemented on the high seas can be different, so long as they are no less effective. Concern over consistency with UNCLOS regarding high seas fishing prohibition is not necessary. Prohibition of high seas fishing is not the goal of the proposal. Regarding concern over the use of "in the absence of" in paragraph (2)(b), this text can be modified so long as "contrary to" remained in the text. He said paragraph (3) is based on the text of Article 7, and does not mean that there will be moratoria on the high seas while extensive fishing is allowed in the EEZs.

There was some support for the deletion of controversial terms such as "enclave", "in the absence of", and "practical measures". Reaction to these suggestions by the four-country group and their supporters was fairly flexible.

The Chair stated that the major concerns seemed to be over the paragraphs (1) and (2). In reference to the question of the necessity of the Article, it might be helpful to put the issue of an area of high seas surrounded by the EEZ of one State in a separate paragraph, and then apply elements from paragraphs (1) and (2) to both situations. There was general agreement with this approach. One of the four-country group members identified some important elements missing from the Chair's newly revised text that made it unsuitable: there must be negotiations prior to the initiation of fishing in an enclave; measures implemented in the high seas should be no less effective than those taken under national jurisdiction; and the rights and special interests of the coastal State must be taken into consideration. Other delegates agreed that the Articles could be accepted with minor changes. At this point, a number of delegates reasserted that Article 14 was not necessary to the Agreement, citing the multiple cross-references in the Chair's newly revised text, the continuing development of Article 7, and a lack of consistency with UNCLOS. The Chair called for continued informal discussion to resolve this issue.

**ARTICLE 20:** The Chair suggested a paragraph-by-paragraph review of the revised text. Referring to paragraph (2), one delegate said the right of boarding should be granted only if "well-founded suspicion" exists. Regarding paragraph (3), some fishing States supported changing the text to note that "adequate evidence" or "clear evidence" must be available to the non-fishing State. A coastal State delegate pointed out that Article 220 of UNCLOS, which says "if evidence warrants", might provide guidance. A fishing State delegate then questioned possible interpretations in paragraph (3), of "undermines the effectiveness", and stated that a reference to paragraph (2) is necessary to avoid interpretational disputes. The Chair pointed out that Articles 4, 5 and 6 cover this concern.

Regarding what should occur in the time between notification of the flag State and assumption of flag State control of the vessel, some coastal States said that control over the vessel should be maintained to collect evidence and prevent further violation. Other States questioned the use of the term "control", and said the concept of "continuous boarding" introduces the possibility of coastal State control over a vessel without flag State consent. Discussion over possible terms to replace "control" brought forth such suggestions as "take appropriate action", "inspect and remain

on board”, and “exert its authority”, although some States questioned the validity of the need for the inspecting State to remain on board the fishing vessel once the inspection has been completed.

Regarding the time allowed for the flag State to respond to coastal State notification, the delegate of a developing coastal State suggested flexible wording such as “promptly”, or “within a reasonable amount of time”. After further discussion, it was generally agreed that the text should read “within 3 working days”. It was also generally agreed that a “point of contact” should be established for notification and response, and that regional organizations and arrangements should designate such contact points as well.

There followed considerable discussion over the concept of “deemed consent” established in paragraph (4) of an earlier Chair’s draft. A coastal State suggested that in the case of a flag State not replying or refusing to take action, consent might be assumed, but the actions available to the inspecting State should not include prosecution. In response, a delegate pointed out that refusal to take action was hardly tacit consent. Another delegate stated that until the obligation of flag States to enforce could be guaranteed, this concept must remain. It was suggested that this could be resolved by rewording the text to state that once control of the vessel is established, it should be taken to port for a full inspection. Alternatively, the text could read “in light of sufficient evidence, the inspecting State may take control and take enforcement action”.

A DWFN stated that concrete evidence of violation must be presented, and prior expressed consent from the flag State be given before any arrest or detention could occur. The need for flag State consent before any imposition of penalties was reaffirmed by a number of fishing States and some coastal States. Another State suggested that the scope of enforcement should be based on Article 73 of UNCLOS, which deals with enforcement of laws and the requirements of the coastal State. A delegate from a developing coastal State repeated his call for remedial measures to address situations of unwarranted boarding and inspection, particularly should there be any resulting deterioration of the catch. It was pointed out that there were procedures for settlement of disputes, if required.

A fishing State delegate supporting regional and subregional application of this Agreement was concerned that in areas covered by these arrangements or organizations, where procedures for non-flag State boarding and inspection of vessels have not been agreed on, it is possible that the national regulations of a coastal State member might be applied to a non-member fishing vessel. The delegate suggested that the setting up of rules and regulations for boarding and inspection of non-member fishing vessels by non-flag members of the region should precede this right, and these organizations and arrangements must maintain open membership. Other delegates disagreed with this view, stating that the right to board and inspect within the regional scheme is necessary even in the absence of rules specific to this circumstance, and that a general standard consistent with UNCLOS for global measures should be set up to provide guidance to the regional and subregional arrangements and organizations.

## RESUMED PLENARY 10 APRIL 1995

### **GENERAL COMMENTS ON THE REVISED UNOFFICIAL DRAFT OF THE DRAFT AGREEMENT**

On Monday morning, following informal consultations on Articles 14, dealing with enclaves, and Article 21 (old Article 20), on compliance and enforcement, the Chair introduced A/CONF.164/CRP.6 of 6 April 1995 and

A/CONF.164/CRP.6/Add.1 of 7 April 1995, the Chairman’s Revised Text. He explained that he was looking for the common denominator in the work, and that it is not a matter of counting States who support an idea, but that it is a matter of evaluation and judgment.

The EU said that the mandate is to improve the conservation and management of fishery resources through cooperation. He could not accept textual changes that shifted the balance among States. His comments were clustered around Articles 3, 5, 6 and 7. He said that there are two elements that underpin cooperation: biological unity and compatibility. In Article 6, biological unity was treated now as a by-product of information available for managing fish stocks and was no longer the fundamental element that the Chair had made it at the opening of the August 1994 session. He said that elements of international cooperation must be truly reciprocal, otherwise no rational management of fish stocks could occur. He said that all States must be able to express opinions in regional organizations by becoming a member or participating. Concerning Article 21, he said that changes in the rules of international law cannot be created to transfer competency of jurisdictions on the high seas.

Norway said that the new subparagraph (e) in Article 16, on the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources, could be accepted on the proviso that the term “coastal State” should be understood in the light of Articles 63 and 64 of UNCLOS. Thailand stated that it is not the excessive size of a fleet that counts, but rather its capacity. Japan said that definitions of international “conservation and management measures” and of “organization” and “arrangement” are still necessary. The Russian Federation said that its position was greatly reflected in Articles 13 and 14 on enclosed and semi-enclosed seas and areas surrounded by areas of the national jurisdiction of a single State. Argentina said that negotiations on Article 20, on enforcement, are indispensable for the text.

Chile said that in Article 3, on application of the Agreement, the EEZ involves economic characteristics, coastal communities and other factors making a degree of flexibility necessary. He suggested replacing paragraph (3) (b) of Article 6 with: “apply the guidelines as set out in Annex 2 in order to determine stock-specific reference points, and any further action to be taken if they are exceeded”. He suggested changing “ecologically related species” with “associated and dependent species”. In paragraph (8) of Article 7, he said that he wanted to add, after the word “notify”, the phrase “the relevant coastal States and” other interested States. He also wanted to add at the end of the paragraph “including vessel data as set out in Annex 1 paragraph (6)”.

Malta said that the amended text on Article 21, circulating within the informal consultations on Article 21, was insufficient. With regard to Article 13, on enclosed and semi-enclosed seas, he said the provisions did not adequately cater to artisanal fishermen in the Mediterranean, where there is no high seas area. New Zealand said he was pleased with the revised text, but said that in Article 12, paragraph (3), on the collection and provision of information, the drafting needed to be consistent with Annex 1. Article 26 needs clarification as to when and how the international tribunal may act to prescribe the obligatory settlement of disputes by peaceful means. On the application of the precautionary approach in Article 5, paragraph (c), he said there is a requirement to recognize that it is applied with particular relevance to Article 6.

The delegate of Korea said that Articles 5, 6 and 7 are insufficient to achieve compatibility and efficient conservation and management measures within zones of national jurisdiction. He argued for the insertion of a safeguard in Article 21 to protect

against abuse of right. Articles 13 and 22 contained new elements that are inconsistent with UNCLOS and general international law. He reserved the right to make recommendations on the text later.

China said it is difficult to make a final judgment on the text, because Article 21 was missing. He said that in Article 1, fish were fish, and he reserved further comment on this definition. In Article 8, paragraph (3), he said that the word "interests" could be interpreted as "economic interests", or "simply a willingness to do something". He could not endorse any reference to interests if these constituted "economic interests". On Article 17, paragraph (1), duties of the flag State, he said the obligations should be derived from UNCLOS and not from regional organizations.

Uruguay proposed that Article 12, paragraph (3), dealing with collection and provision of information, should begin by establishing its conformity with Part XIII of UNCLOS. The title of Article 22 should be amended to read "Measures to be taken by port States" when dealing with boarding and inspection. Article 24, paragraph (2), on forms of cooperation, should include reference in the text to "the strengthening of the autonomous scientific research capabilities".

The delegate of Australia said she was pleased with the balance and level of detail contained in the text, but argued against any more definitions appearing in Article 1. She concurred with New Zealand's comment on the precautionary approach in Article 5, paragraph (c), but objected to any alteration of Articles (8), paragraph (3), and Articles 16 and 17. On Article 20, she said enforcement and compliance needs to be strong and concise and should provide for effective high seas boarding and inspection.

The delegate of Ukraine spoke in general support of the revised text and did not wish to see any imbalance occur through the inclusion of new amendments. He did not support Chile's amendment to Article 8, paragraph (3), on cooperation for conservation and management.

Poland said the revised text is much improved, but expressed concern over the concepts adopted in Articles 5, 6 and 7. He reserved final comment on Articles 13, 14 and 21. He said the Preamble's reference to Programme Area C of Agenda 21 should also include reference to Programme Area D, as both are related and cross-references exist in Agenda 21. Article 5, subparagraphs (a) and (h), needed harmonizing, as the term "utilization" later shifted to "sustainability". He could not accept any reference to adjacent areas extending outwards 70 miles from coastal States' EEZs.

Greenpeace International drew attention to an earlier US proposal urging adoption of language that would prevent excess fishing capacity shifting from one area to another to harvest fisheries at or above sustainable levels. He welcomed Chile's movement over adoption of the precautionary approach, but remained disappointed that the US language on transparency had not been incorporated into the Chair's revised text. He was especially pleased to see reference to artisanal fishworkers in Article 22, subparagraph (2) (b) and in Article 5, paragraph (i), and expressed the hope that this language could be carried through into the final text.

Peru said the text improved the provisions of UNCLOS, and emphasized that it should remain balanced. He said any changes at this juncture would jeopardize the efforts of the Conference thus far and supported Uruguay's proposed amendments.

The Chair said he needed further time for informal consultations on Articles 14 and 21 and suggested the Plenary reconvene on Tuesday afternoon. The EU delegate said he had kept his intervention within the Chair's guideline of 3 minutes, and now wished to have the opportunity to respond at length, as the Chilean and other delegations had already done.

The EU proposed that the definition of "conservation and management measures" will need revision in the light of the operative parts of the text. A definition of the terms "arrangement" and "stock" will also need definitions. In Article 6, paragraph (1), the word "widely" should be deleted, since it gives the impression of broader assessment of the precautionary approach. He said that in Article 7, biological unity should not become a sub-product of information. He also said that in Article 12, paragraph (3), the term "beyond areas under national jurisdiction" should be deleted. He also kept a general reservation and said he could not take any decision until he would see the final version of the Chair's revised text. The Chair stated that he was uncomfortable taking decisions on some of the scientific matters presented without discussions. Japan stated that in Article 5, subparagraph (d), the effect of stock enhancement programs designed for the recovery of target species and species belonging to the same ecosystem or dependent upon or associated with the target species, should be added. He also said that he wanted to delete Article 16, paragraph (e), since it gives special emphasis for the coastal State. In Article 17, paragraph (4), he suggested deleting a "regionally agreed" system of monitoring, to be replaced with one "adopted by subregional or regional fisheries management organizations or arrangements to which the flag State is a party". Canada said there seemed little point in being self-congratulatory when suddenly questions that seemed to have been settled long ago were reopened through a series of proposed amendments. He favored cooperation, but said that if cooperation is supposed to be based on political imperatives, any concession would be made impossible. He said uncertainty seemed to reign. He wanted a definitive Article 21 on enforcement. Indonesia said that he was uncertain where developing countries like his own could go in view of these developments. Argentina, supported by Peru, said in any negotiation there is a need for timing and rhythm if one is negotiating in good faith. His government has stressed the urgent need, in light of recent events, for having texts agreed upon internationally. He said if there is no political will to act through cooperation, governments will feel themselves free to defend their interests in the best way possible. The Russian Federation said that the mandate of the General Assembly is not all that is involved, since the destruction of fish stocks continues. Turkey said that he favored the Chair's text in Article 13 on enclosed and semi-enclosed seas. The EU admitted to being surprised at delegates' reactions and said there can be no agreement on anything until there is agreement on everything. The EU, he said, had never given up the positions it had presented in the last two and one-half years. The Chair said he needed time to evaluate the suggestions made and to identify any possible improvements, but wanted to move ahead as far as possible. The nature of dialogue, he said, is to put forth points of view and to recognize what is viable and what is not. His immediate task is to see what can be incorporated in light of the debate.

## REVISED DRAFT AGREEMENT HIGHLIGHTS

A/CONF.164/22/Rev.1 of 11 April 1995, the Chair's Revised Text, was submitted to delegates at the Plenary, on Wednesday morning, by the Chairman, Satya Nandan. The text consists of 48 Articles and two Annexes. In the Preamble, there is a new paragraph on the need to avoid adverse impacts on the marine environment and to preserve biodiversity.

Article 1, dealing with use of terms and scope contains new definitions of "conservation and management measures" and of "fish". Article 2, on objective, now states that the objective of the Agreement is to ensure long-term conservation and sustainable use of SFS and HMFS "through effective implementation of the

relevant provisions of the Convention". Article 4, concerning the relationship between this Agreement and the Convention, states that nothing in the Agreement "shall" prejudice the "rights, jurisdiction and duties of States under the Convention".

In Article 5, outlining the general principles, a new paragraph (d) assesses the impacts of fishing, other human activities and environmental factors on target species and species belonging to the same ecosystem or dependent upon or associated with the target species. Paragraph (f) includes reference to "requiring" the use of selective, environmentally safe and cost-effective fishing gear and techniques. New paragraph (i) takes into account the interests of artisanal and subsistence fishers. Paragraph (l) now contains reference to implementing and "enforcing" conservation and management measures through effective monitoring, control and surveillance.

Article 6, dealing with application of the precautionary approach, refers to its "wide" application. Paragraph (6) now reads that when the status of target stocks or non-target or "associated or dependent" species is of concern, States shall subject those stocks to enhanced monitoring. Paragraph (7) calls upon States to establish conservative conservation and management measures as soon as possible for new or exploratory fisheries. Article 7, on compatibility of conservation and management measures, contains a new paragraph (7), stating that coastal States shall regularly inform States fishing on the high seas of measures adopted by coastal States for SFS and HMFS within areas under their national jurisdiction, and a new paragraph (8), saying that States fishing on the high seas shall regularly inform other interested States of measures for regulating activities of vessels flying their flag.

In Article 10, on functions of regional fisheries management organizations and arrangements, new paragraph (m) deals with transparency in decision-making. A new paragraph (3) has been added to Article 12, dealing with promoting scientific research related to the conservation and management of SFS and HMFS for the "benefit of all". Article 13, on enclosed and semi-enclosed seas, contains reference to the "geographical and ecological characteristics" of such seas. Article 14, dealing with areas of high seas surrounded entirely by areas under the national jurisdiction of a single State, calls for States to pay special attention to the establishment of compatible conservation and management measures for SFS and HMFS. Article 15, on transparency, includes new reference to intergovernmental and non-governmental organizations having "timely access to the records and reports" of fisheries organizations or arrangements. Paragraph (e) of Article 16, concerning new participants, refers to the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources. Paragraph (1) of Article 18 refers to ensuring that flag States' vessels do not engage in any activity that undermines the effectiveness of conservation and management measures.

Article 20, dealing with international cooperation in enforcement, includes a new paragraph (5) that says the flag State "may authorize" the coastal State to board and inspect a vessel on the high seas that is believed to have been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State. Article 21, on regional agreements and arrangements for compliance and enforcement, now deals with development of procedures governing the exercise of the right of boarding and inspection. Paragraph (2) of Article 22, on boarding and inspection by port States, contains new reference to prohibition of landings and transshipments where it has been established that the catch has been taken in a manner that undermines the effectiveness of subregional or regional conservation and management measures on the high seas. Subparagraph (2)(b) of Article 23, concerning

recognition of the special requirements of developing States, now mentions the need to ensure access to fisheries by subsistence, small-scale, artisanal and women fishworkers, as well as indigenous peoples in developing States. In Article 24, on forms of cooperation with developing States, subparagraph (3)(a) deals with the objective of collection, reporting, verification, exchange and analysis of fisheries data and related information is "improved conservation and management of fisheries".

In Article 28, dealing with settlement of disputes, paragraphs (3) and (4) deal with settlement of disputes in relation to Part XV and Article 287 of UNCLOS. Paragraph (1) of Article 30, on provisional measures, states that pending the resolution of a dispute, the parties to the dispute may submit the matter to a court or tribunal referred to in Article 287 of UNCLOS.

In Article 34, on reports on developments in relation to conservation and management of SFS and HMFS, the Secretary-General of the United Nations shall submit a report to the General Assembly on "developments" in relation to the conservation of SFS and HMFS, instead of on "progress made in the implementation of the provisions of this Agreement". Article 40 now deals with "provisional application" of the Agreement pending its entry into force. A new paragraph (2) is contained in Article 46 dealing with revision of the Annexes. Annex 1, on standard requirements for collection and sharing of data, now provides that basic fishery data collected by States shall be "made available to the relevant subregional or regional fisheries organizations". Annex 2, outlining guidelines for application of precautionary reference points in conservation and management of SFS and HMFS, contains a reference in paragraph 4 to associated "or dependent" species being maintained or restored to levels consistent with previously agreed precautionary reference points.

### **REPORT OF THE CREDENTIALS COMMITTEE**

The Credentials Committee met on 7 April 1995, under the chairmanship of Mr. Alberto Luis Daverede of Argentina. The Committee had before it a memorandum by the Secretary-General dated 6 April 1995, indicating that, as of that date, communications had been received from 93 States and from the European Community.

### **CLOSING PLENARY SESSION**

The Chair said that although the review of the Draft Agreement took longer than anticipated, discussions were constructive and considerable progress was made as demonstrated in the final text, A/CONF.164/22/Rev.1. Nandan reminded delegates that the General Assembly mandate in Resolution 47/192 was based on the decision of the heads of Government at UNCED and reflected the concern of the international community regarding the status of world fisheries. In Agenda 21, the problems were identified as: inadequate management of fisheries; over-utilization of some stocks; over-capitalization; excessive fleet size; vessel reflagging to escape controls; insufficient selection of gear; unreliable databases, and lack of sufficient cooperation among States. Recent FAO reports have indicated that the trend of unsustainable exploitation of fish stocks continues, and it is necessary for States to implement effective conservation and management measures. The Chair stated that the Conference must deliver an outcome to achieve this goal for SFS and HMFS based on: compatible measures in both areas under national jurisdiction and on the high seas; the use of the precautionary approach, including the use of reference points; and requirements relating to data collection. He said sustainable use of these resources is the common responsibility of all who are the present-day custodians.

Nandan said that although the Draft Agreement contained in document A/CONF.164/22/Rev.1 takes a balanced approach to the needs of both the coastal States and flag States, the collective interests of the international community must also be considered to secure sustainable use of the resources. He said the text creates three essential pillars: the principles and practices on which better management of fish stocks in areas of national jurisdiction and the high seas should be based; the need to ensure that the measures adopted are adhered to, complied with, and not undermined by those fishing in those areas; and the peaceful settlement of disputes based on the provisions of UNCLOS. Nandan said that broad agreement already exists on most of these provisions.

The Chair asked delegates to study the text with an open mind. It was impossible to include every suggestion in the text, but all views were taken into account when the text was formulated. He appealed to the delegates to evaluate the text in terms of what the Conference as a whole can live with, and pointed out that there would be the opportunity to raise essential issues in the next session. He stated that the schedule for the final session would be very tight, as technical issues relating to the finalization of the text and draft final Act of the conference must be examined, and he encouraged delegates to undertake informal consultations in the intersessional period.

Brazil said that there must be voluntary acceptance by flag States of compliance with boarding and inspection on the high seas. He said flag States should not have as much interest in areas outside their jurisdictions, but reasonable rights of fishing should not be denied. Transparency and compliance must be ensured. Peru noted some unacceptable substantive changes in the text and said his suggested change to Article 6, paragraph (5), regarding emergency measures compatible with measures in coastal State jurisdiction, was not included. In Articles 21, 22 and 25, references to the rights of coastal and port States have been deleted. Peru could not accept a continuous call by fishing States for balance in the text that is not reflected in UNCLOS. Estonia said that he could not support the idea of an "enclave". Norway stated that it was particularly important to seek effective rules for enforcement. Chile said that conservation measures in the area of the high seas adjacent to the EEZ cannot be less stringent than those measures applied by the coastal States in the EEZ. The precautionary approach is the basic guideline. The US emphasized his belief that the conference should negotiate a binding agreement with the objective of sustainable use of SFS and HMFS achieved through strong and compatible conservation and management measures. Such measures must include the precautionary approach, applied throughout the entire range of the stocks, based on adequate data collection and sharing arrangements. The EU said that it would move into the future with an open mind and constructive spirit. The key work that delegates will undertake involves cooperation. Cooperation, *inter alia*, implies the non-discriminatory opening of regional organizations. Japan said that the most difficult question is that of enforcement. He was opposed to the introduction of uniform joint-enforcement schemes, from which each and every organization must borrow. Indonesia said that he was worried because not only high seas resources are in danger, but so also are resources in the EEZs of developing States. China said that basic consultations on Articles 14 and 21 have not been completed, and the Chair should thus bracket these Articles. He said that the Chair's text could be taken as the basis for future negotiations. Australia, speaking on behalf of the SPFFA, stated that he was particularly pleased that there is good language in the Chair's text on strong global standards for flag State control and data collection and sharing. He also stated that enforcement is central. Argentina said that he preferred the previous text of Article 8, paragraph (3), that reflected the balance between the open nature of any

international organization or arrangement and respect for its internal rules. Poland said that he was ready to conduct bilateral negotiations aimed at a mutually satisfactory solution related to conservation and management measures and the sustainable use of stocks. The Russian Federation said that in Articles 13 and 14, it was essential to have special rules taking into account the geographical particularities of enclaves. Uruguay said that to achieve the goal of the Conference, delegates must approve effective conservation and management measures for the stocks involved in the framework of UNCLOS.

Korea agreed that States have a responsibility to ensure that marine resources remain available for present and future generations. Canada said the efforts of the Chair had succeeded in devising solutions to overcome common problems. The text of Article 21 does not ignore the rights of flag States, and he understood why some countries were unable to move in the direction of breaking new ground in international law. Iceland endorsed earlier concerns regarding the removal of Article 10, paragraph (2), and said delegates should take due notice of the headline in the NGO bulletin *ECO*, which says "Wake Up or Ocean Degradation Will Continue". Senegal said his country would need to find ways of implementing the principles contained in the Draft Agreement.

Morocco spoke in support of the balance maintained in the revised text and urged for consensus to prevail in order to serve the interests of present and future generations. Sri Lanka said he hoped consensus would prevail. Mexico said it is the responsibility of each State to ensure that conservation and management measures are applied throughout the regional and subregional organizations and arrangements. Greenpeace International said she remained skeptical about governments translating words into action and said Greenpeace would continue to promote public awareness of the need for a treaty and urged for continuance of NGO participation. The Chair responded by saying he hoped Greenpeace would invite delegates to its meetings.

WWF said the most visible issue before the Conference is that of excess fishing capacity, and that this must be addressed in future negotiations.

## A BRIEF ANALYSIS OF THE SESSION

After two and one-half weeks of intense negotiations, conducted in informal Plenary, in select group informal consultations with the Chair, and in numerous peripheral caucus group activities, Satya Nandan has persevered to produce an enhanced Revised Draft Agreement, which delegates were able to take home.

Nandan's work programme slipped dramatically and delayed the review of his Draft Agreement by four days. Delegates, and especially Chile, expressed forthright reluctance to proceed with a speedy informal Plenary review of his two conference room papers produced only in English-language versions at the close of the second week. Nandan was forced to reschedule his programme of work and continued to conduct further informal consultations over issues of "enclaves" and compliance and enforcement. These informal consultations were not completed prior to the issuance of the Chair's Revised Draft Agreement, and China argued that the entire text in Articles 14 and 21 should remain bracketed until the final session.

The tensions that prevailed prior to the commencement of the session between the Canadian and EU delegations over high seas fishing conflicts on the Grand Banks spilled over into the Conference negotiations. Perceptions of flag States' erosion of rights in the Revised Draft Agreement came abruptly to the fore on Monday. Three-minute limits to interventions imposed by Nandan

were initially breached by Chile, who spoke at length from a four-page list demanding new amendments. This later caused the EU to seek a second intervention, when it tabled a five-page list of amendments. These filibustering interventions led many to believe, and possibly the Chair, that work of the Conference had taken a three-year backwards step. Old rhetorical sentiment was quickly aroused, and DWFNs were accused of threatening to destabilize the Conference mandate to secure new conservation and management measures for SFS and HMFS.

Common sense seemed, however, to prevail at the closing Plenary session, with an unusually moderate statement from the EU, but still not sufficient to satisfy some coastal States, like Peru, who contend that the revised text represents a move toward maintaining DWFN rights and access to high seas resources.

All too often, the Conference negotiations have been seized in rhetorical saber rattling and sentimentality, reminiscent of an undersized turbot caught in a lined cod-end, while the oceans resources continue to decline.

If nothing else, the seizure of the Spanish fishing vessel "Estai" on the Grand Banks brought home to delegates, and a well-informed public, that the continuing pillage of the oceans cannot be sustained any longer. Since the convening of the Conference, the FAO's estimates of unsustainable fishing practices

has continued to spiral. Nandan's closing statement represented a sober and determined call for all States to adhere to the concept of sustainability and conserve and manage the world's living marine resources for future generations.

Nandan's text reflects a greater concern for the protection of marine environment than originally existed in the preliminary discussions to produce a negotiating text. NGO persistence to include issues of environmentally safe and selective fishing gear, recognition of the needs and rights of artisanal and subsistence fishworkers, transparency in data information flow, and application of a precautionary approach to fisheries management, have all prevailed. The most remarkable change of heart came from delegates, who, during the organizational and procedural session, sought to prevent NGOs from participating even as observers, but now suddenly spoke up in warm support of the valued contribution of NGOs, not only to the work of the Conference, but also in developing the Code of Conduct for Responsible Fishing.

Conference participants at large should take some heart from the tumultuous seas that have been ridden to reach this juncture. The Revised Draft Agreement has much to commend it. Delegates should accept its balanced tuning and not delay its passage through the final session and towards ratification.

## THINGS TO LOOK FOR IN THE INTERSESSIONAL PERIOD

**INTERGOVERNMENTAL CONSULTATIONS:** Informal consultations within two main caucus groups, the Like-Minded coastal States group and the DWFN group, are expected to continue throughout the intersessional period in preparation for harmonization of the Chair's revised text at the final substantive session. Look for increasing US activity to broker agreement over remaining obstacles between the two groups.

**NGO ACTIVITIES:** NGOs are expected to continue in their consultations with the FAO, especially on the Code of Conduct, during the intersessional period. Look for notification of one more NGO round table before the final session of the Conference.

### **FAO CONSULTATIONS ON CODE OF CONDUCT FOR RESPONSIBLE FISHING**

The FAO concludes negotiations on the Code of Conduct for Responsible Fishing in November 1995. The Code covers a wide range of issues, including fisheries management, research, fishing vessel operations, aquaculture, trade, and coastal area management. Look for further reference to the negotiations on the Code and continuing NGO involvement.

### **FINAL SESSION TO MEET IN NEW YORK**

The final two-week session of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks will convene at UN Headquarters in New York from 24 July to 4 August 1995. During the first week, delegates will consider substantive matters that remain unresolved at the close of the fourth substantive session. The final week will be devoted to finalization of the text and its harmonization in all languages. Look for the Secretariat to prepare the final Act of the Conference.

## 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>.