



# Earth Negotiations Bulletin

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## A BRIEF HISTORY OF THE CONFERENCE

The problems associated with high seas fisheries management are not new to the UN system. Participants at the Third UN Conference on the Law of the Sea (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 at the regional and subregional level. During recent years the pressures on high seas fisheries brought about by systematic and sustained over-fishing practices have grown considerably. The problem of global over-fishing has become an international responsibility requiring urgent resolve.

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 the UN Conference on the Environment and Development (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 straddling fish stocks (SFS) and highly migratory fish stocks (HMFS); 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".

### ORGANIZATIONAL SESSION

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

The major issues discussed at the first session were: the nature of conservation and management measures to be established through cooperation; the mechanisms for international cooperation; regional fisheries management organizations or arrangements; flag State responsibilities; compliance and enforcement of high seas fisheries 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 substantive 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 in an 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 substantive 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

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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.

#### **FOURTH SUBSTANTIVE SESSION**

The fourth substantive session of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was held at UN Headquarters in New York from 27 March until 12 April 1995. General statements were delivered in the Plenary followed by informal Plenary negotiations on the Chair's Draft Agreement A/CONF.164/22. Two contentious articles, Article 14 dealing with high seas enclaves and Article 20 dealing with compliance and enforcement, were considered in informal consultations but considerable disagreement on changes to the text remained. The Chair circulated a 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) to a reconvened Plenary during the second week of negotiations, but delegates were reluctant to enter into any negotiation on the Chair's revised text. At the beginning of the third week a composite and speedy review of the Chair's revised text was thwarted by some delegates' lengthy interventions. Further discussion in Plenary was canceled and additionally the Chair suspended all other informal consultations. Plenary reconvened on the final morning when delegates collected the Chair's Revised Draft Agreement contained in document A/CONF.164/22/Rev.1, which was available in all languages. The Revised Draft Agreement consists of 12 Parts containing 48 Articles and 2 Annexes. General statements were made on the Revised Draft Agreement immediately prior to the closure of the fourth substantive session.

### **THE INTERSESSIONAL PERIOD**

#### **WASHINGTON DC MEETING**

A handful of "selected" coastal State and DWFN delegates met in Washington in June 1995. Among those in attendance were Argentina, Canada, the EU, Japan, Korea and New Zealand. The meeting considered problems arising from the Chair's Revised Draft Agreement text on Article 21 that deals with regional agreements and arrangements for compliance and enforcement.

#### **NEW YORK MEETING**

Three days of "pre-session" consultations were held at UN Headquarters in New York from 19-21 July. The meeting was attended by approximately 20 delegations with representations from the core-group of like-minded coastal States that now includes Indonesia. Delegations representing the DWFN caucus included China, the EU, Japan and Korea. The South Pacific Forum Fishery Agency was represented. Other coastal State delegations included Australia, Mauritania and Senegal. This pre-session activity focused on the circulation of "non-paper" prepared by the US delegation on Article 21 dealing with compliance and enforcement. Two alternative texts were presented by the EU and Japan. At the invitation of the Chair, Greenpeace International, on behalf of a number of NGOs, made a statement. No other NGO participation was permitted. NGOs were denied access as observers.

#### **NGO ACTIVITIES**

There were no NGO round tables or seminars specifically dealing with the Conference.

### **THINGS TO LOOK FOR TODAY**

#### **PLENARY**

The Conference will open at 10:30 am in Conference Room 2. Conference Chair, Satya Nandan, is expected to present opening remarks, and reflect on intersessional activities. The Chair should then move to the first item of business, the adoption of the agenda for this session. Nandan is expected to give an overview of the programme of work for the coming two weeks. Canada's Minister of Fisheries, the Hon. Brian Tobin, and J. Almeida Serra of the European Union are expected to make key speeches. Other delegations expected to make general statements include Australia, Japan, Poland, Russia and the US.

#### **NGO ACTIVITIES**

A caucus group of NGOs consisting of the World Wide Fund for Nature, Greenpeace International, Natural Resources Defense Council, International Collective in Support of Fishworkers and the Environmental Defense Fund will deliver a press briefing at 10:00 am on the 10th Floor of the Church Centre at 777 UN Plaza. The briefing will focus on the deepening global fisheries crisis and will also critique the Chair's Revised Draft Agreement. Notice of a NGO declaration to be presented at this morning's Plenary will be given. Look for the NGO Declaration supported by 78 NGO signatories. Look also for NGO documents recommending alternative language to the Chair's Revised Draft Agreement. NGO representatives will continue their consultations in Conference Room A for the duration of this session.

#### **IN THE CORRIDORS**

Some delegates are indicating that last week's three days of "closed doors" intersessional has narrowed the divergence of views on Article 21 dealing with enforcement. A US "non-paper" on Article 21, promoted from the Washington DC workshop attended by a handful of invitees, resulted in two alternative proposals to be submitted by the EU and Japan during the 3 day intersessional. Although some delegates expressed annoyance at not being invited to the Washington workshop, the US "non-paper" has acted as a catalyst in attempting to seek a "middle ground" position. Discussion on Article 21 continued late into Friday night, but without full coverage of the "non-paper".

Look for a circulation of a revised text on Article 21 and circulation of a functional definition of "arrangement" either in the form of separate conference room papers or contained in a complete revision of the Chair's Revised Draft Agreement. Article 14 on high seas enclaves remains a contentious issue for some coastal States and DWFNs and it is unclear whether a convergence of views will be attainable. At least one DWFN is believed to find the Chair's revised text completely unacceptable. Look for further reference to the Sea of Okhotsk.

This final negotiating session has effectively been extended by one week as delegates wrestled with proposals for alternative text for Article 21. Some delegates question whether two weeks is sufficient time in which to harmonize text prior to the conclusion of the session. Look for continued caucusing by the larger like-minded group of coastal States. Other delegates have remarked that any delays of time will cause the Chair to convene special working groups to hammer out remaining difficulties, as the Chair's preference is for a consensus document to materialize. Even if the text can be harmonized, delegates concede that it will be impossible to open the "Agreement" for signature on the final day. Look for details on a separate signing ceremony that is expected towards the end of November or early December 1995.