



# Earth Negotiations Bulletin

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## FISH CONFERENCE HIGHLIGHTS THURSDAY, 27 JULY 1995

Conference Chair, Satya Nandan, reconvened informal consultations in Conference Room 5 at 10:00 am on Thursday and continued to review a revised text of Article 21 which was completed at 1:15pm. A further revised text including paragraphs 1-16 was circulated prior to adjournment. Informal Plenary reconvened at 3:00 pm and continued through until 7:45 pm. The Chair continued reviewing document A/CONF.164/CRP.7.

### INFORMAL PLENARY

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

The Chair said discussion on **Article 8**, dealing with cooperation for conservation and management, should focus primarily on drafting and harmonization, and urged delegates to show restraint and clarity in any substantive comments. The **US**, supported by **Norway**, the **Solomon Islands** and **Namibia**, stated the article should remain unchanged. He emphasized that changes to paragraph 3 would destabilize organizations and arrangements as they now exist. He further suggested that replacement of the word "party" with "participant in" could cause confusion, and that "established" be used instead of "adopted" in paragraph 4. The **EU**, supported by **Japan**, **Poland**, **Korea**, distributed a proposed draft for Article 7 due to elements of imbalance regarding the activities of coastal States and DWFNs on the high seas. Regarding Article 8, the open character of membership without limitations must be recognized, or regional arrangements and organizations measures must only be applicable to members. **Chile**, supported by **Peru**, **Uruguay**, **Ecuador** and **Mauritius**, stated the text does not offer enough safeguards against the entry of States with no concrete interest in the zone, thus a reference to Article 118 of UNCLOS is necessary. **China** restated that the high seas must be open to all, and said Article 16 establishes terms of entry based on the provisions of UNCLOS. He could not accept the article as drafted, and suggested the deletion of "In accordance with the terms of participation..." in paragraph 3. **Australia**, on behalf of **FFA**, said the present text allows for an appropriate degree of flexibility and substantive changes in the article are unnecessary. **Japan** stated there has been no consensus on regional agreements regarding enforcement on non-members, and that openness must be assured. The **Russian Federation** stated that paragraph 2, line three should read "a new fishery is being organized" or "planned". Also, the end

of paragraph 2 should read "the rights, interests and duties of coastal and other States". He expressed support for the US proposal regarding paragraph 3, and said that "without prejudice for the rules and procedures of such organizations" should be added at the end. The **EU** reiterated that references to conditions must make clear that organizations cannot exclude new members, and reminded delegates that excluding States from an organization will not preclude a State from fishing.

**Peru** and **Uruguay** proposed a new Article 5 (bis) which states that if negotiations to establish an organization fail after two years, provisional measures shall be jointly adopted. **Japan** disagreed with 5(bis) and said it complicates the process at this stage. **Chile** and **India** supported 5 (bis), and **Guatemala** stated that it is similar to Article 7(5).

Paragraphs 1, 2, 4, 5, and 6 were accepted as amended, and 5(bis) was left for further discussion. Regarding paragraph 3, the Chair stated that he would try again to draft a paragraph in which an allowance for conditions was not seen as a barrier to participation.

**Article 9** deals the establishment of subregional or regional fisheries management organizations or arrangements. Certain editorial changes were accepted to: the title, the chapeau, and paragraphs (a), (b), and (c).

**Article 10** deals with the function of subregional and regional fisheries management organizations and arrangements. Stylistic changes in the title, paragraphs (a), (d) and (k) were accepted.

Debate ensued on paragraph (b) which for editorial reasons had deleted the word "allocation" in its first usage, because it was felt the sense of the paragraph was lost. **China** proposed inclusion of the word "reasonable" before "allocation of", but the Chair said an unreasonable allocation could be taken to dispute settlement. **Namibia** argued that rights and quotas constituted two things. The Chair said that in the interests of fairness it would not be prudent to further change the paragraph.

The **Russian Federation** said transparency in paragraph (m) should not refer to internal decision-making because the international community is interested in the decision adopted. He could not agree to the disclosure of internal procedures and said there was a contradiction between the obligation of States and the rights and procedures of regional organizations. The Chair said this paragraph originated from general debate and NGO interventions, and further said there was concern that the decision-making process should be transparent. **Namibia** proposed combining paragraphs (m) and (n) to "provide for the transparency and proper publicity of the decision-making process, conservation and management measures, and other activities of the concerned organizations and

This issue of the *Earth Negotiations Bulletin* © <enb@igc.apc.org> is written and edited by Chad Carpenter <ccarpenter@igc.apc.org>, Lewis Clifton <d.l.clifton@city.ac.uk>, Patrick E. Moran <pmoran@strauss.udel.edu>. The Managing Editor of the Bulletin is Langston James Goree VI "Kimo" <kimo@pipeline.com>. Specific funding for coverage of this meeting has been provided by the Norwegian Ministry of Foreign Affairs. The sustaining donors of the *Bulletin* are the International Institute for Sustainable Development <iisd@web.apc.org>, the United Nations Environment Programme and the Pew Charitable Trusts through the Pew Global Stewardship Initiative. General support for the Bulletin during 1995 is provided by the United Kingdom, Switzerland, GTZ and the World Bank. The authors can be contacted at their electronic mail addresses and by phone and fax at +1-212-888-2737. IISD can be contacted at 161 Portage Ave. East, Sixth Floor, Winnipeg, Manitoba R3B 0Y4, Canada and by phone at +1-204-958-7700 and by fax at +1-204-958-7710. The opinions expressed in the *Earth Negotiations Bulletin* are those of the authors and do not necessarily reflect the views of IISD and other funders. Excerpts from the *Earth Negotiations Bulletin* may be used in other publications with appropriate citation. Electronic versions of the *Bulletin* are automatically sent to e-mail distribution lists (ASCII and PDF format) and can be found on the gopher at <gopher.igc.apc.org> and in searchable hypertext through the *Linkages* WWW-server at <http://www.iisd.ca/linkages/> on the Internet.

arrangements”, which met with favorable consideration. **Article 11**, on strengthening existing organizations and arrangements, was accepted without comment.

On **Article 12**, dealing with the collection and provision of information and cooperation in scientific research, the Chair stated that changes to paragraphs 1 and 2 were editorial. **Japan** requested the deletion of the reference in paragraph 3 to “international organization” as these organizations are not bound by the Agreement, and only States should be covered. The Chair said that the FAO, IOC and others are involved in these activities. **New Zealand**, supported by **Peru** and **Norway**, agreed that the reference should be kept, and cited Article 242 of the Convention. He said the paragraph is important and is consistent with the goals of the Agreement and UNCLOS. The Chair stated that the paragraph will be redrafted to address these concerns.

The Chair said he is aware of the delicate nature of **Articles 13** and **14** and that they would be the subject of informal consultations.

Speaking to **Article 15**, dealing with transparency in activities of subregional and regional fisheries management organizations or arrangements, **Japan** said the wording in paragraphs 1 and 2 presented the same problems of clarity as that of Article 12, and suggested that the text of paragraph 1 read, “States which are members or participants of the regional organizations shall...”. The **US** supported by **New Zealand**, **Australia**, **Fiji** and the **Cook Islands**, proposed insertion in paragraph 2, line 5 of “which shall not unreasonably restrict such participation”, and the addition of “reasonable” to “...procedural rules” in the last line. **Japan** said the US proposal was unacceptable and that NGOs must not receive better treatment than States. **China** restated its 25 July proposal clarifying that the NGOs should be observers, and so too should the non-member States. **Chile**, supported by **Guatemala**, noted that the proposed US addition to the text was unnecessary. The Chair stated the text had been covered and technical suggestions of the Secretariat would be adopted. He asked that China not pursue its proposal, and stated that the Japanese proposal had brought up points bearing further examination. Regarding the US proposal, the Chair said he was willing to look at the problem further.

On **Article 16**, dealing with new members or participants, the Chair noted there had been suggestions that this article should be repositioned. The **Russian Federation** stated that in the first line the reference should be to “possible” new members. **Australia**, supported by **Japan**, said the text should not be changed. The Chair stated the article is designed to accommodate new members and the question of possible members is dealt with elsewhere. **Indonesia** asked for clarification regarding “participatory right” and the inclusion of allocation of catch. He pointed out that in Article 15, the NGO is a participant. The Chair said there may be some redundancy and this might be redrafted. **Norway** said that change might not be necessary if the article is to be moved. The **EU** said it prefers the text for subparagraph (e) as drafted in August 1993, and asked for a review. The **Russian Federation**, supported by the **FAO**, said the use of the word “status” is not correct, and that “state” is more appropriate in terms of fisheries. Although the **US**, **Australia**, and others said the word “status” is most commonly used, it was decided that the change suggested by the Russian Federation would be implemented. The **EU**, supported by **Poland** and **Korea**, pointed to subparagraph (e), saying that the needs of coastal communities are at stake as opposed to the “needs of coastal States”. **Iceland**, supported by **Kiribati**, **Peru**, **Canada**, **Micronesia**, and **Brazil**, asserted that the needs referred to by the EU had been covered and the text should not be changed.

## DOWN THE CORRIDORS

**INFORMAL CONSULTATIONS:** Delegates continued their informal consultations completing the review of the Chair’s revised text on **Article 21**, distributed on 22 July.

Delegates registered puzzlement at the restoration of reference to Article 292 in paragraph 14. One delegate argued that there was “no room for acceptance of arrest or detention in Article 21” but said that there is need for the prompt release of the crew especially if some are not nationals of the flag State. The Chair said that it seemed absurd not to apply the prompt release of vessels throughout oceans. One delegate argued that if there was no power of arrest then the provisions of Article 292 should not apply.

No comments were made on paragraph 15, which deals with “action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.”

Paragraph 16, which provides for flag States and inspecting States to invoke the procedures for the settlement of disputes, was considered superfluous, because recourse is already provided for under Part VII, which specifically deals with the peaceful settlement of disputes.

Regarding paragraph 17, which deals with States liability for loss or damage pursuant to the implementation of Article 21, coastal States said balance was needed, especially to cover the “obstruction” of the flag State during inspection. Other delegates said there was “no two-way traffic” in the paragraph. One delegate proposed an amendment that States should also be liable for compensation for expenses incurred “as appropriate”. The Chair said the provision of this paragraph should be seen in context of the article as a whole.

**Article 21 (bis)** dealing with basic procedures for boarding and inspection pursuant to Article 21, contains four paragraphs. Paragraph 1 details the requirements of the inspecting State when inspecting a vessel. Some delegates said that both the master and crew should be allowed to communicate with the flag State authorities during an inspection. Paragraph 1 (e) authorizing the “restricted use of force” was unacceptable to some delegations. One delegate said that Articles 21 and 21 (bis) should be taken together; there was no contemplation to use force for boarding a vessel, but that boarding parties might be armed for self defense. The Chair said he would neutralize the use of force in a redraft, but said it was not possible to exclude use of force as a last resort.

One DWFN delegate said the whole structure of the article is “for a serious violation”. Another delegate said the *quid pro quo* offered in paragraph 4 is the suspension to fish but as this is already covered in Article 19 (1)(c), it should not be repeated. One delegate said there could be no reference to the flag State refusing a boarding, because that would prevent inspection of gear and other violations, facilitating “business as usual” after a delayed inspection.

## THINGS TO LOOK FOR TODAY

**INFORMAL CONSULTATIONS:** Informal consultations will continue at 10:00 am in Conference Room 5. Delegates will focus on Article 13, which deals with enclosed and semi-enclosed seas, and Article 14, which deals with areas of high seas surrounded entirely by areas under the national jurisdiction of a single State. An amendment to Article 13, proposed by the **Russian Federation** will be considered, as well as an amendment to Article 14, proposed by **Canada**, **Peru**, the **Russian Federation** and the **US**. These proposed amendments were first circulated on 6 April 1995.

**INFORMAL PLENARY:** The Chair will reconvene informal Plenary at 12:00 in Conference Room 2 and continue with the review of document A/CONF.164/CRP.7, starting with Part IV, which deals with non-members or non-participants.

**NGOs:** NGOs will continue with their strategy meetings at 10:00 in Conference Room A.