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FISH CONFERENCE HIGHLIGHTS FRIDAY, 28 JULY 1995

Conference Chair, Satya Nandan, reconvened informal consultations in Conference Room 5 at 10:00 am on Friday with a review of Articles 13 and 14. Informal Plenary reconvened at 12:30 pm continuing the review of A/CONF.164/CRP.7. The meeting adjourned at 9:00 pm.

INFORMAL PLENARY

PART IV - NON-MEMBERS OR NON-PARTICIPANTS

The Chair highlighted the Secretariat's changes to **Article 17** and opened the floor for comments. The **Republic of Korea** stated that paragraph 1, which notes that non-members of subregional or regional organizations are not discharged from the obligation to cooperate in the conservation of stocks, is contrary to treaty law. **New Zealand**, supported by **Papua New Guinea** and **Peru**, said the paragraph was in accordance with UNCLOS and needed no change. Paragraphs 1, 2 and 3 were accepted.

Japan, supported by **Peru** and **Iceland**, questioned paragraph 4, which refers to deterrent activities consistent with UNCLOS and this Agreement and suggested that a reference to international law would make the paragraph consistent with Article 33. The **Republic of Korea** noted that "deter" carries a connotation of coercion, and the Chair suggested "prevent" instead. Prior to adjournment, **Chile** reported that **Brazil**, **Colombia**, **Ecuador**, **Guatemala**, **Peru**, **Uruguay** and **Mexico** had reviewed **Annex 1** and will submit their results to the Chair soon. The **FAO** has also submitted a definition of "nominal catch" for consideration.

PART V - RESPONSIBILITIES OF FLAG STATES

On **Article 18**, dealing with duties of flag States, the Chair said editorial amendments had changed "State" to the plural and deleted the definite article. **Israel** said the change was not in accordance with Article 94 of UNCLOS and delegates agreed that the title and description should remain unchanged. The changes to paragraph 2 and the chapeau of paragraph 3 and paragraph 3 (a) were approved. **Australia** said that the establishment of regulations for flag States required cross-referencing to Articles 21 and 21 (bis).

Thailand said that paragraph 3(b)(iv) required change because a country cannot control its nationals inside another country's maritime zone and suggested the words "endeavor to" be inserted at the beginning. **Canada** expressed sympathy with this position, but **The Republic of Korea** and **Japan** said the text had been harmonized at the Geneva intersessional and they did not wish for

further amendment now. The Chair said the paragraph should be read in context with the chapeau. The text remained as presented.

Thailand, supported by **Syria**, said reference to "national laws" in paragraph (c) was too general. "In compliance with national laws" was preferable. The Chair said this suggestion changed the nuance and could later frustrate a State's obligations. A proposal by **Peru** "taking into account the relevant national laws of the flag State" was accepted. Editorial changes to paragraphs (e), (f) and (i) were accepted. On the question of monitoring in subparagraphs 3(g)(i),(ii) and (iii) substantial discussion ensued whether the areas should be treated subregionally, regionally, globally or internationally. Delegates eventually agreed that paragraph 3(g)(iii) be reinstated to include "subregionally, regionally and globally agreed among States concerned". Paragraph 4 remained unaltered.

PART VI - COMPLIANCE AND ENFORCEMENT

On **Article 19**, dealing with compliance and enforcement by flag States, **Thailand** requested that the chapeau be aligned with Article 18(3)(b) with a direct reference or alternate text. **Israel** said the reference to "flag State" should be removed from chapeau. **Australia**, supported by **Papua New Guinea**, stated the chapeau should remain unchanged. The **US**, supported by the **Russian Federation**, pointed out that paragraph 1 will be bolstered by national legislation. **Israel** said Article 217 of the Convention applies to this article and refers also to vessels bearing flag State registry. The Chair said the reference to Article 217 and the suggestion of the Secretariat to delete "flag" would be accepted. **Japan** questioned term "flying its flag" in the body of the article. The Chair agreed the term flows from the chapeau and should be removed from the body. The **EU** stated replacement of "sanctions" with "penalties" is unacceptable and urged that paragraph (e) be harmonized with the language of the FAO. He requested "the owner of" be inserted in paragraph (e) before "the vessel does not fish..." **Canada** supported the EU regarding "penalties". He further stated "adequate in severity" should read "be of sufficient severity as to be effective...", and "the refusal" should be added before "cancellation,..." The Chair noted that Article 217 of the Convention says "adequate in severity". **Papua New Guinea** supported the EU wording, if "masters" was included. **Indonesia** stated the paragraph (c) information requirement should be broadened. Regarding paragraph 2, the use of "on such vessels" should be deleted. The **Republic of Korea** stated that owners should not be responsible for violations, as masters often act without their knowledge.

Japan supported the EU regarding the language, saying that paragraph 2 should be consistent with FAO Flagging Agreement, Article 3(8), which suspends the fishing license. **Australia**, supported by **Fiji**, noted the vessel must not return to fishing on the

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high seas. This could be clarified by saying "on vessels flying its flags". **Chile** suggested that "fishing gear" be inserted between "position" and "catches" in paragraph 1(c), and said available information should be greater. **Malaysia** stated the use of "sanctions" in paragraph 2 was not adequately discussed, and reserved the right to comment. **New Zealand** supported the Chair's text, and urged harmonization of paragraph 2 with UNCLOS. **China** stated "...on the high seas" should be added as in the Flagging Agreement.

Japan, Norway, Peru and the **Republic of Korea** stated there should be no substantive change. The Chair responded to each of the proposed changes, noting that paragraph 1(c) was already broad enough and that adding references to the high seas and "flying its flag" to paragraph 2 was unnecessary.

For **Article 20**, on international cooperation in enforcement, **Japan** proposed adding specific reference to "appropriate authorities". **Uruguay**, supported by **Peru**, argued that paragraph 5 should be rearranged to call for flag State authorization to board first, then cooperation in enforcement action. **Japan**, supported by the **US, China** and **New Zealand**, preferred the present wording because general cooperation should come first, then boarding as a last resort.

For **Article 22**, on boarding and inspection by port States, **Chile**, supported by **Uruguay**, stated that paragraph 2 was no longer intact, and proposed a new paragraph that merged paragraphs 1 and 2 and specified the duties of the port State. The **Russian Federation** said that limitations on port State sovereignty were unacceptable, questioned the meaning of "voluntarily" in a port and requested changing "right" to "obligation" in paragraph 1. **Japan**, supported by the **US, the EU, Australia, Papua New Guinea** and **China**, said the wording was intentionally vague and represented an acceptable, negotiated compromise. **Uruguay** argued that flag State involvement is needed for violations on the high seas and does not undermine port State sovereignty. The **Republic of Korea**, supported by **Poland**, noted that "inter alia," in reference to acts a port State may undertake, should be deleted. **Indonesia** commented that landings and transshipments mentioned in paragraph 3 warranted sentences. **Chile** withdrew its proposal, providing that the text remained unchanged. The Chair summarized: the paragraph will be retitled; "duty" will be added to paragraph 1; paragraph 2 will retain the word "may" to keep the voluntary tenor; "inter alia" will not be deleted; paragraph 3 and 4 will remain unchanged. The article, as amended, was accepted.

PART VII - REQUIREMENTS OF DEVELOPING STATES

On **Article 23**, dealing with recognition of the special requirements of development States, delegates preferred inclusion of reference to the Global Environmental Facility and the Commission on Sustainable Development. A **US** proposal that "indigenous peoples" be amended to the singular, in paragraph 2(b), was carried. A proposal from **New Zealand** to include "artisanal fishers" was also agreed.

On **Article 24**, forms of cooperation with developing States, an attempt by the **US** to delete "shall" in paragraph 2 was unsuccessful. Other stylistic changes were agreed. Under **Article 25**, dealing with special assistance in the implementation of the Agreement, the **US** proposal to substitute "special funds" with "voluntary funds" in paragraph 1 was not accepted.

PART VIII - PEACEFUL SETTLEMENT OF DISPUTES

Article 26, on the obligation to settle disputes by peaceful means; **Article 27**, the prevention of disputes; and **Article 28**, disputes of a technical nature, were agreed as amended.

On **Article 29**, the Chair noted the stylistic changes to paragraphs 1 and 2, but a **Russian Federation** intervention questioned the overall intent of the article. Interventions by **Iceland, Indonesia, Peru** and others indicated the complexity of the issues raised. The Chair agreed further work is needed to improve and clarify the text.

DOWN THE CORRIDORS

INFORMAL CONSULTATIONS: Informal consultations began with the Chair asking delegates to review his circulated revised drafts of **Article 21** and **Article 21(bis)**. In opening discussion on **Article 14**, the Chair said Article 13 is subsidiary. One delegate said that the majority of the States support the proposal made by **Canada, Peru, the Russian Federation** and the **US**, proposed on 6 April 1995, and argued that it merited inclusion in the Draft Agreement. Another State disagreed, saying the contents of this article and Article 7 should not be included in the interests of "legal purity". One delegate said that some States with a vested interest in the Sea of Okhotsk fishery had entered into bilateral agreements with the coastal State. He said his country had implemented conservation and management measures before entering into a recent bilateral agreement in this region.

Another State argued that the article and proposed changes alter the mandate of the General Assembly and the provisions of UNCLOS because "no specific right on the high seas not already provided in UNCLOS can be recognized". The Chair said the text as drafted is consistent with UNCLOS, and reinforced the need for cooperation between States. Another State said the question of "legal purity" was not based on substance and pointed to a lack of counter-proposals. He noted that although there are bilateral agreements with some "responsible States", unilateral action was still a possibility in the Sea of Okhotsk and other areas. A coastal State noted the purpose of this conference is the development of international law, as UNCLOS does not provide for all eventualities. Delegates discussed the historical movement of the pollock fishery from the US EEZ, to the "Donut Hole" in the Bering Sea, and finally into the Sea of Okhotsk. One delegate stated a situation similar to the "Donut Hole" would not be tolerated and that other measures would be taken if necessary.

The Chair said he could see little reason to remove the article and said that arguments regarding the ability of one State to take unilateral measures on the high seas must be balanced with the need to ensure cooperation for measures on the high seas. The Chair's draft seeks to secure such cooperation.

For **Article 13**, on semi-enclosed and enclosed seas, some delegates said the terms "natural" and "geographical" proposed by another State were unnecessary. Another said the conservation and management measures of the coastal States should be taken into account, and suggested the addition of "in accordance with the rights, duties and interests of the States concerned". Others expressed disagreement with these changes. A DWFN said inconsistency exists between the proposal for this article and Articles 122 and 123 of UNCLOS. He said UNCLOS does not envisage rights for the coastal States, but refers to coordination. The Chair agreed that the article's language could be broadened to include all States fishing in these areas. The **Russian Federation** said its proposal is based on Article 123 of the Convention and emphasizes two elements: coastal States bordering these areas should cooperate in their management; and coastal States should "invite... to cooperate" as outlined in Article 123(d) of the Convention. A DWFN stated that preferential treatment is given to the coastal States in the proposed text, and that the reference to "legal and other relevant conditions..." is unclear. He and others then expressed support for the Chair's draft over the alternate proposal. The Chair said he will clarify the article to the greatest extent possible while retaining consistency with UNCLOS.

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: Informal consultations will continue at 9:00 am in Conference Room 5. Consultations are expected to focus on: **Chile's** proposed changes to Annex 1; the final clause; provisional ratification, and the number of ratifications for entry into force.

INFORMAL PLENARY: The Chair will reconvene informal Plenary at 11:30 in Conference Room 2 and continue with the review of document A/CONF.164/CRP.7 commencing with Article 30 on provisional measures.