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FISH CONFERENCE HIGHLIGHTS MONDAY, 31 JULY 1995

Conference Chair, Satya Nandan, reconvened informal consultations in Conference Room 5 at 9:00 am on Monday. Three hours were given to negotiating **Chile's** proposed amendments to **Annex 1**, which deals with standard requirements for collection and sharing of data. The Chair reconvened informal Plenary at 12:30 pm and continued reviewing text contained in document A/CONF.164/CRP.7. This review was completed at 6:30 pm.

INFORMAL PLENARY

PART VIII - PEACEFUL SETTLEMENTS OF DISPUTES

The Chair stated that **Article 29**, which incorporates the UNCLOS dispute settlement procedures, would be reconsidered later with **Article 30** and **Article 31**.

PART IX - GOOD FAITH AND ABUSE OF RIGHTS.

Article 32, on good faith and abuse of rights, was accepted without amendment.

PART X - NON-PARTIES TO THIS AGREEMENT

For **Article 33**, on Non-parties to this Agreement, the Chair proposed substituting "prevent" for "deter" to be consistent with Article 17(4), but **Japan** disagreed that "prevent" had been agreed upon earlier and requested that "deter" be retained. The **Republic of Korea** preferred "discourage," and **Canada**, supported by **Peru**, argued that agreement had been reached and that "prevent" reflects a concern for conservation measures. **Iceland**, supported by **Canada**, **India** and the **Russian Federation**, suggested specifying that "vessels" refer to those which are not Parties to this Agreement. **India** questioned a reference to international law, and recommended a reference to UNCLOS and this Agreement. **Japan** expressed concern that the article could lead to abuse by State parties and proposed adding "Nothing in this agreement shall effect the rights and obligations of non-Parties under other agreements or international law." **New Zealand**, supported by **Papua New Guinea**, **Peru**, **Iceland**, the **US**, **Uruguay** and **Canada** noted that this concern was covered in Articles 4 and 43. **Japan** reiterated that the proposal referred only to non-Parties, but the **Russian Federation**, **Poland** and **Argentina** stated that the Agreement cannot effect the rights of non-Parties. **Israel** stated that the article's two sentences should be two separate paragraphs and that the article should precede Article 32.

The Chair summarized the debate: **Israel's** suggestion will be incorporated; the reference to non-Parties will not be included

because non-Parties are not bound by the Agreement; the article will include "deter", which is not covered under UNCLOS, thereby requiring a reference to international law.

PART XI REPORTS ON DEVELOPMENTS BY THE SECRETARY-GENERAL AND REVIEW CONFERENCE

On **Article 34**, dealing with reports on developments by the Secretary-General, the Chair said this article will be deleted and transmitted to the General Assembly to decide whether the Secretary General will provide this service. The **FAO** called for coordination and centralization of the preparing and reporting of information covered in this article. **Morocco** said a standard format should be provided to cover all instruments and activities in which States are involved. **Article 35**, dealing with the review conference, was accepted as redrafted by the Secretariat.

PART XII - FINAL PROVISIONS

On **Article 36**, dealing with signature, the Chair said it refers to Article 305 of the Convention and that certain procedures outlined may need to be simplified to deal with the circumstances of this Agreement. This also applies to references in Articles 37 and 38. **Iceland** stated that Article 36 should say "shall be open" instead of "shall remain open". The **EU** agreed with the Chair regarding the simplification of procedures. Regarding **Article 39**, Entry into force, the Chair stated this is related to the question of provisional application, and some delegations think the number of necessary instruments of ratification is too high. It has been suggested that twenty might be better. **Argentina** supported the use of twenty instruments of ratification. **Chile**, supported by the **EU**, **Mexico**, **Japan**, **Uruguay**, **Colombia**, the **Republic of Korea**, **China**, and **Poland**, disagreed, stating that the number of ratifications reflects the strength of the Agreement, and should not be reduced for an artificial entry into force. These delegates preferred that between forty and sixty instruments of ratification be required. **Peru**, supported by **New Zealand**, the **US**, **Papua New Guinea**, **Canada**, **Iceland**, **Indonesia**, **Norway**, **Micronesia**, and the **Russian Federation** supported **Argentina**, saying that the goal should be the swiftest entry into force.

On **Article 40**, dealing with provisional application, **Canada** stated that the period of six months is too long, and that the article should urge rapid application. The **EU**, supported by **Thailand** and **Uruguay**, said this article creates problems in terms of constitutional and parliamentary procedures and cannot be adopted as is. **Peru**, supported by **Argentina**, noted the article allows for "States that sign..." and those which "notify". He stated this allows for safeguards against the concerns of obligation, and it should be accepted. The **Russian Federation**, referring to subparagraph (a), asked if official approval would take place here or in the General Assembly. The Chair clarified that final adoption is when the States

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consent to the adoption. The **US**, supported by **Uruguay, Iceland, Poland** and **Chile**, suggested that the article should compel States to make a clear statement that they will be applying provisions, and said he could provide language for this proposal if necessary.

Papua New Guinea, Australia and the **Solomon Islands** supported paragraph 2, but **Indonesia** suggested deleting paragraph 2 and **Japan** rejected all provisional application. The Chair said that a decision on Articles 39 and 40 will not be taken now, but smaller groups will continue negotiations.

Article 41, Reservations and exceptions; **Article 42**, Declarations and statements; and **Article 43**, Relation to other agreements, were accepted without amendment. **Article 44**, Amendment, was accepted with the specification "of the United Nations" to follow "Secretary-General." **Article 45**, Denunciation; **Article 46**, Status of Annexes; **Article 47**, Depositary; and **Article 48**, Authentic texts, were accepted without change. The Chair reviewed changes to Annex 1 discussed in informal sessions, and stated he would issue text piecemeal while awaiting the official version. He added that Articles 14, 21, 29, 30 and 31 are still pending.

Responding to questions concerning the adoption process, the Chair stated his intent that the Conference would adopt the text Friday and submit it to the General Assembly. Following further questions, he stated that this issue would be discussed today.

CREENTIALS COMMITTEE

Ambassador Alberto Daverede of **Argentina** reported that 100 delegations have communicated credentials, but only 60 were in accordance with Rule 4(1). The Chair urged delegations to submit credentials in due form.

DOWN THE CORRIDORS

INFORMAL CONSULTATIONS: Conference Chair, Satya Nandan, prior to commencing informal consultations, outlined his programme of work for the coming week. He said he expected to release revised harmonized text of the Draft Agreement during the afternoon, and that a full text would be released Tuesday. He said informal consultations on the few remaining outstanding issues would be needed. In accordance with the Rules of Procedure, and in the absence of consensus, he anticipated giving delegations a complete copy of the revised harmonized text 24 hours prior to any decision-taking. Consultations with the Secretariat, he said, had indicated that the Agreement could be opened for signature during 4/5 December when States Parties to the Law of the Sea meet during the Sixth Committee of the General Assembly.

Ambassador Couve of Chile, reviewed the **Chilean** proposed amendments, noting that in addition to previous support for his proposal, it was also supported by **Argentina**. He was especially concerned that: failure to respect the principle of confidentiality in data transmission might have serious consequences for EEZ management; non-aggregated data secured from EEZ waters is confidential and embodied in national laws; and, high seas data may also be submitted in a non-aggregated confidential form, by adopting the same principle that is contained in the Convention for the Conservation of the Antarctic Marine Living Resources (CCAMLR).

In reply, the Chair noted two the reports of two technical working groups, "Ad Hoc Consultation on the Role of Regional Fishery Agencies in Relation to High-Seas Fishery Statistics" held in La Jolla in December, 1993, contained in document A/CONF.164/INF/10; and, Comments by the Coordinating Working Party (CWP) on Fishery Statistics on Annex 1 of the Draft Agreement for the Implementation of the Provisions of the United Nations Convention of the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks" held in Madrid during March 1995, contained in document A/CONF.164/INF/13. The Chair reminded delegates he had attended the La Jolla consultation and noted that the CWP meets regularly to examine

ways in which fishery management bodies can harmonize the collection and exchange of data. The La Jolla consultation had noted that Annex 1 was the minimum standard that could be accepted.

On **Article 1 (1)**, the proposal to substitute "shall" for "should" in the final sentence was agreed, but the sentence was later amended to read "Confidentiality of non-aggregated data and their dissemination shall be subject to the terms with which such data are presented".

On **Article 2**, paragraph (a) dealing with the principles of data collection, compilation and exchange, the Chilean proposal to substitute "and each seine for purse seine" for "purse seine" was the subject of technical clarification from the FAO and a number of technical experts present. It was agreed that "and purse-seine" immediately follow "long-line" and that all other reference to purse-seine be deleted. On paragraph (e) the Chilean proposal to include "Parties to this Agreement" after "States" was not agreed.

On **Article 3**, dealing with basic fishery data, substantial discussion evolved regarding inclusion of the FAO "nominal catch" definition and its formulation. Delegates agreed to amend the text to "total catch in number, nominal weight or both, by species (both target and non-target) as is appropriate to each fishery." Moving subparagraphs (d) and (e) to Article 3 (2) was not agreed, but the deletion of the word "scientific" in the chapeau was agreed.

The proposal to amend **Article 5**, dealing with reporting, was further amended to read "national fisheries administration and, where agreed, to the relevant subregional". A further amendment proposed by a DWFN to delete the reference to "high seas" was not agreed.

On **Article 7**, dealing with data exchange, and the proposed amendments, it was agreed that the text in paragraph (1) should remain. Delegates, after some discussion, agreed that the data flow charts should not remain as part of the Agreement text and that both illustrative diagrams be deleted.

In closing the consultations the Chair said it would be necessary to reconvene some further consultations to deal with provisional application. He indicated that a possible date for signature of the Agreement could be 4-5 December 1995.

IN THE CORRIDORS

A flurry of activity in the corridors yesterday was indicative of earnest attempts to secure a text that will accommodate the Russian Federation and Polish positions on high seas enclaves. Several delegates conceded that there is some common ground on this issue, but that efforts must continue. An earlier Russian Federation statement mentioned the "adoption of unilateral measures, supported, if necessary, by the use of naval forces". Delegates during the last three years have worked hard to move away from gunboat diplomacy. It would be disappointing if the Draft Agreement failed to catch, what appears to be the single largest remaining transboundary issue in the cod-end.

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: Informal consultations will continue at 9:30 am in Conference Room 5. These informal consultations are expected to deal with the final clause, provisional ratification and the number of ratifications for entry into force. Look for a revised text on Article 14, dealing with areas of high seas surrounded entirely by areas under the national jurisdiction of a single State, and Article 21, dealing with subregional and regional cooperation in enforcement.

INFORMAL PLENARY: The Chair will reconvene informal Plenary at 3:00 pm in Conference Room 2. Look for circulation of revised harmonized text to be issued in piecemeal form. Look also for circulation of revised text on Article 14 and Article 21 and 21(bis). A new text on Annex 1 incorporating the amendments agreed upon in Monday's informal consultations is also expected.