



# Earth Negotiations Bulletin

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## FISH CONFERENCE HIGHLIGHTS THURSDAY, 3 AUGUST 1995

Conference Chair, Satya Nandan, reconvened informal Plenary in Conference Room 2 at 12:30 pm for forty minutes during which the Chair outlined the progress of his informal consultations with delegations. One statement was made by **Japan**. The Chair later reconvened informal consultations at 5:00 pm in Conference Room 5 to deal with the few outstanding issues.

### INFORMAL PLENARY

The Chair opened the informal Plenary by saying that following Wednesday evening's late night consultations, virtually all issues are now resolved. He expected to meet with a small group Thursday afternoon to clarify the text relating to participation of the EU. He said the final text of the Agreement will be available on Friday in all languages and presented for decision in Plenary. Noting that in its current state the Agreement is a comprehensive, democratic reflection of the past three years of negotiations, the Chair expressed the hope that it will be adopted by consensus. The Chair also stated that a draft of the Final Act, a rendition of the factual developments which took place over the course of the Conference, would be circulated. He welcomed comments on the draft and said he would like to ensure that all factual aspects of the Final Act are accurate. He invited delegates to submit their comments to the Secretariat. The Final Act will be available for signature following adoption of the Agreement. If adopted, the Agreement is expected to be open for signature in December 1995. The Chair then reminded delegations to ensure submission of their credentials if they had not already done so. He said the Credentials Committee had held its second meeting on Thursday morning, and its final report will be issued today.

**Japan** asked for clarification on two related points concerning the matter of State Parties. In **Article 20(7)**, he asked whether "flag States" referred to State Parties or to non-party States. He then asked the same question regarding the reference to "inspecting States" in **Article 21(14)**. The Chair responded that in both cases the context of the text of the Articles made it clear that the use of "States" refers to "State Parties". The Chair adjourned the meeting at 1:10 pm.

### DOWN THE CORRIDORS

**INFORMAL CONSULTATIONS:** The Chair convened informal consultations to discuss the participation of the EU, and urged delegates not to create any impediment or conditions upon the EU acting as lead negotiator in matters over which they have competency. According to Annex IX, Article 2 of UNCLOS, an international organization may sign UNCLOS if a majority of its member States are signatories, and Article 3(1) allows an international organization to deposit its instrument of formal confirmation or accession if a majority of its members States deposit or have deposited their instruments of ratification or accession. Following the Annex IX provisions without amendment could mean that EU participation will be a protracted process.

**Article 47**, which was agreed upon, holds that Annex XI provisions will apply in cases where an international organization does not have competency, except that the first sentence of Article 2 and Article 3 (1) shall not apply. In cases where the international organization claims competence over all the matters governed by the Agreement, the organization will become the negotiating body and its member's States shall not become States Parties, except with respect to their territories for which the international organization has no responsibility.

The Chair also considered problems remaining with **Article 16**, formerly Article 14, on areas of high seas surrounded by the jurisdiction of one State. "With that State" was deleted from the first sentence to remove any implication that fishing States will be obligated to cooperate with coastal States. One delegate requested attention to the last sentence, which his government had informed him, was "compromised". A small group of delegates with a particular interest in this Article were to meet following informal consultations. Delegates made additional suggestions for minor changes to the text and asked questions regarding translation problems. The Chair took note of the editorial suggestions and asked delegates with translation problems to contact the Secretariat.

**NGO ACTIVITIES:** NGOs met with Dr. Wolfgang Krone and Dr. Margarita Lizarraga from the UN Food and Agriculture Organization (FAO), at 2:00 pm in Conference Room A, to discuss the development of the FAO "Code of Conduct for Responsible Fisheries". Draft copies of the Code of Conduct and Working Papers on Articles 6 and 7 were made available to NGOs. Dr. Krone underscored the importance of understanding and collaboration with NGOs in the successful drafting of the Code of Conduct. He summarized progress to date saying that the Working

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Party set up by the FAO Committee on Fisheries had discussed much of the text, but that Article 6, dealing with fisheries management, and Article 7, dealing with fishing operations, were held in abeyance for discussion by the Technical Committee until the closing of this Conference. The Technical Committee will reconvene at the end of September to finalize outstanding Articles and produce a final text. The text will then pass through the Council on Fisheries for approval in mid-October, and be presented for adoption at the FAO Conference on 25 October 1995.

In response to questions from NGO representatives, Dr. Krone stated although the Code of Conduct is voluntary, it addresses all fisheries, and as such covers areas not discussed in the Agreement. He pointed out that the non-binding nature of the Code of Conduct allows for a more stringent approach to some issues not covered in the Agreement, but emphasized that, although the Code covers 100% of maritime fish production, consensus on issues such as high seas fishing rights expressed at this Conference will be respected. In response to comments regarding working conditions, gear restrictions and other concerns, Dr. Krone agreed that some of these issues must be dealt with and stated that technical consultations are on-going in Canada in concert with the International Maritime Organization (IMO), International Labour Organization (ILO) and others to deal with this in a separate framework.

In reference to implementation of the Code of Conduct, Dr. Krone recognized that developing countries would require assistance, and said the FAO has begun development of a draft regional programme to address this concern. The basis for the programme is education and training in the development of: regional and subregional arrangements and organizations; monitoring, surveillance and control; and selective gear in management. He stressed the importance of publicity and promotion in the country to create awareness of the need for the programme.

Regarding other activities many groups have continued their lobbying activities and have to date secured ninety-six signatories to the NGO Treaty that was published in the 24 July 1995 edition of *ECO*. The Treaty represents the views and concerns of millions of fishworkers, their families, environmentalists, scientists and citizens throughout the world.

**PRESS BRIEFING:** During a press briefing held on Thursday at 11:00 am, the Chair, Satya Nandan noted the global marine fisheries crises which precipitated this Conference and remarked upon the progress achieved. He characterized the enforcement provisions as the most important aspect, and explained that Parties to this Agreement and to regional management organizations now have the right to board and inspect as well as to deter States that are not Parties from activities that undermine conservation and management measures. He said that regional organizations are open, but States wishing to join must have a "real" interest, and that all disputes ought to be subject to compulsory and binding dispute settlement. The Chair also noted that the work done at the Conference has "given some teeth" to regulations for conservation and management, and that this Conference has developed international law within the framework of UNCLOS.

Responding to a question on the Agreement's weak points, the Chair stated that the Conference had achieved far more than originally expected and added that the Conference began with ambitions of a resolution. The Chair was asked to describe the practical effect of the Agreement, and responded that fisheries will no longer be a free-for-all. On the use of force, a "delicate" issue during negotiations, he stated that force should be commensurate

with the level of provocation and will be allowed only when there is a threat to the inspector or deliberate obstruction of inspection.

**IN THE CORRIDORS:** After a night of prolonged informal consultations in Conference Room 5, long after the interpreters had departed, delegates said that consensus finally emerged on all the outstanding issues. This sentiment was re-confirmed early on Thursday morning, when several delegates conceded that "it's all tied up, bar the bow and bunting." Some delegates commented that tired faces were visibly evident on Thursday morning, as delegates admitted that the re-drafting exercise continued for several hours after the conclusion of informal consultations. The Chair's press briefing at 11:30 am, preceded by that of Greenpeace and the International Collective in Support of Fishworkers, delayed the start of informal Plenary. Despite the up-beat tone exercised by delegates over their successes, NGOs remain substantially disappointed that the Agreement still does not effectively deal with issues of discards, waste, by-catch, environmentally safe and selective fishing gear. However NGOs take some heart from the inclusion of the precautionary approach concept to fisheries management. NGOs questioned whether transparency will actually work. Several delegates from the smaller developing coastal States acknowledged that the text represents the best deal that could be struck at this time, especially because the DWFNs have advanced considerably on the issue of State cooperation, but said that within a few years the majority of the environmental issues raised by NGOs during the Conference will need global consideration.

### DOCUMENTS ON THE TABLE

Document A/CONF.164/30, dated 1 August 1995, became available Thursday. It contains the statement made by the Chair of the opening of the Sixth Session, held on 24 July 1995.

Document A/CONF.164/CRP.8, dated 2 August 1995, contains a harmonized revision of the Chair's Draft Agreement that reflected revisions agreed upon informally as of 1 August 1995. In noting its circulation from the documents section, the Chair asked delegates to be aware of its "datedness."

An informal conference paper, entitled "Proposal by the Chairman" was circulated to delegates during informal Plenary on Thursday morning. This 31-page paper, with exception of those outstanding issues referred to in the Chair's opening remarks to informal Plenary, contains agreed revised text to the close of informal consultations on Wednesday night. This paper, dated 3 August 1995, displays the silhouettes of two tuna species, and is referred to as the "two-fish" paper. It was available in the English language only. An earlier 32-page edition containing amendments agreed during the earlier part of this week, is dated 2 August 1995. Unlike its successor the front cover depicts a "single fish" illustration.

### THINGS TO LOOK FOR TODAY

**PLENARY:** Plenary will reconvene at 11:30 in Conference Room 2. General statements will be made by the Hon. Brian Tobin, Minister of Fisheries and Oceans from Canada to be followed by the delegate from Norway, and Patricio A. Bernal, the Chilean Undersecretary of State for Fisheries. Statements will be made by nine other delegations, to include European Commissioner, Emma Bonino with responsibility for Fisheries, Humanitarian Aid and Consumer Policy. The Chair will make a closing statement. Look for circulation of the revised text of the "Agreement" in all UN languages, and the final report of the Credentials Committee.