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FISH CONFERENCE HIGHLIGHTS WEDNESDAY, 26 JULY 1995

Conference Chair, Satya Nandan, reconvened informal consultations in Conference Room 5 at 9:30 am on Wednesday and continued to review a revised text of Article 21. Shortly after noon, the Chair reconvened Plenary when statements were made by the delegations of the **Russian Federation** and the **Philippines**. Informal Plenary then reconvened to continue reviewing document A/CONF.64/CRP.7. This document represents the first attempt at harmonizing the text contained in the Chair's Revised Draft Agreement A/CONF.64/22/Rev.11. Informal consultations reconvened during the evening.

PLENARY

Plenary heard two statements.

Russian Federation: Mr. Vladimir F. Korelsky stated that this sixth session is intended to conclude negotiations, but an array of provisions remain in question. The Draft Agreement identifies, but does not solve the problems with Articles 13 and 14, which require special rules, and absent appropriate language the Russian Federation cannot adopt the Agreement. Articles 22 and 29 also continue to arouse concern.

Philippines: Dep. Maria Lourdes V. Ramiro-Lopez stressed the importance of Article 3 (3) to the conservation programmes of developing nations, and supported retaining the language as currently drafted. She reiterated the need to strengthen measures that protect the welfare of fishworkers and crew members, particularly those who are not nationals of the flag vessel, and proposed an additional paragraph for Article 21 calling for increased protection.

INFORMAL PLENARY

On **Article 6**, application of the precautionary approach, the **US**, supported by the **EU**, **Norway** and the **Russian Federation** commented that the word "apply" in paragraph 3(b), in reference to guidelines, should not be changed to "observe". **Malaysia** stated that paragraph 4 is unclear as the entities that will have the final judgment and suggested referring to regional and subregional organizations.

Chile, supported by **Uruguay** and **Peru**, stated that the changes currently proposed by the Chair should remain in the text. **Uruguay** and **Peru** proposed a paragraph 5 (bis), which would apply when fish stocks are in danger of depletion because of factors other than natural phenomena, such as over-exploitation. **Korea**

expressed reservation with the word "widely" when applying the precautionary approach, and suggested using the phrase "if needed".

Papua New Guinea supported the US proposal regarding the use of "apply" in paragraph 3(b), and noted that the new language in paragraph 4 is unnecessary. The Chair noted that the previous comment of Papua New Guinea regarding the change of "conservative" to "cautious" in the second line of paragraph 7 was incorporated. **Namibia** said, regarding paragraph 6, that the word "status" in line 3 should be moved to the end of the sentence for clarity. **Argentina** stated that the deletion of the word "widely" in paragraph 1 would upset the balance of the text. Regarding the proposal for paragraph 5(bis) made by Uruguay and Peru, he was unclear as to "other factors". **IOC/UNESCO** proposed the addition of "existing and predicted" to the last line of paragraph 3 (c) in recognition of the ability of science.

Mexico, supported by the **Republic of Korea**, supported the proposal of Peru and Uruguay and asked for clarification regarding "other factors". Regarding paragraph 7, he said the reference to catch and effort limits should be deleted. **Canada** supported the proposals of Peru and IOC/UNESCO. **Peru** clarified that the proposal deals with emergencies such as imminent stock depletion, and that the coastal State and DWFNs would work toward a timely solution using the precautionary approach. **Chile**, regarding paragraph 7, line 3, said that the difficulty for developing countries could be mitigated if it read "including *inter alia*, catch and /or effort limits". He also suggested the terms "as the result of over fishing or pollution" be added to the text proposed by Peru. **Iceland** supported the proposal of Peru, but pointed out the purpose could be achieved without the addition of 5(bis). **Colombia** supported 5(bis) and agreed that catch and effort limits as in paragraph 7 are excessive. **Japan**, in reference to paragraph 5, said that the measures should be applied to both the EEZs and high sea zones in question. The Chair stated that there have been far too many proposals and urged the delegates to "cool off". He pointed out that the issue in question was covered in other areas of the text such as Article 8(2) but thought the consensus was for further refinement.

The Chair further suggested: that the US proposal regarding the chapeau be accepted and the rest of the language in paragraph 3(b) remain; that the addition to paragraph 3(c) suggested by the IOC be made; that paragraph 4 remain unchanged; that Namibia's wording for paragraph 6 be adopted; in paragraph 7 "cautious" be exchanged for "conservative", and line three will read "catch limit and effort limit". Regarding the paragraph 5 proposal by Peru, he stated that it is misplaced and should be made into 7(bis) along with the proposal for 5(bis). He also stated that the description "such as over fishing and pollution" would be added to this for clarity. He said he understood the intent of the proposal, and with

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the assent of Uruguay and Peru would attempt an appropriate redrafting of the text.

On **Article 7**, dealing with compatibility of conservation and management measures, the Chair stated the changes made by the Secretariat to paragraphs 1(b) and 2 are editorial. **Uruguay** asked that at the end of paragraph 2(c), the term “as well as its reproductive period” be added. The **Republic of Korea** urged that the balance in the text between coastal States and DWFNs in paragraph 2(a) be made stronger. The **Russian Federation** said the term “overall” in paragraph 2 is unclear. He disagreed with the proposed deletion of the reference to Article 31 in paragraph 4. The Chair said a better term than “overall” is “stocks as a whole or in their entirety”. He agreed that the reference to Article 31 is unnecessary, as all of Part VIII, dealing with peaceful settlement of disputes, applies. In response to comments by **Colombia** regarding paragraph 2(c), the Chair stated that “taking into account the biological unity and other biological characteristics of the stocks” might be appropriate because it is more general. The **EU** stated that they have serious substantive problems and reserved further comment on this article. He stated that paragraph 2(b) must be amended to make this article more explicit. Measures must also be applied through the most appropriate means. He further said that the linkages with Article 6 and Article 8 (2) are not being considered in terms of the overall balance of the text.

DOWN THE CORRIDORS

INFORMAL CONSULTATIONS: Coastal State and DWFN delegates met in Conference Room 5 at 9:00 am on Wednesday and continued the review of the Chair’s revised text on **Article 21** distributed on 22 July. Paragraphs 5, 6, 7, 8, 9, 10, 11, 12 and 13 were considered during two sessions of informal consultations. Article 21, in its revised form, deals with subregional and regional cooperation in enforcement and appended is a new Article 21 (bis), which deals with the basic procedures for boarding and inspection pursuant to Article 21.

Paragraph 5 deals with the response time of the flag State to the inspecting State’s notification of evidence from an inspection. Some delegates suggested that three days is too short to accommodate differing international time zones and the bureaucracy of some governments. The Chair reminded delegates that an earlier text had proposed a 24 hours notice and the 3-day time frame is now very reasonable.

Paragraph 6 promotes a mechanism whereby inspectors may remain on board a vessel when there are clear grounds for believing that a vessel has committed a serious violation. It also requires the inspecting State to inform the flag State of the name of the port to which the vessel is to proceed so that the investigation can continue. One delegate noted that this paragraph has to be viewed alongside paragraph 10, which requires the inspecting State to release the vessel to the flag State on receipt of such a request, together with information and the progress of the outcome of the inspecting State’s investigation. Delegates noted that high costs of inspection would accrue to both the inspecting State and the flag State should a vessel be requested to proceed to the nearest appropriate port. This should encourage the speedy effect of inspections. The DWFNs could not accept any priority in favor of the inspecting State and an absence of balance would derogate the freedom of the high seas.

The Chair said the 3-day period was to the benefit of the flag State and it did not mean that the inspecting State will continue examination beyond 3 days.

Paragraph 7 requires the inspecting State to inform the relevant organizations, or the parties to the relevant arrangement, of the results of any further investigation and was accepted without comment.

Paragraph 8, dealing with the inspectors obligations, drew comment that both the safety of the vessel and its crew should be ensured but comment was also made that the safety of the vessel

did not necessarily mean safety for the crew. The inspector did not have any right to assume command of the vessel. It was stated that the inspecting State should, to the extent practicable, ensure that their activity does not affect the quality of the catch onboard. Inspections should not hinder fishing operations, but the function of maintaining quality of the catch is not a responsibility of the inspectors.

Paragraph 9, dealing with the definition of a “serious violation”, lists eleven probable violations. Some delegates said the listing represented a “shopping list” or the promotion of a “penal code” while others said it was excessively long. A shorter listing, one delegate argued, would act as an “indicative” or an “illustrative” range of serious violations that would highlight actions of reprehensible conduct. Delegates argued that without a “shopping list” Article 21 is meaningless. Another delegate suggested that there should be a specific definition of a “serious violation”. The Chair said he could see no good cause to change anything.

Proposed amendments to paragraph 10 included the requirement of the inspecting State, upon the request of the flag State, to release the vessel to the flag State along with “full” information on the progress and outcome of its investigation.

Some suggestions to paragraph 11 simplified the rights of the flag State to take measures, including proceeding to impose penalties, against its vessels.

Diverse opinion existed with regard to the proposed text in paragraph 12 and the Chair agreed that further redrafting is required.

On paragraph 14, some delegates questioned its necessity because the matter is already covered in Article 43(2) of the Draft Agreement, which deals with the relation to other agreements.

NGO ACTIVITIES: NGOs continued their strategy meetings on Wednesday morning by discussing the use of selective gear and membership in regional and subregional organizations, and identifying language that can be used to improve transparency. Look for NGO proposed amendments to enhance transparency. In the afternoon NGOs discussed the EU position with J. Almeida Serra, Director General of the European Commission and Rafael Conde de Saro, representative of the European Council of Ministers.

IN THE CORRIDORS

Delegations and NGOs alike are commenting on the Chair’s firm hand in limiting unnecessary and repetitive interventions in informal Plenary, as he strives to secure a full review of A/CONF.164/CRP.7. Some delegates, involved in the work of the UNCED PrepCom are commenting that a “goal”, seemingly unattainable four years ago, is now in sight. They believe however, that the introduction of any new substantive text at this juncture, could substantially undermine the review of the first issue of a harmonized text, and thus delay the Conference outcome. Unlike previous sessions, the Chair has adopted a liberal application of his gavel: a sure sign that old scores must not be revisited and that progress, in the interests of agreeing and implementing new conservation and management principles, must continue.

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: Informal consultations will continue at 10:00 am in Conference Room 5. Delegates will continue with their review of the Chair’s revised text of Article 21.

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.

NGOs: NGOs will continue with their strategy meetings at 10:00 in Conference Room A. NGOs will meet with a group of Members of Parliament from Canada’s Standing Committee on Fisheries and Oceans during the afternoon.