

Earth Negotiations Bulletin

A Reporting Service for Environment and Development Negotiations

Vol. 7 No. 51 Published by the International Institute for Sustainable Development (IISD) Wednesday, 2 August 1995

FISH CONFERENCE HIGHLIGHTS TUESDAY, 1 AUGUST 1995

Conference Chair, Satya Nandan, reconvened informal consultations in Conference Room 5 at 10:00 am on Tuesday. Three hours were given to informal consultations. Plenary reconvened at 3:30 pm, when the Chair outlined his informal consultation work programme. Statements were made by Brazil and Sri Lanka, and one NGO. Informal consultations, reconvened later in Conference Room 5.

PLENARY

Before opening the floor to delegations who were unable to make general statements earlier in the session, the Chair said informal consultations would continue over many unresolved issues. Revised text copy would be made available in due course. He said informal consultations during the morning had focused on Articles 21 and 22, and some further "tinkering" was required. He did not expect any substantial departure from the text and said he would inform delegates of the progress as it is made.

BRAZIL: Ambassador Henrique R. Valle stated that voluntary acceptance of compliance through inspection and boarding by all parties is essential for building confidence and achieving conservation and management goals. He claimed these aims were attainable within the scope of Article 21 without the limitations of paragraph (13), which are addressed in Article 43(2). He welcomed provisions concerning regional organizations, special requirements for developing countries and coastal subsistence communities.

SRI LANKA: Anton Attapattu emphasized the need for better conservation and management of SFS and HMFS and stated that Article 21 is of "paramount importance" in achieving these goals. He said his country is actively seeking to improve the management of these species and has drafted new domestic legislation for fisheries and aquatic resources. He encouraged States to accede to the agreement establishing the Indian Ocean Tuna Commission (IOTC). He said it is important to establish a cooperative arrangement for the management of Indian Ocean tuna because catch rates have risen sharply over the past decade. Sri Lanka has assisted in this process by offering to host the IOTC Secretariat.

NON-GOVERNMENTAL ORGANIZATIONS: A representative speaking on behalf of the Offshore Fishworkers of Chile, Peru, Argentina, and Ecuador expressed concern over the final outcome of Articles 8, 15, 19, 20 and 21. He advocated the need for minimum international labor standards for fishworkers and requested the conference recommend that the General Assembly

hold an international convention to regulate labor conditions for offshore fishworkers. He said old vessels continue to operate and the crews live under inhuman conditions. The representative noted fishermen are more apt to comply with management measures when they are aware of the resulting benefits and when they are able to participate in the formulation of regulations. In respect to transparency, he urged for explicit reference to the participation of social partners in the work of subregional and regional organizations in Article 15.

Before adjourning Plenary, the Chair said he would continue with informal consultations on Wednesday morning, and hoped to reconvene informal Plenary at 11:30 am. Noting the fluidity of informal consultations, he suggested that delegates consult the Journal for any changes.

DOCUMENTS IN CIRCULATION

The First Report of the Credentials Committee was circulated in document **A/CONF.164/31** on Tuesday. The Credentials Committee is chaired by Argentina and is composed of representatives from: Antigua and Barbuda, Burundi, China, Kenya, New Zealand, Papua New Guinea, the Russian Federation and the US. The reports notes that communications from 100 States, including the European Community had been received. The Credentials Committee will reconvene on Wednesday, 2 August 1995 in order to complete its examination of the credentials and decide on its recommendation to the Conference. A provisional list of delegations to the Sixth Session of the Conference was circulated on Tuesday.

A revised text of the Draft Agreement, available only in English, was circulated at the close of Plenary. This document, entitled a "Proposal by the Chairman for adoption" is dated 1 August 1995. It contains text on old Articles 14, 21, 21(bis), 29, 30 and 31, which were subject to informal consultation on Tuesday.

DOWN THE CORRIDORS

INFORMAL CONSULTATIONS: The Chair opened informal consultations by advising delegates that it was necessary to maintain momentum and not rehearse old issues. He said new text had been prepared on some of the outstanding issues, especially those relating to enforcement and high seas enclaves. In this regard, he gratefully noted the willingness of the Russian Federation to continue working on this issue. He first invited delegates to consider a revised text on **Articles 29, 30 and 31**, which deal with settlement of disputes, provisional measures, and limitations on applicability of procedures, respectively. The Chair said the revised text represents an attempt to simplify the text

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contained in A/CONF.164/CRP.7, and takes into account discussions held during informal Plenary, especially the concerns voiced by the Russian Federation and Indonesia regarding the equality of non-Parties to the Agreement. The two-page redraft, dated 31 July 1995, dealing with these articles was circulated at the beginning of the session. One delegate suggested that the title of **Article 29** be amended to read "Procedures for the Settlement of disputes". This amendment was accepted. Article 29 is now reduced to five paragraphs. In paragraphs (1) and (2) the emphasis is now more firmly placed on the provisions relating to the settlement of disputes set out in Part XV of the Convention, and applies *mutatis mutandis*. Paragraphs (3) and (4) include special provisions for applying the Convention machinery to the Agreement. In response to the debate, the Chair said a further look is needed. New text on paragraph (5) stipulates that any court or tribunal to which a dispute has been submitted under Part VIII shall apply to the relevant provisions of the Convention.

Article 30, dealing with provisional measures, substitutes the word "settlement" for "resolution" in paragraph (1). A new paragraph (2) states that without prejudice to Article 290 of the Convention, which deals with provisional measures, the court or tribunal to which the dispute has been submitted under Part VIII, may prescribe any provisional measures which it considers appropriate to prevent damage of the fish stocks in question as well as in the circumstances referred to in Article 7 (5) and Article 14 (2).

One delegate said **Article 31** was unnecessary but noted that certain delegations were keen to ensure explicit mention to the exception of the EEZ. Several delegations insisted on explicit mention of Article 297 (3) of the Convention in Article 31 because this article in the Convention deals specifically with fisheries matters and not other matters including freedom and rights of navigation, and science. Another argued for the inclusion of "*mutatis mutandis*". Delegates finally agreed that the text should read "The provisions of Article 297(3) of the Convention applies also to this Agreement."

The Chair then turned to revised text on **Article 21** paragraph (8) that contains two additional sentences stating that crews will be released promptly following investigations, and both the inspecting and flag States shall take all necessary steps to protect the welfare of the crew. Some DWFNs objected that the "shadow" of the provision is that crews may be arrested, while others expressed concern for crew members who are not nationals of the flag State and requested a specific reference. The Chair noted that two elements are important to this paragraph: the removal of the notion of the possibility of detention and arrest; and ensuring that no impediments exist to the well-being of the crew.

Paragraph 11 defines "serious violation" and subparagraph (b) cites failing to maintain accurate records of catch and related data as required by relevant subregional or regional organizations. One delegation expressed concern with the word "accurate" and the possible imposition of national regulations, and suggested a reference to international law. Other delegates noted that the word "substantial" was unacceptable and suggested "serious" as a possible replacement. In reference to subparagraphs (c) and (d), one DWFN proposed the use of the word "directed" before "fishing". The proposal was supported by some States, while others felt that the reference unnecessary. The DWFN noted that the proposal was based on concern over the balance of the text. Subparagraph (f) cites "using prohibited fishing gear", and one delegation proposed specifying gear prohibited "in that particular area" by the regional or subregional organization. Some States called for the reinsertion of the notion of obstruction of inspectors as a serious violation. Subparagraph (i) deals with multiple or repeated violations which together constitute a serious disregard of conservation and management measures. A DWFN commented that this subparagraph was open to any interpretation, but others stated that these activities show that States are not acting in good faith and should be considered "serious."

Paragraph (12) states that a flag State may take action to fulfill its obligations under Article 19 with respect to an alleged violation. **Indonesia** tabled a proposal regarding paragraphs (12), (13) and (18) that was examined by delegates. Initial comments by one DWFN pointed out that proposed paragraphs (12) and (13) could be combined. Others felt that the proposal changed the meaning of the paragraph, and called for the retention of the present text.

Paragraph (14) states that Article 21 applies where a State Party with membership in a regional organization has grounds for believing that a fishing vessel flying the flag of another State Party has acted contrary to conservation measures in the high seas, and subsequently enters into an area under the national jurisdiction of the inspecting State or another State which consents to application of this article by the inspecting State. Some DWFNs objected that this paragraph creates a new element under international law and requested its deletion. One delegate replied that the paragraph should not be rejected simply because it goes beyond UNCLOS. The Chair noted that it would be possible to redraft the paragraph keeping the references the EEZ of the inspecting State, while deleting the last part regarding "another State which consents."

Paragraph (18) deals with liability for damage or loss arising from unreasonable actions in implementing this article. One delegate said the paragraph was imbalanced because it imposes liability on inspecting States, but not on flag States for failing to take action. Others stated the paragraph should protect the vessel, not the inspectors, and another delegate suggested inserting a requirement that States be liable for failure to ensure compliance by vessels flying their flags. Another delegate noted that States can withhold consent, so deletion was unnecessary.

The Chair noted the tabled proposal of Indonesia, and called for further review.

Article 22, formerly 21 (bis), covers basic procedures for boarding and inspection pursuant to Article 21. Paragraph 1(e) requires States to ensure that inspectors avoid the use of force except when necessary to ensure the safety of the inspectors and cooperation in the inspection. Some delegations said the text must allow the use of force only to ensure safety of inspectors and for no other reason. Other delegates suggested broadening the text to allow force where an inspection is being obstructed. It was pointed out that the possibility of the use of force must be in the text in order to ensure compliance. The Chair said that the problem in this subparagraph is the use of the term "cooperation", and that if force is necessary, it must be proportionate to the provocation. He stated that he would attempt to build this into a redraft. **Malta** distributed a proposed new **Article 21 (bis)** requiring inspectors, in addition to other duties, to inform the flag State of boarding and inspection at the same time this takes place. One delegation said this could present practical problems in many situations. The Chair stated, that the consensus is that this falls under the responsibilities of the master, who must ensure that communication with the flag State takes place.

Informal consultations continued late into Tuesday night.

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: Informal consultations are expected to continue at 9:30 am in Conference Room 5. These informal consultations are expected to deal with outstanding issues left unresolved from yesterday's consultations.

INFORMAL PLENARY: The Chair is expected to reconvene informal Plenary at 11:30 am. In view of the fluidity of informal consultations, delegates should consult the Journal for further information. Look for circulation of revised text on Articles 14, 21, 29, 30 and 31.

NGOs: NGOs recommence their strategy meetings in Conference Room A at 10:00 am to review the Chair's revised text and to discuss labor and fishers issues. Look for notice of a meeting with the FAO on the Code of Conduct for Responsible Fisheries.