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FISH CONFERENCE HIGHLIGHTS WEDNESDAY, 2 AUGUST 1995

Conference Chair, Satya Nandan, reconvened informal consultations in Conference Room 5 at 11:00 am. Informal Plenary reconvened at 4:10 pm in Conference Room 2, when the Chair outlined progress of the informal consultations. A statement was made by Malta. Informal consultations then reconvened in Conference Room 5 and continued late into Wednesday night.

INFORMAL PLENARY

The Chair briefed the Conference on the progress of the informal consultations. **Article 13**, regarding enclosed and semi-enclosed seas, has been resolved. Consultations for **Article 14**, dealing with areas of high seas surrounded by areas under a single States' jurisdiction, did not run as smoothly and strong feelings were expressed on both sides. He expected resolution of this Article during the evening's consultations. Final text for **Article 29**, concerning the settlement of disputes, was accepted. The dispute settlement procedures found in the Convention are to be followed. On **Article 3**, addressing application, the Chair noted that paragraph (3) required further recognition of States' different capacities with respect to fisheries, and he expected final text during evening consultations. Final text was agreed upon for **Article 8 (3)**, dealing with cooperation for conservation and management by regional and subregional fisheries organizations. The Chair said the agreed text should satisfactorily resolve the matter from all points of view. After extensive discussion, final text was also reached for **Article 21**, dealing with enforcement. The agreed text was circulated Wednesday morning and will be incorporated into the final text of the Agreement. The Chair stated that all agreed text will be incorporated and copies of the final text should be circulated by this morning. He said he intended to introduce the final text for decision on Friday. **Malta** stated his concerns regarding **Article 22** on boarding and inspection by port States were not adequately addressed and would like the Article to undergo further review. The Chair said that Malta's concerns were met in the text of the Article as it stands, and that a boarding State must only notify a flag State where a violation has occurred.

The following provisions were tabled for further review during evening consultations: **Article 8 (5)(bis)**, dealing with cooperation for conservation and management of SFS and HMFS on the high seas in regions where no subregional or regional management bodies exist; **Article 6 (5)**, concerning application of the precautionary approach in instances where natural phenomena have

adversely affected stocks; and, **Article 10 (2)**, addressing coastal States' rights regarding the conservation and management of stocks.

DOWN THE CORRIDORS

INFORMAL CONSULTATIONS: The Chair opened informal consultations by advising delegates that revised versions of **Articles 8(3)** and would be circulated soon as possible. He highlighted his revisions to **Article 14**, on areas of high seas surrounded entirely by an area under the national jurisdiction of a single State, dated 31 July 1995. Paragraph (2) states that pursuant to Article 8, dealing with cooperation and management, States shall act in good faith and make every effort to agree on conservation and management measures prior to the commencement of fishing on the high seas. It does not prohibit fishing in absence of an agreement. The Chair noted that the Article is consistent with the rest of the text, but recognizes that this is a peculiar situation.

A DWFN noted that he had originally wanted the Article deleted and reiterated that he cannot accept the idea that some regions of the high seas could be controlled by a single State. The delegate introduced a new joint proposal by three DWFNs on Article 14, dated 1 August 1995 and based on an earlier proposal. The joint proposal does not specify the type of management measures to be agreed upon and does not refer to Article 8 of this Agreement or Article 61 of UNCLOS. He said the goal was to confirm rights that belong to all fishing nations. Another DWFN stated that the Chair's redrafted text lacks balance because it places the duty of cooperation upon States fishing the high seas rather than on the coastal States, and should instead require that cooperation is "between" States. Other DWFNs said the Article should contain wording similar to UNCLOS and cannot recognize specific rights.

One delegate objected that the question of who is required to cooperate with whom is minor. He argued that the Chair's revised Article does not rise to the level of UNCLOS in providing for coastal State rights and duties, and only requires States to "take into account" coastal State conservation measures as in other parts of this Agreement. Another delegate emphasized the progress that had been made, including: recognition of surrounded areas; acceptance of the need for cooperation; and, agreement on which measures to apply in Article 7 (4), (5) and (6). One delegate reiterated the importance of Article 14 to his country, and expressed willingness to accept the current draft. He noted that the text does not specify a course of action in absence of provisional measures and added that States should not be free to avoid conservation and management measures.

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Because the DWFN joint proposal was based on an earlier draft, one delegate asked the submitting DWFN for specific comments on the Chair's current text. The DWFN stated that the text is worse than the earlier version. He noted that fishing States must twice "take into account" coastal State concern, and questioned whether requiring efforts to agree "prior to commencement" of fishing amounted to requiring permission to fish. One delegate responded that no State should fish anywhere without taking into account EEZ management measures, and another noted that the text already represents a compromised agreement.

On **Article 13**, one delegate stated that they had requested "geographical", rather than "ecological", in reference to characteristics which must be accounted for in implementation. Article 14 also requires regard for "ecological" characteristics. Some delegations supported this idea, noting that UNCLOS does not make narrow references, and that all characteristics should be taken into account.

The Chair commented that he would redraft the reference to cooperation because it carried a "nuance" of requiring cooperation from fishing States. He will also make clearer reference to Article 7, on compatibility of conservation measures; neutralize the reference to characteristics of the area by replacing "ecological" with "natural"; and retain the reference to Article 8. The Chair noted there is no suggestion of a unilateral right and added the Article, in its current form, merely recognizes that these areas exist and that special consideration was needed for setting up compatible conservation and management measures. The informal consultations adjourned briefly to discuss the issues.

At 1:00 pm, the Chair reconvened informal consultations, and said there was considerable common ground on Article 14 and then presented a revised **Article 8 (3)**, on membership in subregional or regional fisheries management organizations. He proposed including the text, invited no more comments and gavelled the matter to a close. One delegate stated that there was no consensus, but the Chair said that delegations had already commented extensively, and the text is going into the Agreement as is.

Evening informal consultations began with the proposal distributed by Peru and Uruguay regarding an amended version of Article 8 (5) (bis). The redraft addresses the concern of some coastal States that failure of one or more States to cooperate pursuant to Article 8 (5), not interfere with the establishment of organizations or arrangements by other States in the region or subregion. The redraft was not supported by some delegates who stated that the requirement of cooperation is covered in Articles 8(1) and 17 (1). Others agreed that the proposed changes did not strengthen the text and could be used to "opt out". It was stated that the use of the term "failure" in the proposal was subjective, and delegates used words such as "apprehension" and "unease" in referring to the amendments. States supporting the proposal disagreed with claims that it, in any way, prejudiced other articles in the Agreement or in UNCLOS. Peru clarified that the proposal was not designed to create loopholes in the text, and was not aimed specifically at fishing States. One delegate suggested the insertion of "having interest in the fisheries concerned" after "relevant coastal States and other States" to clarify the text. Another responded that this would revisit issues of openness already discussed. The Chair summarized that this text must fit into the Agreement and UNCLOS with regard to provisions for cooperation. He said, given this goal, it is necessary to examine the flow of the paragraphs of Article 8 with an eye to consistency. He stated that provisions must be made for cases when cooperation is not forthcoming, and noted that given the concerns expressed, changes were necessary to the text. He proposed the addition before Article 8 (5) (bis) of something similar to "where a State to which paragraph (5) applies does not cooperate in the implementation of that paragraph, the other States concerned are not prevented from giving effect to their obligation under paragraph (5) and in other relevant provisions of the Convention".

He stated that he hoped that this would allay some of the concerns expressed by delegations.

IN THE CORRIDORS: Some delegates have noted that others continue to rehearse old sentiments in informal consultations while endeavoring to establish new consensual text and have commented that the Chair has remained remarkably cool throughout, although impressively firm. There is little room for further last-minute maneuvers as the Conference moves into its final hours. However, a very visible and concentrated gathering of senior delegates, in the main conference room prior to informal Plenary being brought to order, indicates that some issues remain alive, if not volatile. The Chair's complimentary remarks about the cooperation of delegations and the "small working group" that appears to have assisted him in recent days is strongly indicative to some that the spirit of negotiation is alive.

FAO DOCUMENTS IN CIRCULATION

The UN Food and Agriculture Organization circulated three papers yesterday.

FAO Fisheries Circular No. 884, entitled "Review of the State of World Fishery Resources: Marine Fisheries," updates the regular reviews of the state of the world's marine fish stocks, based mainly on statistics through 1992. It notes the limits of world fish production, documents and draws attention to the implications of the high level of exploitation of the more valuable marine resources and notes, for each FAO statistical area, the major changes and trends that have occurred in specific resources. Special sections address the environmental issues in marine fisheries and provide a perspective of the fishery assessment strategies in current use in support of fisheries management in each region.

FAO Fisheries Circular No. 885, entitled "Review of the State of World Fishery Resources: Inland Capture Fisheries," analyses the status and trends of food production from inland capture fisheries from 1984 to 1992. It notes that the steady increase in total inland catches appeared to peak in 1992 at approximately 6.5 million tonnes, but at about this time the contribution from aquaculture equaled and began to exceed that of capture fisheries. The paper states that it can be assumed that most of the major fisheries are not at their maximum levels of exploitation, and that future increases, to maintain supplies to an increasing world population, will be almost totally supplied from aquaculture activities.

FAO Fisheries Circular No 886, entitled "Review of the State of the World Fishery Resources: Aquaculture," analyses the status and trends of food production through aquaculture from 1984 to 1992. The paper notes that by 1992 aquaculture was contributing over 14% of the total fisheries production, more than compensating for the decline in capture fisheries. It notes that aquaculture is expected to make a major and increasing contribution to total food fish supply.

THINGS TO LOOK FOR TODAY

INFORMAL CONSULTATIONS: Informal consultations could continue in Conference Room 5 early this morning, to deal with any remaining unresolved issues.

INFORMAL PLENARY: The Chair is expected to reconvene informal Plenary 11:30 am. In view of the fluidity of informal consultations, delegates should consult the Journal for further information. Look for circulation of a composite revised and harmonized text in the English language.

NGOs: NGOs will continue with their strategy meetings in Conference Room A at 2:00 pm today, when they meet with Dr. Krone and representatives of the UN Food and Agriculture Organization to discuss the development of the Code of Conduct for Responsible Fisheries.