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ENVIRONMENT AND SUSTAINABLE DEVELOPMENT

Sustainable use and conservation of the marine living resources
of the high seas: United Nations Conference on Straddling Fish
Stocks and Highly Migratory Fish StocksReport of the Secretary-General

CONTENTS

	<u>Paragraphs</u>	<u>Page</u>
I. INTRODUCTION	1 - 4	2
II. FIRST AND SECOND SESSIONS	5 - 9	2
III. THIRD SESSION	10 - 14	3
IV. FOURTH SESSION	15 - 18	4
V. DRAFT AGREEMENT	19 - 22	5
VI. VOLUNTARY FUND	23	5
VII. RECOMMENDATIONS OF THE CONFERENCE	24 - 26	6
<u>Appendix.</u> Draft agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks ..		7

I. INTRODUCTION

1. The present report is submitted to the General Assembly in accordance with paragraph 7 of resolution 48/194 of 21 December 1993.

2. In paragraph 1 of its resolution 47/192 of 22 December 1992, the General Assembly decided to convene in 1993, in accordance with the mandate agreed upon at the United Nations Conference on Environment and Development, an intergovernmental conference on straddling fish stocks and highly migratory fish stocks.

3. The Conference was to "take into account relevant activities at the subregional, regional and global levels, with a view to promoting effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks, and that, drawing, inter alia, on scientific and technical studies by the Food and Agriculture Organization of the United Nations, it should:

(a) Identify and assess existing problems related to the conservation and management of such fish stocks;

(b) Consider means of improving fisheries cooperation among States;

(c) Formulate appropriate recommendations." 1/

4. The General Assembly went on to reaffirm, in paragraph 3 of resolution 47/192, that the work and results of the conference should be fully consistent with the provisions of the United Nations Convention on the Law of the Sea, in particular the rights and obligations of coastal States and States fishing on the high seas, and that States should give full effect to the high seas fisheries provisions of the Convention with regard to fisheries populations whose ranges lay both within and beyond exclusive economic zones (straddling fish stocks) and highly migratory fish stocks.

II. FIRST AND SECOND SESSIONS

5. In accordance with General Assembly resolution 47/192, the Conference held two sessions in New York in 1993. An organizational session was held from 19 to 23 April 1993, during which the Conference elected its Chairman, Mr. Satya N. Nandan (Fiji), and three Vice-Chairmen (Chile, Italy and Mauritania). The Conference also established its Credentials Committee.

6. Detailed discussions on the substantive issues relating to the conservation and management of straddling fish stocks and highly migratory fish stocks commenced at the second session, held in New York from 12 to 30 July 1993. These discussions focused on the following key issues: minimum data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks; a precautionary approach to fisheries management; procedures for the settlement of high seas fisheries disputes; compliance and enforcement; the nature of conservation and management measures to be

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established through cooperation; the mechanisms for international cooperation; regional fisheries management organizations or arrangements; compatibility and coherence between national and international conservation measures for the same stock; port State enforcement; non-parties to a subregional or regional agreement or arrangement; and the special requirements of developing countries.

7. On the basis of consideration by the Conference of these key issues, the Chairman prepared a negotiating text (A/CONF.164/13) which became the basic text for the future work of the Conference.

8. The reports presenting factual information on the organizational and the second session of the Conference are contained in documents A/CONF/164/9 and A/CONF/164/16 and Corr.1. The report of the Secretary-General on these two sessions is to be found in document A/48/479 and Corr.1.

9. Acting on the recommendations of the Conference, the General Assembly in paragraph 3 of resolution 48/194 approved the convening in New York of two further sessions to be held from 14 to 31 March 1994 and from 15 to 26 August 1994.

III. THIRD SESSION

10. In accordance with General Assembly resolution 48/194, the third session of the Conference was held in New York from 14 to 31 March 1994. 2/

11. The third session had before it the negotiating text (A/CONF.164/13) prepared by the Chairman. During the first week of the session, the Conference heard general statements on the negotiating text and then proceeded to section-by-section consideration of the text.

12. The negotiating text itself was divided into 11 sections and 2 annexes: (i) the nature of conservation and management measures to be established through cooperation; (ii) mechanisms for international cooperation; (iii) regional fisheries management organizations or arrangements; (iv) duties of the flag States; (v) compliance and enforcement of high seas fisheries conservation and management measures; (vi) port States; (vii) non-parties to subregional or regional organizations or arrangements; (viii) dispute settlement; (ix) compatibility and coherence between national and international conservation measures for the same stock; (x) special requirements of developing countries; (xi) review of the implementation of conservation and management measures; annex 1 on minimum data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks; and annex 2 on arbitration.

13. At its second session, held in 1993, the Conference had requested the Food and Agriculture Organization of the United Nations (FAO) to prepare two information papers, one on the precautionary approach to fisheries management and the other on management reference points. At the third session the Conference decided to entrust the consideration of these questions to two open-ended working groups. The reports of these two working groups to the

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plenary session of the Conference are contained in documents A/CONF.164/WP.1 and A/CONF.164/WP.2.

14. At the end of the third session, the Chairman, as a result of the informal consultations held during that session, was able to issue a revision of the negotiating text (A/CONF.164/13/Rev.1). He noted that the Conference had moved closer to agreement on a number of issues and indicated that the revised negotiating text as a whole reflected the progress made at the session on all substantive matters.

IV. FOURTH SESSION

15. The fourth session of the Conference was held from 15 to 26 August 1994. 3/ In his opening statement, the Chairman outlined the key elements that would ensure a successful outcome of the Conference:

"(a) It must establish minimum international standards in sufficient detail for the conservation and management of fish resources;

"(b) It must ensure that the measures taken for conservation and management in the exclusive economic zones and in the adjacent high seas areas are compatible and coherent, in order to take into account the biological unity of the stocks and the supporting ecosystem;

"(c) It must ensure that there is an effective mechanism for compliance and enforcement of those measures;

"(d) It must provide for a globally agreed framework for regional cooperation in the field of fisheries conservation and management, consistent with the situation prevailing in each region, as is envisaged by the Convention on the Law of the Sea;

"(e) It must provide for a compulsory binding dispute-settlement mechanism, consistent with the Convention on the Law of the Sea, while providing the necessary flexibility to the parties to a dispute to use the mechanism of their choice (A/CONF.164/21)."

16. According to its programme of work the Conference commenced by hearing general statements by representatives on the revised negotiating text (A/CONF.164/13/Rev.1). The Conference then undertook a section-by-section examination of the text, beginning with the preamble that had been introduced in the revised text.

17. During the fourth session, the Conference held informal consultations on two items: (i) the matter raised by the Russian Federation on the question of fishing taking place in areas of the high seas surrounded by the exclusive economic zones of one or more coastal States, and (ii) the Norwegian proposal dealing with enforcement measures in a regulatory area adjacent to the exclusive economic zone of a coastal State. The informal consultations were unable to reach any final conclusions on these matters.

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18. A brief discussion was held in the plenary on the question of the form of the instrument that would result from the Conference. The Chairman himself consulted widely with delegations on this issue.

V. DRAFT AGREEMENT

19. Based, inter alia, on the discussions and proposals made during the review of the revised negotiating text and on the basis of informal consultations with delegations, the Chairman prepared a revised version of the text entitled "Draft agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the conservation and management of straddling fish stocks and highly migratory fish stocks" (A/CONF.164/22). The draft agreement is appended to the present report.

20. This new text is in treaty form. It consists of a preamble, 13 parts and three annexes. The parts of this instrument carry the following titles: general provisions; conservation and management of straddling fish stocks and highly migratory fish stocks; mechanisms for international cooperation concerning straddling fish stocks and highly migratory fish stocks; responsibilities of the flag State; compliance and enforcement; port State enforcement; requirements of developing States; peaceful settlement of disputes; non-participants; abuse of rights; non-parties to this Agreement; reports on implementation and review conference; and final provisions. Annex 1 deals with minimum standard for collection and sharing of data and annex 2 contains suggested guidelines for application of precautionary reference points in conservation and management of straddling fish stocks and highly migratory fish stocks. An arbitration procedure is to be found in annex 3.

21. With respect to the form of the instrument, the Chairman, in his closing statement, noted that it was based on his sense that there was a widespread and substantial view in the Conference that a binding outcome of the deliberations was essential "if we are to achieve the goal of effective conservation and management of the two types of fish stocks that are the subject matter of this Conference". He noted, however, that there was no consensus at that time on the question of the form of the outcome of the Conference.

22. The Chairman characterized the draft agreement as "a turning-point in our work" in that it represented an important step towards achieving solutions to many problems on which the Conference had been divided. It offered a basis for compromise and helped to highlight the areas on which further negotiations should be concentrated.

VI. VOLUNTARY FUND

23. In accordance with General Assembly resolution 47/192, a voluntary fund has been established. This fund has provided air fares for a number of participants, thus enabling them to attend the Conference. Governments and regional economic integration organizations are invited to contribute to the fund.

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VII. RECOMMENDATIONS OF THE CONFERENCE

24. The Conference decided to recommend to the General Assembly that it provide for the convening of two further sessions of the Conference, to be held from 27 March to 12 April 1995 and from 24 July to 4 August 1995, to enable it to complete its work.

25. The first session in 1995 would be devoted to the consideration of the substantive matters before the Conference with a view to concluding negotiations at the end of that session.

26. The second session should be the final session of the Conference. The first week of the session would be devoted to the concordance and harmonization of the text in all languages. The second week would be devoted to the Final Act of the Conference and the preparation of the authentic texts of the Agreement in order that the Final Act and the Agreement could be adopted at the end of that week.

Notes

1/ General Assembly resolution 47/192, paragraph 2, which was based on a resolution adopted by the United Nations Conference on Environment and Development (Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3-14 June 1992 (A/CONF.151/26/Rev.1) (United Nations publication, Sales No. E.93.I.8 and corrigenda), vol. I, Resolutions Adopted by the Conference, resolution 1, annex II, chapter 17, paragraph 17.49).

2/ A factual report on the third session of the Conference is contained in document A/CONF.164/20.

3/ A factual report on the fourth session of the Conference is contained in document A/CONF.164/25.