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HIGH-SEAS FISHERIES AND THE INTERESTS OF THE COASTAL STATES
OF THE REGION. AN ANALYSIS OF THE UPCOMING NEGOTIATION
FROM THE PERSPECTIVE OF SOCIAL EQUITY*

Part I: From the United Nations Convention on the Law of the Sea
to the United Nations Conference on Straddling Fish Stocks and
Highly Migratory Fish Stocks

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SUMMARY

After the signature of the United Nations Convention on the Law of the Sea on 10 December 1982, one of the remaining latent concerns of the international community was high-seas fisheries.

The fact that the economies of developing coastal States often depend on harvesting fish occurring in areas that extend beyond their exclusive economic zones —and therefore fished by deep-water fleets— demands that high-seas fisheries be regulated efficiently and equitably by the international community.

The preparatory process to the United Nations Conference on Environment and Development reintroduced the issue to the international debate and, once the Conference was over and Agenda 21 adopted, its chapter 17 on oceans and seas contained a programme area dealing specifically with this matter.

That is also the part of the programme which consolidates the convening to the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, which concluded its first substantive session in July 1993.

This paper reviews the different negotiating positions on the issue, from the United Nations Conference on the Law of the Sea itself to the Latin American scenarios immediately before the United Nations Conference on Environment and Development.

Its purpose is to allow for a comparative analysis of possible repetitions in terms of proposals, objectives and points of agreement.

The second part will analyse the negotiating context of the Conference under way and the regional alternatives for achieving greater benefit from the results of this basic instrument for sustainability and equity in marine resources allocation.

I. INTRODUCTION

The General Assembly of the United Nations, in its resolution 47/192 of 22 December 1992, decided to convene in 1993, pursuant to the mandate adopted at the United Nations Conference on Environment and Development, an intergovernmental conference on straddling fish stocks and highly migratory fish stocks.

The same resolution contains a note stating that for the sake of brevity, the term "straddling fish stocks" will be used —when advisable— to refer to "fisheries populations whose ranges lie both within and beyond exclusive economic zones".

In an editorial directive dated 23 February 1993, the United Nations Secretariat established as the official name in Spanish "Conferencia de las Naciones Unidas sobre las poblaciones de peces cuyos territorios se encuentran dentro y fuera de las zonas económicas exclusivas (poblaciones transzonales) y las poblaciones de peces altamente migratorias", to be used in the first reference to the Conference.

The same directive accepts that subsequent references can be shortened to "Conferencia de las Naciones Unidas sobre las poblaciones transzonales y las poblaciones de peces altamente migratorias".

This avoids a terminology problem that affects the very object of the convocation.

The resolution refers to a series of international instruments that provide important background for the negotiations at the Conference, such as Agenda 21, chapter 17, programme area C, relating to the sustainable use and conservation of marine living resources of the high seas; the 1992 Declaration of Cancún; the 1984 Strategy for Fisheries Management and Development, and the 1982 United Nations Convention on the Law of the Sea.

All this material will be analysed in this study, along with other more properly regional material that presents the position of Latin America and the Caribbean on this problem.

The main thrust of the resolution is based on the application of the provisions of the United Nations Convention on the Law of the Sea concerning straddling fish stocks and highly migratory fish stocks.

In this regard, an analysis will be made not only of the text of the Convention but also the negotiation itself at the Third United Nations Conference on the Law of the Sea, which may provide some formulations that could be repeated in the upcoming negotiation.

According to the resolution, the object of the Conference is to:

- 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.

II. THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

The controversy about these pending issues —which made it necessary to convene the Conference— refers to lacunae which the final version of the United Nations Convention on the Law of the Sea might have left in the solution to problems dealing basically with stocks that migrate between zones of national jurisdiction of States and the high seas.

Several conflicting positions emerged during the negotiations at the Third United Nations Conference on the Law of the Sea concerning the definitive wording of the text on the conservation and management of living resources in the high seas, which ranged from granting more power to coastal States over such resources —the position held by the developing countries— to a weak mention of the need for cooperation in the part dealing with the high seas.

The present text is the result of difficult negotiations and constitutes a delicate balance, which the treatment of the issue during the preparation for the United Nations Conference on Environment and Development and the Conference itself severely tested, since there was even an attempt to remove the treatment of the issue from the United Nations Convention on the Law of the Sea.

1. The text of the United Nations Convention on the Law of the Sea

The Convention deals with different hypotheses that could generate conflicts between coastal States and States with high-seas fishing fleets, both in Part V referring to the exclusive economic zone and in Part VII on the high seas.

The basic approach to the problem is contained in paragraph 2 of article 63, which mentions stocks occurring within the exclusive economic zone and those in an area beyond and adjacent to the zone (which generically comprise the "straddling stocks" in the terminology of the upcoming conference) and establishes that "Where the same stock or stocks of associated species occur within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall SEEK, either directly or through appropriate subregional or regional organizations, TO AGREE UPON THE MEASURES NECESSARY FOR THE CONSERVATION OF THESE STOCKS IN THE ADJACENT AREAS" (emphasis added).

Article 64 on highly migratory species establishes that "The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall CO-OPERATE directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall CO-OPERATE to establish

such an organization and participate in its work" (emphasis added). Paragraph 2 states that the provisions of paragraph 1 apply in addition to the other provisions in this Part.

Article 66 on anadromous stocks states in paragraph 1 that "States in whose rivers anadromous stocks originate shall have the primary interest in and responsibility for such stocks".

Anadromous stocks are those, like salmon, which hatch in rivers, go out to sea and return to the rivers to spawn.

Paragraph 2 says that the State of origin of anadromous stocks shall ensure their conservation by the establishment of appropriate regulatory measures for fishing in all waters landward of the outer limits of its exclusive economic zone and for fishing by other States.

The article establishes that fisheries for anadromous stocks shall be conducted only in the waters landward of the outer limits of exclusive economic zones, except in cases where this provision would result in economic dislocation for a State other than the State of origin.

The Convention points out that with respect to such fishing beyond the outer limits of the exclusive economic zone, States concerned SHALL MAINTAIN CONSULTATIONS with a view to achieving agreement on terms and conditions of such fishing giving due regard to the conservation requirements and the needs of the State of origin in respect of these stocks.

It also says that the State of origin shall cooperate in minimizing economic dislocation in other States fishing these stocks.

Article 67 deals with catadromous stocks, which are those, like river eels, that go down to the mouth of the river or out to sea to reproduce.

The article says that the coastal State in whose waters catadromous species spend the greater part of their life cycle shall have responsibility for the management of these species and shall ensure the ingress and egress of migrating fish. According to the Convention, harvesting of catadromous species shall be conducted only in waters landward of the outer limits of exclusive economic zones.

As the article stands, there is no exception that would allow for harvesting these species outside zones of national jurisdiction, as in the case of anadromous species (which could be simply a reflection of the radius of distribution of catadromous species, among other things).

The first concern of the Conference convened for July emerges from this analysis of the provisions of the Convention. Even though the text of the resolution and the later editorial directive could use the term straddling to refer exclusively to paragraph 2 of article 63, it seems that anadromous species should be included in the agenda of the conference, given the exceptional hypothesis that they can be harvested in areas of the high seas.

With respect to the provisions referring to the high seas, specifically section 2 on the conservation and management of the living resources of the high seas, five articles provide the context in which the right to fish in that area is exercised.

Article 116 (right to fish on the high seas) recognizes the right that all States have for their nationals to engage in fishing on the high seas, subject to their treaty obligations, **THE RIGHTS AND DUTIES AS WELL AS THE INTERESTS OF COASTAL STATES PROVIDED FOR, INTER ALIA, IN ARTICLE 63, PARAGRAPH 2, AND ARTICLES 64 TO 67**, and the provisions of the same section of part VII.

Article 117 (duty of States to adopt with respect to their nationals measures for the conservation of the living resources of the high seas) establishes the obligation of States ("**STATES HAVE THE DUTY**" (emphasis added)) to adopt with respect to their nationals such measures as may be necessary for the conservation of the living resources on the high seas, and to cooperate with other States in adopting those measures.

Article 118 (cooperation of States in the conservation and management of living resources) says that States **SHALL COOPERATE** with each other in the conservation and management of living resources in the areas of the high seas, adding that States whose nationals exploit identical living resources, or different living resources in the same area, **SHALL ENTER** into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall also, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end.

Lastly, article 119 (conservation of the living resources of the high seas) refers to measures to determine the allowable catch and establish other conservation measures, mentioning the obligation of the States to take measures, on the best scientific evidence available, to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by **RELEVANT ENVIRONMENTAL AND ECONOMIC FACTORS, AND TAKING INTO ACCOUNT FISHING PATTERNS, THE INTERDEPENDENCE OF STOCKS AND ANY GENERALLY RECOMMENDED INTERNATIONAL MINIMUM STANDARDS, WHETHER SUBREGIONAL, REGIONAL OR GLOBAL**.

The article also introduces a concern for associated or dependent species, with a view to maintaining or restoring populations above levels at which their reproduction may become threatened.

It also establishes the obligation to exchange available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks and ensure that conservation measures and their implementation do not discriminate against the fishermen of any State.

2. The Third United Nations Conference on the Law of the Sea

The present text of the Convention, as mentioned above, resulted from a complex negotiation during various sessions of the Conference; therefore it is worthwhile analysing how the issue was treated over the nine years that the sessions lasted.

The question of the upcoming Conference was handled —during the Third United Nations Conference on the Law of the Sea— by the Second Committee, presided over respectively by Ambassadors Reynaldo Galindo-Pohl of El Salvador and Andrés Aguilar of Venezuela.

The list of issues submitted to the consideration of the Third United Nations Conference on the Law of the Sea originated in a series of General Assembly resolutions from the time when the issue of the

peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction was first placed on the agenda of the General Assembly. The General Assembly dealt with the issue in its twenty-second session and adopted resolution 2340 (XXII), which establishes an ad hoc committee composed of 35 States to study the peaceful uses of the seabed and the ocean floor beyond the limits of national jurisdiction.

Pursuant to the committee's report, the General Assembly, in its twenty-third session, adopted on 21 December 1968 resolution 2467 (XXIII) establishing a Committee on the Peaceful Uses of the Seabed and Ocean Floor beyond the Limits of National Jurisdiction, ultimately composed of 91 members.

On 17 December 1970 the General Assembly adopted resolution 2750 (XXV), which in part C decided to convene another conference on the law of the sea in 1973 and instruct the Committee to prepare for the conference.

The conference would be responsible for establishing an international regime—including an international machinery—for the area and resources of the seabed and ocean floor, and the subsoil thereof, beyond the limits of national jurisdiction, a precise definition of the area, and a broad range of related issues including those concerning the regimes of the high seas, the continental shelf, the territorial sea (including the question of its breadth and the question of international straits) and contiguous zone, fishing and conservation of the living resources of the high seas (including the question of the preferential rights of coastal States), the preservation of the marine environment (including, *inter alia*, the prevention of pollution and scientific research (United Nations, 1975f).

The first substantive session, the second of the Conference, was held in Caracas 20 June-30 August 1974.

When the session turned to the subject of the high seas, it was pointed out that the regime for the high seas was based on customary laws, many of which had been codified in the 1958 Convention of the High Seas, which contained provisions compatible with the reality that the conference was dealing with. However, issues had to be discussed and resolved, such as the limits of the territorial sea, FISHERIES MANAGEMENT, THE INTERESTS OF COASTAL STATES IN THAT AREA OF THE HIGH SEAS ADJACENT TO THEIR ECONOMIC ZONES WITH RESPECT TO THE PRESERVATION OF SPECIES AND PROTECTION OF THE MARINE ENVIRONMENT, among others.

The representative of El Salvador, for example, stressed the need for high-seas fisheries to be governed by regulations adapted to the new circumstances created by current technological development, which is threatening to exhaust species.

Some held that such regulations could be based on the provisions of article 2 of the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas, which understood the "conservation and the living resources of the high seas" to refer to measures that lead to the optimum constant yield of those resources, so that the supply of food and other marine products is increased as much as possible. The first thing that needs to be ensured in formulating conservation programmes is the food supply for human consumption.

The text of the 1958 Convention states that States will be obligated to adopt or collaborate with other States in adopting such measures with respect to their nationals as may be necessary for the conservation of the living resources on the high seas.

It was also held that such goals called for the prohibition of depredatory fishing methods and the organization of fishing on the basis of objective scientific data, in order to avoid overexploitation. Arguments were presented for the need to ensure access to all States, with no discrimination, to fishing on the high seas, with the proviso that that should not lead to overexploitation, exhaustion or destruction of the resources.

Mention was also made of the need for special regulations for certain anadromous species, in recognition of the investment of some States to provide suitable conditions for reproduction, taking into account that those species are migratory and also grow and feed in the high seas. A series of proposals was presented for the treatment of anadromous species, which will be discussed below.

Some African States stated that the conservation system of that time was inadequate, since it emphasized the application of international regulations in both the Seabed Committee and the First Conference. That could suggest that it was presupposed that those international regulations were functioning well, when in fact the contrary was true. According to the representative of Tanzania, for example, the so-called international regulations were made by supposedly "international commissions" and applied under "international conventions" which were not strictly speaking international in the sense given to the term by the Third Conference. The representative of Tanzania held that such commissions and conventions were useful for only a few States whose main interest was not conservation but rather the exploitation of a region's stocks. Some fishing commissions or conventions were called regional, but the term regional also had different connotations, since some States were active in virtually all the regions, making it difficult to believe that they could be concerned about conservation in countries thousands of miles away, in regions other than their own. Their main motive was purely and simply exploitation, and the objective of conservation was mentioned only after having exploited resources to the point where they were seriously depleted.

Mention was also made of the need to reverse this trend, so that conservation become the primary objective. Scientific research was the basis for formulating and applying international regulations, but such research was carried out under the auspices of the States, which meant that even though most of the scientists did respectable work, at times they were restricted by terms of reference designed to serve purely national interests.

The same African representative emphasized that the real power of enforcement was in the hands of the flag States, and added that to that date their action had been quite poor. So many obstacles had been placed on inspection procedures that they had become insignificant, and inspectors were biased in their action and protected national interests more than those of the international community. Moreover, their functions were normally limited to seeing if an offense had been committed, when a more important obligation would be to prevent offenses from being committed. He said that inspectors were not allowed below deck nor to inspect the fishing equipment being used. He also mentioned the fact that when the enforcement procedures of some "international commissions" were examined, it was shown that some of the people who emphasized the importance of international regulations were also the ones who refused to allow their vessels to be duly inspected.

According to that same representative, in the few cases in which violations were reported, the action to be taken was left to the flag State. Besides the difficulty of taking legal action in a forum far from the scene of the infraction, the authorities of flag States had also proven unwilling to take measures to encourage conservation. Indeed, the behaviour of flag States had been such that fishermen were induced to act in ways that bordered on piracy. Fishermen did not comply with regulations on allowable

catches on the high seas; the institution of closed seasons or areas was impractical, as was the monitoring of fishing equipment and techniques. Fishing on the high seas had become piracy and plunder.

The representative of Tanzania ended by calling for urgent and effective action at the international level, so that the management of the living resources of the high seas be placed under effective international control.

Along the same lines, other representatives of developing countries held that the competency of the projected international seabed authority should not be limited exclusively to the seabed, but should also include the adjacent waters and its resources, and the president of the Committee, Andrés Aguilar of Venezuela, recognized that a trend had arisen in the discussion in this regard.

The representative of the United Kingdom argued that the current regime, established in the Convention of the High Seas and based on the freedom of the seas, had served the international community well, despite some criticisms voiced at the Conference. He recognized, however, that the obligations of flag States should be spelled out in greater detail.

The representative of the former Soviet Union emphasized the representativeness of the 1958 Convention of the High Seas, stressing the importance of the freedom of the high seas and accepting the need for new measures for the conservation of living resources.

With respect to the criticism aimed at international fisheries commissions, he said that serious criticism had to be based on facts and figures. He ended by stating that his delegation was in favour of a regime that avoided any interference with the freedom of the high seas.

The representative of Peru mentioned that States should respect the rights of the international community in the international zone in the same way they respect the rights of coastal States in their 200-mile zone of national jurisdiction. In his judgement, the high seas were not "rex nullius" but rather "res communis", and the proposed regime should include suitable provisions for managing those areas. In the proposals presented by the representatives of Ecuador, Panama and Peru to the Seabed Committee in 1973, the international sea was defined as that part of the ocean not subject to the sovereignty and jurisdiction of coastal States and which should be open to use by all States, be they coastal or land-locked, for peaceful purposes. In the judgement of the representative of Peru, the term high seas should be used instead of the international sea. Measures should be adopted to ensure suitable international control over fisheries, in order to preserve natural resources in the international sea.

Proposals on the high seas were presented in that session, such as that contained in the document (A/CONF.62/C.2/L.68) prepared by the representative of El Salvador, which recognizes the right of citizens of all States to fish the high seas, with the obligation to coordinate their activities on the high seas in order to ensure the conservation of living resources, the equitable participation in the utilization of such resources, the organization of research studies and systems, the regulation of fishing and the use of devices suited to the maintenance of the optimum sustainable yield of such resources (United Nations, 1975b).

The representative of El Salvador said that regulating the high seas did not mean the disappearance or annihilation of freedom, but rather order and the equitable coordination of the interests of the numerous users and beneficiaries according to principles guiding current international relations, mainly the legal equality of all States, non-discrimination, reasonable access to natural resources and the recent

principle of international distributive justice. Thus freedom, in the sense of freedom of action, would be spelled out as regulated powers, reflecting cooperation among States and the exercise of an authority granted, protected and preserved by the international community. The process of elaborating a new regime for the high seas had begun in 1958 with the adoption of the Convention on Fishing and the Conservation of the Living Resources of the High Seas, but unfortunately little progress had been made because of the lack of mechanisms with enough teeth to enforce regulations. That Convention was shaped by national interests in conflict and open competition, whereas current thinking calls for cooperation among States. Thus the high seas become the international sea to the extent that the old name takes on a new meaning or is replaced in order to emphasize a break with the past, under the rule of freedom of action, and the future under the rule of rationally regulated freedom.

The representative of the United States of America proposed a draft article to be included in a chapter on the high seas — living resources (United Nations 1975a). The proposal states that "States shall CO-OPERATE with each other in the exploitation and conservation of living resources in areas beyond the economic zone of coastal States. States exploiting identical resources, or different resources located in the same areas, shall enter into fisheries management agreements, and establish appropriate multilateral fisheries organizations, for the purpose of maintaining these resources" (emphasize added). It goes on to say that States "have the duty to apply...for such living resources" a series of conservation measures which in general correspond to the present text of article 119.

Germany, Belgium, Denmark, France, Ireland, Italy, Luxembourg, the Netherlands and the United Kingdom of Great Britain and Northern Ireland submitted a working paper on the high seas (United Nations, 1975h) to the Second Committee, in which the sponsors hold that the principles and provisions contained in the 1958 Geneva Convention on the High Seas are valid and must remain in force for areas beyond the territorial sea, and should be incorporated in any new comprehensive convention on the law of the sea adopted by the Third Conference, developing thereafter a series of provisions on the obligations of the flag State, but with no reference to fishing.

Other statements dealing with fishing on the high seas relate to specific species such as highly migratory species. In this regard, the representative of Ecuador said that although highly migratory species such as tuna in international waters should be under the jurisdiction of a body like the International Seabed Authority, it was also true that they should fall under the sovereignty of a State when they enter their jurisdictional waters and should be harvested according to standards established by that coastal State, which should take into account the pertinent recommendations of international bodies. Within jurisdictional waters, fish are undoubtedly under the jurisdiction of the coastal State, and with all due regard for the need for international cooperation —indeed necessary for the conservation and development of the species and its priority use for the benefit of the coastal States and only afterwards by third States in conformity with the regulations of the coastal State, the rights of sovereignty should not be replaced.

Australia and New Zealand presented a draft article on highly migratory species, establishing that any coastal State in whose economic zone or other waters highly migratory species are found or taken and any State whose vessels take such species may request the opinion of the Director-General of the Food and Agriculture Organization of the United Nations (FAO) as to whether proper management of such species requires the setting up of an appropriate international or regional organization. The draft article further points out that all States will cooperate fully with an organization established and empowered to issue regulations to conserve and manage the species concerned, including the allocation

of national quotas; and pointing to the need to issue other provisions concerning the application of regulations beyond the economic zone.

Canada, Denmark, Ireland and Japan, respectively, presented proposals concerning anadromous species.

The draft article presented by Denmark stated that the exploitation of anadromous species shall be regulated by agreement among interested States or by international arrangements through the appropriate intergovernmental fisheries organization, with all States having an equal right to participate in such arrangements and organizations.

The proposal of Ireland held that the right of exploitation of stocks of anadromous species shall be exercised only: i) within waters under the jurisdiction of the State of origin; ii) within waters under the jurisdiction of other coastal States, subject to such conditions and regulations as shall be agreed between such coastal State and the State of origin, taking into account the special role of the State of origin in the conservation of the species.

The proposal included an explanatory note that emphasized that anadromous fish, such as salmon, are completely dependent on fresh water rivers for their existence. The note pointed out that only in rivers that are unpolluted and in which suitable stretches of gravel and water flow conditions exist can the spawning and hatching-out take place. If, then, the stock is to survive, positive steps are to be taken to ensure that works carried out on the rivers, for irrigation, power development or other purposes, do not impede the migration of the parent fish upstream or that of the young fish downstream, and that the river water remains unpolluted. This, in the majority of cases, entails stringent restrictions on other uses of the waters and expenditures of large sums of money by the State and by industry, as well as sacrifice in refraining from using the available water supply otherwise. The note ends by stating that if the sustainable yield of the stocks of salmon is to be maintained at the optimum level, captures on the high seas and within the coastal waters of States other than the State of origin should at the least be severely restricted, otherwise a State of origin cannot be expected to spend money and make sacrifices to ensure the survival of the species.

Japan formulated a proposal that clearly aimed to strengthen the interests of States that fish anadromous fish stocks, by stating that "The conservation and management of anadromous species shall be regulated through arrangements among the States participating in the exploitation of such species and, where appropriate, through regional intergovernmental organizations established for this purpose". The draft goes on to say that in arrangements for regulating the exploitation of such species "the special interest of the coastal State, in whose fresh or estuarine waters anadromous species spawn, shall be taken into account".

The goal here was to cull from this document the main trends of the Conference in relation to anadromous species, since as mentioned above, when anadromous species migrate to the high seas, they are clearly straddling stocks, and in this sense they, like other stocks, should be covered by protective measures.

At the end of the second session of the Conference, the Rapporteur presented a report on the activities of the first and second sessions, including the activities of the Second Committee during those sessions, adding a working paper entitled "main trends", which gathered the formulas generally acceptable from the proposals presented either to the Committee on the Peaceful Uses of the Seabed and the Ocean

Floor beyond the Limits of National Jurisdiction or to the Third United Nations Conference on the Law of the Sea. The report stated that the inclusion of these formulations did not imply any opinion on the degree of support they have commanded nor that all the proposals from which these formulations have been taken have been discussed in the Second Committee. It also clarified that the inclusion of a provision, whether or not only one formula appears, did not necessarily imply that there were no other opinions concerning those questions or that all or most delegations agreed on the necessity for such a provision.

The paper stated that its purpose was to focus the discussion of each of the items allocated to the Second Committee on the fundamental issues, leaving until later the consideration of supplementary rules and drafting points, therefore it did not include all the proposals contained in the reports of the seabed Committee or submitted to the Conference.

This procedure produced a draft text, containing alternatives for different articles and providing a useful tool for the future work of the Second Committee and the gradual shaping of what would later be known as the informal negotiating text, the direct source of the final text of the Convention.

This text, in Part VII, number 4 (The High Seas and Transmission from the High Seas), includes nine provisions, some of them with different formulas.

The first provision states that "The coastal State has a special interest in maintaining the productivity of the living resources of the sea in an area adjacent to the patrimonial sea".

The first formula for the second provision states that "Fishing in the international sea area shall be properly regulated to prohibit indiscriminate fishing and other violations of rules and regulations for the conservation of the fishery resources".

The second formula states that "Fishing and hunting in the international seas shall be subject to regulations of a world-wide and regional nature.... The aforesaid activities shall be carried out by techniques and methods which do not jeopardize adequate conservation of the renewable resources of the international seas".

Finally, formula C is the one which most resembles the present text of articles 118 and 119, with the difference that the language of the formula was stronger, affirming that "States...have the duty to apply the following conservation measures for such living resources", and then reproducing the measures contained in article 119.

Another provision says that "Regulations adopted to regulate fishing and hunting in the international seas shall ensure the conservation and rational utilization of living resources and the equitable participation of all States in their exploitation, with due regard to the special needs of developing coastal countries and land-locked countries", and that "Such regulations shall establish conditions and methods of fishing and hunting which prevent the indiscriminate exploitation of species and avert the danger of their extinction".

The possibility was also foreseen that where a State had good reason to believe that vessels of the flag of another State had violated fishing and hunting regulations applicable to the international seas, the former State may request the flag State to take the necessary steps to punish those responsible.

Another formula reproduces a proposal which was also included under the title of exclusive economic zone, which recognizes the possibility that the coastal State inspect and arrest violating vessels seaward of its economic zone in the case of anadromous species, to ensure compliance with its laws and regulations, which would function as a kind of right of pursuit beyond the exclusive economic zone.

Thus concludes the first two sessions of the Conference, with the proposals and main trends having been analysed.

During the third session of the Conference, which took place in Geneva between March and May 1975, the president presented what was called the single negotiating text, which gathered some of the tentative agreements on provisions concerning the competence of the Committee, and which would later, together with the work of the other Committees, consolidate what would eventually be known as the "informal integrated negotiating text", the immediate forerunner of the draft of the Convention on the Law of the Sea.

That informal integrated text contained in its section 2, Part VII virtually the same provisions as the present text of the United Nations Convention on the Law of the Sea.

During the seventh session, Ecuador presented an informal suggestion on highly migratory species, proposing a version of article 64 (Platzöder, 1982b) in which the coastal State and other States whose nationals fish in the region for the highly migratory species listed in annex I to the Convention shall cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone, which is identical to the present text of the article.

The proposal goes on to say that unless otherwise agreed by the coastal State, its consent shall be required for the adoption of measures applicable in its exclusive economic zone.

It also states that the coastal State shall be competent to enforce within its exclusive economic zone compliance with the measures in question by all fishermen. The States members of the appropriate international organization shall agree on effective arrangements for ensuring compliance, with respect to the members, with the agreed measures beyond the exclusive economic zone and shall be responsible for compliance with the measures in question by their nationals if they fish for such species beyond the said zone. If the appropriate international organization should determine that a resource is being fully exploited, it shall prescribe the catch allowable in the entire region through which that species migrates. If the volume of the catch should exceed such limit, the States members shall agree on the measures necessary for ensuring that fishing in the region remains within that limit.

During the eighth session in 1979, Argentina presented an informal suggestion for article 63, paragraph 2, namely to replace the word "seek" by "be obliged"; and to add, at the end of the paragraph, an additional text specifying the measures to be included in the respective agreements and stating that, if no agreement is reached within a reasonable period of time, the State fishing for the stocks mentioned in paragraph 2 of the article should abide by the regulations issued by the coastal State for the conservation of such stocks (United Nations, 1980).

During the ninth session, which took place in 1980, Argentina presented a new proposal related to paragraph 63.2 (Platzöder, 1982a) which added to the present text of paragraph 2 that if the coastal State and the States fishing for such stocks in the adjacent area do not reach an agreement within a

reasonable period, and the proceedings are instituted before the appropriate tribunal provided for in article 286, that tribunal shall determine the measures to be applied in the adjacent area for the conservation of these stocks. Such measures shall be compatible with those applied to identical stocks by the coastal State within its exclusive economic zone. Pending decision of the tribunal on the provisional or definitive measures to be applied, and in case of an imminent risk of depletion of the stocks, the measures being applied by the coastal State within its exclusive economic zone for the conservation of the stocks will be provisionally applied, mutatis mutandis, to the adjacent area, by States fishing in that area.

As the representative of Argentina later explained, the latter proposal gathered the comments made during the previous session, with a view to bringing the different positions closer together. The representative of Argentina pointed out that the fact that some 30 delegations supported the text demonstrated that their concern was shared by a large segment of the international community. He also added that for that reason, the door must be kept open for efforts based on the text or on others which had been circulated in the Second Committee, to work out a formula offering a better chance of consensus than the present text, since the latter had proved to be unacceptable to more than half of the delegations which have expressed an interest in the problem.

Later, when the ninth session resumed, a revision of the previous proposal was presented, sponsored by Argentina and other countries (Platzöder, 1982c), changing it to read where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent areas shall, by mutual agreement, either directly or through appropriate subregional or regional organizations, adopt such measures as may be necessary for the conservation of these stocks in the adjacent area. In the event that agreement on such measures is not reached within a reasonable period, and proceedings are instituted before the appropriate tribunal pursuant to article 286, that tribunal shall determine the measures to be applied in the adjacent area for the conservation of those stocks. If definitive measures cannot be determined within a reasonable period, the tribunal, upon request of any of the interested States, shall determine provisional measures for that same area. In establishing definitive or provisional measures, the tribunal shall take into account those measures applied to the same stocks by the coastal State within its exclusive economic zone and the interests of other States fishing these stocks.

This proposal, with slight variations, was contained in an annex to a statement of Canada presented in the first part of the ninth session (United Nations, 1981b), which expressed the concern of that Government about protection on the high seas for stocks which overlap the 200-mile limit. The statement went on to say that together with a number of other States they considered the existing provisions in the revised negotiating text to be inadequate to provide for the conservation of those stocks. In that regard, the statement said that the Government of Canada had welcomed and supported the proposal of Argentina in the Second Committee to amend the text in a manner which would provide adequate protection for those stocks, noting the support of 30 countries for that proposal and the critical comments of another 20 countries. Therefore, the Government of Canada tried to take those critical comments into account in a compromise proposal annexed to the statement.

The statement also said that the question must remain open for consideration intersessionally and at the Geneva session, before the text is formalized, adding that the opposition to a change in that article was short-sighted. Leaving those resources open to plunder, on a come-one-come-all basis, would serve neither the interests of countries which fish on the high seas nor those of the world community looking to the sea for food.

The Canadian delegation believed that a balanced text could be developed along the lines of the Canadian proposal, which would protect endangered fish stocks by requiring an international tribunal to take action in response to a threat to conservation, and give due regard to the most important interests concerned.

Lastly, the statement asked those countries which had opposed any change in article 63 to reconsider their positions, and to be prepared to agree to whatever changes were necessary to provide for the conservation of fish stocks.

During the first part of the eleventh session held in New York from 8 March to 30 April, a proposal was presented at a plenary meeting of the Conference which reproduced the one presented to the Second Committee when the ninth session resumed (C.2/Informal Meeting/54/Rev.1, 14 August 1980), which had fewer sponsors (United Nations, 1982a).

At the request of the president of the Conference, the sponsors of this latter proposal did not demand that the proposal be voted on.

Some later attempts were made in the Conference to confer more rights to the coastal States with respect to straddling stocks. Proposals were made in informal negotiations to include an explicit reference to the "special interest" of coastal States with regard to fish stocks whose area of distribution overlapped their exclusive economic zones and the high seas (United Nations, 1975c).

The Group of 77 also proposed that a "special interest" of the coastal State should be recognized beyond the 200-mile limit. That proposal was presented at the last session of the Conference by Australia, Canada, Cape Verde, Island, Philippines, Sao Tome and Principe, Senegal and Sierra Leone. It added to the present text of paragraph 63.2 other paragraphs that said that in the case of not reaching an agreement within a reasonable period on such measures, and the proceedings as provided for in article 286 had been instituted, that tribunal shall determine which measures are to be increased in the adjacent area for the conservation of such stocks.

If definitive measures cannot be adopted within a reasonable period, the tribunal, at the request of any of the concerned States, shall establish provisional measures for that area. When establishing definitive or provisional measures, the tribunal shall take into account the measures applied to that stock by the coastal State within its exclusive economic zone and the interests of other States that fish such stocks.

At the session in which the Convention was signed, the representative of Ecuador held that article 64, by establishing a regime for the conservation and optimum use of highly migratory species, unequivocally made the provisions of Part V of the Convention applicable to such stocks, since there was obviously no difference with respect to the content and scope of the sovereign rights exercised by the coastal State over all natural resources, living and non-living, whatever their habits, existing in the waters, seabed and seabed subsoil, up to 200 miles (United Nations, 1982b).

These last statements on the issue can be found in the verbatim records of the signatory session of the Convention, during the last part of the eleventh session, held in Montego Bay, Jamaica, 6-10 December 1982.

The representative of Tanzania, for example, lamented in his final statement that the high seas were not included in the common heritage of mankind (United Nations/ Third Conference on the Law of the Sea, 1983d).

The representative of Cape Verde said that the legal regime of the exclusive economic zone under the United Nations Convention on the Law of the Sea also protected the conservation of straddling stocks. In accordance with all the relevant provisions of the Convention, where the same stock or stocks of associated species occurred both within the exclusive economic zone and in an area beyond and adjacent to the zone, the States fishing for such stocks in the adjacent area were duty bound —according to that delegation— to enter into agreement with the coastal State upon the measures necessary for the conservation of such stock or stocks of associated species (United Nations/Third Conference on the Law of the Sea, 1983c).

The representative of Costa Rica said that that country took special interest in the rational exploitation of highly migratory species, since tuna was one of the riches of its exclusive economic zone in the Pacific. For the Government of Costa Rica, the provisions of its national law requiring that foreign vessels pay for fishing permits to fish in its exclusive economic zone applied also to fishing for highly migratory species, which was in conformity with articles 62 and 64 of the Convention.

The representative of the Republic of Korea said that the successful implementation of the Convention depended on effective cooperation unfettered by political or ideological considerations, especially in areas such as conservation of fishery resources, protection of the marine environment, deep seabed mining and delimitation of the continental shelf and the exclusive economic zone.

The representative of Germany emphasized that as a geographically disadvantaged State but a State with important interests in the traditional uses of the seas, it remained committed to the principle of the freedom of the high seas (United Nations, Third Conference on the Law of the Sea, 1983b). According to that country, that principle had been reaffirmed and incorporated in the provisions of the Convention on the Law of the Sea, which would therefore have to be interpreted to the furthest extent possible in accordance with that principle.

The representative of New Zealand, echoing the concerns of the small Pacific island countries, said that the major living resources of their exclusive economic zones was highly migratory species of fish. The acquisition of jurisdiction over those fish had been coupled with a clear willingness to cooperate with one another in their management and a South Pacific Forum Fisheries Agency had been established for that purpose. Cooperation had also been developing with those distant-water fishing nations that were prepared to respect the sovereign rights of Pacific island countries over all living resources within their zones, including tuna, in accordance with customary international law and the terms of the Convention. He ended by saying that those small countries lacked the ability to enforce their resource jurisdiction. They would obtain the full benefit of their exclusive economic zones only if other, more powerful States were prepared to respect their international obligations in that regard (United Nations, Third Conference on the Law of the Sea, 1983b).

III. FROM THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA TO THE UNITED NATIONS CONFERENCE ON ENVIRONMENT AND DEVELOPMENT

International and regional efforts get under way.

1. The FAO Strategy on fisheries management and development

Given these events and before analysing the context in which the international community could renew its thinking about high-seas fishing, the World Conference on Fisheries Management and Development, held in 1984, should be analysed.

The Strategy (FAO, 1984) adopted at the end of the Conference contains five basic programmes of action:

1. The planning, management and development of fisheries;
2. The development of small-scale fisheries;
3. Aquaculture development;
4. International trade in fish and fishery products;
5. Promotion of the role of fisheries in alleviating under-nutrition.

The introduction to the Strategy mentions the new regime for ocean resources inaugurated by the United Nations Convention on the Law of the Sea and the practices of States from the mid-1970s onward, which have given rise to a general consensus concerning the faculties of the coastal State to manage fisheries within its jurisdiction.

The Strategy recognizes the need for Governments to examine their individual and collective strategies and policies for the management and development of fisheries. In a period of change like the one in which the Strategy was adopted, the challenge was to provide a new basis for the rational management and use of the world's fishery resources, with due attention to the requirements of the new fishery regime.

The strategy recognized that the powers of coastal States over resources which, in most cases, were previously accessible to all and which at present occur in exclusive economic zones, are not automatically a guarantee of rational management and optimum use of the resources. It noted that there were problems pending concerning the exercise of those powers, which called for a more efficient method of management. Another pending problem was identified with respect to those stocks that occur within the exclusive economic zones of two or more coastal States or both within an exclusive economic zone and in an area beyond it and adjacent to it; or when it is a question of highly migratory species, or inland waters species which, at different times, are found under the jurisdiction of more than one country.

The Strategy identified eight years ago the pending questions which still today remain unresolved, such as straddling stocks and highly migratory species.

These issue would fall within the programme of action on fishery planning, management and development, which aims to increase international collaboration, especially with respect to stocks that occur within the exclusive economic zones of two or more coastal States or both within an exclusive economic zone and in an area beyond it and adjacent to it; or highly migratory species or inland waters species which, at different times, are found under the jurisdiction of more than one country.

2. The regional scenario

With the convening of the Conference, the concerns of Latin America and the Caribbean, expressed in different venues, must be reviewed, with a view to extracting a set of common principles that the region might bring to the next negotiation. The different positions taken during the Third United Nations Conference on the Law of the Sea should also be looked at, since similar patterns will probably also emerge in the negotiations.

Among the principles that Latin America and the Caribbean wanted to incorporate in the text of Programme C of chapter 17 of Agenda 21, and which were discarded due to pressure from countries like the United States and the European Community, are the following:

- Prevent high seas fishing from having negative effects on living marine resources that occur under the sovereignty and national jurisdiction of coastal States;
- Arrive at agreements on the necessary measures applicable to the high seas to guarantee the sustainable use of straddling stocks; such measures should be compatible with the measures applied by coastal States with their zones of sovereignty and jurisdiction;
- Coastal States have responsibility and special interests for that part of the stock that occurs outside their zones of sovereignty and jurisdiction;
- States whose vessels take stocks of highly migratory species on the high seas and coastal States in whose zones of sovereignty and jurisdiction those stocks occur should agree on measures to conserve and manage such stocks on the high seas;
- Measures referred to in the above paragraph should fully recognize the sovereign rights of coastal States in their zones of sovereignty and jurisdiction, and take into account the special interests of those States in such stocks outside those zones, thus avoiding negative repercussions that could affect such stocks inside the zones of sovereignty and national jurisdiction.

Several different instruments in the region incorporate these principles in one way or another.

In the Tlatelolco Platform on Environment and Development (ECLAC, 1992), for example Latin American and Caribbean Governments, "Urge the international community to create co-operation mechanisms for the conservation and optimal use of the marine resources found within the zone of sovereignty or jurisdiction of two or more riparian States, or on the high seas".

Later, the Expert Group on Ocean Policy Aspects of the Tlatelolco Platform, convened by ECLAC to spell out the Platform's statements on ocean policy, stated that a model system for monitoring and controlling fishing on the high seas is essential. In this regard, it is absolutely necessary that those

countries with activities on the high seas provide reliable statistics for suitably monitoring fisheries resources to the riparian States that fish the same or similar stocks.

The same document (ECLAC, 1991) states that in the case of existing stocks in zones of national jurisdiction and in the adjacent area on the high seas, the conservation and utilization regime applied to the high seas portion of such species should be consistent with the one applied by the coastal State in its zone of jurisdiction and which, in this regard, should pay special attention to the provisions of the United Nations Convention on the Law of the Sea concerning conservation and management of living resources in the exclusive economic zone and the high seas, as well as the contents of the Strategy on Fisheries Management and Development, adopted by FAO at its 1984 Conference.

The experts also agreed that mechanisms needed to be defined for compensating coastal States for exploitation by third States of stocks found in their zone of national jurisdiction and on the high seas.

Lastly, it was agreed that progress had to be made in formalizing a global agreement on fisheries management that adopted holistic criteria for assessing the environmental impact of high seas fisheries and the precautionary principle for the protection and management of fishery resources. According to these criteria, no ocean fishing can be begun or expanded without first having scientifically based guarantees that it will have minimum effects on the stability of resources and the remaining components of the ecosystem.

Four regional meetings preparatory to the United Nations Conference on Environment and Development stressed the importance of efficient regimes for conserving and managing shared fishery resources.

At the end of the colloquium on the conservation of living resources in high seas zones adjacent to jurisdictional seas, a component of the International Meeting of Legal Experts on Latin America and the United Nations Convention on the Law of the Sea, held in Santiago, Chile, 13-17 May 1991, the so-called "Declaration of Santiago" was adopted, based on the United Nations Convention of the Law of the Sea and the conclusions of the conference held in 1990 in Saint John's, Newfoundland.

The Conference on the Conservation and Management of the Living Resources of the High Seas, convened by the Government of Canada, 5-7 September 1990, adopted a series of conclusions which have generally been accepted by later meetings.

The Declaration of Santiago reiterates the provisions of section 2 of the part on the High Seas of the United Nations Convention on the Law of the Sea, entitled Conservation and management of the living resources of the high seas, considering it to be undoubtedly a solid framework but one which unfortunately is not being implemented as expected.

The Declaration refers to unregulated fishing, reflagging, fishing with gill-nets, the lack of controls and surveillance, etc.

It goes on to postulate a set of principles and proposed measures to eliminate such practices and install an effective regime for conserving the living resources of the high seas.

Concern was expressed during the Consultation on Sustainable Development and Environment in the Agriculture, Forestry and Fisheries Sectors in Latin America and the Caribbean (FAO, 1992a) about depredatory fishing on the high seas of highly migratory species and straddling stocks in the area adjacent to the exclusive economic zone, recommending that these concerns be addressed by the relevant agencies, in accordance with the principles of the 1982 United Nations Convention on the Law of the Sea.

Also, the coordination meeting of the Latin American riparian countries of the Eastern Pacific (CPPS/UNEP, 1992; Permanent Commission for the South Pacific/United Nations Environment Programme) reaffirmed the principle that fishing on the high seas should only be carried out in an ecologically sound manner and efficiently supervised, in order to ensure the conservation and promote the optimum use of the living resources.

The meeting reaffirmed the force of the new law of the sea, which is clearly based on the previous principles, considering the straddling, associated and highly migratory species to be in need of special measures when they are taken on the high seas, since the sovereign rights of the riparian States in their 200-mile maritime zones should be taken into account.

Support was also given to Programmes C and D of the document on the protection of oceans, all kinds of seas including enclosed and semi-enclosed seas, coastal areas and the protection, rational use and development of their living resources (Section II, chapter 17 of Agenda 21), emphasizing the importance of the texts that were then in brackets and are today suppressed, which affirmed the powers of coastal States over highly migratory species and straddling stocks.

The Latin American Fisheries Development Organization, in its report preparatory to the United Nations Conference on Environment and Development (OLDEPESCA, 1992), under the heading "conservation and sustainable use of the living resources of the high seas", calls for the application of a resolution of the Eighth Conference of Ministers, which calls on the countries of the region to completely prohibit the use of large-scale pelagic drift-nets and to continue to make efforts to establish programmes to reduce the capture and incidental mortality of non-commercial marine species, such as marine mammals.

The document also recommends requesting international cooperation for making an inventory of resources and studies to provide a rationale for a regional management of migratory species.

3. Other current international scenarios

At the international level, the International Conference on Responsible Fishing, held in Mexico, 6-7 May 1992, was a response to the concern of developing countries for the fishing practices of the industrialized countries, basically on the high seas, and the need for certain criteria common to the international community for the conservation and management of the living marine resources.

This initiative is part of the process that seeks to define certain universally accepted regulations concerning, among other things, the so-called straddling stocks, and to spell out in greater detail the provisions of the United Nations Convention on the Law of the Sea.

The objectives of the Conference were basically to:

- Reach a consensus on the need to establish a code of conduct for fishing, which would lead to respect for principles and responsible fishing and induce producer and consumer countries to adhere to it;
- Analyse the need for research and technological development for better utilization and to ensure the sustainability of resources, without environmental deterioration, and to explore ways for technology transfers and scientific and technological cooperation;
- Propose criteria for defining suitable techniques for responsible fishing and commercial practices that offer the consumer access, quality and fair price.

The Declaration of Cancún, adopted at the end of the Conference, recognizes the expansion of fisheries on the high seas over the last decade, and the fact that strategies for adopting measures for conservation, surveillance and enforcement have proven to be inadequate in many areas, since there is an overexploitation that affects the state of national fisheries that are interest for many States.

It also expresses the need for fishing to develop in the framework of an integrated and balanced system under the concept of "responsible fishing".

It further refers to the existence of measures already adopted to ensure a better relationship between fishery activities, environment conservation and biodiversity, which take into account the recommendations of the 1984 World Conference on Fisheries Management and Development.

It also highlights the contribution of the United Nations Convention on the Law of the Sea to the search for an efficient legal framework for national jurisdiction areas and the high seas.

It calls for the adoption of the principle of the sustainable use of living marine resources, encouraging the application of policies and measures that lead to a level of fishing suitable for the sustainable utilization of fishery resources, taking into account the specific characteristics of each fishery.

The Declaration makes some interesting points about "biodiversity" as a way to strengthen mechanisms for regulating fishing on the high seas specifically to protect marine biological diversity.

It also calls for bilateral, regional and multilateral cooperation to establish efficient mechanisms for regulating fisheries on the high seas, in accordance with the principles of the United Nations Convention on the Law of the Sea. It states that the freedom of States to fish on the high seas should be balanced by the obligation to cooperate with other States to ensure the conservation and rational management of the living resources, in accordance with the relevant provisions of the Convention.

The Declaration requests that FAO prepare an International Code of Conduct for Responsible Fishing.

The issue was treated at the Technical Consultation on High Seas Fisheries, convened by FAO, 7-15 September 1992.

The agenda of the Consultation included debates on statistics on the high seas, research, management and responsible fishing practices, new concepts and techniques of management, participation of the developing countries and a legal framework.

The Consultation identified a series of elements that should be taken into consideration in the preparation of a code of conduct on responsible fishing (FAO, 1992b), among them:

- Promote research leading to greater knowledge of high-seas and other stocks and sustainable development through responsible management practices and fishery operations;

- Enforce regulations controlling vessels and nationals in light of the provisions of international law and in accordance with what is stipulated in article 117 of the United Nations Convention on the Law of the Sea;

- Confront the problems of managing stocks and regulating high-seas fishing through international cooperation, in accordance with articles 63 (2), 64-67 and 118 of the United Nations Convention on the Law of the Sea, with special reference to problems of over-fishing and excessive fishing capacity on the high seas.

- Provide data to relevant regional bodies and contribute, in due manner, to surveillance, control and supervision organized at the regional level;

- Consider the possibility of elaborating appropriate procedures for settling disputes;

- Considering the impact of tariff and non-tariff barriers on international trade in fishery products and the rational use of fishery resources, take in account the relevance of agreeing on measures to promote international trade in fishery products congruent with the negotiations that are taking place in the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), with the overall principles of GATT and with the principles of responsible fishing.

The Consultation also pointed to the need for fishing on the high seas to be carried out in the framework of the United Nations Convention on the Law of the Sea, identifying a series of concepts to be considered:

- * High-seas fisheries should be in accordance with the concept of sustainable development as defined by the FAO Council in November 1988 and reflected in the outcome of the United Nations Conference on Environment and Development and in article 119 of the Convention.

It should be recalled that the Council's definition refers to the management and conservation of the natural resource base and the orientation of technological and institutional change in order to ensure the continual satisfaction of human needs for present and future generations. Such sustainable development conserves the land, water, genetic resources of flora and fauna, is environmentally rational, technically appropriate, economically viable and socially acceptable.

- * Management of fisheries in the high seas should be conducted in accordance with the concept of responsible fishing that, as stated in the Declaration of Cancún, encompasses the sustainable utilization of fishery resources in harmony within the environment; the use of capture and aquaculture which are not harmful to ecosystems, resources or their quality; the incorporation

of added value to such products through transformation processes meeting the required sanitary standards; the conduct of commercial practices so as to provide consumers access to good quality products.

- * Fisheries management should be concerned with the whole stock unit in its entire area of distribution, and take into account all sources of removals. In the case of fish stocks that occur both within the exclusive economic zone of one or more States and the adjacent high seas, management measures should be harmonized between the States involved.
- * A set of internationally agreed standards and minimum requirements for fishing on the high seas should be developed, giving priority attention to problems posed by the adoption of "flags of convenience".
- * Consumers' interests should be taken into account when designing management measures.

The Consultation noted existing management problems in certain areas of the high seas, including overcapacity and resultant overfishing. It also recognized that access to timely and reliable information on the amount of fishing effort and its distribution was essential for the management of fisheries in the high seas.

It was agreed that the concept of maximum sustainable yield continued to provide a valid reference point for management, recognizing, however, that it was necessary to develop multispecies and ecosystem management strategies.

During the preparation for the United Nations Conference on Environment and Development, a group of countries presented a management proposal based on the Declaration of Santiago.

That document, entitled "Conservation and management of the living resources of the high seas: principles and measures for an efficient regime based on the United Nations Convention on the Law of the Sea" (United Nations, 1992a), presented by a group of countries, including Antigua and Barbuda, Bahamas, Barbados, Belize, Costa Rica, Cuba, Chile, Dominica, Guyana, Jamaica, Peru, Saint Kitts and Nevis and Saint Lucia, after reiterating the relevance of the management criteria contained in the United Nations Convention on the Law of the Sea, introduces a series of principles and measures to that effect.

The principles include the following:

- a) High seas fishing should be executed only on the basis of ecologically sound practices, efficiently supervised and carried out, in order to ensure conservation and promote the optimum use of the living resources;
- b) In order to protect the sustainable conservation of the resources, fisheries management regimes should maintain the ecological relation between dependent and similar stocks, preventing any reduction of the size of the stocks below the level of their stable reproduction, while avoiding harmful impacts on the marine ecosystem;

c) States that fish a straddling stock on the high seas along the 200-mile limit of a riparian State, or highly migratory species occurring within that limit, should adopt the necessary actions for respecting the interests and special responsibilities of the riparian State with regard to that part of the stock occurring beyond the 200-mile limit, and the highly migratory species beyond that limit;

d) High seas fishing should not have any harmful consequences for the resources under the jurisdiction of the riparian States.

With respect to measures, inter alia, it establishes:

1) The duty of States to monitor and efficiently control the fishing activities of their nationals, vessels and crews, in order to ensure the conservation of the resources, compliance with relevant regulations on conservation and management, the presentation of complete reports on catches and activities, and the prevention of by-catches.

2) States should provide the competent international organizations with complete data on catches on the high seas, and scientific data on those catches. States that fish the same stocks should also cooperate by exchanging such data.

3) States should ensure that vessels authorized to fly their flags comply with conservation and management regulations adopted by competent international organizations.

4) States should establish sanctions in virtue of their internal law, adopting legal measures against their nationals, vessels and crews, for any violation of the regulations adopted by competent international organizations, or when such organizations do not exist via other international arrangements, if such violations are committed directly, and through reflagging.

5) States whose nationals or vessels fish in the same area of the high seas should cooperate to establish agreements or international organizations to ensure the sustainability of fisheries, and the application of efficient conservation and management regimes, including suitable systems, reciprocal inspection and execution and dispute-settlement mechanisms.

6) With respect to stocks that occur within the exclusive economic zone of a riparian State and in an adjacent area of the high seas, the management regime applicable to such stocks should establish the coherence of the measures applied on the high seas with those applied by the riparian State in its exclusive economic zone.

7) With respect to highly migratory species, the management regime on the high seas should fully recognize the sovereign rights of the riparian State in its exclusive economic zone and, having taken into account the special interest of the riparian State in such species while they are outside its zone, avoid harmful consequences for the resources within that zone.

4. The policy discussion in the region

On 1 December 1992, the Government of Chile convened the First Conference of Fisheries Ministers and Senior Officials of the Americas. At the end of the meeting, the president summarized the main concerns shared by the participants, which reflected the main lines of the Latin American position for the upcoming Conference (Chile, Ministry of Economic Affairs, Development and Reconstruction, 1993).

1) The recognition that the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks provides an opportunity to adopt the decisions needed for the conservation and rational use of the living resources of the high seas, which demand adequate scientific support and an appropriate framework of international cooperation.

2) Agreement that the international solution should be fully compatible with the United Nations Convention on the Law of the Sea, considered to be the expression of generally practiced international law on the subject.

3) The need for the intergovernmental conference to move towards developing an effective legal regime endowed with control mechanisms for high seas fisheries.

To meet these objectives some courses of action were proposed:

- Reinforce the organizations and regional commissions dealing with fisheries and conservation of resources;
- Improve or create efficient methods for surveillance, inspection, observation and control;
- Strengthen scientific and technological capacities as well as possibilities of access, both financial and commercial, under fair, equal conditions to international markets for marine products;
- Make conservation measures adopted on the high seas consistent with conservation programmes that already exist in the exclusive economic zones to ensure the conservation of these resources through integrated management;
- The importance of the Cancún Conference and Declaration and the relevance of the writing of a code of conduct by the FAO to regulate fishing activity on the high seas;
- The need to present a united front for the region in future negotiations on high seas fisheries, suggesting the advisability of future meetings of fisheries ministers and senior officials.

IV. THE NEGOTIATION SCENE

After outlining Latin America's preparation process in the above chapter, we turn now to the negotiation scene that can be expected at the Conference.

According to some conservative prognoses, the Conference will seek international cooperation for fisheries statistics and information on fisheries capacities on the high seas.

It is also estimated that the work of FAO on the code of responsible fishing will repeat the Declaration of Cancún, but that it will not contain provisions for enforcement.

It is further predicted that the Conference will make an effort to grant more power to regional organizations, which raises the issues of setting quotas, distributing quotas among member States and surveillance over quotas among members and non-members of the organization.

For those who hold these positions, the international scene is probably not prepared for this Conference to make significant progress on these issues, which have haunted international fisheries meetings over the years. It is predicted that these matters will be brought up and passed off to other organizations to be resolved, or that the Conference will be so polarized that some States will decide to take their own conservation measures and apply them unilaterally.

The United Nations system has also formulated some ways to facilitate a negotiation announced since the adoption of the United Nations Convention on the Law of the Sea.

A group of experts, convened in 1991 by the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, published a series of reflections on the problem, concluding with a set of guidelines which will hopefully orient the negotiation (United Nations, 1992b).

The experts estimate that the United Nations Convention on the Law of the Sea provides a framework for the exploitation of natural resources of the high seas which will ensure their effective conservation and management. This entails recognizing that the right to fish on the high seas is subject to obligations imposed by the Convention with respect to conservation and management of the resources, and in the case of straddling and highly migratory stocks, subject to the rights, obligations and interests of the coastal States in whose exclusive economic zones such stocks occur, in accordance with what is established by the Convention.

The meaning of the provisions of section 2 of Part VII of the Convention are based on this logic, and it is an essential starting point for resolving the problems connected with the application of the regime for high seas fisheries. Where exploitation conflicts with conservation and management obligations, the Convention itself tips the scale toward conservation, in the exclusive economic zone and on the high seas.

The recognition of the corresponding rights of the concerned States provides the basis for resolving the problem of straddling and highly migratory fish stocks.

The right to fish on the high seas is subject to the rights, obligations and interests of the concerned coastal States, in accordance with articles 63 (2) and 64-67 of the Convention. Thus, exercising the right to fish on the high seas requires proper recognition of these coastal State rights. The issue of the jurisdiction of coastal States over the highly migratory species found within their exclusive economic zones was settled by the Convention in favour of the coastal State, which has been consolidated by State practice.

The experts agreed that the States needed to pay more attention to developing the legal, institutional and policy aspects of conservation and management of the resources of the high seas. They thought it essential to continue to develop recommended standards for the management of high seas fisheries and to become more active in regional and subregional fisheries organizations and commissions in adopting specific management regimes for the respective fisheries.

Exploitation regimes should be based on the scientific assessment of stocks, where possible, under the joint auspices of concerned States, the determination of an allowable catch and the distribution of quotas and the establishment of national and international surveillance and enforcement mechanisms.

It was considered essential that States emphasize the collection and exchange of scientific information and catch statistics, so that the information necessary for stock assessments and management measures is available.

Among the guidelines agreed on, it was established that conservation and management obligations imposed collectively in respect of the resources of the high seas are no less than the obligations of conservation and management imposed on coastal States in respect of their exclusive economic zones.

Access by nationals of a State to any high-seas fishery is subject to fulfilment of the obligation to cooperate with other States in a regime for the conservation and management of the fishery in question and on compliance with the other provisions of section 2, Part VII of the Convention.

The obligation to cooperate, which needs to be articulated more fully by agreement between States, carries with it the obligation to enter into negotiations with other States with a view to arriving at an agreement and not merely going through a formal process of negotiation. In order to fulfil their obligation to take measures necessary for the conservation and management of high-seas fishery resources, States may have to accept reasonable proposals made in the course of these negotiations.

It was also said that failure by a State to accord proper recognition to the rights, duties or interests of a coastal State, or of other States, in respect of straddling or highly migratory species as provided for under the Convention may constitute a breach of the relevant provisions (in particular article 116) of the Convention.

It was agreed that fisheries commissions or organizations concerned with high-seas fisheries should have, inter alia, the following responsibilities:

- a) To collect and assess information and data relating to the state of fisheries;
- b) To provide a forum for member States to agree on an allowable catch;
- c) To provide a forum for agreeing on the allocation of quotas or to measures for the regulation of fishing effort.

It was agreed that increased multilateral discussion must be promoted at the level of the Committee on Fisheries of FAO, in regional organizations and elsewhere of common international standards for fisheries management.

It is advisable, as a conclusion to this first part of the study, that the region increase its technical efforts and policy dialogue, in order to reflect on the data which the first substantive session of the Conference will provide as the scene for future negotiations.

The meeting convened by ECLAC seeks to provide a meeting place to exchange impressions about the technical challenges of upcoming sessions, and this first document seeks to facilitate a review of the possible components of those challenges.

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