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**REPORT OF THE MEETING OF THE REGIONAL GROUP OF EXPERTS  
ON HIGH SEAS FISHERIES**

(Santiago, Chile, 25-26 November 1993)

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## I. ORGANIZATION OF WORK

### Place and date

1. The meeting was organized by the Economic Commission for Latin America and the Caribbean (ECLAC) as part of its activities in support of the implementation of Agenda 21 —as adopted by the United Nations Conference on Environment and Development— by the countries of the region. The aim of the meeting was to provide technical inputs to the Governments for use in negotiations in connection with the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks.

### Attendance

2. The meeting was attended by experts from Argentina, Chile, Colombia, Peru, Uruguay and Venezuela; representatives of the Food and Agriculture Organization of the United Nations (FAO), ECLAC, Latin American Fisheries Development Organization (OLDEPESCA), Permanent Commission for the South Pacific (CPPS) and Greenpeace International; and observers from the Chilean Department of Fisheries, National Fisheries Service, Ministry of Foreign Affairs and the Catholic University at Valparaíso. A list of participants is provided in annex 1 to this report.

### Agenda

3. The following agenda was adopted at the meeting:

1. The negotiating text prepared by the Chairman of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (document A/CONF.164/13 of 29 July 1993)
2. The concept of maximum sustainable yield (MSY) and other management options
3. The precautionary approach
4. Other regional priorities

Opening meeting

4. Speaking on behalf of the Executive Secretary of the Economic Commission, at the opening meeting Mr. Alfredo Gastal, Chief of the Environment and Human Settlements Division of ECLAC, welcomed the participants. It was a source of satisfaction for ECLAC to serve as a meeting place for the true agents of the various priorities set forth in Agenda 21 and to offer them an open, informal forum where experts could debate the technical issues they felt were raised by the options under negotiation at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks. ECLAC would then be able to transmit those options to the Governments in a technical document to be distributed, inter alia, to the Group of Latin American and Caribbean countries at the next substantive session of the Conference, which was scheduled for March 1994. ECLAC hoped to accompany the countries in those negotiations and to provide them with any technical inputs needed to facilitate the decision-making process for the Governments of the region. It was subsequently announced that the presiding officers for the meeting would be Patricio Pavéz of Chile, who would serve as Coordinator, and Osvaldo Mársico of Argentina, who would serve as the Rapporteur.

## II. SUMMARY OF THE DEBATES

The negotiating text prepared by the Chairman of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (document A/CONF.164/13 of 29 July 1993) (agenda item 1)

5. Mr. Roberto de Andrade, an Economic Affairs Officer with the ECLAC Natural Resources and Energy Division, presented the document and offered a technical and economic analysis of the text.

a) Status of the world's fisheries

6. In the past three years, a worldwide decline in catches had been observed, following the achievement of a level of approximately 100 million tons in 1989, according to FAO statistics.

7. Catches were diminishing in marine areas, but were steadily rising in inland waters. Between 1989 and 1991, marine catches had decreased by around 5 million tons.

8. The Latin American and Caribbean region's total catch had held steady in terms of volume, and the species being harvested were being restocked.

9. Of the 19 countries in the world that caught over one million tons each, according to FAO statistics, three —Peru, Chile and Mexico— were in the region, which attested to the importance of that sector of the economy for Latin America. Moreover, in the cases of other countries that did not have large catches, socio-cultural factors were at work that made fishing an important component of those countries' development.

10. Fishing activity on the high seas by countries possessing ocean-going fleets was following a trend similar to that observed in world totals. In 1991 the countries registering the largest catches in waters not adjacent to their exclusive economic zone (EEZ) were Russia (the former Soviet Union), Japan, the Republic of Korea and Spain.

11. The trend in developed-country versus developing-country shares of total catches was moving in the latter's favour. In 1970, the shares of the two categories were fairly even (about 50% each). In 1974, developed countries accounted for around 60% of the catch, but that situation was reversed in 1991, when developing countries took in 60% of the catch; that fact attested to the importance of the fisheries sector to those countries, which included the Latin American nations.

12. The catch of straddling fish stocks and highly migratory fish stocks had followed the same trend as world catches had. In fact, the turning point for catches of straddling fish stocks had actually come in the same year as it had for catches worldwide, i.e., 1989. As of 1991, catches of highly migratory fish stocks had still been on the rise.

13. In view of the above information, a series of problems affecting high seas fisheries could be identified and classified in the following manner:

- Insufficient regulation
- Fleets containing an excessive number of vessels
- Overexploitation of some resources
- The use of fishing gear and equipment that was inappropriate for selective harvesting
- An increase in by-catches
- A lack of sufficient reliable data and information on the main resources of the high seas
- Insufficient scientific information on the main species
- The difficulty of monitoring fleets operating in that marine environment.

An outline of the negotiating text is provided in annex 3.

b) General discussion of the negotiating text prepared by the Chairman of the Conference (document A/CONF.164/13)

#### General aspects

14. The text was a satisfactory consolidation of the main positions and concerns relating to high seas fisheries of straddling fish stocks and highly migratory fish stocks.

15. The negotiating text did not prejudice the ultimate character of the document to be produced, which might eventually take the form of a binding instrument (convention), a declaration of principles or general guidelines.

16. The negotiating text sought to give effect to the United Nations Convention on the Law of the Sea (UNCLOS) of 1982 and the principles of international law set forth therein.

#### Specific aspects

17. The conservation and management measures mentioned in the document included the elements necessary to arrive at an agreement regarding straddling fish stocks and highly migratory fish stocks. That part of the document did, however, need to be expanded and set out in greater detail, and a section on arrangements for scientific research needed to be added.

18. The high seas were the area in which those measures were to be applied, and their application should in no way affect the sovereign rights of the coastal State for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, in its exclusive economic zone.

19. As stated in the report of the Expert Group on Ocean Policy Aspects of the Tlatelolco Platform, convened by ECLAC and the United Nations Environment Programme (UNEP) in July 1991, provisions applying to the conservation and utilization of the portion of the high seas occupied by straddling fish stocks should be consistent with those applied by the coastal State in areas under its jurisdiction.

20. All the measures proposed in the negotiating text were compatible with and complementary to those contained in UNCLOS but their application and supervision on the high seas entailed differing degrees of difficulty.

21. It was important to take note of the differences that existed in terms of species, distribution patterns, and the status of existing and potential fisheries. Another consideration was that conservation measures were an integral part of the context for the various strategies applied by the relevant States; accordingly, a control on fishing effort had different implications for ocean-going fleets than it did for coastal fleets.

22. For example, area and seasonal closures might be the easiest measures to implement on the high seas, whereas the determination of total allowable catches and quotas would be more difficult to apply due to the obvious differences existing between the fishing technologies used by coastal States and by countries that had fleets operating in distant fisheries. Differences also existed in regard to objectives, harvesting strategies, means of production, etc.

23. In adopting conservation and management measures, the inspection capabilities of the nations in question had to be considered; this was particularly the case for developing countries, which in many instances were not in a position to maintain real-time records of the effects of fishing activities.

24. The incorporation of the economic and environmental factors referred to in the negotiating text as considerations in determining the maximum sustainable yield introduced an element of uncertainty because those capabilities differed from nation to nation.

25. Regional organizations and arrangements should define the criteria and factors mentioned in the negotiating text in greater detail and should adapt them to the specific characteristics of each fishery and region. With a view to a more accurate interpretation of such conservation and management criteria and factors, recommendations and information of a scientific or technical nature should be set forth. A number of suggestions regarding the expansion or refinement of the proposed measures are presented in annex 4.

26. Cooperation played an important role in achieving an optimum utilization of the resource; in that connection, emphasis was placed on the significance of paragraph 51 of the negotiating text, which provided for provisional and voluntary compliance with conservation and management measures by States fishing on the high seas in cases where no agreement had yet been reached with the coastal State.

27. Note was taken of the need for horizontal cooperation among the relevant States within the framework of regional organizations and arrangements and among those organizations and arrangements themselves. The relevant industrial sectors should also pursue that aim, since such arrangements would contribute to the sustainability of fishery resources and activities over the long term.

28. Cooperation mechanisms should consider the differing capabilities of the participating States while maintaining their focus on the special interests of coastal States in areas adjacent to their exclusive economic zones. Regional organizations and arrangements should give consideration to the promotion of mechanisms that would enable all the States concerned to participate on an equal footing. Specific mechanisms should exist to deter fishing activities outside the framework of, or in actual violation of, regional conservation and management arrangements.

29. The representative of the Permanent Commission for the South Pacific (CPPS) underscored the need to reinforce the role played by existing regional organizations —such as the CPPS— in the conservation and management of straddling fish stocks and highly migratory fish stocks in order to ensure their sustainability.

30. Mr. Andrés Mena-Millar said that FAO was carrying out many different activities of a technical nature in connection with the conservation and management of the living resources of the sea, including high seas fisheries. The countries had asked FAO to draw up a code of conduct for responsible fishing, to include fishing on the high seas. That idea had the support of the entire international community. One of the events leading up to that request was the meeting of the Committee on Fisheries held in April 1991, which had suggested that FAO had an important role to play in promoting international understanding regarding the responsible conduct of fishing operations. It had also noted that the technical work in that field could lead to the elaboration of guidelines for the preparation of a code of conduct on appropriate fishing practices that would take into account all the technical, socio-economic and environmental factors that were at stake. Subsequently, in June 1992, the Government of Mexico, with technical support from FAO, had organized the International Conference on Responsible Fishing in Cancún, Mexico. That Conference had issued the Declaration of Cancún, in which it called upon FAO to draft a code of conduct for responsible fishing and delineated a number of principles to be upheld therein. The general idea was for fishing activity to continue its development within an overall state of equilibrium under the byword of responsible fishing. That concept encompassed the sustainable utilization of fisheries resources in harmony with the environment and the use of fishing and aquacultural practices that were not harmful to the ecosystems concerned, their resources or their quality. It included the incorporation of added value to fishery products through manufacturing processes that met appropriate health standards and the use of commercial practices in such a way as to provide consumers with quality products. At its twenty-first session, held in April 1993, the FAO Committee on Fisheries approved a format and time-frame for the formulation of the code of conduct. The International Conference held in Cancún and the preparations for the United Nations Conference on Environment and Development had served to identify problems that would be addressed by the code of conduct. Thus, work on the formulation of the code had already begun. To date, the following subject areas, on which work was proceeding, had been identified:

- Fishing operations
- Fishery management practices
- Promotion of aquaculture
- Fisheries research
- Integration of coastal fisheries in the management of coastal zones
- Fair trading practices.

The code, or its underlying principles, should be approved by common accord and should be applied both within and outside the EEZ, since they could be formulated on an independent basis. Those principles would be applied voluntarily in the form of national fishery statutes and regulations, as well as being useful in the negotiation of bilateral arrangements.

31. Texts had been examined in other international forums which could complement those elements. Those texts should be adequately distributed and accorded due consideration.

32. The proposal relating to the negotiating text should include some sort of sanction to discourage any violation of the agreed conservation measures. Such a provision would empower the port State to impose sanctions in the event of very serious violations of conservation and management provisions. The funds obtained by those means could be used to finance the regulatory systems of developing countries.

The concept of maximum sustainable yield (MSY) and other management options (agenda item 2)

33. Mr. Roberto de Andrade presented a paper concerning basic concepts used in the conservation and management of fisheries resources and analysed issues relating to high seas fisheries. In that analysis he focused on trends in ocean catches between 1970 and 1991 and drew a parallel between world and regional volumes. The region had displayed a measure of stability in terms of the size of its catches (except for the collapse of anchoveta fisheries in 1973 and 1983) in comparison with the rest of the world, whose catches had begun to climb sharply in 1982 and had continued to rise until peaking in 1989, after which they had entered into a downturn. The stability of the region's catches was the result of a substitution process in respect of the species caught, whereas the increase in total world catches had been produced by a substantial expansion of the fishing fleet, especially of ocean-going vessels. Furthermore, an assessment of the situation after a decade of applying the maximum sustainable yield (MSY) as a management objective showed that, at the international level, the fisheries sector was suffering from overinvestment, and most fisheries were being overexploited. The speaker highlighted the importance of fisheries resource allocation in view of the shared and limited nature of such resources, noting that, given those circumstances, sectoral regulation was needed. The conservation and management of fisheries resources should have at least three basic objectives: the biological preservation of fisheries resources, avoidance of the economic inefficiencies associated with overinvestment in plants and fleets, and the maintenance of employment and wage levels in the sector. The speaker went on to urge the participants to think about the weak points of the MSY model, which, owing to its simplicity and the ease of its application, was used in many fisheries arrangements. One such weakness was that the model had not proved to be sufficiently effective to sustain the exploitation of many fisheries in the long run. Nor did it incorporate variations in environmental conditions; instead, it regarded them as constant, which was clearly not the case given the complexity of the marine environment. Moreover, it was a static model that attributed equal importance to catches at any given point in time. The analysis then turned to the maximum economic yield (MEY) model, which, because it was based on the MSY model, suffered from the same flaws. In attempting to introduce dynamic factors, the discount rate used in the model was of fundamental importance. In addition, those models did not provide for the valuation of by-catches, and there were socio-political factors that were just as important as biological and economic elements in terms of the conservation and management of fisheries resources. The speaker then stressed the importance of the manner in which regulatory instruments were handled and called upon the participants to think about the possibility of their Governments implementing the conservation and management measures provided for in agreements or arrangements established as a result of the Conference. He asked them whether or not the countries of the region were in a position to fulfil all the mandates with which they had been entrusted at the Conference and whether or not the institutional capabilities existed for implementing those measures and regulatory instruments. In closing, he asserted that the major challenge faced by the Governments was how to design and implement fisheries management systems capable of promoting and reconciling three main objectives: economic growth, social equity, and environmental and biological sustainability.

34. The most widely-known production models were maximum sustainable yield and maximum economic yield, but there were also other analytical models in existence, such as sequential stock analyses, which were not subject to the same requirements as the above-mentioned models in terms of recruitment behaviour and length.

35. The quality and coverage of the information used as inputs for those analytical procedures were very important; from that standpoint, open and broad-based collaboration was even more crucial in order to provide the best possible information as a foundation for conservation agreements and arrangements.

36. The application of models for promoting the conservation and management of fisheries resources should be without prejudice to the sovereign rights of the coastal State(s) over the natural resources, whether living or non-living, in its exclusive economic zone or the coastal State's interests in the area adjacent to that zone.

37. Mr. Patricio Pavéz Carrera of the School of Marine Sciences of the Catholic University at Valparaíso presented a paper entitled "Principio de compatibilidad y coherencia para un mismo stock" [the principle of compatibility and coherence for the same stock], a translation of which is given below.

## **"INTRODUCTION**

A proposed interpretation of what, for practical purposes, will be referred to here as the "compatibility and coherence" principle, was presented at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks of 12-30 July 1993 ("Comments on compatibility and coherence between national and international conservation measures for the same stock. Submitted by the Delegation of Japan" (A/CONF.164/L.28), 27 July 1993) and has been reiterated in other forums in an effort to sensitize opinions on the subject and to gain acceptance.

The proposal addresses the need for an appropriate conservation and management of straddling fish stocks and highly migratory fish stocks; its motivation is thus a laudable one, but no consensus exists as to the ways in which such compatibility and coherence might be achieved.

This proposal confronts the interests of distant-water fishing nations (DWFNs) with those of coastal fishing nations (CFNs), which seek to establish the predominance of those interests based on the fact that a large part of the productivity of fisheries resources is determined by conditions in coastal areas under their jurisdiction (EEZ)."

...

## **"ANALYSIS OF THE PROPOSAL**

The point of contention regarding the establishment of fundamental principles of compatibility and coherence has to do with the ways in which due regard for the needs, interests and practices of DWFNs and CFNs is to be achieved.

The proposal refrains from engaging in legal arguments even though its advocates hold the conviction that the sovereign rights of the two should not prejudice one another. The proposal asserts that the interests of the two should coexist and complement each other through mutual cooperation.

Mechanisms for such cooperation, in terms of the compatibility and coherence proposal, should be established through regional or subregional organizations; this is in accordance with article 63 of UNCLOS. That article does not, however, set forth the conditions for such an understanding. The proposal, as presented at the Seventh Workshop of the Pacific Economic Cooperation Conference (PECC) Fisheries Task Force, held recently in Vancouver, contends that such agreements should be **open to all parties on an equal footing.**

To that end, it is proposed that such organizations should establish the status of the stocks in question, basing their estimates on the entire migratory range, and should undertake biomass surveys so as to determine the appropriate level for the allowable biological catch (ABC). This, according to the proposed interpretation, will permit a due regard for the actions taken by coastal States in the field of conservation and management within their EEZ, including those whose effects extend beyond that zone.

Obviously, an assessment of straddling fisheries resources throughout their migratory route will call for the use of many instruments that a coastal nation may lack precisely because of its strategy of operating within its EEZ. To meet this requirement, consideration should therefore be given to opening the way for participation in the research effort by any third-party nation that wishes to operate in the outlying seas. Clearly, this entails dependence for coastal analysis capacities on those nations having ocean-going capabilities.

The idea of determining fishing effort on equal terms means that any decline in the supply of a straddling fish stock will prompt the relevant DWFN to redirect its fishing operations to another region of the ocean, which is something that a country operating within its own EEZ **cannot do.** In that new region, the DWFN might advance an argument similar to that of the relevant coastal nation(s).

If the criterion of "quality" is added to the foregoing, then the proposed interpretation of the concept of compatibility and coherence will surely be unacceptable to coastal countries. That criterion necessarily implies a value judgement that would have little chance of being accepted when opposing interests are at stake. The situation that arose in connection with the appraisal of the findings of the Scientific Committee of the International Whaling Commission (IWC) is a good example of this.

It will be very difficult to win the respect of the scientific community, to allude to the terms used in the proposal, in view of the scope and quality of the scientific assessment that could reasonably be expected from coastal States, given their limited capabilities, the difficulties involved in preparing a more comprehensive projection, etc.

Considering the question from another vantage point, regional organizations have generally been created as a means of providing a forum that will serve the interests of the countries in a given region as they relate to the resources in that area.

The proposed interpretation postulates the consideration, within these organizations, of the interests of third-party nations based solely on the merit of the interest they have in the resources of a given area.

After having analysed the situation, the relevant regional organization should take steps to put into effect the recommendations that are set forth, even if they differ from those made by the coastal States belonging to that regional organization. Thus, and considering the —inappropriate— references which the negotiating text makes to the principle of non-discrimination, all regional organizational systems would automatically be open to the interests of any nation having the ability to deploy ocean-going fleets.

Another component of the argument put forward in the proposed interpretation of the principle of coherence and compatibility is the concept of "universal benefit" (benefits for all concerned) owing to the essential nature of such assessments and their importance in ensuring a sustainable yield for mankind.

It is difficult to ascertain the degree of social equity of the concept in this situation, considering the fact that the countries which support the possibility of operating fleets in distant fisheries do so primarily because they have at their disposal a market in which price levels are such as to sustain an oceanic fishing effort.

These markets are closed to nations desiring access to them; this is the case of coastal nations, whose resources, because they are composed of straddling stocks, are of great importance to distant fisheries. The proposal posits the existence of conditions of equality in its analysis of the situation, arguing that it entails actions of benefit to all. In order for this to become a reality, however, the terms of any agreement regarding the area adjacent to the EEZ and the high seas must necessarily incorporate these and other factors so that its management will truly benefit all the parties concerned equally."

## "SUMMATION

Stated in other terms, the proposed interpretation of the concept of coherence and compatibility means that countries whose operations are based in coastal fisheries must necessarily seek to arrive at an understanding with nations having the technological and economic capacity to operate in distant waters because surely only they can cover the entire distribution area of a given resource; it will be difficult to win "respect" for the limited scope and quality of the assessments which coastal countries may be able to undertake, and regional organizations will therefore be open to the interests of third-party nations.

This situation will enable DWFNs to focus their attention on areas of the ocean adjacent to any EEZ of interest to them. If in addition we consider the evidence that suggests that a large majority of marine resources of great economic importance are straddling stocks or move along far-flung migratory routes, then the conclusion is that the proposed interpretation of the concept of compatibility and coherence signifies a rollback of the advances made in the field of resource management in UNCLOS, in whose spirit an attempt is made to align them, while giving preference to the interests of coastal nations."

38. On the subject of the compatibility of different regimes, it was noted that some countries with ocean-going fishing fleets had proposed that any collaboration should be contingent upon a restriction of coastal States' ability to set allowable catches or quotas for highly migratory fish stocks within their exclusive economic zones. It was agreed that such a proposition posed a serious threat to the system established by UNCLOS and that any reading of the negotiating text that would lead in that direction should be avoided. Paragraph 2 of article 64 of UNCLOS, which said that the provisions of paragraph 1 of the same article would apply in addition to the other provisions of that part of the Convention, upheld the rights and authority of the coastal State regarding the management of highly migratory fish stocks, at least within the exclusive economic zone (EEZ), and of its interests in the management of such stocks outside the EEZ. States were therefore not on an equal footing with one another; instead, the interests of coastal States predominated owing to the interrelated effects of the harvesting of the species in question.

39. From a legal point of view, it was important to state that conservation and management measures taken in the area of the high seas adjacent to the EEZ should be consistent with the measures adopted by the coastal State in its EEZ. In cases where no arrangement was in existence, the measures established by the coastal State should be applied on a provisional basis. In such cases, it was essential that a binding system for the settlement of disputes should be in place.

40. From a scientific standpoint, it was necessary to differentiate species and limits on fish stocks and to analyse the behaviour of such stocks in order to generate the basic information needed to ensure the establishment of sufficiently compatible management measures.

#### The precautionary approach (agenda item 3)

41. Ms. Carmen Artigas, a Legal Officer with the ECLAC Natural Resources and Energy Division, discussed the characterization of the precautionary approach in the Rio Declaration on Environment and Development and described the task of the international system as that of extending the application of that approach to all environmental issues rather than confining it to problems of pollution, as had been advocated by some developed countries. The inclusion of that approach in the Framework Convention on the Conservation of Biological Diversity laid to rest all doubts as to its applicability to the protection of natural resources. The precautionary approach served as a basis for the idea of developing the concept of environmental impact assessments for new fisheries to the point where no fishing activity on the high seas could be initiated or expanded without first having scientific assurances that it would have a minimal effect on the stability of the resources and other components of the ecosystem. The precautionary approach should not only be used in connection with the suitability of production models, sequential stock analyses or bio-economic models regarding the implications for such resources but should also be applied to the possible socioeconomic impacts of the adoption of management measures. It was therefore important to define the components of fishery sustainability so that action could be taken in regard to each such component ahead of time. The speaker urged the participants to define some of the elements of the precautionary approach as applied to fisheries, citing, *inter alia*, the gradual development of fisheries, international or financial checks to forestall uncontrolled fishery development, maximum allowable catches based on past experiences in similar cases, multi-specific experimental management, levels below the maximum sustainable yield or related concepts and experimental forms of comprehensive ecosystem management.

42. The precautionary approach was embodied in Chilean legislation regarding that nation's fisheries; some of the most important forms it took in Chilean law were: i) declarations of full-capacity exploitation and the closure of access to new vessels when the production surplus of a given stock had been exhausted (articles 21 and 24 of the General Law on Fisheries and Aquaculture of Chile); ii) the allotment of a stock's production surplus by means of proportional, individual quotas for catches in new and recovering fisheries (articles 39 and 40); iii) the institution of special closed seasons when oceanographic events occurred that were harmful to one or more species (article 6).

43. There was general agreement with the premise set forth in section I, paragraph 5, subparagraph b) of the negotiating text, which stated that the absence of adequate scientific information would not be used as a reason for failing to take strict measures to protect a resource. However, the principle should not be applied in a radical form so as to automatically equate the precautionary approach with moratoriums or bans, but should instead be employed in a reasonable manner.

Other regional priorities (agenda item 4)

44. The Honourable Alfonso Arias-Schreiber presented a study conducted by the Latin American Fisheries Development Organization (OLDEPESCA). That study is attached as annex 5 to this report.
45. The representative of the Environmental Centre for the River Plate Basin (CACPLA) then commented upon on a number of considerations relating to the possible role of MERCOSUR in strengthening member countries' capabilities for the negotiation of issues relating to high seas fisheries. Her presentation is attached as annex 6 to this report.
46. In reference to the proposal put forward by the representative of OLDEPESCA regarding a Latin American perspective on the subject of high seas fisheries, the speaker shared the concern, as expressed by OLDEPESCA, that a profusion of isolated proposals would not help to safeguard the interests of the Latin American countries during the revision of the negotiating text.
47. The foregoing observations prompted the participants to recommend a number of measures for promoting coordination among the nations of the region; ideally, such efforts would find concrete expression in a new consultative forum of a technical nature. Concerted action on the part of regional organizations would be called for in order to carry out such an activity, if at all possible before March 1994. It was also suggested that, once such a concerted effort had been mounted —taking the form, if possible, of the preparation of an integrated draft international convention— steps should be taken to coordinate the results with those countries that maintained similar positions.
48. The representative of the CPPS informed the participants about the resolution adopted by that organization calling for the coordination of the position of its member countries and spoke about the steps being taken in that respect.
49. The experts were in agreement regarding the importance of strengthening the ability of the countries of the region to meet the challenges involved in implementing many of the instruments relating to high-seas fisheries management. In that connection, they stressed the need for an abundant flow of technical assistance on advantageous terms in the fields of research, training and monitoring, among others.
50. In that connection, the participants recalled the resolution included as annex VI to the Final Act of the Third United Nations Conference on the Law of the Sea, entitled Resolution on Development of National Marine Science, Technology and Ocean Service Infrastructures.
51. Conservation and management agreements and arrangements should be established on equal terms; accordingly, consideration should be accorded to other aspects of economic development, including the factor of price and market access. Along those same lines, participants in future arrangements for the management of high-seas fisheries should give special consideration to the economic and environmental factors that were taken into account in UNCLOS as well as the specific characteristics of the sustainability of development in Latin America and the Caribbean.
52. Finally, it was recommended that the Governments, international organizations and governmental agencies should make an additional effort to create a new technical consultative forum prior to the sessions scheduled for March so that inputs might be generated that would enable the region to strengthen its negotiating capacity and secure a version of the negotiating text that would truly speak to the priorities

of Latin America and the Caribbean. The possibility of holding such a forum immediately prior to the meeting of ministers of fisheries to be convened by the Argentine Government in 1994 should therefore be analysed; to that end, it was essential that Governments and agencies should make the necessary financial effort to assemble the relevant technical experts and carry forward the work initiated by the present group of experts. Steps should also be taken to explore the possibility of securing funding from a donor country that held a similar position and was interested in promoting a dialogue on the subjects dealt with at the meeting, as was the case of the Government of Canada, which had clearly shown itself willing to provide technical and economic assistance for similar initiatives in the past.

### III. CLOSING MEETING

53. The meeting was brought to a close by the Director of the Special Policy Division of the Ministry of Foreign Affairs of Chile, the Honourable Jorge Berguño Barnes, who thanked ECLAC for having convened the group of experts to deal with a subject of pivotal importance to the work of the United Nations which bore such a direct relationship to the results of the United Nations Conference on Environment and Development. There were two points of view on the formulation of the negotiating text. According to one of those perspectives, it would be advisable for the wording to reflect modern concepts (e.g., sequential stock analyses) relating to the management of straddling and associated fish stocks. According to the other, it would be better to retain the terminology of the Convention on the understanding that those concepts should be weighed within a certain context. The speaker took note of the relevance of the items included on the agenda for the meeting, observing that they invited precisely the type of deliberations that were needed, regarding the contents of the negotiating text.

54. The precautionary approach was a very delicate subject both for non-governmental organizations and for the countries. Further thought should be given to whether or not the application of the precautionary approach to a new or recently-opened fishery might call for an experimental management scheme under the custodianship of the coastal State.

55. In regard to the concern, shared by all the participants, as to the continuation of the exercise, the speaker noted that the meeting had marked the culmination of a Latin American process that had begun with the adoption of the Tlatelolco Platform on Environment and Development and had been carried forward by the statement of principles set forth in the Declaration of Cancún and the negotiations regarding the future code of conduct for responsible fishing.

56. The possibility of intensifying the Latin American dialogue concerning those as yet unresolved issues would help to ensure that the above-mentioned instruments were not transformed into the playthings of technocrats. To that end, he shared the participants' view that, prior to the forthcoming session of the Conference, a new consultative forum should be created so that the interests of the region might be suitably reflected in the results of the negotiations.

57. He concluded his remarks with the statement that, although the negotiating text, as it stood at present, could be regarded as a good rough draft subject to modification, a more participatory response from distant-water fishing nations was to be expected. He added that his country and other coastal States should continue to defend their interests, inasmuch as the position of coastal nations, as currently reflected in the negotiating text, would not lead to the achievement of their objectives. The possibility of a subsequent technical consultation at which new tactics and strategies might be defined therefore appeared to be an essential condition for a more effective negotiating position.

58. On that note, the speaker declared the work of the Meeting of the Regional Group of Experts on high Seas Fisheries to be concluded.

## Annex 1

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## Annex 2

**LIST OF DOCUMENTS**

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16. United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, Comments on precautionary management of fisheries (submitted by the delegation of Sweden) (A/CONF.164/L.22), New York, 22 July 1993.
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Annex 3

**NEGOTIATING TEXT**

- 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. Flag State responsibilities
- V. Compliance and enforcement of high seas fisheries conservation and management measures
  - a) Compliance and enforcement by flag States
  - b) Regional arrangements for compliance and enforcement
- VI. Port States
- VII. Non-parties to a subregional or regional agreement or arrangement
- 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 I: Minimum data requirements for the conservation and management of straddling fish stocks and highly migratory fish stocks
- Annex II: Arbitration

## STRUCTURE OF THE NEGOTIATING TEXT

The negotiating text can be thought of as having seven different parts and two annexes. Those parts can be classified as follows:

The first part is of a technical nature and corresponds to section I; it contains the concepts of maximum sustainable yield and the precautionary approach.

Another part, which deals with institutional matters, corresponds to sections II and III. It discusses mechanisms for international cooperation and regional fisheries management organizations or arrangements.

The third part is made up of sections IV, V and VI and concerns surveillance and control measures.

The fourth part includes sections VII and VIII and has to do with restrictions and arbitration. It delimits the role of States that are not members of subregional or regional agreements or arrangements as well as dealing with disputes.

The fifth part has to do with the interests of the States concerned and corresponds to section IX, in which reference is made to the principle of compatibility and coherence.

The sixth part, which is made up of section X, "Special requirements of developing countries", deals with the subject of cooperation.

The seventh and final part relates to the matters of continuity and follow-up and corresponds to section XI.

One general observation regarding the negotiating text is that the paragraph within its technical section concerning the concept of maximum sustainable yield is a faithful reproduction of the wording of UNCLOS, with no major advances being registered in terms of the management model used. The incorporation of the precautionary approach into this section of the document does, however, represent a significant contribution.

Another new element in the text that will need to be carefully analysed is the discussion of the principle of compatibility and coherence in the fifth part (section IX).

### Structure

- \* Technical matters (I): Maximum sustainable yield and precautionary approach;

- \* Institutional matters (II-III): Structuring of arrangements;
- \* Surveillance (IV, V, VI): Controls on the harvesting of fish stocks and sanctions;
- \* Restrictions and arbitration (VII, VIII): Limitations applying to States that are not party to arrangements and the settlement of disputes;
- \* States' interests (IX): The principle of compatibility and coherence as applied to straddling fish stocks;
- \* Cooperation (X): Special requirements;
- \* Continuity and follow-up (XI): Biennial report and a conference in five years' time.

#### Annex I

### MINIMUM DATA REQUIREMENTS FOR THE CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

Fishery data collection  
Basic fishery data requirements  
Scientific data supporting stock assessment  
Vessel data and information  
Data reporting  
Data verification  
Data exchange

#### Annex II

### ARBITRATION

Institution of proceedings  
Constitution of arbitral tribunal  
Submission of memoranda  
Hearings  
Procedure  
Duties of parties to a dispute  
Expenses  
Required majority for decision  
Default of appearance  
Provisional measures  
Award  
Finality of award  
Interpretation or implementation of the dispute  
Application to entities

## Annex 4

**RECOMMENDATIONS FOR THE IMPROVEMENT OF EXISTING MANAGEMENT  
AND CONSERVATION PROPOSALS****Management and surveillance**

- a) Statistics compiled by FAO indicate that world catches have been shrinking since 1989; this may be attributable to a decrease in the abundance of living marine resources.
- b) Economic data point to overinvestment in fishing fleets and the existence of processing facilities demanding large quantities of living marine resources.
- c) Access to the living resources of the high seas (waters adjacent to exclusive economic zones) continues to be unimpeded, in accordance with article 116 of the United Nations Convention on the Law of the Sea, with the allowable catch being set, for regulatory purposes (article 119), at the level required to maintain the maximum sustainable yield.
- d) The principle of unimpeded access, when employed in conjunction with a management plan that relies on the establishment of allowable catches based on the maximum sustainable yield, has proved to be ineffective because it leads to overinvestment in the fisheries sector and to an overexploitation of a majority of fishing grounds.
- e) The observation of resource behaviour patterns indicates that fish stocks or units in the high seas influence the stocks that are also located within the exclusive economic zones of coastal States.
- f) Accordingly, coastal States should reach agreement, in the short term, on the modalities to be used for the management of such fisheries while assuming responsibility for the proper maintenance of living marine resources over time.
- g) To that end, the application of fish stock models should be discussed and agreed upon, on the basis of complete and objective studies; in order for that to be possible, broad-based cooperation is required on the part of the coastal States that are directly involved, as well as of distant-water fishing nations.
- h) Once research and management modalities have been agreed upon, they should be established by a designated regional agency and should be followed by all countries operating in the relevant fishing grounds.

- i) Compliance with such regulations must not be left to the discretion of the countries. The regulations must be of a mandatory nature and must be subject to a stringent, even-handed system of sanctions applying both to their form and their implementation.
- j) Coastal States should therefore consider making major modifications in their fisheries regulations and expanding the jurisdictions of their courts, which will monitor compliance and enforce these regulations.
- k) In this respect, article 1 of the Chilean fisheries code of 1991 states that "The provisions of this statute shall govern the preservation of living marine resources and all fishing, aquaculture, research and sport activities conducted in inland waterways, territorial seas or the exclusive economic zone of the Republic and in areas adjacent to the latter which may now or in future fall within national jurisdiction under the terms of international treaties or laws.
- l) Article 165 of the aforementioned statute empowers the Authority to establish regulations for the conservation and management of straddling or associated fish stocks. In addition, it may prohibit the off-loading, supply or servicing of vessels in the territorial seas and exclusive economic zone when there are grounds to believe that the fishing activities being conducted are harmful to fisheries resources or to their exploitation by national vessels in the exclusive economic zone.
- m) The aforementioned measures should be agreed upon and enforced in order to forestall the possibility of overinvestment in and/or overexploitation of the sector.

### Guidelines

In respect of item I: It would be advisable to institute preventive rather than corrective measures. This means that information would need to be gathered prior to the commencement of exploitation (in the case of potential resources that either have not been exploited at all or have been exploited very little), since it is thought to be more difficult to reduce an existing fishing effort than to forestall an excessive effort in the first place.

The first step, which will serve as a foundation for arriving at an understanding of the issues involved and for a dialogue on the subject among scientists, is to obtain a list of straddling fish stocks and highly migratory fish stocks from each of the countries concerned.

Clearly, the issues are different for each country; such differences are particularly notable between the Pacific and Atlantic oceans.

Another consideration in relation to item I is that conservation measures are specific to each fish stock in accordance with each stock's particular feeding and reproductive habits.

Since the primary basis for conservation and management measures is the information obtained from scientific data (section I, paragraph 4, subparagraph (a) of the negotiating text), it would be advisable to form a group of competent researchers to ensure the successful outcome of negotiations with countries operating beyond the 200-mile limit.

The MSY and MEY models do not help to provide answers regarding recruitment trends. Generally speaking, surplus production models are highly rigid and permit the incorporation of no more than one datum per year based on the premise that stocks are in equilibrium. Because of the characteristics of these models, they do not permit corrective measures to be taken in time, especially with regard to short-lived species.

Alternative models (particularly sequential stock analyses, or SSAs) are therefore preferred, although work may be begun on the basis of production models until such time as the information needed to undertake an SSA has been gathered. In any event, if two different procedures are used, then their results can be checked against each other.

It is important to note that problems arising outside the 200-mile limit cannot be studied properly without taking events within the EEZ into account if fish stocks are present that circulate between the two zones.

It is recommended that a scientifically accurate list of the protective measures established by each country for the various fish stocks should be presented as a means of providing a sound foundation for negotiations with countries operating beyond the 200-mile limit.

## Annex 5

**STATEMENT OF THE HONOURABLE ALFONSO ARIAS-SCHREIBER, OBSERVER FOR  
OLDEPESCA AT THE MEETING OF THE REGIONAL GROUP OF EXPERTS  
ON HIGH SEAS FISHERIES AT ECLAC HEADQUARTERS,  
(Santiago, Chile, 25 November 1993)**

I am pleased to have this opportunity to address you and the other participants at this meeting, which has been convened at such an appropriate point in time by ECLAC, so that I may discharge the welcome task entrusted to me by the Executive Director of OLDEPESCA, Carlos Mazal. Mr. Mazal, who unfortunately is unable to attend, has been so kind as to ask me to transmit his warm greetings and present to you part II of a study concerning a Latin American perspective on high seas fisheries. That study, which OLDEPESCA has just forwarded to the Governments of our region, is intended as a fresh input for consensus-building and the further definition of positions in the light of the proceedings of the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, whose first substantive session was held in New York in July of this year.

Although this study goes beyond the specific technical issues being considered at this meeting, we decided that, in view of its overall relevance to our countries' objectives in promoting the management of high seas fisheries, it would be appropriate to present the study to you. One of our reasons for doing so is to hear your impressions of its contents and your views regarding the advisability of drawing up an integrated draft international convention that would incorporate the basic elements required to safeguard our interests in respect of such fisheries. Another reason is so that we may offer you a reasoned presentation of the study which will enable you, upon your return to your respective capitals, to provide a fuller explanation of the implications of our analysis and of the resulting proposals.

Without going into detail about the concepts used in the analysis conducted by OLDEPESCA, which are discussed in the document that has already been distributed to the participants, I feel it would be helpful to share with you the main considerations that prompted its preparation, the concerns we have about the direction being taken by the work of the United Nations Conference in New York, and the types of approaches that we believe should be used in order to bring the negotiations to a satisfactory conclusion.

The starting point for the task at hand was the realization that high seas fisheries were going to become —as has in fact proved to be the case— the next great challenge to be faced by coastal States following the extension of the zone under national jurisdiction to the 200-mile maximum limit. This was because, once the majority of the fish stocks previously harvested by fishing fleets from distant countries was located within that limit, it was only to be expected that such fleets would react to their exclusion by intensifying their operations in an unbridled manner in adjacent areas, taking advantage of the fact that such fish stocks often move farther out to sea during certain stages in their life cycles.

Although we became aware of this threat during the deliberations of the Third United Nations Conference on the Law of the Sea, the sea powers' objections to the idea of recognizing special rights or interests on the part of coastal States in areas bordering on the zones under those States' jurisdiction, which those powers claimed would open the door to what they called "creeping jurisdiction" beyond the established limits, made it impossible to forge a consensus —the modality used for the work of the Conference— for the introduction of appropriate provisions to ensure the conservation and sound management of straddling and highly migratory resources.

Unfortunately, subsequent events have demonstrated —in some cases with more serious consequences than were foreseen— how mistaken it was to leave unfinished the task of specifying and developing as fully as necessary the basic but very general and insufficient provisions contained in the 1982 Convention. And now that, thanks to constant pressure, the present Conference has been convened to remedy the ambiguities and gaps in the Convention, we find that, despite a recognition of the need to adopt effective measures for the conservation and sound management of those marine resources, major differences of opinion remain, not only in reference to the substantive aspects of those measures but also as regards their legal status; whereas coastal States feel they should be of a binding nature, distant-water fishing nations insist on the formulation of mere "guidelines" which would be applied on a voluntary basis through bilateral or multilateral arrangements.

This situation is cause for concern and leads us to believe that if countries such as ours are unable to form a united front with the largest possible number of coastal States on the basis of soundly-designed and well-founded proposals, we run the risk of seeing countries that hold opposing positions directing the Conference towards an openly adverse or, at the least, inoperative outcome in terms of the due protection of our rights and interests. We are therefore called upon to play a very active and concerted role in support of our positions regarding the necessary coherence between conservation measures applying to the high seas and the measures adopted by coastal States within the areas under their national jurisdiction; regarding the criteria relevant to the concepts of maximum and optimum sustainable yields; regarding the origin, content and implications of the precautionary approach; regarding the duties of flag States to periodically supply scientific, technological and statistical information concerning fishery resources and fishing operations and to cooperate in the operation of an effective system of monitoring, control, surveillance and enforcement; regarding participation in the enforcement of such measures by the port State; regarding the powers or authority of regional and subregional fisheries organizations; regarding the penalties to be imposed upon violators; and regarding the best procedures for ensuring the binding settlement of disputes.

This being the situation, since the Chairman of the Conference will preside over the work of the forthcoming session (in New York during the second half of March 1994), using as a basis the negotiating text he distributed in July 1993, we will have to take the initiative in countering adverse proposals and asserting our views in the course of those deliberations. The most effective way of doing so would be to present an integrated draft international convention which would take the current negotiating text, once the necessary modifications had been made, as its point of departure but would then re-cast its basic concepts and contents in a draft for presentation by a core group of countries holding similar positions (Argentina, Canada, Chile, Iceland and New Zealand) as well as in the document issued by the CPPS member States (Colombia, Chile, Ecuador and Peru).

After summing up the areas of agreement and of disagreement that have emerged since the Conference's inception, the study prepared by OLDEPESCA offers a comparative analysis of the three above-mentioned instruments' main provisions and then closes with a number of conclusions and suggestions that are submitted to the Governments of our region for their consideration. The terms in which those findings and recommendations are set forth are quite succinct, and there is therefore no need to repeat them here. The important point is to make use of the time available to us to reach agreement regarding guidelines and the drafting of documents that will prepare the Latin American delegations for the session to be held next March so that they will not only stand ready to voice concurring views but will also be able to present a well-prepared draft that could be highly useful in the course of the negotiations and the preparation of a new text by the Chairman of the Conference.

As for the procedure to follow in order to accomplish this, failing a regional assembly between the months of December and February, I would suggest that a working group be formed by agreement with the Latin American countries' permanent representatives to the United Nations and that this group should meet in New York as soon as possible, with the Chairman of the Group of Latin American and Caribbean countries (GRULA) serving as coordinator. For its part, OLDEPESCA stands ready to provide any assistance that may be requested within the framework of the regional cooperation and coordination which it is its mission to promote in the fisheries sector.

## Annex 6

**RECOMMENDATIONS OF THE ENVIRONMENTAL CENTRE  
FOR THE RIVER PLATE BASIN (CACPLA)**

The Southern Common Market (MERCOSUR), which was created with the signing of the Treaty of Asunción in 1991 by Argentina, Brazil, Paraguay and Uruguay, has as its objective the formation of a single regional market by January 1995. This market will serve approximately 187 million people in an area that constitutes about 56% of Latin America's spatial environment.

In general terms, MERCOSUR seeks to reactivate the economic growth of those countries within the framework of a market economy providing for the unimpeded circulation of merchandise, services and factors of production among the four nations, the coordination of macroeconomic and sectoral policies and the establishment of a common external tariff and trade policy in respect of other markets.

To date, matters relating to inland and ocean fisheries are not being addressed by MERCOSUR negotiations. It is therefore recommended that:

1. The topic of fisheries, their production and the marketing of fisheries products should be included in MERCOSUR negotiations, with due consideration being accorded to the conservation, protection and sustainable use of fishery resources;
2. At such time as agreements concerning the fisheries sector and the sustainable use of fishery resources are signed within the framework of MERCOSUR, the need for compatibility between such agreements and the United Nations Convention on the Law of the Sea and joint regional positions on the subject should be taken into account;
3. Agreements concluded within the framework of MERCOSUR should also take into consideration any binational treaties already signed by the four countries (such as the Treaty on the River Plate Basin and its Coastline Commission (1973) or others) that cover the subject of sustainable fishing.

Taking into account the declaration regarding the regulation of the exploitation of straddling and highly migratory fish stocks which citizens' organizations presented at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (New York, 12-30 July 1993), it is also recommended, at the regional level, that:

1. The precautionary approach should be taken in activities involving the exploitation of marine resources, especially large-scale commercial and industrial fishing operations;

2. Conventions and arrangements for the protection and sustainability of fisheries should be broadly disseminated in the communities that are directly concerned (such as organizations of fishermen, artisanal and small-scale fishermen and non-governmental environmental organizations) with a view to their improved implementation and supervision. In addition, legitimate channels should be opened to permit genuine participation by such organizations in the formulation of regional programmes, protocols and arrangements.