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COMMITTEE FOR THE EASTERN CENTRAL ATLANTIC FISHERIES

Sixteenth Session

Tenerife, Spain, 22-24 October 2002

**OPTIONS FOR FUTURE ARRANGEMENTS FOR COOPERATION IN
FISHERIES MANAGEMENT IN THE AREA OF COMPETENCE OF THE
FISHERY COMMITTEE FOR THE EASTERN CENTRAL ATLANTIC**

I. INTRODUCTION

1. On the recommendation of the Fishery Committee for the Eastern Central Atlantic (CECAF), at its Fifteenth Session, held in Abuja, Nigeria, 1 to 3 November 2000, the Director-General convened a technical consultation with a view to discussing a draft agreement for the establishment of a regional fishery commission, under the provisions of Article XIV, paragraph 3 (a) of the FAO Constitution, which would replace CECAF. Accordingly, a Technical Consultation was held in Lagos, Nigeria, from 27 to 30 November 2001, for the consideration, *inter alia*, of a draft agreement.

2. After a protracted debate, the consultation concluded that prior to the consideration of a draft agreement for the establishment of a body under Article XIV of the FAO Constitution, it was necessary to consider and agree on a number of issues. These include, first, the question of the area of competence of the new body, in particular whether it should be concerned with areas under national jurisdiction or with the high seas, or both, as these areas are subject to different legal regimes under international law. Related central issues are those of the membership, species covered, the range and nature of the functions and powers of the new body, its financing mechanism and structure. The consultation requested the secretariat to provide “*a situation paper on these issues for the Sixteenth Session of CECAF*”. The consultation was further of the view that the negotiation of any agreement could only be initiated once a consensus had been reached within the Committee with respect to those issues.

3. This document was prepared in response to the request made by the Technical Consultation and is structured along the following lines. First, it provides some general background information on the current status of CECAF with particular reference to recent proposals of an institutional nature regarding its future. Second, this document provides some general information on the two basic legal regimes that apply to the area of competence of CECAF. Third, in line with the discussions held and guidance provided in the course of the Technical Consultation, the document identifies and elaborates upon a few critical issues on which a decision is required. Fourth, the document puts forward some tentative ideas regarding possible institutional frameworks for cooperation in fisheries management in the current area of competence of CECAF.

II. GENERAL BACKGROUND

A. Establishment of CECAF and brief institutional overview

4. The Fishery Committee for the Eastern Central Atlantic (CECAF) was established under Article VI, paragraph 2 of the FAO Constitution by Resolution 1/48 of the FAO Council at its Forty-eighth Session, held in Rome in June 1967. The Statutes of CECAF were promulgated by the Director-General on 19 September 1967. Resolution 1/48 had authorized the Director-General of the Organization “*to select its membership from among Member Nations and Associate Members in Africa whose territory borders the Atlantic Ocean from Cap Spartel to the mouth of the Congo River and such other Member Nations and Associate Members fishing or carrying out research in the sea area concerned or having some other interest in the fisheries thereof, whose contribution to the work of the Committee he deems to be essential or desirable*”¹. Given the importance of the decision taken by the FAO Council for a correct understanding of the conditions that prevailed at that time and the functions entrusted to the Committee, an extract of the Report of the Forty-eighth Session of the Council is appended to this document as Annex I.

5. As foreshadowed in Council Resolution 1/48, which had stressed that CECAF would be established “*as an interim measure*”, throughout its life the Committee kept its structure, functions and responsibilities

¹ The current membership of CECAF consists of the following States: Benin, Cameroon, Cape Verde, Congo, Côte d’Ivoire, Cuba, Democratic Republic of Congo, Equatorial Guinea, European Community, France, Gabon, Gambia, Ghana, Greece, Guinea, Guinea-Bissau, Italy, Japan, Korea, Rep. of, Liberia, Mauritania, Morocco, The Netherlands, Nigeria, Norway, Poland, Romania, São Tomé and Príncipe, Senegal, Sierra Leone, Spain, Togo, United States of America.

permanently under review, in order to adjust them to a number of new challenges and demands². This document does not describe in detail institutional reforms or adjustments discussed or carried out throughout the life of CECAF, as relevant information could be found in a number of fairly comprehensive reports containing a survey of the activities of the CECAF.

6. Broadly speaking, for the past 30 years, there has virtually been no session at which the Committee did not consider institutional issues regarding its structure and functions, including its splitting into various sub-regional bodies. In general, however, with limited exceptions, these exercises did not result in the adoption of specific measures of an institutional nature. In December 1972, when CECAF held its third session, the Committee noted that most of its Members bordering the Atlantic Ocean had established maritime zones under national jurisdiction beyond 12 miles. Upon request of these Members, which emphasized that this changed the conditions regarding the review and objectives of management measures, the Committee approved the establishment of a Sub-Committee on the Management of Resources within the Limits of National Jurisdiction open only to coastal States. This Sub-Committee was abolished by the Committee at its Fourteenth Session, held in Nouakchott Mauritania, from 6 to 9 September 1998.

7. At its twelfth Session, held in Accra, from 27 April to 1 May 1992, the Committee recommended to the Director-General that its Statutes be broadened in order that its terms of reference include functions already exercised by the Committee in respect of socio-economic and management matters. The FAO Council, at its Hundred and Second Session, Rome, 9-20 November 1992, approved revised Terms of Reference for CECAF.

B. Fourteenth Session of CECAF, Nouakchott, Mauritania, 6 to 9 September 1998

8. At its Fourteenth Session, held in Nouakchott, Mauritania, from 6 to 9 September 1998, the Committee *“agreed to progressively work towards the upgrading of the body to a Commission level under Article XIV of the FAO framework. It requested FAO to provide the draft agreement for a possible Article XIV body and information concerning the functioning of the Indian Ocean Tuna Commission (IOTC) and the General Fisheries Commission for the Mediterranean (GFCM), in particular information concerning financial regulations and autonomous budget. It was agreed that these documents be discussed at the Fifteenth Session of CECAF”*³.

9. It may be of interest to recall that this decision followed the adoption by the FAO Conference, at its Twenty-ninth Session, Rome, 7-18 November 1997, of Resolution 13/97 entitled *“Review of FAO Statutory Bodies”*. The Resolution stressed *“the importance of moving towards increased self-financing for Statutory Bodies that have regional focus, and of enhancing the responsiveness of those bodies to the needs of their Members”*. The resolution encouraged *“commissions established under Article VI of the Constitution to seek more extra-budgetary resources to supplement the resources made available to them under the FAO Regular Programme Budget, taking into account the economic capacity of the regions concerned and of their Members”*. The resolution encouraged a movement on a wide Organization basis for the review by a number of bodies of their own structures and financing mechanisms.

C. Fifteenth Session of CECAF, Abuja, Nigeria, 1 to 3 November 2000

10. At its Fifteenth Session, held in Abuja, Nigeria, from 1 to 3 November 2000, the Committee had before it a number of documents, intended to guide the discussions, including a preliminary draft agreement for the establishment of a regional fishery body in the Eastern Central Atlantic, a *“scheme for calculation of contributions to the administrative budget of IOTC”* and financial regulations of IOTC. In the ensuing discussions

² Reviews have been an on-going process. CECAF/XIV/98/7 *“Review of Possible Options for a Future Structure of the Committee”*; CECAF/XV/2000/6 *“Options for Long-term Institutional Arrangements for Fishery Management in the Eastern Central Atlantic”*.

³ *Report of the Fourteenth Session of the Fishery Committee for the Eastern Central Atlantic*. Nouakchott, Mauritania, 6-9 September 1998, Paragraph 65.

*“(...) the Committee confirmed its willingness to engage in the process for the establishment of an autonomous Commission (...). The Committee recommended that the Director-General should convene, as soon as possible, a Legal and Technical Consultation with a view to discussing and eventually adopting a draft agreement for the establishment of the regional fishery commission, which should be approved further by the FAO Council”.*⁴

D. Technical Consultation on the Future of CECAF, Lagos, Nigeria, 27 to 30 November 2001

11. The Technical Consultation on the Future of the Fishery Committee for the Eastern Central Atlantic was held in Lagos, Nigeria, from 27 to 30 November 2001. The Technical Consultation examined in detail *“Possible Options for the Future of CECAF”* and made a *“Review of Preliminary Draft Agreement for a Regional Fishery Body”*. In doing so, the Technical Consultation made a number of observations that, given their importance, need to be reproduced below *in extenso*:

“29. The Consultation recognized that the area of competence of CECAF, as presently defined, covers both waters under national jurisdiction and the high seas and that the two areas were subject to different legal management regimes. Several members expressed concern at a proposal whereby both regimes would be dealt with under a single agreement, while others considered that the current area of CECAF should be covered by the new body. The Consultation felt that whatever agreement was eventually adopted should not impinge on the rights conferred on coastal states under international law particularly the UN Convention on the Law of the Sea.

30. Other elements of concern were issues related to membership, financing, structure and functions of the future body. Some delegations expressed concern about an open-ended membership body while several delegations felt that the functions were too broad and overlapped with those of existing regional fishery bodies/arrangements.

32. The Consultation concluded that prior to the consideration of a Draft Agreement for the establishment of a body under Article XIV of the FAO Constitution, it was necessary to consider in-depth and agree on a number of fundamental issues. These issues include the area of competence of the body, in particular whether it should be concerned with areas under national jurisdiction, or with the high seas or both, as these areas were subject to different regimes under international law. Related central issues were those of the membership, species covered, the range and nature of the functions and powers of the new body, its financing mechanism and structure. The Consultation requested the Secretariat to provide a situation paper on these issues for the Sixteenth Session of the Committee.

*33. The Consultation agreed that the negotiation of an agreement could only be initiated once a consensus had been reached within the Committee with respect to those fundamental issues. Depending on the outcome of the review of these issues, the Committee might wish to recommend that negotiations be initiated through appropriate ad hoc technical conferences”*⁵.

III. RELEVANT INTERNATIONAL LEGAL REGIMES APPLYING TO THE AREA OF COMPETENCE OF CECAF

12. At the Technical Consultation on the Future of CECAF, a very important consideration, central to the issue under review, was put forward as follows: *“(...) the area of competence of CECAF, as presently*

⁴ *Report of the Fifteenth Session of the Fishery Committee for the Eastern Central Atlantic*. Abuja, Nigeria, 1-3 November 2000, Paragraphs 32 and 34.

⁵ *Technical Consultation on the Future of the Fishery Committee for the Eastern Central Atlantic*, Lagos, Nigeria, 27-30 November 2001.

defined, covers both waters under national jurisdiction and the high seas and that the two areas were subject to different legal management regimes”.

13. It is therefore essential to identify the area of competence of CECAF, and describe briefly the two internationally defined legal regimes applicable to this area, with particular reference to the provisions relevant for the purposes of the present document. In this connection, in the course of the Technical Consultation, some delegates laid considerable emphasis on the need for a proper understanding of the existing international legal setting, especially as regards the 1995 United Nations Fish Stocks Agreement, as well as its full implications, as this lack of understanding may have conditioned the decisions taken by CECAF at its Fifteenth Session, in 2000.

A. Area of competence of CECAF

14. The area of competence of the Committee is defined as *“all the waters of the Atlantic bounded by a line drawn as follows: from a point on the high water mark on the African coast at Cape Spartel (lat. 35° 47' N, long. 5° 55' W) following the high water mark along the African coast to a point at Ponta da Moita Seca (lat. 6° 07' S, long. 12° 16' E) along a rhumb line in a northwesterly direction to a point on 6° south latitude and 12° east longitude, thence due west along 6° south latitude to 20° west longitude, thence due north to the Equator, thence due west to 30° west longitude, thence due west to 40° west longitude, thence due north to 36° north latitude, thence due east to 6° west longitude, thence along a rhumb line in a southeasterly direction to the original point at Cape Spartel”.*

15. Annex II to this document reproduces a table containing a graphic presentation of the area of competence of CECAF⁶. This table shows that the area of competence of CECAF includes both areas under national jurisdiction and areas of the high seas. This area corresponds approximately to Statistical Division 34, developed by the Coordinating Working Party on Fishery Statistics and will be sometimes referred to in this document as the area of competence of CECAF. This area is subject to two distinct legal regimes, as defined by the United Nations Convention on the Law of the Sea of 1982 and the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 December 1995.

B. The 1982 United Nations Convention on the Law of the Sea

16. The 1982 United Nations Convention on the Law of the Sea, which came into force on 16 November 1994, is a comprehensive instrument intended to cover all aspects regarding the sea. Its provisions relating to the conservation and management of living marine resources are well known and therefore there does not seem to be a need for a detailed presentation thereof.

17. Basically, the negotiation process for the Convention, and the Convention itself, introduced the concept of an exclusive economic zone, an area beyond and adjacent to the territorial sea of 12 miles, which may not extend beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. Relevant provisions are set out in Part V of the Convention. In the exclusive economic zone the coastal State has *“sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil, and with regard to other activities for the economic exploitation and exploration of the zone (...)”.* The coastal State, taking into account the best scientific evidence available to it, must ensure through proper conservation and management measures that the management of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether sub-regional, regional or global, are required to cooperate to this end.

⁶ The issue of the Southern limit of CECAF, i.e. whether it should be extended in order to include the waters under the jurisdiction of Angola and those of Namibia was under consideration for quite some time. While there are occasionally specific cooperation activities with Angola, no decision has been taken to extend the limit, mainly because the concerned States seem to have preferred the continuation of the present arrangements.

Article 63 of the Convention, entitled “*stocks occurring within the exclusive economic zones of two or more coastal States or both within the exclusive economic zone and in an area beyond and adjacent to it*”, provides, in paragraph 1, that “*where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice*”. In addition, in paragraph 2, it provides that “*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 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 area*”⁷. A number of specific provisions apply to other species with particular reference to highly migratory species (Article 64), marine mammals (Article 65), anadromous stocks (Article 66) and catadromous species (Article 67).

18. The areas beyond the exclusive economic zones belong to the high seas. Under Article 116 of the Convention, “*all States have the right for their nationals to engage in fishing on the high seas subject to: (a) their treaty obligations; (b) 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 76 and (c) the provisions of this section*”. In addition, as per Article 117 of the Convention “*all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas*”. Furthermore, “*States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. 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, as appropriate, cooperate to establish subregional or regional fisheries organizations to this end*”.

19. It turned out that these provisions were insufficient to deal with a number of problems related to, or affecting the management of high seas fisheries and long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks. For this reason, the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened pursuant to General Assembly Resolution 47/192 of 22 December 1992 and in accordance with a mandate agreed upon at the United Nations Conference on Environment and Development. This Conference led to the adoption of the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, on 4 December 1995.

⁷ This establishes a distinction between “shared stocks” (paragraph 1) and “straddling stocks” (paragraph 2).

C. The 1995 United Nations Fish Stocks Agreement

20. The 1995 United Nations Fish Stocks Agreement came into force on 11 December 2001 following the deposit of the thirtieth instrument of ratification or acceptance. This document will summarize its main provisions of relevance to the issue under consideration.

21. The Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 (Cf. paragraph 23 of this document) apply also to the conservation and management of such stocks within areas under national jurisdiction. Article 8, under Part II entitled “*mechanisms for international cooperation concerning straddling fish stocks and highly migratory fish stocks*” is particularly relevant for the purposes of this document. (...) “*Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks*”. States are required to enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. In addition, where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stocks in the subregion or region, must cooperate to establish such an organization or enter into appropriate arrangements to ensure conservation and management of such stocks and shall participate in the work of the organization or arrangement.

22. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having “*a real interest*” in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned. Only States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply. These basic concepts regarding international cooperation are supplemented by detailed principles regarding, *inter alia*, the functions of regional organizations, the determination of the nature and extent of participatory rights for new members, transparency in activities of regional management organizations and arrangements, collection and provision of data.

23. The 1995 United Nations Fish Stocks Agreement lays down a number of general principles regarding conservation and management of straddling fish stocks and highly migratory fish stocks. Article 6 thereof, in particular, provides that States should apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to preserve the marine environment. States are required to be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information may not be used as a reason for postponing or failing to take conservation measures. In addition, in implementing the precautionary approach States are required to improve decision-making for fishery management, including by implementing techniques for dealing with risk and uncertainty and apply guidelines set out in Annex II to the Agreement and determine stock-specific reference points of fisheries management. Furthermore, under Article 7 of the Agreement, conservation and management measures established for the high seas and those adopted for areas under national jurisdiction must be compatible in order to ensure the conservation and management of the straddling fish stocks and highly migratory species in their entirety. To this end, coastal States and States

fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks.

24. The Agreement contains detailed provisions regarding the duties of the flag State. It lays down a general principle whereby a State whose vessels fish on the high seas must take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures. A State may authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities under the Convention and the Agreement. The Agreement establishes in its Part VI an extremely detailed framework for compliance and enforcement through, *inter alia*, compliance and enforcement by the flag State and detailed procedures for boarding and inspection of vessels by members of organizations or participants in arrangement. Thus, where following a boarding and inspection, there are clear grounds for believing that a vessel has contravened conservation and management measures, the inspecting State is required to notify the flag State. The flag State must respond within three days and must either take action to fulfil a number of obligations or authorize the inspecting State to investigate the violation. In the case of a serious violation, and where the flag State fails to respond or fails or refuses to act, the inspecting State is given additional powers to bring the vessel into port for further investigation. Serious violations are defined in the Agreement by reference to a list of potentially serious violations. A flag State can resume control at any time during the proceedings. In addition, any port State has the right and the duty to take measures to promote the effectiveness of conservation measures without discrimination in form or in fact against the vessel of any State. That State may, *inter alia*, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals. It may also adopt regulations empowering national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of conservation and management measures on the high seas.

IV. SPECIFIC ISSUES FOR CONSIDERATION

25. When considering future arrangements for cooperation both CECAF, at its Fourteenth and Fifteenth Sessions, and the Technical Consultation called for the preparation of a “*a draft agreement for the establishment of a body under Article XIV*” of the FAO Constitution. The general consensus, at the time, was that a unique body would be established with competence *vis-à-vis* the current CECAF area (corresponding approximately to FAO Statistical Division 34). This was in fact reflected in the draft agreement that had been prepared. However, in the course of the Technical Consultation, some reservations were expressed as to the practicability of this approach and it was emphasized that there was a need to consider, first, in detail a number of issues. The issues identified by the Technical Consultation are presented below. In reviewing them, it is important to note that they are closely interrelated.

A. Area of competence

26. The current area of competence of CECAF is as described in Paragraph 14 above and as presented in Appendix II to this document. In line with the above observations, this global area of competence is now subject to two distinct legal regimes insofar as it includes areas under national jurisdiction subject to the regime established by the 1982 United Nations Convention on the Law of the Sea and areas on the high seas subject to the regime established by this Convention, as supplemented by the 1995 United Nations Fish Stocks Agreement.

27. The area of competence of the body to be established will condition a whole range of other options, with particular reference to those regarding rights of participation and membership. In more precise terms, if the area of competence of the new body to be established is to coincide with the current area of CECAF, then arrangements might have to be made in order to ensure that under the broad framework of that body there could be at least two distinct structures, one for the high seas and one for areas under national jurisdiction with different participants and functions.

28. Alternatively it could be proposed that the current area of competence of CECAF be limited to areas under national jurisdiction and, in parallel, that the area of competence of a new body should cover areas of

the Statistical Division 34 that are on the high seas⁸. This is, *mutatis mutandis*, the approach reflected in the Convention on the Conservation and Management of Fisheries Resources in the South East Atlantic Ocean (SEAFO Convention), the area of competence of which corresponds broadly to the maritime areas on the high seas of current Statistical Division 47.

B. Membership and rights of participation

29. As mentioned above, CECAF membership includes Member Nations in Africa whose territory borders the Atlantic Ocean from Cap Spartel to the mouth of the Congo River and other Member Nations fishing or carrying out research in the sea area concerned or having some other interest in the fisheries thereof, whose contribution to the work of the Committee it deems to be essential or desirable, all selected by the Director-General. The current membership includes coastal States and non coastal States. Incidentally, this issue, which is well accepted at present, was the source of much debate some 20 years ago. This is also closely linked to the broader issue of the functions and powers of the Committee.

30. Under the provisions of the 1995 United Nations Fish Stocks Agreement basically coastal States and States fishing on the high seas must cooperate in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate arrangements or organizations. States are required to enter into consultations with a view to reaching agreements regarding those stocks. As noted above, where a subregional or regional fisheries management organization or arrangement has competence to establish conservation and management measures for particular straddling stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned. Consequently, and although the concept of State having a “*real interest in the fisheries concerned*”⁹ may be open to debate and require clarification, any organization competent with respect to the areas of Statistical Division 34 on the high seas is open to coastal and non coastal States¹⁰. In fact, the need for all the States which are involved in a way or another in a particular fisheries is a critical element for the effective operation of any fishery body under the regime defined by the 1995 United Nations Fish Stocks Agreement.

31. Given the configuration of Statistical Division 34, and assuming that it would be used as a basis for the determination of the area of competence of a future body competent with respect to high sea fisheries, it could well be that at least one State of Latin America might be entitled to membership or participation as a coastal State. This specific issue will require further review.

32. Again the above considerations regarding membership and rights of participation have a definite impact on the question that the Committee is invited to address of whether the new body should be competent with respect to the whole current area of competence of CECAF, or only with respect to that portion of the area which lies on the high seas. In this latter case, the areas under national jurisdiction would be covered by another body.

⁸ Of course even if the area of competence of an organization established under the regime of the 1995 United Nations Fish Stocks Agreement were to be limited to the high seas, it would have an impact with respect to areas under national jurisdiction of coastal States. This is so because of the nature of straddling stocks of some stocks and the legal obligation that measures adopted with respect to the high seas and to areas under national jurisdiction be compatible.

⁹ See for instance by Erik Jaap Molenaar, The Concept of “Real Interest” and Other Aspects of Co-operation through Regional Fisheries Management Mechanisms, *The International Journal of Marine and Coastal Law*, Vol. 15, No 4, 2000, pages 475-531.

¹⁰ Both under the 1982 United Nations Convention on the Law of the Sea and the 1995 United Nations Fish Stocks Agreement all States have a right for their nationals to engage in fishing on the high seas.

C. Species covered

33. Under the current Statutes of CECAF, the Committee has competence with respect to all fishery resources in its area of competence. In practice, the Committee has over the years defined its own priorities of work and concentrated on a number of stocks, in accordance with the guidance provided by its members, the priorities of the Organization as well as the resources made available to the Committee and the Organization. In addition, CECAF has not been dealing with tuna, insofar as such stocks are covered and regulated by the International Commission on the Conservation of Atlantic Tunas (ICCAT). ICCAT was set up by the International Convention for the Conservation of Atlantic Tunas which was adopted in 1966 and came into force in 1969. The area of competence of ICCAT is defined, in Article I of its Convention, as “*all waters of the Atlantic Ocean, including the adjacent seas*”. It includes areas under national jurisdiction.

34. If a body is established, which is competent with respect to the high seas of Statistical Division 34, then the question arises as to whether that body should deal with all species occurring in its area of competence or, given the existence and past record of ICCAT, should its mandate exclude tuna and tuna like species.

35. In the course of the Technical Consultation of Lagos, reference was made to the fact that given the existence of ICCAT, a possible new organization competent with respect to the areas on the high seas of Statistical Division 34 should not be competent with respect to the species already dealt with by ICCAT. In considering the matter, the Committee may wish to note that a number of arrangements allowing for a coherent relationship between ICCAT and a number of other bodies have been implemented. Thus, in addition to the circumstance that, so far, CECAF has not concerned itself directly with tuna and tuna like species, reference could be made to the fact that fishery resources dealt with by the South East Atlantic Fisheries Organization, being established by the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, will not be dealing with “*highly migratory species listed in Annex I to the 1982 United Nations Convention on the Law of the Sea*”. Furthermore, an informal arrangement has been applied since 1969 whereby the General Fisheries Commission for the Mediterranean does not deal with species regulated by ICCAT¹¹. In addition, it would seem that ICCAT, whose area of competence covers both areas under national jurisdiction and areas on the high seas, might already provide a suitable framework for the implementation of the provisions of Article 7, paragraph 1(b) of the 1995 United Nations Fish Stocks Agreement^{12 13}.

D. Functions and powers

36. Much could be said about this critical issue of the functions of CECAF, which attracted considerable attention in the past. It does not seem that this is the case any longer. The following observations concentrate on what is deemed to be essential so that the Committee could provide relevant guidance.

37. From a strictly legal point of view, CECAF is a body entrusted with purely advisory functions. These advisory functions are to be exercised in accordance with reporting procedures set out in Paragraph 5 of its

¹¹ The Mediterranean Sea is considered an adjacent sea within the meaning of Article I of the ICCAT Convention.

¹² Article 7, paragraph 1 (b) of the 1995 United Nations Fish Stocks Agreement reads as follows: “*Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention: (...) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction*”.

¹³ In relation to these observations concerning the species covered, it may be of some interest to mention that delegations of Japan at some recent conferences have pointed out that there may, in fact, be three main regimes concerning fisheries in the high seas: i.e. the regime applicable to straddling fish stocks; the regime applicable to highly migratory species, and the regime applicable to the “discrete” stocks (as they are designated by scientists), which are stocks located entirely in the high seas.

Statutes, i.e. to the Director-General and, through him to the Governing Bodies of FAO (the Conference, the Council or the Standing Committees of the Council) or the Member States. However, given the dimension that fisheries management matters acquired in West Africa during the 1970's and the early 1980's, the impression was conveyed at times that CECAF had the power to make recommendations directly to its Members. At the same time proposals were made, in general terms, that the Committee should have regulatory powers vis-à-vis its Members and with respect to resources under national jurisdiction. This would have involved a change in the legal status of CECAF, and, in particular, it would have required its establishment through an agreement concluded under Article XIV of the FAO Constitution. In addition, while this was not explicitly referred to, the possibility for CECAF to adopt regulatory measures within the areas under the jurisdiction of its Members that are coastal States would have raised the question of the membership of CECAF¹⁴.

38. In the course of the Fourteenth and the Fifteenth Sessions of CECAF the possibility that a new CECAF, entrusted with regulatory powers, be established under Article XIV of the FAO Constitution was supported by a number of delegations. A draft agreement submitted tentatively to the Fifteenth Session and the Technical Consultation envisaged the possibility for a new CECAF to adopt mandatory regulatory measures such as those provided for, for instance, under the Agreement for the Establishment of the General Fisheries Commission for the Mediterranean and a limited number of bodies competent in the fisheries of the North Atlantic Ocean. However, during the debate at the Technical Consultation, at least one delegation underlined the fact that it is highly unlikely that a new CECAF would be adopting binding regulatory measures with respect to resources which are subject to the exclusive jurisdiction of coastal States.

39. Subject to the views that the Committee may provide on this matter, the Organization should like to make some observations on this issue, which could have considerable implications with respect to the future status of a body competent with respect to areas under national jurisdiction. There are few cases, such as the North East Atlantic Fisheries Commission (NEAFC), where a Commission may adopt decisions binding upon its Members concerning measures of control relating to fisheries conducted within an area under the fisheries jurisdiction of a Contracting Party. In this case, the Contracting Party in question must take the initiative of requesting the measure and it must receive its affirmative vote. In addition, a special procedure allowing for the cessation of effect of such measures at the request of the Contracting Party is provided for. Comparable provisions are found in the Gdansk Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts. The General Fisheries Commission for the Mediterranean has also the power to adopt similar regulatory measures, but it is important to recall that the Mediterranean is a sea where only a very limited number of States have claimed extended areas under national jurisdiction. Furthermore, the Mediterranean has the characteristics of enclosed or semi-enclosed seas under a number of provisions of the 1982 United Nations Convention on the Law of the Sea¹⁵.

40. In practice, as pointed out at the Technical Consultation, it may be indeed unlikely that CECAF would be adopting regulatory measures binding directly upon its Members regarding areas under national

¹⁴ It may be considered legally questionable that States, other than coastal States, participate in the adoption of regulatory measures regarding resources within the jurisdiction of coastal States.

¹⁵ The relevant provisions of the GFCM Agreement (Article V) read as follows: "1. *The recommendations referred to in Article III, paragraph 1(b), shall be adopted by a two-thirds majority of Members of the Commission present and voting. The text of such recommendations shall be communicated by the Chairman of the Commission to each Member.* 2. *Subject to the provisions of this Article, the Members of the Commission undertake to give effect to any recommendations made by the Commission under Article III, paragraph 1(b), from the date determined by the Commission, which shall not be before the period for objection provided for in this Article has elapsed.* 3. *Any Member of the Commission may within one hundred and twenty days from the date of notification of a recommendation object to it and in that event shall not be under obligation to give effect to that recommendation. In the event of an objection being made within the one hundred and twenty days period any other Member may similarly object at any time within a further period of sixty days. A Member may also at any time withdraw its objection and give effect to a recommendation.* 4. *If objections to a recommendation are made by more than one-third of the Members of the Commission, the other Members shall be relieved forthwith of any obligation to give effect to that recommendation; nevertheless any or all of them may agree among themselves to give effect to it.* 5. *The Chairman of the Commission shall notify each Member immediately upon receipt of each objection or withdrawal of objection*". Only on very limited occasions has the GFCM adopted regulatory measures under the above legal basis, although this might change in future.

jurisdiction where they exercise sovereign rights over their resources. This is so for a number of reasons, including, *inter alia*, the very nature of the stocks and fisheries based thereon, their distribution, the multispecific and sometimes local nature of some fisheries, as well as the increasingly differentiated nature of the required management measures. In addition, there are now in West Africa, in the area of CECAF, a number of Sub-Regional Commissions on Fisheries and it would appear more appropriate, at least from a purely legal point of view, that regulatory measures binding upon its Members be adopted by these sub-regional bodies.

41. In view of the above considerations, and subject to such observations and guidance that the Committee may wish to provide, it would seem that a new CECAF might continue to exercise with regard to resources under the national jurisdiction of its Members essentially, if not exclusively, functions of an advisory nature that would take the form of recommendations to its Members. These recommendations would be channelled to its Members either directly, should a new CECAF be established by agreement under Article XIV of the FAO Constitution, or through the Director-General or on his behalf, should CECAF retain its present status as a body established under Article VI of the FAO Constitution.

42. However, the situation is entirely different as concerns the resources of the high seas. The 1995 United Nations Fish Stocks Agreement establishes a framework for the development of regional bodies entrusted with regulatory powers, as appears from the information provided in Paragraphs 20 to 24 above. The rationale for this is that, in line with the dual regime established by the 1982 United Nations Convention on the Law of the Sea, while the central authority for the management of resources within areas under national jurisdiction lies with each concerned coastal State, authority for the management of high seas fisheries lies with coastal States and all States that have a right, through their nationals, to engage in fishing on the high seas, and that authority is to be exercised through appropriate organizations or arrangements¹⁶. Furthermore, the 1995 United Nations Fish Stocks Agreement has established a framework for a very tight and somewhat sophisticated system of enforcement and compliance.

E. Financing

43. The Technical Consultation of Lagos was of the view that prior to considering in detail a draft agreement for future cooperation it was necessary to consider options regarding its financing mechanisms. In fact it would seem premature, and may be impossible, to explore this issue further in the absence of clear decisions on other, interrelated matters.¹⁷

44. As a general observation, it could be mentioned that in connection with the proposal to establish CECAF as a body under Article XIV of the FAO Constitution, the secretariat has been requested to present a document containing various financing options. This was done by providing information on the schemes and the scale of contributions of other regional fisheries bodies that are used, or are being tentatively considered, in connection with the General Fisheries Commission for the Mediterranean (GFCM) and the Indian Ocean Tuna Commission (IOTC). At the Technical Consultation of Lagos, the Permanent Secretary of the Sub-Regional Fisheries Commission provided information on the sources of funding for the Commission. However, no substantive conclusions were arrived at during the discussions at the Technical Consultation.

45. During the Technical Consultation a particular consideration was highlighted which may be of some relevance for the purposes of this document. In general, it was pointed out that in Commissions entrusted with regulatory powers to deal with the management of fishery resources, criteria for the establishment of contributions tend to privilege the level of catches by vessels flying the flag of its Members. This does not exclude that other considerations, including considerations regarding the level of development of the Members be also taken into account. However, in general, in bodies entrusted with the regulatory

¹⁶ The 1995 United Nations Fish Stocks Agreement has established a regime for highly migratory species and for straddling stocks. If the States so decided, it could also cover the so-called discrete stocks (see footnote 13), as is the case with the Convention for the Conservation and Management of Fishery Resources in the Southeast Atlantic Ocean. Although discrete stocks are not referred to as such, they are covered by the Convention.

¹⁷ Part R of the Basic Texts of FAO also provides some relevant general orientations regarding the financing of commissions established under Article XIV of the FAO Constitution.

management of resources, the level of catches by vessels flying the flag of a Member is the paramount criterion in determining the level of its contribution to the budget. Thus, the level of a Member's contribution to the budget is in relation to the catches by the vessels flying its flag. Thus it would appear that, should a body be set up to regulate the fisheries in the high seas of the present CECAF area, it might be appropriate to follow the same logic, without prejudice, of course, to the introduction of other corrective criteria such as levels of development.

46. In the case of regional fisheries bodies entrusted with a spectrum of functions such as those conferred upon CECAF at present, including in particular both management and development of fisheries, a broader and more complex range of criteria have been considered to determine the level of assessed contributions. This is illustrated by on-going discussions within the framework of the General Fisheries Commission for the Mediterranean.

F. Structure

47. The Technical Consultation of Lagos also emphasized the need to agree on the issue of the structure of the new body to be established, prior to considering the negotiation of an agreement. Again, this matter is related to the other matters on which a decision is required and to elaborate developments thereon may be premature in the absence of more precise guidance.

48. There is no single, established pattern of organization of bodies entrusted with regulatory management powers under the regime established by the 1995 United Nations Fish Stocks Agreement. However, the constituent instruments of organizations established recently make provision for, in addition to the commission itself, the possibility of establishing a scientific committee, as well as, given the importance of enforcement and compliance matters, a compliance committee. This is without prejudice to the establishment of temporary committees. The internal structure of a number of commissions entrusted with regulatory management powers, such as ICCAT or NAFO, became extremely complex, under what was initially a simple institutional framework. For instance ICCAT consists, in addition to the "main" Commission itself, of a Compliance Committee and several committees and panels reporting directly to the Commission, as well as an important Standing Committee on Research and Statistics (SCRS), which includes three sub-committees and several working groups.

49. An important consideration to keep in mind in connection with the structure of a possible future body, is that, should it be decided that it would be competent with respect to the whole area of CECAF as it stands at present, i.e. including areas under national jurisdiction and areas on the high seas, then a complex internal structure might perhaps need to be envisaged. This structure would presumably have to include two bodies, one dealing with resources under national jurisdiction, and the other dealing with the resources of the high seas, with different membership.

V. POSSIBLE OPTIONS FOR FUTURE INSTITUTIONAL FRAMEWORKS FOR COOPERATION IN FISHERIES IN THE AREA OF THE FISHERY COMMITTEE FOR THE EASTERN CENTRAL ATLANTIC

50. This section is not intended to duplicate the previous one which, as requested by the Technical Consultation of Lagos, aimed at identifying a number of specific issues on which guidance of the Committee is being sought. This section reflects a first general attempt to present a broad outline of what could be the future institutional arrangements for cooperation in fisheries in the area of CECAF, as a result of the decision taken by the Committee itself, at its Fourteenth and Fifteenth Session, concerning its future legal status and functions.

51. Two broad general options could be tentatively envisaged, on the understanding that they would not, in any way, pre-empt the possibility for the Committee to propose any additional options. These are:

- The possible establishment of a single regional fishery body competent with respect to the current CECAF area but with a structure and functions reflecting the two existing legal regimes; or
- The possible establishment of a regional fishery body competent for the high seas and the continuation of CECAF with an area of competence limited to areas under national jurisdiction.

A. The possible establishment of a single regional fishery body competent with respect to the current CECAF area but with a structure and functions reflecting the two existing legal regimes

52. Under the guidance provided by CECAF at its Fourteenth and Fifteenth Sessions and by the Technical Consultation of Lagos, a proposal could be made to the effect that CECAF, under its present form, be progressively replaced with a body established by agreement under Article XIV of the FAO Constitution. This body would have the same area of competence as described in Paragraph 14 of this document.

53. Since the area of competence of CECAF consists of areas under the national jurisdiction of coastal States and areas on the high seas subject to fundamentally distinct legal regimes, this would have to be duly reflected in the constituent instrument of the new body. This would have implications for the new body in term of States eligible to participate therein with respect to one area or another, structure, functions and powers as well as financing mechanisms.

54. From a purely legal or technical point of view it might be possible to conceive such a regional body. That said, a cooperation framework making provision for two distinct management mechanisms with a different membership, involving a fairly high number of States, would be necessarily cumbersome, perhaps impracticable. Many members of CECAF are developing States which might increase further the practical difficulties affecting the functioning of the new body. In turn, this could exacerbate the current lack of commitment on the part of a number of countries towards CECAF, as well as current functional difficulties of the Committee. Under the circumstances, consideration could be given to another solution.

B. The possible establishment of a regional fishery body competent for the high seas and the continuation of CECAF with an area of competence limited to areas under national jurisdiction.

55. In view of the above, consideration could be given to the possible establishment of a regional fishery body, by agreement under Article XIV of the FAO Constitution, with an area of competence excluding areas under national jurisdiction. This is precisely the solution reflected in the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Region under which the South East Atlantic Fisheries Organization (SEAFO) is being established and the approach reflected in the Agreement for the Establishment of a South West Indian Ocean Fisheries Commission, currently under negotiation.

56. Should this approach be followed, it would require a parallel adjustment to the area of competence of CECAF, which would need to coincide with the outer limits of the areas under exclusive jurisdiction of its Members.

57. A related question, concerning the transformation of CECAF from a body established under Article VI of the FAO Constitution into a commission established by agreement under Article XIV of the FAO Constitution, arises. This question calls for further review in light of a possible decision taken by the Committee at its present session that a separate regional fishery body, competent with respect to areas on the high seas, should be set up and that, consequently, the area of competence of CECAF be limited to areas under national jurisdiction.

58. Thus, it is recalled that a process to this effect was initiated at the Fourteenth Session of the Committee, held in Nouakchott, in 1998 and confirmed at the Fifteenth Session, held in Abuja in 2000. At that time it was generally felt, although the matter had not been studied in detail, that this process would

strengthen the role and functions of CECAF and might contribute to removing a number of constraints with which it was faced. The Technical Consultation on the Future of CECAF held in Lagos in 2001 considered in some detail Document CECAF/TC/2001 entitled “*Possible Options for the Future of the Fishery Committee*

for the Eastern Central Atlantic”. This document referred to the past activities of CECAF, which have been described in a number of technical documents of the Organization. However, it also highlighted the fact that the Committee’s activities had been constrained by a number of difficulties summarized as follows:

- “- *lack of funding;*
- *a complacent attitude and lack of commitment to CECAF of some Members;*
- *low participation and attendance at the sessions of the Committee and meetings of its subsidiary bodies;*
- *inadequate implementation of its recommendations; problems of communication and inadequate Secretariat work;*
- *emergence of other fishery management and advisory organizations or arrangements in the region; and*
- *inadequate collaboration between CECAF and these bodies*”¹⁸.

59. Document CECAF/TC/2001 further pointed out that any significant improvement in the work of CECAF either under its present form, i.e. as a body established under Article VI of the FAO Constitution, or as a new structure, would be difficult unless the above constraints were removed or attenuated. In particular, it was underlined that the mere fact of establishing CECAF as “a commission” through an international agreement would not in itself remove any of the above constraints. Document CECAF/TC/2001, as well as the debates thereon at the Technical Consultation, also emphasized that there might not be an actual need for the establishment of CECAF as an autonomous body through an international agreement under Article XIV of the FAO Constitution, insofar as it was unlikely that a future body would have an autonomous budget and be entrusted with regulatory management powers that it would exercise effectively.

60. In this connection, reference was made to the observations put forward by the Conference of FAO at its Ninth Session, in 1957, when it adopted “*Principles and procedures which should govern conventions and agreements concluded under Articles XIV and XV of the Constitution and commissions and committees established under Article VI of the Constitution*” as well as Conference Resolution N° 46/57 on “*conventions and agreements, constituent rules of commissions and committees*” that are now set out in Part R of the FAO Basic Texts.

61. On that occasion:

“503. The Conference, after considering the report of the Council (C 57/38) came to the conclusion that it was necessary to lay down principles to be adhered to in future whenever the provisions of Articles VI, XIV or XV of the Constitution were being applied. The intention was not to lay down too rigid rules since obviously the text of the various conventions and rules of procedure must be drafted in the light of the desired objectives. The Conference, however, wished to establish a framework, i.e. juridical and administrative norms to govern in future the drafting of new texts or of amendments to existing agreements and of the constituent rules of commissions and committees.

Basic considerations

504. In accordance with the provisions of Article VI of the Constitution, the Conference and the Council may establish general or regional commissions as well as committees and working parties, and may convene general, technical, regional or other meetings. For the necessary juridical act to be accomplished, all that is required is a decision of the Conference or Council.

505. *Article XIV of the Constitution applies to conventions and multilateral agreements concluded under the aegis of the Organization. These are agreements concluded between States with respect to which, in conformity with the principles of public international law, the expressed consent of sovereign entities constitutes the required juridical act.*

506. *However, the procedure of multilateral agreements has been used on several occasions to establish commissions and committees entrusted with specific tasks which fall within the general terms of reference of the Organization.*

507. *It must be borne in mind that the express purpose of multilateral agreements is to create contractual obligations to those who become parties to them. Contracting parties undertake to do or not to do certain things, such obligations being generally assumed for a given period. It follows directly from this principle that any agreement concluded under Article XIV of the Constitution amongst Member Nations of the Organization should entail financial or other obligations going beyond those already assumed under the Constitution of the Organization. Failing this, there would be no grounds for such an agreement, at least not in the legal form prescribed under Article XIV of the Constitution.*

508. *Hence, any multilateral agreement between Member Governments may undoubtedly provide for the establishment of a commission or an executive body, but this should not be an end in itself since under Article VI the Conference and the Council are empowered to establish such bodies merely by a decision on their part. Consequently, the setting up of a commission or a committee by a multilateral agreement is justified only when such agreement presupposes the assumption of specific obligations going beyond mere participation in the work of the body thus established”¹⁹.*

62. After having considered the above, and having regard to the decision taken by CECAF at its Fifteenth Session, the Technical Consultation reiterated the view that the process for the establishment of CECAF as a commission under Article XIV of the Constitution “*had to be gradual taking into account the realities of the region*”. Taking into account the above, the Technical Consultation “*unanimously agreed to the continuation and strengthening of the present arrangements of CECAF, given its wider scientific and technical tasks but concentrating its activities on a few key priority areas with regional focus*”. Consequently, the Technical Consultation proposed a number of amendments to the Terms of Reference of the Committee and requested the secretariat to submit it to the next session of CECAF. The proposed revised terms of reference are presented in document CECAF/XVI/2002/6.

63. It would appear, on the basis of the foregoing, that should CECAF be of the view that the process for the negotiation of an agreement under Article XIV of the FAO Constitution should not be pursued, and that its area of competence should be reconsidered, the Committee could continue its activities with its present status of a committee under Article VI, paragraph 2 of the Constitution.

64. In connection with a possible decision along the above lines, the Committee may wish to take into account the following two observations.

65. The first is that in the course of the past 25 five years a number of other organizations dealing with fisheries within the limits of national jurisdiction in the area of competence of CECAF have been established and, in some cases, have been carrying out a substantial number of activities, sometimes with support from FAO. Thus, towards the late 1970’s the Ministers of Fisheries of Cape Verde, Gambia, Guinea-Bissau, Mauritania and Senegal established the Sub-Regional Conference of Ministers of Fisheries which, in 1985, following the adoption of an international agreement to that effect, became the Sub-Regional Fisheries Commission. Guinea became subsequently a member of the Commission. In 1984 the Regional Fisheries Committee for the Gulf of Guinea (COREP) was established. COREP, based in Libreville, consists of Congo, the Democratic Republic of Congo, Equatorial Guinea, Gabon and Sao Tome and Principe. In 1989

¹⁹

See *Report of the Ninth Session of the FAO Conference*, November 1957, Paragraphs 503-508.

a process was launched for the establishment of the Ministerial Conference on Fisheries Cooperation among African States Bordering the Atlantic Ocean. A number of committees dealing with fisheries were also created within economic cooperation organizations. In general there has been a definite tendency towards the sub-regionalization of fisheries cooperation in the CECAF region, which, in some respects, reflected

debates held within CECAF during the 1980's. This may have been encouraged by a recent recommendation made by the Fourth Session of the Ministerial Conference, held in Conakry, Guinea, in 1999, that the States of the Western part of the Gulf of Guinea (from Liberia to Nigeria) should work towards creating a sub-regional fishery body. As a result, the Ministers of Fisheries of these States have held a series of contacts in 2000 and 2001. This overall context - where States are committed towards a fairly substantial number of fisheries bodies, sometimes with overlapping functions - may not be conducive to a decision regarding the future of CECAF through its transformation into a commission established by agreement under Article XIV of the FAO Constitution. In this regard, it may be recalled that Members of the Sub-Regional Fisheries Commission and of COREP might be more interested in a reinforcement of cooperation between FAO and CECAF with their respective bodies, rather than in a change in the status of the Committee. In the course of the Technical Consultation the secretaries of these bodies expressed the desire to concluding a cooperation arrangement with FAO in future.

66. Second, should it be decided to initiate a process for the establishment of a regional body competent with respect to the high seas, this might last for some time, as is the case with similar processes in the South East Atlantic and in the South West Indian Ocean. As its area of competence extends to the high seas, CECAF would continue to provide a forum for consultation during that transitional phase.

VI. POSSIBLE ACTION BY THE COMMITTEE

67. The Committee is invited to review this document and provide its views thereon and such guidance as it deems appropriate.

68. In accordance with the views expressed by the Technical Consultation on the Future of the Fishery Committee for the Eastern Central Atlantic held in Lagos, Nigeria, 27-30 November 2001, whereby it is essential to consider in detail and agree on a number of fundamental issues regarding a new body to be established, prior to the negotiation of an agreement, the Committee is specifically invited to offer its views on the following issues concerning that possible new body:

- (a) area of competence;
- (b) membership and rights of participation;
- (c) species covered;
- (d) functions and powers;
- (e) financing; and
- (f) structure.

69. In light of the considerations presented in this document and the Committee's position with respect to the above specific issues, CECAF is invited to indicate which of the two options outlined under Chapter V of this document it would favour. These options are as follows:

- (a) Possible establishment of a single regional fishery body competent with respect to the current CECAF area but with a structure and functions reflecting the two existing legal regimes; or
- (b) Possible establishment of a regional fishery body competent for the high seas and the continuation of CECAF, but with an area of competence limited to areas under national jurisdiction.

70. The Committee is invited to provide such other views and guidance as appropriate and may wish, in light of the outcome of its proceedings, to invite the Director-General of FAO to convene such technical conferences to negotiate an agreement, under Article XIV of the FAO Constitution, as may be required.

Annex 1

EXTRACT FROM THE REPORT OF THE FORTY-EIGHTH SESSION
OF THE FAO COUNCIL

Rome, Italy 12-23 June 1967

35. The Council noted that it was proposed to complete and circulate the Study to all Member Nations by 1 September 1967, together with a letter indicating that the Study had not yet been received by the Ad Hoc Committee and that the views of that Committee would follow. This would give them adequate time to formulate their views on the Study before the Fourteenth Session of the Conference.

36. Regarding the future work of the Ad Hoc Committee, the Council decided that a broad interpretation should be given to its terms of reference, as laid down by the Forty-Seventh Session of the Council, namely to consult with the Director-General on the content and conduct of a study on this topic. It was decided that a Third Session of the Committee should be held when the Committee would review and give its comments on the content of the Study. These observations together with the Study would be presented to the Forty-Ninth Session of the Council. The views of the Ad Hoc Committee should be circulated to all Member Nations immediately after its Third Session. It was decided to hold the Third Session of the Ad Hoc Committee from 2 to 4 October 1967.

Fisheries Questions

37. Before the Council addressed itself to matters brought to its attention by the Committee on Fisheries (COFI) it heard from the Committee's Chairman, Dr. A.W.H. Needl a general description of the Committee's work covering both its First Session in 1966 and its Second Session in 1967. He outlined the Committee's role in relation to the dynamic development of the fisheries of the world, the rapidly growing importance of fisheries as a source of protein food, and their special international nature. He enlarged on the function of COFI as a forum for discussion of international fishery problems, and also its function of reviewing the Program of Work of FAO in the field of fisheries, especially its discussion in depth in non-Conference years when it can influence the program. The Council then addressed itself to specific matters brought to its attention in the Committee's Report of its Second Session (CL 48/7), on which Council action was required.

Establishment of FAO Fishery Committee for the Eastern Central Atlantic

38. The Council considered paragraphs 42 to 47 of the Report of the Second Session of COFI (CL 48/7), and noted that the existing Regional Fisheries Commission for Western Africa was not operative for reasons of a political nature, and that the proposed FAO Fishery Committee for the Eastern Central Atlantic would in effect replace the Regional Commission which would be dissolved. The Council also noted that the Director-General would consult Governments especially concerned by means of a Technical Conference on Fisheries of West African Countries being held in Dakar, Senegal, from 31 July to 4 August 1967.

39. The Council then adopted the following resolution:

Resolution 1/48FAO FISHERY COMMITTEE FOR THE EASTERN CENTRAL ATLANTIC

THE COUNCIL

Noting that the need for effective international action for the development and the rational utilization of the fishery resources of the Eastern Central Atlantic had been established;

Considering that, as recommended by the Committee on Fisheries at its Second Session, the establishment of a Committee of selected Member Nations and Associate Members under Article VI-2 of the Constitution for the Eastern Central Atlantic area would, as an interim measure, lead to international co-operation in that area;

Authorizes the Director-General of the Organization to establish, under Article VI-2 of the Constitution, a Committee of selected Member Nations and Associate Members to be known as the "FAO Fishery Committee for the Eastern Central Atlantic", and to select its membership from among Member Nations and Associate Members in Africa whose territory borders the Atlantic Ocean from Cape Spartel to the mouth of the Congo River and such other Member Nations and Associate Members fishing or carrying out research in the sea area concerned or having some other interest in the fisheries thereof, whose contribution to the work of the Committee he deems to be essential or desirable;

Further authorizes the Director-General to promulgate the Statutes of the Committee and in particular to determine its terms of reference along the general lines of those terms of reference of the FAO Regional Fisheries Commission for Western Africa which relate to sea fisheries;

Requests the Director-General, when selecting the members of the Committee and determining its terms of reference, to give consideration to the views that may be expressed thereon by the Technical Conference on the Fisheries of West African Countries scheduled to be held in Dakar from 31 July to 4 August 1967; and

Requests the Director-General to report to the Council, at its next Session, on measures taken to implement this resolution.

Establishment of Indian Ocean Fishery Commission

40. The Council discussed the recommendation of COFI in paragraphs 61 to 69 of the Report of its Second Session (CL 48/7), and a draft resolution prepared at the Committee's request and placed before the Council as Annex IV of document CL 48/21.

41. The Council noted that the creation of this new fishery commission might lead to a withdrawal of interest in the Indian Ocean by the Indo-Pacific Fisheries Council. The Council endorsed the Committee's recommendation that the Director-General do everything in his power to ensure close co-operation between IPFC and the new Commission. The Council also endorsed the recommendation of COFI that the Antarctic area be excluded for the time being from the terms of reference of the proposed Commission.

42. The Council then adopted the following resolution:

Resolution 2/48

INDIAN OCEAN FISHERY COMMISSION

THE COUNCIL

Noting that the Indian Ocean is an area as yet inadequately served by international fishery bodies;

Noting further that the need for collective action for the development and rational utilization of the fishery resources of the area had been established;

Considering that the Committee on Fisheries, after a thorough examination of the situation, recommended at its Second Session the establishment of a fishery body to cover the Indian Ocean and further recommended that such body be established under Article VI-1 of the Constitution.

Hereby establishes under Article VI-1 of the Constitution of the Organization a commission to be known as the "Indian Ocean Fishery Commission", the statutes of which shall be as follows:

FISHERY COMMITTEE FOR THE EASTERN CENTRAL ATLANTIC

STATUTES

Promulgated by the Director-General on
19 September 1967, under Article VI, paragraph 2, of
the FAO Constitution, pursuant to Resolution 1/48 of the
Forty-Eighth Session of the FAO Council (12-23 June 1967)

The Director-General of the Food and Agriculture Organization of the
United Nations:

Considering

1. The terms of Resolution 1/48 adopted by the Council at its Forty-Eighth Session which reads as follows:

THE COUNCIL

Noting that the need for effective international action
for the development and the rational utilization of the
fishery resources of the Eastern Central Atlantic had
been established;

Considering that, as recommended by the Committee on
Fisheries at its Second Session, the establishment of
a Committee of selected Member Nations and Associate Mem-
bers under Article VI-2 of the Constitution for the Eastern
Central Atlantic area would, as an interim measure, lead
to international co-operation in that area;

Authorizes the Director-General of the Organization to
establish, under Article VI-2 of the Constitution, a
Committee of selected Member Nations and Associate Mem-
bers to be known as the "FAO Fishery Committee for the
Eastern Central Atlantic", and to select its membership
from among Member Nations and Associate Members in Africa
whose territory borders the Atlantic Ocean from Cape Sparte
to the mouth of the Congo River and such other Member Nations
and Associate Members fishing or carrying out research in the
sea area concerned or having some other interest in the fish-
eries thereof, whose contribution to the work of the Committee
he deems to be essential or desirable;

Further authorizes the Director-General to promulgate the Statutes of the Committee and in particular to determine its terms of reference along the general lines of those terms of reference of the FAO Regional Fisheries Commission for Western Africa which relate to sea fisheries;

Requests the Director-General, when selecting the members of the Committee and determining its terms of reference, to give consideration to the views that may be expressed thereon by the Technical Conference on the Fisheries of West African Countries scheduled to be held in Dakar from 31 July to 4 August 1967; and

Requests the Director-General to report to the Council, at its next Session, on measures taken to implement this resolution.

2. The provisions of Article VI of the Constitution whereby the Conference, the Council, or the Director-General on the authority of the Conference or Council, may establish committees to study and report on matters pertaining to the purposes of the Organization and determine the terms of reference and the reporting procedures, as appropriate, of such committees; and
3. The principles and procedures of the Organization governing committees established under Article VI of the Constitution;

Hereby promulgates the statutes of the "FAO Fishery Committee for the Eastern Central Atlantic", established under Article VI, paragraph 2 of the Constitution, which shall be as follows:

1. Area

The area of the Committee is defined as all the waters of the Atlantic bounded by a line drawn as follows: from a point on the high water mark on the African coast at Cape Spartel (lat. 35°47'N, long. 5°55'W) following the high water mark along the African coast to a point at Ponta da Moita Seca (lat. 6°07'S, long. 12°16'E) along a rhumb line in a northwesterly direction to a point on 6° south latitude and 12° east longitude, thence due west along 6° south latitude to 20° west longitude, thence due north to the Equator, thence due west to 30° west longitude, thence due north to 5° north latitude, thence due west to 40° west longitude, thence due north to 36° north latitude, thence due east to 6° west longitude, thence along a rhumb line in a southeasterly direction to the original point at Cape Spartel.

2. Membership

The Committee shall be composed of Member Nations and Associate Members of the Organization selected by the Director-General. Such Member Nations and Associate Members of the Organization shall be selected from among Member Nations and Associate Members of the Organization in Africa whose territory borders the Atlantic Ocean from Cape Spartel to the mouth of the Congo River, and such other Member Nations and Associate Members fishing or carrying out research in the sea area concerned or having some other interest in the fisheries thereof, whose contribution to the work of the Committee the Director-General deems to be essential or desirable.

3. Terms of Reference

The terms of reference of the Committee shall be to give advice designed:

- (a) to promote, co-ordinate and assist national and regional programmes of research and development, leading to the rational utilization of the marine fishery resources of the area defined under 1. above;

- (b) to assist Member Governments in establishing the scientific basis for regulation measures for the conservation and improvement of marine fishery resources;
- (c) to encourage education and training through the establishment or improvement of national and regional institutions and by the promotion and the organization of seminars, study tours and training centres;
- (d) to assist in the collection, interchange, dissemination and analysis or study of statistical, biological and environmental data and other marine fishery information;
- (e) to assist Member Governments in formulating programmes to be implemented through sources of international aid to help achieve the objectives described in (a), (b), (c) and (d) above;
- (f) to promote liaison and co-operation among competent institutions within the sea area served by the Committee insofar as the Constitution, the General Rules, regulations and facilities of the Organization permit.

4. Subsidiary Bodies

- (i) The Committee may establish sub-committees or working parties on problems of major importance or of a specialized nature;
- (ii) The establishment of any subsidiary body shall be subject to the determination by the Director-General that the necessary funds are available in the relevant chapter of the budget of the Organization. Before taking any decision involving expenditure in connection with the establishment of subsidiary bodies the Committee must have before it a report from the Director-General on the administrative and financial implications thereof.

5. Reporting

The Committee shall submit to the Director-General reports on its activities and recommendations at such appropriate intervals as to enable the Director-General to take them into consideration when preparing the draft Programme of Work and Budget of the Organization and other submissions to the Conference, Council or the Standing Committees of the Council. The Director-General shall bring to the attention of the Conference through the Council recommendations adopted by the Committee which have policy implications or which affect the programme of finances of the Organization. Copies of each report of the Committee will be circulated to Member Nations and Associate Members of the Organization and international organizations for their information as soon as they become available.

6. Observers

- (i) Any Member Nation or Associate Member of the Organization that is not a member of the Committee may, upon its request, be represented in an observer capacity if so decided by the Conference or Council;
- (ii) States which, while not Members of the Organization, are members of the

United Nations, any of its Specialized Agencies or the International Atomic Energy Agency may, upon their request, and with the approval of the Council of the Organization, be represented in an observer capacity in accordance with the provisions relating to the granting of observer status to nations adopted by the Conference of the Organization.

7. Participation of International Organizations

Participation of international organizations in the work of the Committee and relations between the Committee and such organizations shall be governed by the relevant provisions of the Constitution and General Rules of the Organization, as well as the rules on relations with international organizations adopted by the Conference and Council of the Organization.

8. Rules of Procedure

The Committee may adopt and amend its own rules of procedure which shall be in conformity with the Constitution and General Rules of the Organization and with the Statement of Principles Governing Commissions and Committees adopted by the Conference. The rules of procedure and amendments thereto shall come into force upon approval by the Director-General.

APPENDIX II

MAP OF THE AREA OF COMPETENCE OF CECAF (AREA 34)

