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**THIRD INTER-GOVERNMENTAL CONSULTATION ON THE
ESTABLISHMENT OF THE SOUTH WEST INDIAN OCEAN FISHERIES
COMMISSION**

Nairobi, Kenya, 27 – 30 January 2004

PROPOSALS OF AVENUES FOR PROGRESS

SUMMARY

This document presents the avenues for progress received from countries in response to the request made by the Second Intergovernmental Consultation on the Establishment of a South West Indian Ocean Fisheries Commission, Antananarivo, Madagascar, 25-28 September 2001

BACKGROUND

1. The second intergovernmental consultation on the establishment of a Southwest Indian Ocean Fisheries Commission, in Antananarivo, September 2001, called on participants to provide the Secretariat with views, in writing, on avenues for progress on three major issues:

- the accommodation of the interests of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks;
- a possible framework to promote co-operation towards the sustainable development of fisheries in the areas under the jurisdiction of coastal States bordering on the Area of competence of the future Agreement;
- the role of FAO within the context of the future Agreement.

RESPONSES

2. Responses have been received from Australia, European Community, France, Japan, Kenya, Mauritius, Seychelles, South Africa, Tanzania and the United Kingdom on avenues for progress in the establishment of a regional fisheries body in the southern and western Indian Ocean. These responses are attached in their entirety as Annex I.

SUGGESTED ACTION FOR INTERESTED MEMBER COUNTRIES

3. Member countries are requested to consider the above responses in relation to avenues for progress at the third consultation and make additions or further comments as may be appropriate.

ANNEX 1

RESPONSES

AUSTRALIA

1. Avenues for progress

- (i) *the accommodation of the interests of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks*

Australia welcomes the contribution of the Developing States Group on the 'FAO or Non FAO issue' that was included in the recent record of meeting. The Statement provided that:

“They also wondered whether instead of relegating the interest of Developing States to a Protocol, it would not be better to produce a document with Part 1 dealing with high seas fishing with those involved retaining an autonomy of operation, if with some safeguards; part 2, dealing with interest of Developing States under FAO; and part 3, with some co-operation and collaboration as may be appropriate between the fishing countries and the coastal and developing States.”

From an Australian perspective, we believe this statement is a way forward for the development of an agreement which is acceptable to those whose interest lie on the high seas and also those who fish in coastal waters. Such an arrangement could either take the form of one agreement separated into parts, or two separate agreements. Some overlap in management measures for straddling stocks is necessary under current international law, and further consideration of the legal ramifications of the arrangements under consideration would be warranted. Given the differing interest of distant water fishing nations and Coastal States, it might be practical for each of these groups to develop their requirements separately, and then join to finalise any overlapping issues.

The phrasing in the statement after part 1 “with some safeguards”, requires some clarification as to whether this refers to the participatory rights of developing states in a high seas agreement.

Australia also reiterates the point, which it has made at both sessions of this group regarding the need for a low cost arrangement reflecting the value of the fishery. There are many options available other than a large permanent Commission. Australia also reiterates its position that it seeks to co-operate with other states in the development of management measures, but does not support text that includes mandatory obligations upon States to provide assistance to other states.

- (ii) *a possible framework to promote co-operation towards the sustainable development of fisheries in the areas under the jurisdiction of Coastal States bordering on the Area of competence of the future agreement*

Australia considers that the framework could draw on the Pacific Islands model, the Fisheries Forum Agency (FFA). The FFA model (details of which are attached) represents a number of developing countries and has equally demonstrated itself as a model to be used to assist developing countries in policy development, research prioritisation and a framework for assisting developing countries in international fisheries negotiations. Australia would be prepared to contact the current Chair of this organisation if most countries are interested, to see if he would be willing to discuss how this organisation works with coastal nations.

(iii) *the role of FAO within the context of the future Agreement*

Australia considers that at this stage the FAO's role is essential to assist developing nations. Australia would positively consider a structure which provides the FAO with a role in assisting developing states in developing their coastal fisheries, whilst at the same time providing high seas states with low coast management arrangements for high seas fisheries. As Australia has noted on previous occasions, Australia is looking at a high seas regime that minimises costs. Preferably, this means one that avoids establishing expensive administrative or other structures.

2. Permanent Chairperson

Australia will not be nominating a person for this position as it is expected that most of these meetings will be on or near the African continent, making it impractical for Australia to provide a permanent chair. Given the membership of the Commission Australian would like to see an experienced person on the African continent become the chair.

As you know, we recently sent you our suggested selection criteria for the Chair, which was circulated to the selection committee for comment.

3. Other issues

Australia believes that, at the next meeting in South Africa, several key unresolved issues should be given precedence before work starts on a detailed consideration of the text. It is felt that resolving these issues and setting a clear agenda would facilitate a more structured and outcome-oriented approach to the meeting. Australia would be happy to participate in setting the agenda in advance.

(Attachment- FFA)

GOVERNANCE OF FFA

Structure

1. The Forum Fisheries Agency (FFA) was established in 1979 in response to the member countries desire to promote regional co-operation and co-ordination in respect of fisheries issues and their concern to secure maximum benefits from the living marine resources of the region, in particular the highly migratory species.
2. Under the 1979 FFA Convention the Forum Fisheries Agency consists of the Forum Fisheries Committee (FFC) which is the governing body, and a Secretariat. The Agency presently has sixteen members, each of which is represented on the FFC¹. The Convention places the seat of the Agency at Honiara, and an Agreement between the Agency and the Government of Solomon Islands defines the diplomatic status of FFA.
3. The FFA Convention foresees the need for 'additional international machinery' to provide for co-operation in 'conservation and optimum utilisation ' of tuna resources, between 'all Coastal States and all states.... Harvesting ... such resources'. The projected establishment

¹ The member states of the Pacific islands Forum are also the Member Countries of FFA. They are Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.

of the Tuna Commission under the Western and Central Pacific Tuna Convention will bring this foresight to realisation and extend it to the high seas.

4. FFC provides leadership, policy guidance and direction for the Agency and supervises the work of the Secretariat. FFC operates in a consultative manner, making decisions wherever possible by consensus. The Committee endeavours to be pro-active in foreseeing issues, promoting solidarity among its members and ensuring commitment of member countries to its decisions. The FFC Chair, which rotates among members, has a particularly important role in promoting regional solidarity and representing the collective views of the Member Countries.
5. The Secretariat, with a current establishment of 53 positions, is organised into six divisions, led by an executive management unit headed by the Director. Conditions of service for professionals and support staff are guided by the harmonised conditions of the Council of Regional Organisations for the Pacific with adjustments for condition in Honiara.

Accountability and stakeholders

6. FFA is accountable in varying degrees to several classes of stakeholder – that is, to persons and institutions whose interests are linked to those of FFA through ownership or funding arrangements or contractual relations, or by reason of significant operational interaction. A strong culture of accountability already exists in FFA.

Member Countries.

7. The Agency is accountable to its member countries for all aspects of its performance. The machinery of accountability comprises the supervisory and decision-making powers of FFC (on which all member countries are represented), the policy directives that FFC gives from time to time to the Secretariat, and the range of financial, audit and operational reports rendered to FFC by the Secretariat. This Corporate Plan is an important part of the arrangements for directing, reporting and holding to account that underpin FFA's governance structure. Beyond FFC itself, FFA in the person of the Director is required to present a formal report annually to the Pacific Islands Forum Leader's meeting, and FFA has a responsibility to regularly publish an accessible account of itself to the public at large.

Aid Donors.

8. FFA relies heavily for its programme activities on funding from a range of aid donors, prominent among them its two developed member countries, Australia and New Zealand. Donors have various detailed requirements to be met in the request for funds, and the reporting of fund use. FFA has a reputation for conscientious execution and meticulous accounting for external assistance. This reputation is a valuable asset in securing continued assistance and in negotiations with prospective donors about development priorities.

Staff

9. Increased recognition of FFA's staff as an important stakeholder group led to wider participation in the recent corporate planning process. The plan includes a renewed commitment to formulation of a staff development policy and stronger emphasis on team work at corporate and divisional levels. Effective delivery of the plan is dependent on the commitment and efficiency of the staff of the Secretariat.

Other Stakeholders

10. Distant water fishing nations, foreign fishing vessel operators and participants in member countries' domestic tuna industry were identified as 'emerging stakeholders' of FFA in the 1998 – 2001 Corporate Plan. Technical standards, financial and other costs and ease of use of the Regional Register and vessel monitoring systems, and the feed-back of aggregate information to those who helped to provide components of it, are all areas where consultation with service users has the potential to improve efficiency and cost-effectiveness - without prejudicing the integrity of FFA's services to its member countries.

EUROPEAN COMMUNITY

1. Avenues for progress

- (i) *The interests of all the participants in an agreement or agreements on high sea fisheries and straddling stocks*

The European Community takes part in this process as a coastal State. In this context it has expressed its preference for an agreement applicable to the high sea, to the exclusion of the exclusive economic zones (EEZ) which are subject, under the international Law of the Sea, to the jurisdiction of the coastal State. The inclusion of the EEZs of the riparian States of the future area of competence, as provided for at the present time by the proposed agreement, would involve for these States the transfer of their rights and obligations to the future Fisheries Commission, insofar as the latter must be given powers to adopt fishing resource management and conservation strategies which are binding upon the contracting parties. The Community considers that the principle of responsibility of the coastal State for the management and conservation of the existing resources in the EEZ must be maintained, while assuring the inclusion in the future agreement of necessary provisions regarding the obligation, also provided for by international law, of ensuring the compatibility between the measures adopted by the coastal State and those adopted by the future Commission in relation to the straddling fish stocks (see Article 9 of the proposed agreement).

The Community believes that the coastal States have an essential part to play in a future Fisheries Commission aimed at high sea fisheries, even though some of these States would not currently be involved in high sea fishing activities. Indeed the need for compatibility mentioned above justifies the participation of these States in the work of the future Commission. Furthermore, the role of the coastal States regarding the attempts made at an international level to combat illegal, unreported and unregulated fishing activities, should not be under-estimated. This role is reflected in the proposed agreement currently under negotiation and is particularly concerned with the obligations of the contracting parties and the obligations of the Port State (Articles 16 and 19, respectively, of the proposed agreement). Furthermore, the future Commission will have to begin work to get accurate data on the status of the stocks and the monitoring of fishing operations. Without the involvement of the coastal States, such studies are unlikely to produce the desired results. In the same context, scientific research carried out by the parties working in co-operation under the auspices of the future Commission should be able to benefit both the coastal States and the States engaged in high sea fishing operations with long-range fishing fleets.

Finally, the Community believes that the future Fisheries Commission should promote a regional synergy in the South of the Indian Ocean with a view to setting up infrastructures for the control of fishing activities, by facilitating a high level of co-operation between the interested contracting parties. In this area also, the role of the coastal States must not be under-estimated.

(ii) *A possible framework to promote cooperation towards the sustainable development of fisheries in the areas under the jurisdiction of coastal states bordering on the Area of competence of the future agreement*

The European Community believes that the future Commission should focus on management and conservation of fishing resources, whereas the co-operation for sustainable development of the coastal fisheries needs to find a more suitable framework in an instrument which is separate from the future agreement. This opinion is based on the following considerations:

- a. The current negotiating process is in response to the desire expressed by the FAO Council at its 116th Session in June 1999 to convert the Regional Fisheries' Committees into Regional Fisheries' Commissions with autonomous budgets and with the powers to adopt binding measures for the management and conservation of fishing resources. The task of these commissions has therefore been clearly defined by the decision-making bodies of the FAO, as focused on the management and conservation of the fishery resources of the areas concerned.
- b. The discussions which took place during the last technical Consultations have allowed the European Community to understand the difficulties which would be involved in the setting up of a Fisheries Commission whose area of competence covers only the high sea with some of its provisions being applicable to the EEZ of the riparian States.
- c. This being said, it is necessary to take into consideration the specific needs of the developing nations in the context of the future agreement in respect of the relevant provisions of the International Law of the Sea (see Part VII of the New York Agreement on the straddling fish stocks of 1995). This is why the European Community would like the provisions currently laid down in article 15 of the agreement to be maintained, while adapting its scope to that of all of the other provisions of the text. This provision must therefore focus on co-operation with the developing countries which will be party to the agreement in order to assist them to participate fully in the work of the Commission and in its follow-up, and also to assist them in developing their own high sea fishing operations, if that is their aim.
- d. Furthermore, the Community stresses that the fishing agreements that it established with some coastal States are also likely to facilitate partnerships promoting the sustainable development of fishing activities in the waters of these countries.

As for the question of knowing what would be the most appropriate framework to meet the aspirations of the coastal States for the development of sustainable fishing within their EEZ, the European Community draws the attention of the participants to the following :

- e. The Community has established links with the States in the region in the context of its policy of co-operation for development. In this respect, the European Development Fund (EDF) is funding programmes targeting several areas, including the use of natural resources, under the Cotonou Agreement. Sub-regional organisations such as COMESA, SADC, EAC, IOC, IGAD have established partnership links with the Community in order to jointly establish the priorities of this policy in the region and the related planning efforts.

- f. Thus, the Community is ready to consider, in close consultation with all stakeholders, an initiative which would allow the developing coastal States in the region of the future SWIOFC to establish and implement a concerted, coherent and synergistic management of their fishing resources. Such an initiative would make it possible to create a development momentum and would help improve co-ordination among the States in view of their total involvement in the work of the future Commission.
- g. It seems premature at this stage to determine the legal framework on which this initiative would be based or the structure which it should lead to. This must be the result of an agreement between all interested parties, which could begin at the next Intergovernmental Consultation in South Africa. In any case, the European Community believes that it is necessary in the first instance to facilitate the setting up by the coastal States concerned of a light consultation mechanism where some common guidelines could be prepared with regard to the other parties who might be interested in entering into partnership with the developing countries concerned in the targeted sector. Later, the guidelines thus set out could help define and establish regional cooperation programmes.

(iii) The role of the FAO within the context of the future agreement

The initiative taken by the FAO Council at its 116th Session as welcomed by the European Community, for it considered that the conservation and management of fishing resources at regional level could only be effectively ensured by a structure which has, on the one hand, powers for the adoption of necessary measures, and on the other hand, a budget autonomy allowing it to function in a flexible and dynamic way.

However, FAO has at several occasions pointed to the growing financial constraints which it has to address. In these circumstances, the European Community is asking whether an Organisation operating outside the FAO framework would not better fulfil the objectives sought by the participants, i.e. the establishment of a Fisheries Commission which could carry out its work in the most comprehensive and effective way. Indeed, Article XIV entails the inclusion in the proposed agreement of several provisions which impose administrative and operational constraints on the future Commission which do not seem to us to be essential to the smooth running of its future activities. Furthermore, the Community reiterates its attachment to the concept of open membership in fishing organisations, in accordance with the international Law of the Sea. It believes that all those involved in fishing in the area must be invited to join the future organisation and that if this is not the case, the efforts of the said organisation are likely to be fruitless.

The Community considers, however, that, given the very important role that FAO is playing, and must continue to play, in the field of international co-operation with regard to fishing, it ought to remain involved in the current process, and could in particular become the depository of the future agreement. FAO can also offer significant input to the work of the future Commission, in particular concerning the assessment of stocks. In this regard, the efforts made by FAO in the context of the FIGIS project (Fisheries Global Information System) might contribute to data collection in the future area of competence of the Commission, and the latter should establish the necessary links with FAO to support this work and take full advantage of it. The FIGIS programme could also play an important role in the assessment of existing resources in the EEZ bordering on the area of competence. The coastal States involved would thus be in a position to manage these resources better and to better identify and formulate their priorities in the context of an agreed policy of co-operation for development in this sector.

2. Permanent Chairperson

This issue is currently being examined by the European community. Given the responsibilities involved in the post of chairperson, the Community is anxious to exercise the greatest possible care in identifying possible candidates for proposal to the participants at the Consultation.

FRANCE

1. Avenues for progress

(i) Interests of participants

It is desirable for the Commission to be open in a non-discriminatory manner to all countries and organisations of economic integration wishing to join, in accordance with the Law of the Sea and the UNIA Agreement of 1995.

The interests of all the participants must be taken into consideration, particularly the interests of the Coastal States in the area of competence of the Commission in relation to the straddling fish stocks, be they discrete or not, for reasons of compatibility.

The text of the Agreement could include an article with a general application, like that which appears in the text of the IOTC, concerning co-operation in support of the developing countries.

The Commission should manage all the high seas deep-water species found within its area of competence, though very little is known at this stage about the type, abundance and distribution of these stocks. A better evaluation would make it possible to create specific sub-commissions at some later stage.

(ii) Co-operation Framework in the EEZ

After reflecting on the discussions which took place during the Second Consultation, we believe that the co-operation framework, aimed at promoting sustainable fisheries development in the areas under jurisdiction of the coastal States, should be institutionalised by means of a Protocol which is distinct from the text establishing the Commission. This Protocol would be open to Parties to the Commission who wish to be Parties to it. The legal framework of the Protocol would also act as support for the ongoing or planned regional co-operation activities in the area.

(iii) The Role of FAO

FAO is an organization which plays a pivotal role in the sustainable development of fishery resources. The establishment of the Commission under Article 14 of the Constitution nevertheless entails certain disadvantages which are being discussed in IOTC (statutory and financial dependency towards the Organization).

In any case, whatever solution is adopted, we regard it as necessary to maintain a link between the future organization and FAO, either by establishing a Commission under Article 14, or through a formula according to which FAO would be the depository of the future instrument, which would then have to take the form of a Convention.

What appears crucial is to ensure the sustainable development of the resource to which the FAO is linked, and to this end, it is vital to allow the broadest participation of all those involved in fisheries, in particular Taiwan.

2. Permanent Chairperson

Discussions about the appropriate candidate, who must be as experienced as possible in view of the task to be accomplished, is not complete at this stage.

JAPAN

1. Avenues for progress

- (i) *the accommodation of the interest of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks.*

(General)

We consider that, in this Fisheries commission, it is appropriate to develop a realistic framework of fisheries resource management that could have immediate effectiveness, fully taking cost-to effect implications into account.

The current draft is intended to accommodate two frameworks of different nature into one Agreement, namely

- (1) the framework that succeeds the “Committee for the Development and Management of Fisheries Resources in the Southwest Indian Ocean” which primarily aimed to promote fisheries in developing coastal state in the area. (The Committee was abolished in 1999) and
- (2) The framework of fisheries management targeting deep-sea fish species, which are “discrete stocks”, distributed along seamount areas of high seas. In order for this Commission to fulfil its role as a regional fisheries management organisation, the top priority should be placed on the establishment of a framework for existing high seas fisheries targeting those discrete stocks (Orange Roughy and Alfonsino) which is the major aim in the work to formulate this Agreement. Also, participating State/entities/Fishing entities should be limited to those that have real interest in the high sea resources in this region.

Since biological characteristics of Orange Roughy (target resource) having low reproductive capacity, there is an urgent need to build up a resource management system as promptly as possible. The most practical and effective approach would be to formulate a management framework among States/ Entities/Fishing Entities harvesting the discrete stocks and voluntary basis, pending the entry into force of the legally-binding Agreement. (for example, an action plan that includes collection of scientific information, authorisation of fishing by flag state, compliance with the 1993 Compliance Agreement of the FAO, and instalment of the Vessel Monitoring System (VMS) operated by flag State.)

(Specific issues)

The following are the Japanese minimum comments regarding the current draft text of the Agreement. Japan will provide the further detailed comments on the major articles by the end of February.

Area of Competence of the Agreement (Article 4)

In the same way as the Indian Ocean Tuna Commission (IOTC) that manages tunas and skipjack, the area of competence of the Agreement should be set at FAO Statistical Areas 51 and 57 (excluding the areas under jurisdiction of Coastal States and the areas under jurisdiction of the regional fisheries management organisation on the northern side.) Therefore, in order to ensure the compatibility with the IOTC and the FAO Statistical Areas, the eastern boundary should be set, not at 120 degrees E, but at 150 degrees E.

Functions (Article 6)

(1) General Principles

“Collection of scientific information” should be added. (Paragraph 1bis).

(2) Functions regarding pollution are outside the competence of this Commission (paragraph 4). Therefore, it should be deleted.

(3) Precautionary approach (PA)

The commission shall also apply take into account best international practices regarding the application of the precautionary approach, including Article 6 and annex II of the 1995 Agreement and the 1995 Code of Conduct for Responsible Fisheries.

(Reason)

Japan does not deny the necessity of the PA as appropriate. However, it is appropriate to have flexible description on the PA in the convention text since discussion on how to apply the PA to fishery management are going on in many regional fishery organisations. The relevant provisions of SEAFO should be a good reference for us.

Interpretation and Settlement of Disputes (Article 28)

Where a dispute is not referred for settlement within a reasonable time of the consultations referred to in this Article, such dispute shall, ~~at the request of any party to the dispute, with the consent of all the parties to the dispute,~~ be submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention ~~or where the disputes concerns one or more straddling stocks, by provisions set out in Part VIII of the 1995 Agreement.~~ The relevant part of the 1982 Convention ~~and the 1995 Agreement~~ shall apply whether or not the Parties to the dispute are also Parties to ~~these instruments~~ the 1982 Convention.

(Reason)

There is no reason that the preferential treatment in provision measures should be allowed to the states those are Parties to the 1995 Agreement and not to the 1982 Convention. Part XV of the 1982 Convention is enough to deal with the settlement of disputes.

(ii) *Framework for co-operation with Coastal States*

As long as this Agreement is aimed at establishing a regional fisheries organisation and at limiting its area of competence to high seas, it is not appropriate to take up under this Agreement the issue of development of sustainable fisheries within the exclusive economic zones (EEZs) of Coastal States.

However, we take that developing Coastal States are requiring the framework that comes in succession to the FAO's commission, which was abolished in 1999. Japan has contributed to Trust Fund for FAO, and extended fisheries assistance to those developing Coastal States through, on bilateral basis, various governmental co-operation and / or technical projects of Overseas Fisheries Co-operation Foundation of Japan (OFCF). Japan wishes to continue such co-operation under the current scheme.

(iii) FAO's role

It is desirable to make this Commission so-called 'non-Article-14 organization' separated from FAO umbrella since 'non-Article-14 organization would be open to all the states, entities and fishing entities concerned, and would have an autonomous budget and accounting system. It would also be necessary to review and amend the related articles in the draft text of the Agreement.

2. Permanent chairperson

We have not had any specific candidate of the permanent chairperson yet, but will continue our effort to find the candidate(s) who satisfies the following requirements. Japan also wishes to join the selection process of the chairperson.

- (1) He/she should have recognition of the need of sustainable utilisation marine living resources
- (2) He/she is from a Commission member State having an interest in high seas fisheries, which can assume responsibility under this Agreement.
- (3) He/she has had extensive experience internationally in the meetings of other regional fisheries management organisations.

KENYA

1. Proposal for establishment of a protocol under FAO

During the debate on this issue, a compromise was suggested by fishing nations that, "A protocol be developed for the benefit of developing states to operate under FAO while the proposed body (Commission or SWIOFC) to be established outside FAO".

Comments

This protocol was not comprehensively explained or a draft given to the delegates for them to study and understand how it may be formulated, operated and including its legal binding. Thus, the compromise was not acceptable to developing states because they felt that they may be short-changed. Kenya does not support the proposal of establishment of a protocol unless it is comprehensively discussed and proved to have more merit than the present proposed arrangement. It however supports the establishment of SWIOFC under FAO constitutions as she feels her interests would be taken care of under FAO.

2. Recognition of special interests (requirements) of developing states (in the region) – Article 15 of the former proceedings.

Countries were expected to come up with their positions on this area as *inter alia* proposed in the draft agreement.

Comments

It should be noted that the main stakeholders of the Indian Ocean who were the members of the former body (IOFC) are all the states that border the ocean and all should be involved in the consultations and should directly benefit from the resources of their territorial, EEZ including adjacent high seas. Thus, any agreement on the management and development of high waters of Indian Ocean should take cognizance of this fact and should consider special requirements of the states adjacent to these waters as agreed during the 2nd *ad hoc* technical meeting.

3. Choice of Continuing Chairmanship.

This matter was brought to the attention of the delegates in the last hour and were asked to submit their proposals to FAO. This came as a result of the problems the Secretariat (FAO) has encountered during the previous proceedings and consultations. New chairmen especially those that had not participated in consultations on this matter before tend to delay proceedings

Comments

Kenya proposes that, for the sake of continuity in these consultations, Madagascar has shown a good track record of steering the proceedings of these consultations, and it would be appropriate to allow her representative, Mr. Christophe Veloson Tsirafy continue with the remaining consultations until the Agreement is finalized. However, the country chairmanship to cease forthwith on signing of the agreement and the future chairperson of the new body be elected by the contracting parties in accordance with the rule of procedure as will be contained in the Agreement of the body.

MAURITIUS

1. Avenues for progress

- (i) *The accommodation of the interests of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks*

The establishment of only one commission to cater for both high seas fisheries and fisheries under national jurisdiction is preferred. This Commission will need to have under it two bodies: one for managing high seas fisheries and the other one to be responsible for fisheries under national jurisdiction. In addition a mechanism will need to be developed to allow for cooperation between fishing nations and coastal states to cover both for fisheries in the high seas and under national jurisdiction.

- (ii) *Possible framework for sustainable development of fisheries under national jurisdiction.*

As stated above in (i) the proposal is to establish only one Commission with two bodies, one for the high seas fisheries and the other for fisheries under national jurisdiction. This will allow for a distinct framework for sustainable development of fisheries under national jurisdiction.

- (iii) *The role of FAO within the context of the future Agreement*

It is proposed that the Commission be established under Article XIV of the FAO Constitution.

2. Assistance in planning, organizing and funding future negotiations

Mauritius is not in a position to provide any assistance in planning, organizing and funding future negotiations.

3. Permanent Chairperson

No nomination is made for consideration for the permanent chairperson.

SEYCHELLES

1. Avenues for progress

- (i) *The accommodation of the interests of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks*

Our concern here lies with the increasing levels of exploitation by distant water fleets for deep-water fish stocks which lie in international waters adjacent to regional country boundaries. Immediate accounting of this fishing activity is required along with valid assessment of the resources, which are being exploited. Therefore, some reporting procedure by vessels exploiting deep-water fish resources in the region must be implemented ASAP. The Seychelles Fishing Authority (SFA) recommends that a scientific working group be set up to address issues relating to deep-water stocks and the increasing interest in this fishery is generating in the region.

- (ii) *Possible framework for sustainable development of fisheries under national jurisdiction.*

Again a full accounting of resources in these areas needs to be undertaken in order to assess the fisheries in question. SFA will support a regional assessment of the resources and assist in the development of a research protocol aimed at addressing the issue.

- (iii) *The role of FAO within the context of the future Agreement*

The SFA is committed to retaining FAO's services as the Secretariat and feel that FAO's guidance of the Commission would achieve the best long-term results at present.

2. Permanent Chairperson

During the last consultation held in Madagascar in September 2001, this issue was briefly discussed. There was, at the time a loose consensus for the continuation of Madagascar (Mr Christophe Veloson Tsirafy) as the chairperson for the next consultation. SFA has no objection to Mr Tsirafy's nomination.

SOUTH AFRICA

1. Avenues for progress

- (i) *The accommodation of the interests of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks*

South Africa, as a developing coastal state in the region and a high-seas fishing nation has dual interests. We wish to see the rapid establishment of a conservation and management organisation which covers high seas and straddling fish stocks. We also recognise that developing coastal states in the region may have as an objective the promotion of fisheries research, development, management and conservation within their EEZs. South Africa is of the opinion that the latter should not jeopardise the former and that these are separate objectives which should be developed in tandem as sub-agreements under a single umbrella agreement (see 2. below). Key issues that need to be amicably resolved between high-seas fishing nations and developing coastal states in the region, before such a high seas and straddling stocks agreement/part agreement can be concluded, are those encompassing Article 6 quint: Fishing opportunities and Article 15: Recognition of the special requirements of developing states in the region.

(ii) *Possible framework for sustainable development of fisheries under national jurisdiction.*

South Africa is of the opinion that this issue should be work-shopped by developing coastal state representatives in order to identify generic and specific shortfalls in fisheries conservation, sustainable development and management and to identify the extent to which these can be addressed using resources within the region. Where essential resources, (e.g. expertise infrastructure; capital) are lacking, the developing coastal states should develop proposals for submission to appropriate international funding and/or conservation organisations. We should take note of the pending World Bank-funded Large Marine Ecosystem fisheries research project currently being planned for the Western Indian Ocean region. In addition, South Africa would not be at liberty to enter into an agreement which:

1. in any way compromises its sovereign rights over its EEZ fishery resources;
2. may be contrary to the SADC Fisheries Protocol of which we are a signatory;
3. undermines UNCLOS (Articles 61 -63).

South Africa supports the "Statement of the Developing States Group on the FAO or Non FAO issue" which emanated from the Madagascar meeting.

(iii) *The role of FAO within the context of the future Agreement*

South Africa would prefer an agreement that was independent of the FAO. Conditions for acceptance of an FAO-controlled agreement would include:

1. decision-making by consensus with no opt-out provisions;
2. inviolable sovereignty over EEZ resources.

TANZANIA

1. Avenues for progress

As you may recall, the need for establishing the South West Indian Ocean Commission came up very clearly after the Ad Hoc Technical meeting held in Mauritius in January 2002. In that meeting it was noted that the countries in South West Indian Ocean had similar ecosystems, that the countries are a homogenous group with similar problems and issues which include :-

- similar fishing methods;
- insufficient human resources;

- inadequate post-harvest relating to the utilisation and marketing of fish and fishery products;
- land based pollution and its adverse effects on the ecosystem;
- inadequate integration of fisheries in coastal area management initiatives
- issues related to illegal, unreported and unregulated (IUU) fishing;
- issues related to reef fisheries and transboundary shared stocks and
- limited knowledge on the resources particularly transboundary stocks

Our expectation is to form a fisheries body that will address the issues and problems faced by the states in the Southwest Indian Ocean and not otherwise.

During the First and Second Intergovernmental Consultations most developing Coastal States, Tanzania being one of them, expressed concerns on a number of issues one of them being the Area of Competence. In the last consultation the area was extended to 1500E. As a result most of the Articles in the draft Agreement were amended to cover the interest of fishing nations.

It is not our priority to have an agreement regarding high seas at this juncture. Our interest is to form a body that will deal with coastal fisheries. Regarding the role of FAO, the proposed South West Indian Ocean Commission should be under FAO. In this context the Area of Competence should be limited to 800E i.e. area 51 of FAO Statistical Area.

2. Chairperson

We propose the name of Mr Thomas W. Maembe, the Director of Fisheries to be considered for the election of a permanent chairperson at the next consultation.

UNITED KINGDOM

1. Avenues for progress

- (i) *The accommodation of the interests of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks*

The United Kingdom, as a coastal State in the context of these negotiations, agrees that the interests of all participants in the future Agreement must be taken into account. In order to do so, a practical and workable solution must be found to reconcile the somewhat divergent views that emerged during the last meeting. We believe that this can be found through an agreement that covers the high seas in the region, while at the same time taking proper account of the interests and concerns of the Coastal States. We do not, therefore, favour an agreement that covers the Exclusive Economic Zones of the Coastal States, except in so far as the regulation of straddling stocks may be concerned. But in the long term a regional high seas Agreement would not succeed without the involvement of the Coastal States, who wish to develop their fisheries, and whose participation is essential for the development of proper scientific data and for the enforcement of the Agreement through port controls and other actions to prevent illegal, unregulated and unreported fishing.

- (ii) *Possible framework for sustainable development of fisheries under national jurisdiction.*

The United Kingdom attaches great importance to the sustainable development of the fisheries of the Coastal States within their Exclusive Economic Zones. We would be interested in exploring mechanisms for ensuring that such development is properly taken into account in the

context of the Agreement. As a first step, it might be helpful to have an early meeting of representatives of the Coastal States and those organizations which have the necessary expertise in fishery development to examine how the longer term requirements of those States can be met. We recall that the FAO, supported by the United Kingdom and others, has established a valuable programme in West Africa, which may provide some helpful precedents on which to draw. It should be possible to find an appropriate instrument through which the Agreement could be linked to an enhanced development programme.

(iii) *The role of FAO within the context of the future Agreement*

We believe that the FAO will have an important role to play in the future Agreement, but do not believe that this should be the formal role currently expressed in the draft text. We would prefer the Agreement to have an administrative structure which is designed specifically for it, rather than one which conforms to a standard FAO model. Although the FAO would not have a formal role in such an Agreement, other than e.g. as Depositary, we would expect the FAO to be involved in assisting the parties to develop the necessary scientific data and in the developmental aspects of the Agreement.

2. Permanent Chairperson

The United Kingdom does not have a candidate to nominate for election as Chairman for the next, and subsequent Consultations.

**Additional comments and suggestions
on the draft agreement
for the establishment of a South West Indian Ocean Fisheries Commission
by Government of Japan**

1. PREAMBLE

The fishery activities in the area of competence of the Agreement play an important role for food supply for contracting parties. Therefore, the Preamble should also recognize the contribution sustainable fishery makes to food security and state that it should be taken into consideration when conservation and management measures are elaborated.

It is not appropriate to refer to the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea in 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks in 1995 (the 1995 UN Fish Stocks Agreement), which is ratified by only some of the participating countries in the SWIOFC consultations, on the same basis as the United Nations Convention on the Law of the Sea in 1982, which is ratified by almost all of them.

2. DEFINITIONS (Article 1)

It should be clarified that this Agreement does not apply to highly migratory species.

Regarding Paragraph (e), Japan supports the current wording of the definition of "Fishing".

3. OBJECTIVE (Article 3)

As we have already commented, the Agreement aims at establishing a regional fisheries organization which limits its areas of competence to the high seas; therefore, it is not appropriate to deal with the development of sustainable fisheries within the Exclusive Economic Zones (EEZs) of coastal States as an objective of the Agreement.

4. AREA OF COMPETENCE (Article 4)

As we have already commented, the area of competence of the Agreement should be set at FAO Statistical Areas 51 and 57 (excluding the areas under jurisdiction of coastal States, and of other regional fisheries management organization on the northern side) in the same way as the Indian Tuna Commission(IOTC) which manages tunas and skipjack. In order to ensure the compatibility of coverage with the IOTC and FAO Statistical Areas, the eastern boundary should be drawn along 150 degrees E, not 120 degrees E.

5. FUNCTIONS (Article 6)

Japan has already submitted the following comments.

(1) General Principles

"Collect scientific information" should be added. (Paragraph 1bis).

(2) Functions

Texts regarding pollution should be deleted, because they are outside the competence of the Commission (paragraph 4).

(3) Precautionary approach (PA)

The Commission shall also take into account best international practices regarding the application of the precautionary approach, including Article 6 and Annex II of the 1995 Agreement and the 1995 Code of Conduct for Responsible Fisheries.

6. MANAGEMENT MEASURES (Article 8)

The brackets in the 3rd and 4th paragraphs should be removed; any objection made by a Contracting Party should be accepted, as long as it is permissible under the best scientific knowledge, and it should be provided explicitly in the Article.

7. COMPATIBILITY OF CONSERVATION AND MANAGEMENT MEASURES (Article 9)

Japan supports the current draft, which limits the compatibility of conservation and management measures to the matters on straddling stocks.

8. SUBSIDIARY BODIES (Article 10)

The Permanent Scientific Committee should be an indispensable subsidiary body for the Commission, in order to develop effective conservation and management measures based on the best scientific knowledge available.

9. COOPERATION WITH OTHER ORGANIZATIONS (Article 11)

The issue of the participation of non-governmental organizations should be provided separately from the involvement of IGOs, so that the difference in nature between IGOs and NGOs is clearly reflected.

10. FINANCES (Article 12), EXPENSES (Article 13) and SECRETARIAT (Article 14)

Discussion on these matters should be deferred until the nature of the organization in relation to FAO is settled.

11. RECOGNITION OF THE SPECIAL REQUIREMENTS OF DEVELOPING STATES (Article 15)

We take note that developing coastal States are requiring a framework that comes in succession to the FAO's commission, which was abolished in 1999. As already mentioned above, however, the Agreement aims at establishing a regional fisheries organization which limits its areas of competence to the high seas; therefore, it is not appropriate to refer to the development of sustainable fisheries within the Exclusive Economic Zones (EEZs) of coastal States.

Regardless of the wording in the Agreement, Japan is ready to contribute to FAO, and to extend fisheries assistance to those developing coastal States through, either FAO or on bilateral basis, various governmental cooperation and/or technical projects of Overseas Fisheries Cooperation Foundation of Japan (OFCF).

12. OBLIGATIONS OF CONTRACTING PARTIES (Article 16)

Current paragraph 8 should be replaced with the Paragraph 6(a) of the Article 13 of the Convention on the Conservation and Management of Fishing Resources in the South East Atlantic Ocean (the SEAFO Convention): it is not practicable to include too detailed requirements on investigation when it is difficult to control vessels which do not fly its flag.

13. FLAG STATE RESPONSIBILITIES (Article 17)

Regarding Paragraph 2 (f), Japan supports current draft "measures to implement any observer programme agreed to by the Commission"

Regarding Paragraph 2 (h), as mentioned above (Article 6), texts regarding pollution should be deleted, because it is beyond the competence of this Commission (paragraph 4).

14. RECORD OF FISHING VESSELS (Article 18)

It should be made clear that this provision excludes the vessels fishing for highly migratory species.

Regarding the information listed in Annex 2, Japan reserves our position whether the information about nationality of owner and/or operator is included in the list due to ongoing internal consultation.

15. PORT STATE DUTIES AND MEASURES TAKEN BY A PORT STATE (Article 19)

It is inappropriate that port States be obliged to take measures against foreign vessels fishing on the high seas, over which its flag state should have sovereignty.

16. TRANSSHIPMENT (Article 21)

The wording of the Article should be more general so that the commission keeps flexibility in taking necessary action. Details of transshipment procedures should be developed separately.

17. RELATION TO OTHER AGREEMENT (Article 23)

It is inappropriate to refer to the 1995 UN Fish Stocks Agreement, which is ratified by only some of the participating countries in the SWIOFC consultations.

18. INTERPRETATION AND SETTLEMENT OF DISPUTES (Article 28)

As we have already commented, this provision should be revised as follows.

Where a dispute is not referred for settlement within a reasonable time of the consultations referred to in this Article, such dispute shall, with the consent of all the parties to the dispute, be submitted for binding decision in accordance with procedures for the settlement of disputes provided in Part XV of the 1982 Convention . The relevant part of the 1982 Convention shall apply whether or not the Parties to the dispute are also Parties to [the 1982 Convention](#).