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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**

**POSSIBLE OPTIONS REGARDING ISSUES CENTRAL TO THE  
NEGOTIATIONS FOR THE ESTABLISHMENT OF A SOUTH WEST  
INDIAN OCEAN FISHERIES COMMISSION**

## **1. Introduction**

The Indian Ocean Fisheries Commission (IOFC), which was a regional fishery body established under Article VI.1 of the FAO Constitution, was formally abolished by the FAO Council at its 116<sup>th</sup> Session in June 1999, together with all its subsidiary bodies. At the same time, the Director-General of FAO was authorized to convene *ad hoc* meetings of the members of the former Committee for the Development and Management of Fisheries in the Southwest Indian Ocean, as required, in order to complete the process of establishment of a new fisheries commission for the area under Article XIV of the FAO Constitution and to take such interim action as may be required regarding the management of the fisheries resources of the area covered by the former Committee pending the formal establishment of the new body.

Four meetings have been held to date to try to agree on an agreement to establish the new fishery commission. Two technical meetings were held in 2000 and a further two Intergovernmental Consultations were held in 2001. While the last Intergovernmental Consultation made substantial progress on the revision of a draft agreement for the establishment of the Southwest Indian Ocean Fisheries Commission, the consultation, like the first consultation, revealed significant differences among the parties to the negotiations. The Consultation identified three major substantive issues that still needed to be resolved before the negotiations could continue, namely:

1. the accommodation of the interests of all participants in an agreement or agreements regarding high seas fisheries and straddling stocks;

2. 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; and
3. the role of FAO within the context of the future agreement.

The Consultation called all participants in the negotiating process to provide the Secretariat with their views in writing on avenues for progress on these three issues, and asked the Secretariat to provide participants for the next meeting with an assessment, in light of these comments, of possible options regarding these issues and other issues central to the negotiations. The written responses of the participants to the negotiations were submitted to an informal Meeting on the Process of Establishment of a Southwest Indian Ocean Fisheries Commission in Rome in February 2003. The Informal Meeting recommended that the agenda for the next consultation should include, *inter alia*,

- A discussion of whether the process should move towards setting up a fisheries commission or a fisheries agreement/s. Is there political will for a Commission?
- A discussion of the proposals for progress that have been provided by the countries.

The present paper responds to the request of the Second Intergovernmental Consultation for an assessment of possible options regarding the issues considered central to the negotiations.

## **2. Present status of the negotiations**

As noted above, a total of four negotiating sessions have been held to date on an agreement to establish the new fishery commission. Before considering the central issues outstanding and possible options for dealing with them, it is perhaps useful to resume the progress of the negotiations.

**The first technical meeting** held in Mauritius, January 2000, reviewed the status of fisheries resources in the region, identified the issues and constraints of the member coastal countries and priorities for intervention. The meeting noted that non-tuna resources were the major source of marine food for the peoples of the Southwest Indian Ocean. The non-tuna fisheries also exhibited similarities with respect to the status of stocks, assessment, management and environmental issues that could be addressed more cost-effectively at a regional level. These fisheries were encountering increased transboundary activity due to local depletion, shifting fishing fleets from within the region and incursions from outside the region. In considering the scope of a possible fisheries commission, the first technical meeting was thinking in terms of a commission covering both high seas areas and waters under national jurisdiction.

At **the second technical meeting**, the participants, who were predominantly coastal states, former members of the Committee for the Development and Management of Fisheries in the Southwest Indian Ocean Committee, agreed on the establishment of an Article XIV body under FAO which would have an autonomous budget with member contributions which were yet to be decided. The focus of

discussions at that meeting still remained on the common interest of the coastal states in the management of fisheries. Concurrent to the process of negotiating an agreement to establish an Article XIV type fisheries body among primarily coastal states, a specialised fishery for deepwater fish was developing on the high seas in the southern Indian Ocean. This new fishery created much commercial attention.

In view of the development of the high seas fishery, and a possible overlap of the zone of competence of the proposed regional body with the areas of competence of other regional bodies, a **first intergovernmental consultation** with broad participation of both coastal states and high seas fishing nations was organised in Reunion (France) in February 2001. At that consultation, the different interests of the parties became acutely evident. For the first time, the Consultation focussed on the management of the high seas as opposed to coastal water fisheries, and indeed agreed on a new definition of the area of competence of the Commission that would exclude areas under national jurisdiction. Doubts were also cast on the advisability of concluding an agreement for the establishment of the Commission under Article XIV of the FAO Constitution.

The **second Intergovernmental Consultation** held in Madagascar in September 2001 reviewed a substantially revised draft agreement. The consultation ended again with significant differences between parties. While the Consultation reaffirmed its stance that the area of competence of the Commission should be limited to high seas areas, and negotiations proceeded on the basis of recent models of high seas fisheries commissions, there was recognition of the special requirements of developing states in the region, both from the point of view of high seas fisheries and straddling stocks and from the point of view of coastal fisheries under national jurisdiction. Proposals were also put forward for the formulation of separate instruments or elements of instruments dealing with high seas fisheries and the interests of developing coastal states. The issue of whether the future agreement should be under the aegis of FAO (Article XIV) was closely bound up with this discussion. In the end, the Consultation agreed that three substantive issues still needed to be resolved for progress in subsequent consultations: accommodating all interests within an agreement or agreements on high seas fisheries and straddling stocks; a framework for co-operation in the sustainable development of fisheries under the jurisdiction of coastal developing states; and the role of FAO in the future agreement.

### **3. The views of negotiating parties on the outstanding issues**

As noted above, the Second Intergovernmental Consultation agreed that the views of the negotiating parties should be sought in writing on the three major issues still outstanding. The responses of the negotiating parties are compiled in the document *Avenues for Progress*, SAFR/DM/SWIO/04 3<sup>1</sup>. Broadly speaking, the responses revealed the following positions:

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

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<sup>1</sup> Working document - Third Intergovernmental Consultation

In general there seems to be agreement that the distant water fishing nations and the coastal states have different expectations of the proposed new fishery commission and that these expectations need to be dealt with in separately negotiated legal provisions, whether as separate legal agreements or as distinct parts of the same agreement. The management structures for dealing with high seas fisheries and coastal fisheries similarly require separate treatment, even if this is within the framework of a single Commission dealing with both. The high seas fisheries call for management measures, while the interest in coastal fisheries is more in promoting their sustainable development. Even if high seas and coastal fisheries call for separate treatment, coastal states also have an essential interest in high seas fisheries, whether or not they are directly involved in fishing activities on the high seas. There also seems to be an awareness, on the part of some potential members of a high seas fisheries management body that the present state of the resources and fishing activities does not warrant the establishment of heavy and expensive management machinery at this time. Similarly, there is a belief that the mechanism dealing with the development of coastal fisheries should also be light and consultative.

*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*

It seems clear from the responses that the coastal states of the Southwest Indian Ocean are seeking some form of consultative mechanism that would assist them in developing their coastal fisheries and in confronting common problems of development and management in the region. In some ways, such a consultative mechanism could be seen as a follow-up to the former Committee for the Development and Management of Fisheries Resources in the Southwest Indian Ocean. It could also draw on the experience of groupings of coastal states, such as those in the Forum Fisheries Agency.

*iii. The role of FAO within the context of the future Agreement*

The responses regarding the relationship of any new fisheries commission with FAO also seem to be linked to the proposed scope and functions of the new body. In so far as the new body deals with the development of coastal fisheries, confronting common problems of management and may have strong capacity-building components, there seems to be little doubt but that it would be desirable for such a body to maintain close links with FAO. In so far as the new body deals with high seas fisheries, then there seems to be a divergence of opinion as to whether the body should be established within the framework of FAO under Article XIV of the FAO Constitution, or as an independent body.

#### **4. Current state of fisheries in the SWIO area**

Any design of new fisheries management machinery for the Southwest Indian Ocean area will need to take into account the state of fisheries resources in the area and of the fisheries on those resources.

*i. Status of fisheries*

The coastal States bordering the South West Indian Ocean (SWIO) form a homogenous group culturally and historically. All States except one are developing countries of which five are Least Developed Countries. Though they have few known shared non-tuna resources, they face similar fisheries management problems related to their regional proximity, development status and oceanography. From this point of view their EEZs form a natural fisheries management region.

The existing non-tuna fisheries of the Southwest Indian Ocean are predominantly inshore and coastal, and operate at the subsistence, artisanal and semi-industrial levels. Industrial fisheries, mainly for shrimp, are important in Mozambique, Madagascar and Tanzania, where they account for significant export revenue. For the most part, however, the region's fisheries involve varied low technology gear (handlines, traps and seines and nets) that take a diverse catch of fish and invertebrates, including, at times, other animals of particular concern (for example turtles). On the East African coast and across the adjacent Indian Ocean Islands, these fisheries provide a major source of protein and contribute significantly to food security and employment. Because of their dispersed and multi-species nature, they are difficult to assess and manage effectively. Partly as a consequence the region has a litany of "paper" regulations and the fisheries are predominantly open-access.

The monitoring of the region's fisheries varies significantly between countries. Small island states such as Seychelles, Mauritius and France (Reunion) with relatively short coastlines and manageably-sized artisanal fisheries have good systems in place. East African coastal countries, Madagascar and Comoros either do not have an adequate monitoring system or adequately monitor only parts of the coastline (Mozambique).

National catch returns to FAO do not accurately reflect the non-tuna catch each year for all countries. However, they may provide an indication of long term trends as of the 1980s. A mid 1980s catch of 150,000 t for the entire SWIO region (South Africa excepted) increased to about 200,000 t in the early 1990s and subsequently settled at between 180 – 190,000 t over the rest of the decade. Mozambique, Tanzania and Kenya had roughly similar long term catch profiles – the catch decreased significantly in the mid 1990s and recovered gradually at the end of the decade. Madagascar, Comoros and Reunion (France) had a gradual increase in the non-tuna catch from the mid 80s up to present but non-tuna species are only a small proportion of the total fish catch of Comoros and Reunion. Cyclical trends in Mauritius and Seychelles largely reflect mothership-dory operations that these two countries periodically use to exploit their distant fishing banks and oceanographic conditions in the late 90's. Catch returns for Somalia are largely unavailable.

Known demersal and semi-pelagic (non-tuna) resources are generally heavily-exploited inshore and less-exploited offshore. Limited potential for increased catches exist except for Madagascar, Mozambique and Somalia where potential increases in catch may be significant. Reported catches for Madagascar and Mozambique may actually be underestimates because of the difficulty of estimating

artisanal catches over their long coastlines. Prawn fisheries have artisanal, as well as industrial and sometimes semi-industrial sub-sectors. The industrial sub-sectors account for significant export revenue and are limited-access fisheries managed for optimum economic return and profitability. Coastal prawn resources are heavily exploited.

The region's non-tuna fisheries are impacted by population pressure (increasing fishing effort), destructive fishing methods (explosives, poisons), coastal zone development and pollution. In addition, oceanographic effects such as elevated water temperatures and coral bleaching as well as a several intense cyclones have contributed to increased variability in catch and species composition over recent years. Better management of exploited fisheries across the region would benefit fisher livelihoods, add value to the catch and assure longer-term food security. Responsible management would include encouragement of fishers offshore while at the same time regulating inshore fisheries.

Equally, there is a need to monitor and manage the developing high seas fisheries of the southern Indian Ocean. Because of their longevity and aggregated distribution, the main species (orange roughy and toothfish) are extremely difficult to manage at a sustainable level even within the EEZ's of some of the countries with the best management regimes. Nevertheless, there is an expressed urgent need for an international instrument to monitor and manage these stocks on the high seas of the southern Indian Ocean.

## *ii. Stock Assessment*

The same Indo-Pacific fish species are found in the catch across the region. These fish co-exist as populations or sub-populations that can be restricted or extensive and are often associated with coral reefs. Likely extensive populations of animals caught include carangids, mackerels, spanish mackerels, sharks, lobsters, turtles and dolphins. There may be other extensive populations since our knowledge of the ecology, movements and range of recruitment into a population, of most of the species that occur, is poor. Many fish populations would extend across the borders of adjacent member states particularly on the East African Coast but their extent into the country is not known.

The assessment of shared 'stocks' may be of lower relevance in the Southwest Indian Ocean compared to other regions (for example the South East Atlantic). However, there is much room for the shared assessment of 'stocks'. Basic (and sometimes inappropriate) methods are used with little interchange or review within the region. Because of the variety of fishing gear used and habitats fished, the catch of a non-tuna fishery in the region almost invariably consists of very many species which complicates and weakens traditional fishery assessments based on single species models. Countries are not in a position to coordinate and improve their assessment efforts and are unable to update their knowledge of the level of exploitation of fish populations and the status of their fisheries. This severely compromises their ability to sustainably manage their own and the region's fish resources.

### *iii. Transboundary Management Issues*

The first technical meeting in Mauritius in January 2000 recognized that important transboundary management issues exist particularly on the East Africa Coast with regard to artisanal fisher movements across borders to fish and sell the catch. Mauritius and Seychelles share a mid-oceanic ridge with possible overlap in shallow and deepwater fisheries. Increasingly the Southwest Indian Ocean region is experiencing fishing incursions from outside the region, usually from the North (Sri Lanka, South East Asia) and mainly of artisanal or small scale fishers coming into the region to fish for high-value demersals, sharks and sea cucumbers. Numerous sightings and several arrests have been made by coastal countries having an enforcement capacity (Seychelles, Mauritius). These incursions occur elsewhere in the Southwest Indian Ocean undetected. The full extent of intra and inter-regional fishing incursions for non-tuna species is still to be assessed.

### *iv. Knowledge of the Resources*

The fishery resources of the SWIO region became largely known during a period of exploration from the mid 1970s to the early 1980s. The period included: an active East African Marine Fisheries Research Organization (EAMFRO); exploratory trawl, acoustic and trial-fishing surveys by FAO/UNDP (Mesyatsev cruises), FAO/NORAD (Fridtjok Nansen) and ORSTOM (Coriolis); several bilateral exploratory fishing ventures with countries such as USSR and West Germany; and culminated in pole-and-line (France, Spain) and purse-seine (France) trial ventures that initiated the present day purse-seine fishery of the region taking over 250 000 t of tuna annually.

During an active decade of the South West Indian Ocean Project in the 1980s, several test-fishing trials were undertaken aimed at localising smaller scale tuna fishing activities that could be more readily adopted by the countries of the region. These small-scale fishing trials sometimes showed promising results (e.g. pole-and-line trials in Zanzibar) but for logistic and other reasons were not taken up by the countries involved. Several present-day fisheries such as the spanner-crab fishery in Seychelles and FAD associated fishing in Mauritius owe their existence to the activities of that project.

The 1990s had relatively little regional, trial-fishing activity but was the period of development of semi-industrial longlining mainly for swordfish. This was first established in Reunion (France) but extended to some other countries of the SWIO region such as Seychelles through the initiative of the national fisheries authorities. The extension of this fishing method to some of the SWIO countries of the East African coast such as Tanzania (Zanzibar) where swordfish is seasonally taken in significant quantities in the artisanal fishery has not been possible due to the technical and financial resources that these national fisheries authorities have at their disposal.

There has been some investigation of the deep-water resources such as deep-water shrimp in Mozambique but in general this is an area for which there has been little exploration in the EEZs of South West Indian Ocean countries. Bottom trawl surveys undertaken in the late 1970s were largely restricted to a depth of less than 200m. Globally there has since been developments in trawling largely centred around fisheries for orange roughy (southern Indian Ocean) and scampi enabling trawlers now to target small but rich fishing patches along sloping outer continental shelves and oceanic rises between 800 and 1500 m depth.

#### v. *Conclusions*

In general it would appear that the problems facing coastal states in the area with respect to coastal fisheries are more in the nature of common problems and issues of development and management. While shared stocks are limited, there is room for shared assessment of stocks. There are also transboundary management issues inherent in the movement of artisanal fishers across borders to fish and sell their catch. The high seas fisheries present separate management issues. Some of the fish stocks straddle the EEZs of coastal States and high seas areas, others have been said to be discrete to the high seas. The fishery is relatively new and the needs for management are still imprecise. However, deep-sea resources have already been targeted for some years (i.e. in sea mounts) and the present unknown state of these fragile resources has raised concern.

### **5. Legal regimes applicable to the resources in the SWIO area**

The nature of a fishery management body will also need to take into account the legal regimes in its area of competence. At the present state of discussions on the establishment of a new fisheries commission, the area of competence of the body is limited to the high seas and would exclude areas under national jurisdiction. However, the expectations of the coastal States appear to focus more on the development of fisheries that fall within national jurisdiction and common problems of management linked to those resources.

The following section discusses the differences in the legal regimes applicable to areas under national jurisdiction and the high seas respectively. The legal regimes are defined in the two major instruments on the law of the sea adopted over the last twenty years or so, namely 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 (the UN Fish Stocks Agreement). The UN Convention on the Law of the Sea came into force on 16 November 1994, and the UN Fish Stocks Agreement came into force 11 December 2001. The UN Convention on the Law of the Sea provided for the establishment of territorial seas of up to 12 nautical miles from the low water mark and Exclusive Economic Zones of up to 200 nautical miles and set out the rules applicable to the resources of these areas. In general, the power to manage fisheries within these limits of national jurisdiction is now recognized as lying with the coastal states concerned.

The Convention also sets out the general principles applicable to the management and conservation of fishery resources on the high seas. The UN Fish Stocks Agreement deals with the issue of fish stocks straddling both the EEZ and adjacent areas of the high seas, as well as highly migratory fish stocks and laid down certain principles and rules applicable to the management and conservation of those stocks.

*i. Areas within national jurisdiction*

As noted above, the right to manage fisheries within the limits of national jurisdiction lies with the coastal states concerned.

The 1982 UN Convention on the Law of the Sea recognized the right of every State to establish a territorial sea up to a maximum breadth of 12 nautical miles from the baselines, normally the low water line along the coast. The Convention, and the negotiation process leading up to its adoption, also introduced the concept of an exclusive economic zone, an area beyond and adjacent to the territorial sea up to a maximum limit of 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. While a coastal State has full sovereignty over its territorial sea, in its 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 (...) and jurisdiction as provided for in the relevant provisions of this Convention with regard to: ... marine scientific research; ... [and] the protection and preservation of the marine environment. ... ”*. Under Article 61 of the Convention, the coastal State is required to determine the total allowable catch for its exclusive economic zone and, 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. Under Article 62, the coastal state is required to promote the objective of optimum utilization of the living resources in its exclusive economic zone, to determine its own capacity to harvest the resources, and to give access to the surplus of the allowable catch to other States.

Paragraph 1 of Article 63 of the Convention provides 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 ”*.

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).

## *ii. Areas outside national jurisdiction*

Marine areas beyond the exclusive economic zones and outside the national jurisdiction of other states 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, under 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 are required to *“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”*.

Paragraph 2 of Article 63 of the Convention, dealing with so-called straddling stocks, 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”*. Paragraph 1 of Article 64, dealing with highly migratory species, provides that *“the coastal state and other states whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work.”*

These provisions proved 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.

## **The 1995 United Nations Fish Stocks Agreement**

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.

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 (See below) 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.

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 that 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.

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.

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.

## **6. Other fisheries management bodies operating in the area**

The main fisheries management bodies with responsibilities in the Southwest Indian Ocean are the Indian Ocean Tuna Commission and the Western Indian Ocean Tuna Organization (WIOTO).

### **1. The Indian Ocean Tuna Commission (IOTC)**

The IOTC was set up under an international agreement concluded under Article XIV of the FAO Constitution in 1993. The IOTC replaced the Tuna Management Committee of the former IOFC, which had no regulatory powers. The Agreement came into force in 1996.

The objective of the IOTC is to promote cooperation among its Members with a view to ensuring, through appropriate management, the conservation and optimum utilization of stocks covered by the Agreement and encouraging sustainable development of fisheries based on such stocks. The stocks covered by the Agreement are tuna and other highly migratory species listed in an annex to the Agreement. The area of competence of the Commission is the Indian Ocean (defined as FAO statistical areas 51 and 57) and adjacent seas, north of the Antarctic Convergence, insofar as it is necessary to cover such seas for the purpose of conserving and managing stocks that migrate into or out of the Indian Ocean.

The main functions and responsibilities of the IOTC are:

- (a) to keep under review the conditions and trends of the stocks and to gather, analyse and disseminate scientific information, catch and effort statistics and other data relevant to the conservation and management of the stocks and to fisheries based on the stocks covered by the Agreement;
- (b) to encourage, recommend, and coordinate research and development activities in respect of the stocks and fisheries covered by the Agreement, and such other activities as the Commission may decide appropriate, including activities connected with transfer of technology, training and enhancement, having due regard to the need to ensure the equitable participation of Members of the Commission in the fisheries and the special interests and needs of Members in the region that are developing countries;
- (c) to adopt, on the basis of scientific evidence, conservation and management measures, to ensure the conservation of the stocks covered by the Agreement and to promote the objective of their optimum utilization throughout the Area; and
- (d) to keep under review the economic and social aspects of the fisheries based on the stocks covered by the Agreement bearing in mind, in particular, the interests of developing coastal states.

The structure of the IOTC includes the Commission itself, on which all members are represented, and a Scientific Committee, whose role is to advise the Commission and any sub-commissions on research and data collection, on the status of stocks and on management issues. The Commission is also empowered to establish sub-commissions dealing with the management of specific stocks. To date, no such sub-commissions have been established. Permanent Working Parties have also been set up on Data Collection and Statistics and on Tropical Tunas, and the terms of reference of a Working Party on tagging are currently under consideration. Working Parties will start work in the future on Neritic Tunas and Billfishes, and are also envisaged for Temperate Tunas.

The IOTC is now faced with the problems of assessing tuna stocks and negotiating and enforcing quotas.

## 2. The Western Indian Ocean Tuna Organization (WIOTO)

The WIOTO was set up under the Western Indian Ocean Tuna Organization Convention in 1991. The Convention entered into force in December 1992.

The members of the WIOTO are Seychelles, Mauritius, Comoros and India, and the area of competence of the Organization is defined in terms of geographical coordinates and coincides with FAO statistical area 51.

The objectives of the WIOTO are to promote cooperation and coordination among its members in respect of, *inter alia*:

- (a) harmonization of policies with respect to fisheries;
- (b) relations with distant water fishing nations;
- (c) fisheries surveillance and enforcement according to arrangements which may be concluded;
- (d) fisheries development, in particular development of fishing capacity of members and fish technology, processing and marketing;
- (e) access to exclusive economic zones of Members, according to arrangements which may be concluded.

The Organization does not have regulatory powers.

While the WIOTO was formally established in 1992, in practice the organization is not currently operative. The last Ministerial Meeting of WIOTO was held in August 1994.

## 7. Factors to be taken into account in considering possible new legal structures

The institutional structures envisaged for the management and development of fishery resources in any particular area will need to take into account, *inter alia*, the state of fishery resources in the area, the applicable legal regimes,

existing fisheries management bodies in the region, the potential cost effectiveness of management structures, and the application of the precautionary approach to fisheries management.

Consideration of the above factors in the particular case of the Southwest Indian Ocean would suggest the following points with respect to the management of fisheries in that area:

1. The focus for regional fisheries arrangements for **coastal fisheries** would need to be on fisheries development issues and common responses to common fisheries management issues as well as shared assessment of stocks. In view of the fact that such fisheries are under national jurisdiction, management of the stocks is a matter for individual coastal states. In so far as individual stocks are shared between neighbouring coastal States, management measures may need to be coordinated with the neighbouring States concerned.
2. For **coastal state fisheries**, there is no need, and indeed no room for the establishment of a regional fisheries management machinery that has the power to take binding decisions on management measures. In principle then, there is no need to set up a regulatory fisheries management body under Article XIV of the FAO Constitution.
3. On the other hand, any management arrangements for **high seas fisheries** including straddling stocks will need to be focussed on fisheries management and have powers to take binding decisions, including on enforcement measures, with respect to the management of those fisheries. Given the existence of the IOTC, any such machinery would need to be focussed on species other than tuna and tuna-like species.
4. Given the different focus and functions of the machinery required for coastal fisheries and high seas fisheries respectively, it would seem desirable to think in terms of separate machinery for each type of fishery, although not necessarily separate bodies.
5. It may be that the present knowledge of the high seas resources and the present state of development of the fisheries based on those resources is insufficient to warrant the establishment of heavy and expensive machinery to manage those fisheries.
6. Nevertheless, an application of the precautionary approach to fisheries management would suggest that an effective system be set in place to monitor the high seas fisheries in the area, and that an effective management system and measures be agreed upon to come into effect automatically once the situation of the stocks and fisheries so warrant.

## **8. Possible options for the SWIO region**

### *i. Option 1 : Continuation of present approach to negotiations*

The first option would be to continue the current approach to the negotiations, and, in effect, to focus on the establishment of new regional machinery for the management of high seas fisheries for species other than tuna, excluding any consideration of coastal fisheries.

#### *Advantages of the option*

1. A great deal of work has already been done to reach agreement on the establishment of a South West Indian Ocean Fisheries Commission.
2. Participants in a high seas fishery are required to cooperate in the conservation and management of those resources and are required, as appropriate, to establish subregional or regional fisheries organizations to this end.

#### *Disadvantages of the option*

1. As noted from the previous meetings, this approach, without other action, is unlikely to satisfy the aspirations of the coastal states.
2. As tunas will be excluded, some participants may have concerns as to whether the establishment of expensive administrative machinery may be economically warranted at this time.

### *ii. Option 2 : restructuring of negotiations to focus separately on coastal state development and needs for high seas fisheries*

The second option, which is already presaged by the report of the second Intergovernmental Consultation, would be to restructure the negotiations to focus separately on the aspirations of the coastal states for the development of their coastal fisheries and to seek common solutions to common problems, on the one hand, and on the needs for effective management of high seas fisheries on the other hand. Various proposals have been made to link together these two lines of negotiations, possibly through two separate elements to be included in a single instrument, through two different but related levels of instrument, as for example an agreement and a protocol, or through two separate agreements. In this connection, given the separate focus and functions of the two mechanisms that may eventually need to be set up, it would seem clearer to focus at least initially on two separate instruments and potential mechanisms.

#### *Advantages of the option*

1. It would seem easier to design institutional machinery where the particular needs of the fisheries concerned are clearly identified.
2. The needs for fisheries management bodies for coastal fisheries on the one hand and high seas fisheries on the other hand are different. For coastal fisheries the need is for light advisory machinery without the power to take binding management decision. The high seas fisheries, on the other hand, may call for a mechanism for setting binding regulatory measures.

3. The aspirations of coastal states are more likely to be focussed on and fulfilled.

***Disadvantages of the option***

1. This option would require rethinking the current approach to the negotiations, at least from the point of view of the machinery required for coastal water fisheries.
2. It may also require the establishment of two separate institutions, although this is not necessarily so.

***iii. Possible structure and content of a framework to promote cooperation towards the sustainable development of fisheries in areas under national jurisdiction***

Given the implications of the legal regime applicable to the management of fisheries within the limits of national jurisdiction, **there would appear to be no need to establish any machinery at the regional level for coastal fisheries that would have the power to take binding decisions on management measures.** The need would therefore seem to be more for the establishment of a light consultative machinery that would bring coastal states together to discuss common problems and issues of development and management, perhaps with the presence of potential donor countries. Such a machinery could be established within the framework of FAO, either through the establishment of a body under Article XIV of the FAO Constitution, or through the establishment of a fisheries development and management committee under Article VI. Or it could be established outside the framework of FAO by the coastal states themselves, as was the case, for example, with the Sub-regional Commission on Fisheries established by a Convention between Mauritania, Senegal, Cape Verde, the Gambia and Guinea-Bissau in 1985.

***Advantages of the establishment of a fisheries management advisory committee under Article VI of the FAO Constitution***

1. Fisheries management advisory committees can be set up very easily by a simple resolution of the FAO Council.
2. Article VI bodies can be less expensive to run than independent commissions, in that they can call upon the technical staff of the Regular Programme, even on a part time basis, and may have less fixed over head costs.
3. Article VI bodies are supported financially by FAO as part of the Regular Programme
4. Article VI bodies are advisory only and do not have regulatory powers, which would in any case be inappropriate for fisheries within the limits of national jurisdiction.

***Advantages of the establishment of a fisheries management advisory committee under Article XIV of the FAO Constitution***

1. The Council Resolution abolishing the IOFC called for the establishment of a new regional fisheries body to replace the Committee for the

- Development and Management of Fisheries in the Southwest Indian Ocean under an agreement adopted under Article XIV of the FAO Constitution.
2. Article XIV bodies can have their own autonomous budgets and more independence with respect to the choice of secretariat staff.
  3. Article XIV bodies can have regulatory powers where such powers are appropriate.

***Advantages of the establishment of a fisheries management advisory committee outside the framework of FAO***

1. Fisheries bodies set up outside the framework of FAO can have more independence from FAO, their own budgets and decision making processes with regard to financial matters and the selection of staff, and also have more flexibility with regard to participation in the work of the body.
2. Fisheries bodies set up outside the framework of FAO may be more responsive to the special needs and negotiating positions of coastal states.
3. Members of fisheries bodies set up outside the framework of FAO may have more of a sense of ownership of the body and thus of commitment to its success.
4. If necessary, and if so desired by the member states, technical and secretariat services could be provided by FAO under contractual arrangements.
5. Such arrangements outside the framework of FAO would also be compatible with the policy guidance provided by the FAO Conference in Resolution 13/97, which recognized the importance of moving towards increased self-financing for Statutory bodies that have a regional focus and of enhancing the responsiveness of those bodies to the needs of their Members, and which decided that in future Statutory Bodies should be established only where strictly necessary and where the work to be undertaken cannot be carried out by *ad hoc* groups.

***iv. High seas fisheries Sub-option 1 : establishment of a separate fisheries body for the high seas along the lines of the agreement currently being negotiated***

The current negotiations are predicated on the establishment of a separate fisheries body for the management of high seas fisheries for species other than tuna, along the lines of other regional fisheries management bodies recently established, such as the South East Atlantic Fisheries Organization. Such a body would need to be open to all fishing nations involved or interested in the fisheries, and coastal states bordering the area, particularly from the point of view of ensuring the compatibility of management measures in the high seas and adjacent exclusive economic zones. The area of competence of the new body would be limited to the high seas.

***Advantages of the option***

1. The negotiations are already well advanced on an agreement for the establishment of a separate high seas fisheries management body, along the lines indicated above.
2. The establishment of a high seas fisheries management body would be in line with the legal responsibilities of States whose nationals engage in such fisheries.

***Disadvantages of the option***

1. Some countries may have concerns about the economic justification for the establishment of an expensive management structure on the basis of current knowledge of stocks and fishing activities.

***v. High seas fisheries Sub-option 2 : Monitoring of high seas fisheries within the framework of the body set up to advise on the management of coastal water fisheries.***

Some of the responses to the request for comments on the possible way forward for outstanding issues imply some concern that the state of the high seas fisheries for species other than tuna in the Southwest Indian Ocean may not justify the establishment of a fully-fledged fisheries management body at this time. The responses suggest that a lighter arrangement for cooperation to ensure proper monitoring of the state of the fisheries and, perhaps, legal commitments regarding the conduct of the fisheries may be more appropriate. In this context the form of an action plan has been suggested. Following this line of thinking, one further option might be for the monitoring of the state of the high seas fisheries for species other than tuna to be carried out within the framework of the body set up to advise on the management of coastal water fisheries. Since there would be no need at this stage to envisage the taking of any binding management measures, a fisheries body with purely advisory powers, such as a body set up under Article VI of the FAO Constitution or a body set up outside the framework of FAO, would be adequate to this function. States and other entities involved or interested in the high seas fisheries for species other than tuna in the area would need to submit reports on their fishing activities to this advisory body, which in turn may need to set up particular machinery, such as a Subcommittee on high seas fisheries, to review those reports and other information on the state of the high seas fisheries. The Intergovernmental Consultation could adopt a resolution calling on States and other entities involved or interested in the high seas fisheries for species other than tuna in the area to submit reports to the advisory body on their fishing activities on the high seas in the Southwest Indian Ocean, and may also provide for interim management action to be taken and a more permanent fisheries management body to be set up if the situation so warrants in the future<sup>2</sup>. Such an approach would, of course, require that the advisory body should include high seas as well as waters under national jurisdiction within its geographical scope, as is the case, for example in CECAF.

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<sup>2</sup> A possible model for such a resolution can be made available if the Consultation so desires.

### *Advantages of the option*

1. The option would allow for further information to be collected on the high seas fisheries for species other than tuna and analysed in a cost effective way without the need to set up a separate management body.
2. It would be less costly than setting up a separate commission and easier to establish.
3. It would allow coastal states to be more involved in the monitoring of high seas fishing activities and stocks.
4. It would preserve options for the establishment of a separate commission for the management of high seas fisheries until more is known of the situation.
5. The collection and analysis of information on both high seas and coastal fisheries in the same body may provide a more complete picture of the state of the resources.
6. It would follow the model currently being used in the CECAF region

### *Disadvantages of the option*

1. If the mechanism of an Article VI body is chosen, there would be no legally binding commitment to report on fishing activity, to conduct high seas fishing in accordance with agreed principles, or to take management action, including interim management measures and/or the establishment of a separate management machinery for high seas fisheries, unless this commitment is provided by another instrument.
2. If the further information gathered indicates an urgent need to establish binding management machinery, there may be delays in the establishment of such machinery.

### *vi. High seas fisheries Sub-option 3 : legal framework for monitoring of high seas fisheries plus legal commitment for reporting and for the establishment of interim management measures and/or a commission for the management of high seas fisheries once situation requires it*

One further option that might be considered is in fact an extension of the previous sub-option, rather than an alternative. This option could be to entrust the monitoring of high seas fishing activities and stocks other than tuna to an advisory body established for coastal water fisheries, whether under Article VI of the FAO Constitution or outside the framework of FAO, **and to bolster this with a legal commitment amongst the States and fishing entities concerned to provide catch and other information, to conduct the high seas fisheries operations for species other than tuna in accordance with certain principles, and, as appropriate, to take pre-agreed interim management measures, such as the freezing of the level of fishing activities, and to establish a longer term fisheries management machinery, once certain pre-agreed trigger points have been reached.** Such a legal commitment would need to be taken outside the advisory body in a separate agreement. The commitment to establish a longer term management body could entail either a commitment to conclude negotiations along pre-agreed lines within a pre-agreed deadline, or the automatic convening of a fully-fledged, pre-negotiated regional fisheries management body under an agreement that has already been

negotiated, signed and ratified. In summary, such an approach could entail the following:

- i. A commitment along the above lines, in the form of a legally binding agreement<sup>3</sup>;
- ii. A mechanism to receive and review reports on fishing activities. If a Advisory Committee under Article VI of the FAO Constitution is set up to deal with coastal fisheries, the new body could also maintain a watching brief over the high seas fisheries;
- iii. Agreed trigger points, possibly based on both catch and stock parameters, that would trigger interim management measures such as the imposition of a freeze on the level of fishing activities, or agreement that once the monitoring body decides that the situation of the stocks so requires, such interim management measures will come into effect;
- iv. A prior negotiated, signed and ratified agreement on the establishment of a new fishery management body for high seas fisheries, which would remain dormant until the trigger points have been reached, or until the monitoring bodies decides that the situation of the stocks so requires, at which point the body would be convened within an agreed deadline.

***Advantages of the option***

1. Such an approach could provide a lighter and less expensive mechanism for monitoring high seas stocks and fishing activities, while preserving options for later action.
2. If coupled with pre-agreed trigger points set at precautionary levels and pre-agreed interim management measures, would be consistent with a precautionary approach.
3. Such a system could be set up very quickly.

***Disadvantages of the option***

1. There may be difficulties in agreeing on appropriate precautionary trigger points.
2. There may be difficulties in persuading governments to pre-agree and bring into force longer-term management machinery which may not be used in the immediate future.
3. High seas fishing nations may wish to set up their own machinery for monitoring and managing high seas fisheries resources outside the body established for coastal water fisheries.

***vii. High seas fisheries Sub-option 4 : Establishment of an arrangement for the monitoring and management of high seas fisheries, outside the body established for coastal water fisheries and without the establishment of a permanent fisheries management commission***

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<sup>3</sup> A possible model for such a commitment could be suggested if the Consultation so wishes.

A further option might be for States to set up a separate arrangement to monitor and manage high seas fisheries resources, without the establishment of a permanent fisheries management body. The option could be similar to the sub-options mentioned above, but could provide for the review of reports on fishing activities to be carried out through arrangements set up by the Parties themselves, and separate from those set up for coastal water fisheries. Basically, such an arrangement could be set up by an international agreement between the countries concerned, whether only high seas fishing nations or high seas fishing nations and coastal states, and could provide for the Parties to carry out their fishing activities on the high seas in the Southwest Indian Ocean in accordance with certain principles, to report on their fishing activities on a regular basis, and for such reports to be analysed in accordance with an agreed procedure (e.g. by the scientific services of one or all of the parties) and for the results of the monitoring to be discussed in periodic meetings of the Parties. The periodic meetings of the Parties could be given the power to take binding management measures. This sub-option would differ from the first sub-option in that there would be no establishment of a permanent structure for the assessment of scientific information or the taking of management measures.

***Advantages of the option***

1. Such an approach could provide a lighter and less expensive mechanism for monitoring high seas stocks and fishing activities, while providing also for the taking of binding management decisions.
2. Such an approach would be consistent with a precautionary approach.
3. Such a system could be set up very quickly.

***Disadvantages of the option***

1. There would still need to be pre-agreed procedures for the scientific assessment of reports on fishing activities and the state of the stocks. If this scientific assessment function is left to individual states, and there is no provision for independent scientific assessment, the Parties may find it more difficult to agree on that assessment and any management measures that may need to be taken.
2. There may be insufficient scientific information at the moment to determine for sure whether the high seas fisheries concerned are based on discrete or straddling stocks.
3. Coastal States may be unhappy if they are excluded from the monitoring and management actions with respect to high seas fisheries.

***viii. The possible role of FAO***

The divergence of opinion regarding the role of FAO with respect to fisheries bodies in the region would appear to be linked in some way to the nature of the fisheries arrangements foreseen and the aspirations of the states concerned.

Thus it would appear that there may be more support for FAO to have a close involvement in the establishment and functioning of any consultative mechanism to promote the development of **coastal fisheries** and advise on their management.

The main difference of opinion seems to be with respect to arrangements for **high seas fisheries**. Under the sub-options considered above, interim mechanisms for the monitoring of high seas fisheries could be set up within the purview of an advisory body dealing also with coastal water fisheries, or separate from any such body. Likewise, any mechanism to be eventually set up to manage high seas fisheries could be either within the framework of FAO under Article XIV of the FAO Constitution, or independent from FAO. On the closeness of the linkages with FAO there appears to be a difference of opinion amongst the negotiators at the Intergovernmental Consultations, with a number of countries preferring to see an independent Commission, partly to facilitate the economic independence of the new Commission and partly to facilitate the full participation of fishing entities other than States. Other countries would prefer to see a close tie with FAO, perhaps partly from a point of view of securing FAO support for the new Commission and ensuring a more equal participation of all parties, including developing countries, in the work and decision-making of the new Commission. While this issue will need to be resolved by the countries themselves, one possible further option may be to establish any new Commission or arrangement for high seas fisheries outside the framework of FAO, but to provide for FAO's technical and/or secretariat services to be made available to the new Commission or arrangement, on a contractual basis.

*ix. Ensuring participation of all actors in high seas fisheries management and coastal state fisheries development*

One of the difficulties faced by regional fisheries management bodies, and in particular those dealing with high seas fisheries, is to find a way of ensuring that all actors in the fisheries can participate in the decision making of the body concerned and will be bound by its management measures. The difficulties are particularly acute in the case of management bodies established with the framework of UN bodies such as FAO, in view of the political constraints applicable to the UN system. The problem has been particularly acute in the case of the Indian Ocean Tuna Commission, which has been seeking various formulas for bringing non-state actors into full participation in the deliberations of the Commission. In other bodies outside the UN system, such as the International Commission for the Conservation of Atlantic Tunas (ICCAT), the attempts to secure such full participation have been more fruitful. The new Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean would also follow this model. In view of the difficulties of dealing with this matter within the framework of the UN system, this could be an additional reason for following the alternative option suggested above for establishing any high seas fishery management organization outside the framework of FAO, but, as appropriate, with a contractual relationship for technical services as well as depositary functions with FAO. The problems of ensuring participation of all actors in the fisheries concerned does not arise in the case of mechanisms dealing with coastal fisheries which lie within the limits of national jurisdiction. Here the concern may be to ensure the participation of potential donor countries as well as coastal states in the deliberations of the body concerned. But there would not appear to be any constitutional issues involved.

## **9. Conclusions**

The Intergovernmental Consultation is invited to review the above options for the resolution of the outstanding issues involved in the negotiation of new arrangements for the management and development of coastal and high seas fisheries in the Southwest Indian Ocean.