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Eleventh round of Informal Consultations of States Parties to 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

(New York, 16-17 March 2015)

Report

SUMMARY

The present document contains the report of the eleventh round of Informal Consultations of States Parties to 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 Agreement), which was held in New York, from 16 to 17 March 2015.

As provided in paragraph 43 of General Assembly resolution 69/109 of 9 December 2014, the eleventh round of Informal Consultations served primarily as a preparatory meeting for the resumed Review Conference on the Agreement. In addition, pursuant to paragraph 44 of the same resolution, an event was convened during the eleventh round of Informal Consultations to commemorate the twentieth anniversary of the opening for signature of the Agreement.

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I. Introduction

1. Pursuant to paragraph 43 of General Assembly resolution 69/109 of 9 December 2014, the eleventh round of Informal Consultations of States Parties to 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 “Agreement”), was held at United Nations Headquarters, in New York, from 16 to 17 March 2015.
2. The Secretary-General convened the eleventh round of Informal Consultations which was to serve primarily as a preparatory meeting for the resumed Review Conference on the Agreement, pursuant to the request by the General Assembly. In addition, pursuant to paragraph 44 of resolution 69/109, the Secretary-General also convened an event during the eleventh round of Informal Consultations to commemorate the twentieth anniversary of the opening for signature of the Agreement.

II. Organization of work

A. Opening of the eleventh round of Informal Consultations

3. The Assistant Secretary-General for Legal Affairs, Mr. Stephen Mathias, opened the eleventh round of Informal Consultations of States Parties to the Agreement on behalf of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel.
4. In his opening remarks, Mr. Mathias noted that since 2015 marked the twentieth anniversary of the opening for signature of the Agreement, the eleventh round of Informal Consultations had a special significance, and could serve as a stepping stone for further implementation of the Agreement. He recalled that the eleventh round of Informal Consultations would serve primarily as a preparatory meeting for the resumed Review Conference, which, pursuant to General Assembly resolution 69/109, was scheduled to be held for one week in the first part of 2016, and would also serve as an opportunity to commemorate the twentieth anniversary.
5. Mr. Mathias stressed the importance of the conservation and sustainable use of fisheries resources for ensuring food security, economic prosperity, poverty alleviation and sustainable development, particularly for developing States, and noted that the Agreement remained the most important legally-binding instrument for the conservation and management of fisheries resources adopted since the United Nations Convention on the Law of the Sea (the Convention) in 1982. He also noted that since the last round of Informal Consultations, the Philippines had become party to the Agreement, bringing the total number of Parties to 82, including the European Union.
6. Mr. Mathias underlined the important mandate of the Review Conference, to examine and assess the adequacy of the provisions of the Agreement and, where required, propose means of strengthening its implementation in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks. He recalled that the eleventh round of Informal Consultations of States Parties would be expected to take a number of key decisions in relation to the

resumption of the Review Conference in 2016, including on the draft provisional agenda and the draft organization of work for the Conference.

7. Mr. Mathias further highlighted the critical importance of delegations' contributions to the updated report to be prepared by the Secretary-General, in cooperation with the Food and Agriculture Organization of the United Nations, to assist the resumed Review Conference, requested by the General Assembly in resolution 69/109. In this regard, he underscored the importance of timely responses to the voluntary questionnaire circulated by the Secretariat regarding the recommendations made by the Review Conference in 2006 and 2010.

8. Mr. Mathias also recalled that the Assistance Fund established under Part VII of the Agreement was a key tool to facilitate the implementation of the Agreement by developing States Parties to it. In this regard, he expressed concern regarding the depleted state of the Assistance Fund and drew attention to the call of the General Assembly in resolution 69/109 for sustained contributions to the Fund.

B. Election of the Chairperson

9. The meeting elected Mr. Fábio Hazin, National Secretary for Fisheries, Ministry of Fisheries and Aquaculture, Brazil, as Chairperson.

C. Attendance

10. Representatives of the following Parties attended the eleventh round of Informal Consultations: Australia, Barbados, Brazil, Bulgaria, Canada, Costa Rica, European Union, Fiji, Finland, France, Greece, Iceland, India, Italy, Japan, Kenya, Marshall Islands, Micronesia (Federated States of), Monaco, Morocco, New Zealand, Norway, Philippines, Republic of Korea, Russian Federation, Slovenia, Solomon Islands, Sri Lanka, Sweden, Trinidad and Tobago and the United States of America.

11. Observers from the following States, United Nations specialized agencies, programmes and bodies, as well as other intergovernmental organizations and non-governmental organizations attended the eleventh round of Informal Consultations:

(a) States non-parties: Burkina Faso, Chile, China, Congo, Côte d'Ivoire, Ecuador, Ghana, Holy See, Jamaica, Lebanon, Madagascar, Saudi Arabia, Sudan, Thailand, Timor-Leste, Viet Nam;

(b) Specialized agencies, related organizations and offices of the United Nations: Food and Agriculture Organization of the United Nations (FAO);

(c) Intergovernmental organizations, subregional and regional fisheries management organizations and arrangements (RFMO/As): African Development Bank, Global Environment Facility, International Commission for the Conservation of Atlantic Tunas (ICCAT), North Pacific Anadromous Fish Commission;

(d) Non-governmental organizations: Deep Sea Conservation Coalition, International Coalition of Fisheries Associations (ICFA), Greenpeace International, Haribon Foundation, International Collective in Support of Fishworkers (ICSF).

D. Opening statement of the Chairperson

12. In his opening statement, the Chairperson recalled the major developments that had taken place since the tenth round of Informal Consultations in April 2014. In accordance with the timeline and schedule of work agreed at the tenth round, the General Assembly, through resolution 69/109, had requested the Secretary-General to resume the Review Conference in the first half of 2016, to convene the eleventh round of Informal Consultations primarily as a preparatory meeting for the resumed Review Conference, to prepare an updated comprehensive report to the resumed Review Conference and to develop and circulate a voluntary questionnaire on the recommendations adopted by the Review Conference in 2006 and 2010 in this regard. He also drew attention to the draft provisional agenda and draft organization of work for the resumed Review Conference prepared by the Secretariat for the consideration of the meeting.

13. The Chairperson recalled that the General Assembly had also agreed to hold in 2016 its review of the actions taken by States and regional fisheries management organizations and arrangements in response to paragraphs 113, 117 and 119 to 124 of resolution 64/72 and paragraphs 121, 126, 129, 130 and 132 to 134 of resolution 66/68 on the impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep-sea fish stocks. He also drew attention to the outcome of the meeting of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction, held from 20 to 23 January 2015.

E. General statements

14. Delegations noted that the Agreement marked a major step forward in the development of a comprehensive legal regime for the long-term conservation and sustainable use of straddling and highly migratory fish stocks, and that participation therein was widely regarded as an important way for a country to signal that it was a responsible fishing nation. The Agreement contributed to the conservation and management of the world's fisheries for these stocks by, inter alia, setting out and strengthening the role and purpose of regional fisheries management organizations and arrangements (RFMO/As), by establishing general principles such as the precautionary and ecosystem approaches, by requiring conservation and management measures to be adopted based on the best scientific evidence available, and by strengthening the responsibility of flag States over fishing vessels flying their flag on the high seas. It was noted that the Agreement reflected a delicate balance between the interests of developing and developed States, as well as between coastal States and distant water fishing nations.

15. The key steps in the implementation of the Agreement that had been taken since the 2010 resumption of the Review Conference were highlighted by some delegations,

including: a stronger recognition of the linkages between sustainable development and fisheries, particularly for small island developing States (SIDS) and least developed States (LDCs); some elementary steps taken by RFMO/As to specifically reflect the development aspirations of SIDS and LDCs; progress made towards achieving compatibility of measures between high seas and national jurisdiction; and the possibility of realizing a larger transformation in fisheries through private sector partnerships in the South Pacific region.

16. The twentieth anniversary of the opening for signature of the Agreement was considered to be both a time for commemoration and for thorough reflection. However, concern was expressed by a delegation that the balance construed in the Agreement might not have been properly translated into reality. In this regard, reference was made to the depleted state of the Assistance Fund and the limited type of activities for which the Fund had been used. A stronger focus on enhancing the ability of developing States to participate in high seas fisheries was required. In this regard, hope was expressed that the resumed Review Conference would provide an opportunity to identify and address implementation gaps so as to ensure the Agreement's balance was not lost.

17. A delegation observed that despite the growing political recognition of the development aspirations of SIDS, including the right to build their capacity to participate in fisheries, including on the high seas, many of their efforts were still blocked at the Western and Central Pacific Fisheries Commission (WCPFC). The concern was expressed that the recommendations of the Review Conference in 2010 had not been implemented in this regard. Concern was also expressed regarding the extent to which the commitment in 2010 to strengthen interaction between fisheries managers and scientists had been implemented.

18. Chile announced its intention to become party to the Agreement by October 2015, recognizing that participation in the Agreement was widely regarded as an important way for a country to signal that it is a responsible fishing nation, and noting that the Agreement contributed to the conservation and management of the world's fisheries for these stocks. Delegations welcomed the announcement by Chile.

19. The Director of the Division for Ocean Affairs and the Law of the Sea (DOALOS), Office of Legal Affairs, provided information to delegations on the status of the Assistance Fund under Part VII of the Agreement, noting that it was currently depleted. In this regard she drew attention to the call in resolution 69/109 for further contributions to the Fund. An observer noted with regret the lack of money in the Assistance Fund in light of the important role it played for members of RFMO/As. It was considered important that the Fund be re-activated and that the procedure to access the Fund be made more flexible so that States Parties and/or RFMOAs could more easily benefit from it. The delegation of Norway announced that the Government of Norway would contribute US \$200,000 to the Fund and encouraged others to do the same. Delegations welcomed this announced contribution to the Assistance Fund.

F. Adoption of the meeting documents

20. The Informal Consultations considered the provisional agenda of the meeting (ISCP10/UNFSA/INF.1) and adopted it as orally amended, with a change in the order of the sub-items under agenda item 5 (see annex I). The draft organization of work for the meeting was also considered, similarly amended and adopted.

III. Issues for consideration by the resumed Review Conference

A. Outputs of the resumed Review Conference

21. The Chairperson recalled that the outputs of the Review Conference in 2006 and 2010 had consisted of two parts: (1) a factual summary of discussions prepared by the President of the Conference, with the assistance of the Secretariat, and subsequently finalized after the Conference, with the help of the Bureau, taking into account the comments of delegations; and (2) a negotiated outcome.

22. Delegations generally supported using the format of the outcome at the previous Review Conference as a good model for the upcoming resumed Review Conference, while indicating their flexibility as to the exact format of the outcome components. In particular, flexibility was expressed regarding whether recommendations should be generally agreed upon or be issued under the authority of the President of the Conference. In this regard, delegations emphasized the need to achieve a strong outcome, which would serve to enhance implementation of the agreement at the global and regional levels.

23. Several delegations expressed their disappointment that the outcome of the 2010 resumed Review Conference had not been as strong as they would have wanted. They also noted that despite considerable efforts undertaken to reconcile the views of States Parties and States non-parties, not everyone had joined in the agreement on the outcome. These delegations therefore stressed their wish for a strong outcome from the 2016 resumed Review Conference to be adopted with the agreement of as many States as possible.

24. Delegations also expressed support for the process that had been used to develop the outcomes of the Review Conference in 2006 and 2010, and emphasized the need to maintain an inclusive process. Several delegations noted that the upcoming resumed Review Conference was an opportunity to have a dialogue with States non-parties to the Agreement, in order to listen to their concerns so as to encourage them to become parties. Delegations agreed that the principle of inclusivity should be observed.

25. The Chairperson took note of the view that the process and format were generally acceptable, while noting the concern expressed by many delegations that any recommendations needed to be agreed upon by as many delegations as possible, and that there was a need for an inclusive process.

B. Draft provisional agenda

26. Delegations considered that the draft provisional agenda for the resumed Review Conference, as prepared by the Secretariat in consultation with the Chairperson, was adequate and acceptable, but would need to be adjusted if it were decided to have another round of informal consultations before the resumption of the Review Conference in 2016 (see para. 67, below). The draft provisional agenda was agreed on this understanding.¹

C. Draft organization of work

27. Delegations expressed their general support for the draft organization of work for the resumed Review Conference prepared by the Secretariat in consultation with the Chairperson. A view was expressed that it would also be useful to identify key issues on which to focus discussions at the resumed Review Conference. A delegation highlighted issues which could be of interest to States Parties and States non-parties on the basis of its experience, such as, the global application of the Agreement in light of the level of participation in it as compared to the Convention; the compatibility of measures; and strengthening the implementation of articles 21 and 22 of the Agreement.

28. Several delegations agreed on the need to establish priority issues, but indicated that the process of responding to the voluntary questionnaire and the results therefrom would help identify such issues and could inform a discussion on priority issues. In this regard, they considered the holding of another round of informal consultations prior to the resumption of the Review Conference in 2016 as useful.

29. The Chairperson indicated that delegations could compile their priority areas prior to the proposed next round of Informal Consultations of States Parties and send them to the Chairperson for circulation. In response to a question, the Chairperson also indicated that, although non-governmental organizations had not been invited to complete the voluntary questionnaire circulated to States and RFMO/As pursuant to General Assembly resolution 69/109, he would informally communicate to States any views he received from observer delegations of other intergovernmental organizations and non-governmental organizations. Delegations agreed with this approach.

30. Delegations agreed to the draft organization of work, with the understanding that it might need to be adjusted should it be decided to have another round of Informal Consultations of States Parties prior to the resumed Review Conference. It was also noted (see para. 67, below) that some delegations had mentioned issues they thought needed to be highlighted during discussions at the resumed Review Conference.²

D. Officers for the resumed Review Conference

31. The Chairperson recalled that the Officers for the Review Conference had been elected in 2006 and that at the resumed Review Conference in 2010, the same Officers had continued to serve unless they were no longer available. The Chairperson proposed

¹ The document will be issued as A/CONF.210/2016/L.1.

² The document will be issued as A/CONF.210/2016/L.2.

that the same procedure be followed when the Review Conference is resumed in 2016. Similarly, he suggested that States serving on the credentials committee in 2010 could continue to serve in this capacity in 2016. The Chairperson informed delegations that the President of the Conference, Ambassador David Balton, had already indicated that he was no longer in a position to continue in this role and that a new President would therefore need to be elected.

32. In this regard, he recalled that the slate of the Bureau had been developed through informal consultations prior to the Review Conference in 2006, and that the nominees had been elected by acclamation on the first day of the Conference. He noted that it would be convenient to follow a similar process in 2016 in order to fill any vacancies for the resumed Review Conference. Regional groups could thus be encouraged to hold consultations to fill any vacancies in the slate of States Parties, and States non-parties could also consult as a group on the filling of any vacancy in the slate of States non-parties. It would be desirable to finalize these consultations well in advance of the resumed Review Conference, if possible.

33. Delegations agreed that these proposals were acceptable.

IV. Commemoration of the twentieth anniversary of the opening for signature of the Agreement

34. Pursuant to paragraph 44 of resolution 69/109, an event to commemorate the twentieth anniversary of the opening for signature of the Agreement was convened on 17 March 2015. In this regard, an interactive round-table discussion divided into two segments was held (see paras. 45 to 65), featuring eminent persons associated with the negotiation and subsequent development of the Agreement, together with representatives from States, inter-governmental organizations and non-governmental organizations, as speakers. A number of delegations made general statements (see paras. 36 to 44). The commemoration was broadcast live via United Nations Webcast.³

Opening of the commemoration

35. Mr. Stephen Mathias, Assistant Secretary-General for Legal Affairs, gave the opening address on behalf of the Under-Secretary-General for Legal Affairs and United Nations Legal Counsel. Mr. Mathias highlighted the importance of fisheries to food security, economic prosperity, poverty alleviation, employment and the sustainable development of many States, particularly developing States. He also drew attention to the impact of the Agreement on the practice of States and RFMO/As, as well as developments related to the Agreement at the global level such as the Review Conference, the Informal Consultations of States Parties to the Agreement and the resolutions of the General Assembly on sustainable fisheries over the past twenty years. He drew attention to two important and interlinked issues, which in his view were crucial to achieving the objectives of the Agreement, namely increasing participation in and implementation of

³ A part of the commemoration may be viewed as part of the archive at webtv.un.org.

the Agreement. He also underlined the importance of assistance for developing States in implementing the Agreement, including through contributions to the Part VII Assistance Fund (see para. 8, above)

General statements

36. Several delegations made general statements in commemoration of the twentieth anniversary of the opening for signature of the Agreement. Delegations reiterated their strong support for the Agreement and recalled its importance as a fundamental tool for the conservation and sustainable use of highly migratory fish stocks and straddling fish stocks, as well as an important instrument to address illegal, unreported and unregulated fishing. The important contribution of those who had been involved in the negotiation of the Agreement was highlighted.

37. Delegations also welcomed the most recent State Party to the Agreement, the Philippines, and the intention of Chile to become party to the Agreement. Hope was expressed that more States would join the Agreement at the earliest opportunity. A delegation expressed the hope that the measures it had recently taken to improve its fisheries in line with international commitments would be a good step towards its adherence to the Agreement in the near future. It was noted that many more States participated in the work of RFMO/As than there were Parties to the Agreement and that the possibility of increasing parties to the Agreement by working through RFMO/As should be considered. It was highlighted by several delegations that the membership in the Agreement currently reflected a balance between developing and developed States, as well as between coastal and distant-water fishing nations.

38. Delegations highlighted the achievements in the implementation of the Agreement, including actions taken at the national and regional levels. Some delegations identified among current and future challenges, the expansion of small-scale and artisanal fisheries for highly migratory species over the last twenty years as well as the need to implement science-based approaches to fisheries management. A delegation referred to the strengthening of the social dimension of fisheries and drew attention to the Work in Fishing Convention of the International Labour Organization and the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (the SSF Guidelines).

39. Several delegations expressed the view that the objectives of the Agreement have yet to be fully achieved and that improving implementation of the Agreement was key to achieving its objectives. The important role of RFMO/As in implementing the Agreement was noted by some delegations, while some others highlighted the need to strengthen the role of RFMO/As, as well as the importance of performance reviews and the implementation of the other recommendations of the Review Conference. A delegation noted the conservation and management measures adopted by the South Pacific Regional Fisheries Management Organization (SPRFMO) and underlined the need for cooperation among RFMO/As. Delegations also noted the creation of new RFMO/As since the

opening for signature of the Agreement, most recently the North Pacific Fisheries Commission, whose secretariat would be located in Japan.

40. The importance of market-based measures and port State measures was also noted. A delegation announced its Government's intention to ratify the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Port States Measures Agreement) while another delegation encouraged other States to become party to that Agreement. A delegation was of the view that implementation of trade tracking and catch documentation schemes should be clear, transparent, risk based, and not overly burdensome. The work of FAO in developing the Global Record of Fishing Vessels Refrigerated Transport Vessels and Supply Vessels (Global Record) was also highlighted.

41. The role of the precautionary and ecosystem approaches in the implementation of the Agreement was also highlighted by some delegations. Delegations encouraged the development of a science-based approach to fisheries management and noted the need to build capacity for the application of ecosystem approaches. In that regard, it was noted that the Assistance Fund under Part VII of the Agreement also provides for funds for the purpose of building capacity for activities in key areas for the implementation of the Agreement, including data collection and scientific research relevant to straddling and highly migratory fish stocks on a national and/or regional level.

42. Several delegations emphasized the need to support developing countries to develop their fisheries and to fulfil obligations under the Agreement, and in this regard, a delegation suggested the establishment of a committee to raise funds for the sustained assistance to developing States.

43. Some delegations emphasized the importance of the upcoming resumed Review Conference and noted that it constituted the sole venue where a range of issues, such as compatibility of measures, global overcapacity, the development of fishing capacity, equitable sharing of benefits, and high seas boarding and inspection schemes, could be addressed. In this regard, some delegations highlighted some issues that should be taken up at the Conference, such as capacity-building of developing States, small-scale and artisanal fisheries, RFMO/A performance, the status of fish stocks and catch limits, compliance and enforcement. As some problems faced by fish stocks worldwide required cooperation at the global and regional levels, including with States non-parties to the Agreement, it was suggested by several delegations that the forthcoming Review Conference should continue addressing issues that discourage ratification by States non-parties. An observer delegation pointed in particular to the management of fishing capacity as a shortcoming in the implementation of the Agreement, which should be discussed at the Review Conference. In this regard, it highlighted that the proliferation of fish aggregating devices (FADs) and other indicators meant that the number and size of fishing vessels were insufficient measures of fishing capacity. Another observer delegation stated that the latest 2014 State of World Fisheries and Aquaculture report of FAO had indicated an improvement in the status of fish stocks. It was also noted that the usage of fish aggregating devices was being considered in different fora.

44. An observer delegation, recalling the recommendations of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction to the General Assembly⁴ for the development of an international legally binding instrument under the Convention relating to biodiversity beyond areas of national jurisdiction, warned that any new instruments should not undermine existing relevant legal instruments and frameworks.

Segment 1. The negotiation and subsequent development of the United Nations Fish Stocks Agreement

45. In accordance with the organization of work for the commemoration, the first segment of the round-table discussion was moderated by Mr. William Mansfield, featuring three eminent speakers who were involved in the negotiation and subsequent development of the Agreement.

(a) Panel presentations

46. In segment 1, Mr. Satya N. Nandan, Distinguished Senior Fellow, Center for Oceans Law and Policy, School of Law, University of Virginia, contributed to the round-table discussion through a video statement. His message highlighted the first twenty years in the life of the Agreement as an important milestone in the development of the international law of the sea. He noted that the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks had integrated divergent views of coastal States and distant-water fishing States, not only on the substance of the mandate but also on the form of the outcome. In his view, the Agreement represented a definitive framework for international cooperation in the conservation and management of high seas fisheries resources and in fact a blueprint for fisheries management in general. He introduced some of the salient features of the Agreement, such as the precautionary approach, the compatibility of measures, enforcement measures, the recognition of the important role of RFMO/As, flag State responsibilities and the compulsory settlement of disputes.

47. Mr. David A. Balton, Deputy Assistant Secretary for Oceans and Fisheries, Bureau of Oceans, Environment and Science, Department of State, United States of America, made a presentation, entitled “The UNFSA Review Conference: Past Outcomes, Future Possibilities”. He recalled the historical evolution of the Informal Consultations of States Parties and the Review Conference, as well as their role in the implementation of the Agreement. In light of this, as well as of developments since 2010, he highlighted some possible issues for consideration by the upcoming 2016 resumed Review Conference, such as strengthening systematic coherence among RFMO/As, increasing efforts to eliminate illegal, unreported and unregulated (IUU) fishing, which affects developing

⁴ A/69/780, para. 1(g).

States disproportionately, further improving scientific knowledge and developing measures on the basis of scientific advice, and finding ways to further assist developing countries.

48. Mr. Arní Mathiesen, Assistant Director-General, Fisheries and Aquaculture Department, Food and Agriculture Organization of the United Nations (FAO) provided a video statement and participated in the interactive discussion via video conference. He noted that the principles of the Agreement were also central to the Code of Conduct for Responsible Fisheries and were included later in other FAO instruments, e.g., the Voluntary Guidelines on Flag State Performance and the Port State Measures Agreement. He also noted the shift of regional fishery bodies from advisory organizations to management bodies, their role in implementing the Agreement and drew attention to the assistance given to them by FAO. He suggested that adequate financial support, strong political support, and a result-based focus were crucial to the successful implementation of the Agreement.

(b) Discussions

49. The Review Conference was highlighted by a delegation as a feature unique to the Agreement and additional information was sought on its role. In response, Mr. Balton acknowledged that the Review Conference was a notable feature in the Agreement that was not contained in many other international instruments. The Review Conference had played a key role in drawing attention to the provisions of the Agreement and in calling upon States and RFMO/As to better implement it. Mr. Balton expressed the view that, although the Review Conference had thus far not been called on to consider any possible amendments to the Agreement, it would be the appropriate forum for doing so.

50. Another delegation asked a question related to actions that could be taken under the Agreement in terms of governance and management of fish stocks both in areas within and beyond national jurisdiction. Mr. Mathiesen noted that these areas should be managed using the same principles, including the precautionary approach, best available science and decision-making processes. Mr. Balton noted that one of the most difficult issues to address was how to ensure a balance between the rights and duties of coastal States in areas under national jurisdiction, and the need to ensure stocks were managed consistently throughout their ranges. He observed that this relationship had been a key element in the negotiations on the Agreement and recalled that article 7 of the Agreement called for compatibility of measures. He recalled that achieving this objective was left to individual regions and in this regard noted the challenges this entailed. He further noted the need for flexibility and compromise.

51. Another question concerned linkages between fisheries management, on the one hand, and climate change and ocean acidification, on the other. Mr. Balton and Mr. Mathiesen suggested there was a need to apply the precautionary approach more stringently in the future while conducting more research and surveys and relying on best available science.

52. A delegation questioned how the implementing agreement being discussed within the context of the Ad Hoc Open-ended Informal Working Group to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction would relate to the Agreement and whether such an implementing agreement could undermine the Agreement and affect fisheries. Mr. Balton noted that, while it was not yet possible to see how any new agreement would relate to existing instruments, there seemed to be an understanding in principle, within the Ad Hoc Working Group, not to undermine the provisions of existing international law.

Segment 2. Participation in and implementation of the United Nations Fish Stocks Agreement - achievements and challenges

53. The second segment of the round-table discussion featuring six eminent speakers from States Parties, RFMO/As and the civil society was moderated by Ambassador Balton.

(a) Panel presentations

54. Mr. Robert Day, Director, International Fisheries Management, Department of Fisheries and Oceans, Canada, made a presentation, entitled “Innovation for effective implementation of the Fish Stocks Agreement”. He highlighted the importance of the Agreement for Canada as a coastal State with extensive fisheries and noted that Canada had updated its domestic legislation to ensure it was in line with the Agreement, including with regard to high seas boarding and inspections in articles 21 and 22 of the Agreement. He described how the implementation of the Agreement had improved fisheries management. In his view, the coordination between science and decision-making processes, including in the application of precautionary and ecosystem approaches; clearly articulated management objectives; and improved compliance and enforcement were some innovative approaches which had led to effective implementation that had been used since the Agreement’s entry into force.

55. Mr. Fábio Hazin, National Secretary for Fisheries, Ministry of Fisheries and Aquaculture, Brazil, spoke on advancing the implementation of the Agreement from a Brazilian perspective. In his view, the most important aspect of the Agreement for developing States was the equitable sharing of fishing opportunities. For example, the International Commission for the Conservation of Atlantic Tunas (ICCAT) had revised its approach to allocations following the adoption of the Agreement. He also underscored the importance of Part VII of the Agreement for developing States, but observed that in practice it had not been implemented fully nor in a balanced manner. In particular, he highlighted the requirements to cooperate with developing States not only in the application of conservation measures but also to assist them to develop their own fisheries. He expressed concern that the Part VII Assistance Fund was under-utilized for the purposes of developing capacity and fisheries by developing States. He also drew attention to the need for reciprocity with regard to boarding and inspection schemes,

between developing and developed States. He suggested that if these concerns were addressed properly, then participation in the Agreement could increase.

56. Mr. Driss Meski, Executive Secretary, ICCAT, spoke on the topic of “Consistency between the ICCAT 1966 Convention and the 1995 UNFSA”. He noted that the ICCAT Convention predated the Agreement by almost 30 years, but that its actions had taken place within the framework of international instruments like the Agreement and that the basic tenets of the ICCAT Convention were in harmony with the requirements of the Agreement. He observed that following the entry into force of the Agreement, ICCAT had promoted its provisions, including through the “Kobe process”. ICCAT’s conservation and management measures sought to implement international fisheries instruments and were based on best available scientific advice. In addition, ICCAT had implemented an increasing number of monitoring, control and surveillance measures.

57. Mr. William R. Mansfield, barrister and legal consultant, spoke on the topic of “Implementing the Fish Stocks Agreement: the South Pacific Regional Fisheries Management Organisation (SPRFMO) and decision-making procedures - consensus; a good goal but a bad rule?”. He noted that during the negotiations of the Convention establishing SPRFMO, due consideration was given to the Agreement and other treaties establishing RFMOs. SPRFMO primarily sought to regulate high seas fisheries, but negotiators were aware that at least one adjacent coastal State had been interested in the management of a straddling stock. How to give effect to article 7 of the Agreement was therefore a key element in the negotiation. He also observed that the most innovative part of the SPRFMO was to give effect to article 10(j) of the Agreement. It adopted a qualified majority decision-making procedure coupled with a carefully limited objection procedure. He maintained that the possibility of voting affected the dynamics of negotiations and observed that the consensus rule could in some cases provide a political cover for not adopting science-based decisions. He suggested that all efforts should be made to achieve consensus, but that objection procedures could serve as a reasonable safeguard.

58. Mr. Ernesto Peñas Lado, Director, Policy Development and Coordination, Directorate-General for Maritime Affairs and Fisheries, European Commission, spoke on the topic of “Implementation of the United Nations Fish Stocks Agreement through participation in RFMO/As”. In his view, multilateral management through RFMO/As was better than bilateral or unilateral management. He suggested that a major weakness in the implementation of the Agreement was that only half of the parties to UNCLOS were parties to the Agreement. He drew attention to five challenges: the need for RFMO/As to complete the coverage of areas and species; the need for better science/scientific advice; improved governance of RFMO/As; effective enforcement; and issues that went beyond a single RFMO, such as IUU fishing and global fleet overcapacity, where global action was necessary and RFMO/As needed to cooperate. He highlighted the importance of developing States being given the opportunity to realize their rights and obligations as coastal States and noted that the European Union dedicated a lot of resources in this regard.

59. Mr. Matthew Gianni, Political and Policy Advisor, Deep Sea Conservation Coalition, spoke on the topic of “The implementation of the United Nations Fish Stocks Agreement from a civil society perspective”. He noted that the Agreement was one of the most important instruments that emanated from the 1992 United Nations Conference on Environment and Development and deserved more attention. He highlighted several areas where he considered implementation of the Agreement could be improved, including overcapacity, IUU fishing, conservation and management measures and flag State implementation. He also acknowledged improvements regarding transparency in fisheries management and in relation to bottom fishing on the high seas, but called for further action to be taken. He considered whether the Review Conference provided sufficient oversight of implementation of the Agreement and whether additional mechanisms should be established. He also urged a greater use of the International Tribunal for the Law of the Sea to enhance the implementation of and compliance with the Agreement.

(b) Discussions

60. A delegation requested more information on the different approaches to voting in different RFMO/As, and in particular whether voting could lead to difficulties amongst member States of RFMO/As. Mr. Mansfield noted that in SPRFMO voting was permissible only when all efforts to reach consensus had been exhausted and that the possibility of voting changed negotiation dynamics by eliminating the use of consensus as a blocking device. Mr. Meski noted that ICCAT allowed for objections, but that members sought to reach decisions by consensus to avoid any difficulties in implementation.

61. A delegation wanted to know how RFMO/As could work together and improve on monitoring, control and surveillance. Mr. Meski drew attention to the cooperation amongst the five tuna RFMO/As through the “Kobe process”, including the harmonization of different actions, e.g. on monitoring, control and surveillance, on developing consolidated lists of IUU fishing vessels and authorized vessels, on catch documents and through the observer programme for transshipment. He noted that the “Kobe process” had reached a point where discussion on how to continue the process was crucial.

62. A delegation drew attention to the difficulties that developing countries, in particular SIDS, encountered in implementing the Agreement, and inquired on possible ways to address the lack of resources of SIDS and what mechanisms existed to ensure that necessary data and technology were accessible to them, including to combat IUU fishing. Attention was also drawn to the need to improve the sharing of benefits from fisheries with coastal States. Mr. Hazin noted that RFMO/As could play a far greater role in building capacity of developing States in fisheries science. He observed that although some RFMO/As had invested in training, most training had been restricted to data collection, but that scientists from developing States should also be able to fully participate in stock assessments and provision of advice to RFMO/As. Mr. Hazin noted that the Agreement included provisions relevant to increasing fishing allocations and participation of developing States in fisheries, but expressed the view that they had not

been sufficiently implemented. Mr. Gianni noted that many organizations were developing programmes to set up satellite vessel monitoring systems to stop IUU fishing and also noted the interest in setting up a global database of port State inspections to facilitate port inspectors, especially in developing States.

63. FAO acknowledged that only a limited portion of the disbursements from the Part VII Assistance Fund had been devoted to capacity development and training, and noted in that regard that not many States and RFMO/As were aware of the existence of the Fund and how it could be used. Thus, FAO was actively trying to promote and provide information on the Assistance Fund. It was also noted that an assistance fund would also be established to assist States in implementing the Port State Measures Agreement, and that FAO had a global programme promoting benefits of this instrument, funded by Norway. The representative of FAO further drew attention to a database on port State inspections that would also be part of the Global Record being established by FAO.

64. The moderator noted that FAO and DOALOS had created a compendium of sources of assistance in this field⁵ and suggested that the resumed Review Conference could benefit from an updated version of this study.

65. Delegations expressed their appreciation to all the speakers and moderators in both segments of the round-table discussion and to the Secretariat for the organization of the event.

V. Consideration of the next round of Informal Consultations of the States Parties to the Agreement

66. Several delegations expressed support for holding a twelfth round of Informal Consultations of States Parties before the resumed Review Conference in order to discuss substantive issues relating to the Conference. A delegation stated its preference not to have another round of Informal Consultations of States Parties, but that if such a meeting were considered necessary, it should be aligned with another fisheries or ocean-related meeting in order to reduce the burden on delegations that needed to travel.

67. The Chairperson concluded that there appeared to be support for another round of Informal Consultations of States Parties, mainly to discuss priorities and establish areas of focus for the Review Conference.

VI. Other matters

68. The Chairperson announced, as in the past, that he would prepare an informal report of the meeting, with the assistance of the Secretariat, which would be posted on the website of DOALOS⁶ for comments for a period of two weeks prior to finalization.

⁵ www.un.org/Depts/los/convention_agreements/fishstocksmeetings/compilation2009updated.pdf.

⁶ www.un.org/Depts/los/index.htm.

VI. Closing of the eleventh round of Informal Consultations of States Parties to the Agreement

The Chairperson closed the meeting and thanked delegations for their participation and expeditious work. He also thanked the Secretariat for its work in preparing the meeting, including in particular for the efforts undertaken in organizing the round-table discussion in commemoration of the twentieth anniversary of the opening for signature of the Agreement.



ANNEX I

Eleventh round of Informal Consultations of States Parties to 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 Agreement)

Draft agenda

**16-17 March 2015
United Nations, New York**

1. Opening of the eleventh round of Informal Consultations by the Representative of the Secretary-General.
2. Election of the Chairperson.
3. Adoption of the agenda.
4. Organization of work.
5. Issues for consideration by the resumed Review Conference:
 - (a) Outputs of the resumed Review Conference;
 - (b) Draft provisional agenda;
 - (c) Draft organization of work;
 - (d) Officers for the resumed Review Conference;
6. Commemoration of the twentieth anniversary of the opening for signature of the Agreement.
7. Consideration of the next round of Informal Consultations of the States Parties to the Agreement.
8. Other matters.