



CURRENT FISHERIES GOVERNANCE

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CURRENT FISHERIES GOVERNANCE

Keynote Speaker

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In my presentation on “Current Fisheries Governance” I propose to make a few introductory remarks about the 1995 UN Fish Stocks Agreement and its main achievements and then discuss some of the current issues in its implementation and make suggestions on the way forward in dealing with some of the problems. This statement is based on a much longer article on the *Implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995* on which Michael Lodge and I have been working. It will be published later this year.

The current fisheries governance is primarily based on the rights and duties of States and their nationals prescribed in the 1982 United Nations Convention on the law of the sea. This is supplemented by a number of hard and soft-law instruments which form an integral part of the global system for ocean governance. The latter includes in particular, the 1995 FAO Code of Conduct for Responsible Fisheries. What these supplementary instruments have in common is that they seek to elaborate upon the relevant provisions of the 1982 Convention that deal with the conservation and management of, in particular, high seas living resources.

The most significant of these instruments is the 1995 United Nations Fish Stocks Agreement (UNFSA) which entered into force on 11 December 2001. UNFSA was the outcome of a Conference mandated by UNCED in 1991, as part of Agenda 21, and convened under the auspices of the United Nations “with a view to pursuing effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks”. This Conference was precipitated by the crisis in marine fisheries of the 1990’s that led to the collapse of a number of valuable fish stocks, such as cod in the North-west Atlantic and pollock in the Bering Sea. The resulting tensions that this created between coastal States and high seas fishing States have been extensively chronicled elsewhere and I do not need to reiterate the history here. Suffice it to say that, by the early 1990s, it had become abundantly apparent that the regime for high seas fishing established by the 1982 Convention was inadequate to prevent depletion of the world’s fish stocks. The problems were particularly acute for straddling and highly migratory fish stocks. In particular it was evident that coverage of high seas fisheries by regional agreements was incomplete. Even where they existed, in many cases regional agreements had failed to provide adequate enforcement mechanisms; failed to resolve disagreements over allocations among fishing States; failed to resolve the question of the respective rights, duties, and interests of coastal States vis-à-vis those fishing on the high seas; and failed to deal with the question of the rights and obligations of new entrants in a fishery.

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The title of UNFSA itself serves as a critical reminder that UNFSA is, first and foremost, an agreement for the purpose of implementing the provisions of the 1982 Convention. This is stated expressly in article 4 of UNFSA, which provides that:

[n]othing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

This provision makes it clear that the 1982 Convention remains the jurisprudential basis upon which the provisions of UNFSA are founded.

UNFSA is built on three essential pillars. These three pillars together are designed to ensure that the Agreement achieves its objective of long term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks.

The first pillar consists of a statement of the principles and practices on which better management of stocks should be based. The primary objective is to seek compatible conservation and management regimes both inside and outside areas of national jurisdiction. Conservation and management measures should be established on the basis of a precautionary approach and should use reference points for establishing the level of utilization of stocks. They should be based on the best scientific information available. .

The second pillar is to ensure that the conservation and management measures are adhered to and complied with, and that they are not undermined by those who fish for the stocks. This must be the collective responsibility of all States concerned in a particular fishery. UNFSA also recognizes that effective enforcement on the high seas must rely on better cooperation among States . To this end, the primary responsibility of the flag State is reaffirmed and the framework for action by States other than the flag States, in the form of a globally recognized right to board and inspect vessels in support of subregionally, regionally or globally agreed conservation and management measures, is set out with clear safeguards against abuse.

The third pillar is the provision on peaceful settlement of disputes. While providing for various possibilities of non-binding settlement, every dispute can in the end be submitted to a court or tribunal for a binding decision.

Perhaps the most important achievement of UNFSA is the way in which it develops the concepts of cooperation, compatibility and responsibility inherent in the 1982 Convention. It does this by both articulating the necessary balance and reciprocity as to the concurrent rights and obligations of coastal States and high seas fishing States by introducing the notion of compatibility and by developing the concepts of biological diversity, ecosystem approach and precautionary approach which were already implicit in the 1982 Convention and necessary for its effective implementation.

Article 36 of UNFSA requires that four years after the date of entry into force of the Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The purpose of the conference is to “review and assess the adequacy of the provisions of the Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order to better address any continuing problems in the conservation and management” of these two types of fish stocks.

What I want to focus on today is on a discussion of some of the key current issues and on some suggestions on the way forward which the Review Conference might consider in the light of experience since 1995. Some of the issues that I have identified are as follows :

- (1) Adherence to UNFSA;
- (2) Better implementation of UNFSA at the regional level through RFMO's;
- (3) The application of the precautionary approach and the use of ecosystem-based management;
- (4) Improving flag State responsibility;
- (5) The implementation of UNFSA by developing countries; and
- (6) Discrete high seas stocks and destructive fishing practices.

1. Adherence to UNFSA

There can be no doubt that an essential first step in securing better implementation of UNFSA is to secure broader and more effective adherence to UNFSA by States. UNFSA cannot attain its full potential unless and until the most important coastal, fishing and flag States become parties to it and comply with its obligations. As at April 2005, there were 52 Parties to UNFSA. In contrast, as at the same date, there were 148 Parties to the 1982 Convention and 121 Parties to the 1994 Implementation Agreement relating to deep seabed mining. A technical reason for this discrepancy is that, unlike the 1994 agreement, UNFSA has no automatic application procedure, nor did it benefit from existing institutional links with the United Nations system. Another important difference between the 1994 Agreement and UNFSA is that a State can be a Party to UNFSA without being a party to the 1982 Convention.

It is vitally important that all parties to the 1982 Convention become parties to UNFSA, so that, as originally intended, there would be a seamless connection between the provisions of the Convention and the provisions of the implementing agreement. Regrettably, however, the pace of ratifications and accessions has been very slow. In this regard, the UN Secretary-General's initiative in holding regular "treaty events" in order to encourage States to sign, ratify or accede to treaties of which the Secretary-General is the depositary is to be welcomed. The Secretary-General should be asked to include the 1995 Agreement in the "treaty event" for the next General Assembly and again at the Review Conference. Among other more innovative initiatives to address this problem, the members of the High Seas Task Force established under the auspices of the OECD have agreed to exert diplomatic pressure on a number of key States identified as having a specific interest in the subject-matter of UNFSA, either as significant flag States of high seas fishing vessels or as States with a strong fishing interest.

The addition of a significant number of new Parties to UNFSA would represent a measurable achievement and an important outcome from the UNFSA review conference. Since the Review Conference is to take place in 2006 it would be useful for the General Assembly to give special emphasis this year to the need for States to become parties to the 1995 Agreement.

2. Better implementation at the regional level through RFMOs

The second broad area in which problems have arisen is that of inadequate implementation at the regional level, including lack of institutional standards, lack of coordination between regional bodies and inadequate harmonization of measures. Fundamental to the success of UNFSA, is the central role accorded to RFMOs in its implementation.

RFMOs are the medium through which States Parties to UNFSA which are engaged in harvesting straddling fish stocks and highly migratory fish stocks can fulfil their obligations to cooperate to conserve and manage those stocks. In giving a broad, functional, definition to what constitutes an “organization or arrangement” for this purpose, UNFSA allows considerable latitude to States to determine the manner in which they will cooperate. A highly structured international fisheries organization is not necessary as long as the RFMO meets the criteria set out in article 10 of UNFSA. Nor does UNFSA force States to join RFMOs. However, if an RFMO exists and a State Party to UNFSA does not become a member, it is required to apply all the management measures adopted by the RFMO. In this way, States Parties to UNFSA cannot avoid their obligation to cooperate by not becoming a member of the relevant RFMO. Where there is no RFMO, fishing States and coastal States of the region are required to cooperate to establish one or enter into appropriate arrangements for conservation and management. At the same time, UNFSA emphasizes that States with a “real interest” in the fisheries concerned are entitled to become members of a relevant RFMO. This important and difficult provision is designed to ensure that, on the one hand, UNFSA could not be used to protect the position of States currently fishing on the high seas by freezing out potential new participants, whilst, on the other hand, RFMOs should not be open to all States regardless of the extent of their interest. Article 8(4) makes clear the consequences of failure to join or cooperate with an RFMO. It provides that only those States which are members of the relevant RFMO, or which agree to apply the conservation and management measures established by the RFMO, shall have access to the fishery resources to which those measures apply.

The obvious way around these provisions is for States to register (or reflag) their fishing vessels in States that are not members of the RFMO concerned and to continue to exercise their (claimed) freedom to fish on the high seas unrestricted by the conservation measures set by the RFMO. This is a problem that lies at the heart of concerns relating to illegal, unreported and unregulated (IUU) fishing. UNFSA adopts a carrot and stick approach to deal with this situation, whilst recognizing the reality that its provisions cannot bind non-parties. Thus, it requires States that are members of an RFMO to request non-members (and non-parties to UNFSA) to comply with the conservation and management measures adopted by the RFMO. Cooperation is to be rewarded with benefits (presumably code for catch allocations) commensurate with the commitment to cooperate. This is the carrot. The stick then appears in the form of articles 17(4) and 33(2), which direct States Parties to UNFSA to take “measures consistent with [UNFSA] and international law” to deter non-parties from undermining the effectiveness of conservation and management measures adopted by an RFMO.

Despite some positive progress in some regions, however, it is apparent that the provisions of UNFSA have yet to take full effect. Although there are some 19 RFMOs worldwide with competence over high seas areas, RFMO coverage of high seas areas remains geographically and functionally incomplete. Some RFMOs lack capacity and in nearly all of them participation is not sufficiently broad to ensure compliance with conservation and management measures and eliminate the problem of “free riders”.

The question of institutional standards is important and the need for the application of “best practices”, both as regards the institutional capacity of RFMOs to deliver conservation objectives and as to the extent to which conservation and management measures adopted by the RFMO meet those objectives, is being increasingly recognized. It must be recalled that the progressive step that was introduced by UNFSA was to list comprehensively, in a legally binding form, the matters upon which States are expected to be able to agree in order to achieve sustainable management of fisheries. By implication therefore, RFMOs used as the vehicle for such cooperation need to be structured in such a manner that their institutional arrangements are capable of delivering an environment which enables member States to agree on the matters set out in article 10. The fact is that most of the existing RFMOs pre-date UNFSA and many of them do not live up to the institutional standards established by UNFSA.

The absence of a systematic approach in most RFMOs to the implementation of UNFSA was in fact noted as a significant obstacle to its effective implementation by the UN Secretary-General in his report on the status of UNFSA. Some of the primary reasons why RFMOs have been ineffective have been succinctly identified by the High Seas Task Force, based on a review of current literature. I commend to you the HSFT report.

The critical weakness of the UNFSA is that it provides no mechanism whereby RFMOs (and States who fish in an area but fail to join the relevant RFMO) can be held to account. UNFSA relies for its effectiveness on a discrete and disparate network of RFMOs, yet there is no institutional link between UNFSA and the RFMOs that are responsible for implementing its provisions. It is suggested that an increased oversight of RFMOs at the global level could significantly reinforce regional and national measures to effectively implement UNFSA. Such oversight could also promote a more systematic approach to improving the conformity of regional conservation and management measures with UNFSA. In making such a proposal, it must, of course, be recognized that most RFMOs are autonomous entities. As the case of IATTC demonstrates, changing the constituent instrument of an RFMO is not a straightforward task.

How the international community might best achieve an appropriate level of oversight at the global level is a matter open to discussion. One strategy, suggested by the Secretary-General of the United Nations in his report, might be to build on the biannual meeting of RFMOs hosted by FAO to establish a more targeted agenda through which RFMOs could work together to implement UNFSA. This certainly seems to be an appropriate mechanism for promoting better coordination between RFMOs and increased harmonization of measures of common interest, for example, the case of the measures applied by the five tuna RFMOs worldwide. This approach however may be less effective in promoting coordination between RFMOs that have less in common with one another.

One clear possibility would be for the States Parties to UNFSA to take upon themselves the specific mandate to periodically evaluate and make recommendations on the performance of RFMOs. Such an evaluation could, for example, be carried out by States Parties as part of a regular review process every five years on the basis of technical reporting by FAO, as the Specialized Agency responsible for fisheries matters or on the basis of self-assessments or third party audits of the effectiveness of conservation and management measures adopted by RFMOs. Whichever specific methodology is preferred, the objective should be to develop clear performance indicators for RFMOs and systematic checking of conservation and management measures for their effectiveness and consistency with UNFSA. A regular review process of this nature would help to ensure accountability by providing the opportunity to set clear goals for States to achieve in respect of the RFMOs of which they are members. It would also enable the international community to identify clearly the areas in which RFMOs fall short of the standards

required by UNFSA and to take action accordingly. Finally, such a process could be used to provide further encouragement to States to accede to UNFSA and to join relevant RFMOs.

3. The Precautionary approach and the use of ecosystem-based management

One of the most important contributions of UNFSA is the way in which it seeks to operationalize the precautionary approach in the context of fisheries management. In so doing, it builds on the Precautionary Principle adopted at UNCED and applies this principle directly to fisheries management. The way in which UNFSA does this is by using the concept of limit reference points as indicators that mark the onset of dangerous conditions. On approaching such threshold conditions, appropriate pre-negotiated responses are called for. The parameters of such conditions, together with guidance as to the appropriate level of response, are set out in Annex II of UNFSA and include the need to establish provisional reference points when information is poor or absent. It is noted that despite UNFSA, there is little evidence of the application of the provisions of Annex II in the management action taken by most RFMOs to date.

It is important that the proposed review of the implementation of UNFSA considers in detail the extent to which RFMOs have been able to give effect to UNFSA requirements relating to the precautionary approach and ecosystem-based management and identifies the factors that may have prevented them from fulfilling their responsibilities. Since the application of the precautionary approach is primarily a matter of risk evaluation and assessment, it seems clear that more effort should be made to evaluate the relative risks to associated and dependent species of harvesting the target stocks at optimal levels.

4. Improving Flag State responsibility

It is worth recalling that one of the key concerns that preoccupied States in the period leading up to UNCED was the practice of reflagging of fishing vessels by their nationals to avoid compliance with internationally agreed conservation and management measures. The problem is well known and does not need to be described in detail again here. Those wishing to circumvent the conservation and management measures adopted by RFMOs need only reflag their fishing vessels to States that are not members of the RFMO concerned. In many cases, such States also happen to be States that are unable or unwilling to exercise their responsibilities under international law for controlling the activities of such vessels. These are commonly referred to as “flags of convenience”, although in recent years, the term “flags of non-compliance” has become popular. In essence, the problem is not so much the act of reflagging, which may be done for legitimate business purposes, but the fact that some flag States who confer their nationality on vessels refuse to join RFMOs and refuse to ensure that their vessels fish in accordance with agreed conservation measures.

Article 94 of the 1982 Convention deals with the duty of a flag State to exercise jurisdiction and control in administrative, technical and social matters over ships flying its flag. In discussing the background to article 94, it needs to be recalled that the primary concern in the 1970s, when the Convention was being negotiated, related to merchant shipping vessels, particularly tankers and cargo vessels, and the question of safety at sea and pollution. Fishing

vessels were not at the time the subject of much discussion, no doubt because the practice of reflagging fishing vessels in order to evade controls was not widespread.

In light of the concerns expressed at UNCED, the matter was taken up first by the FAO. As a result, “The Compliance Agreement” was adopted in 1993, before UNFSA, even though Part V of UNFSA covers much similar ground. The objective of both agreements is to spell out the duties of flag States with respect to vessels which engage in fishing on the high seas. The basic duty, which applies to all flag States, whether or not they are members of the relevant RFMO, is to ensure that high seas fishing vessels do not undermine the effectiveness of internationally agreed conservation and management measures. Both agreements, but particularly UNFSA, give content to this duty by requiring flag States to take a number of actions. These include prohibiting such vessels from fishing on the high seas without a specific licence (which the flag State may only issue if it is able effectively to exercise its responsibility over the vessel), maintain records of all vessels authorized to fish, institute satellite monitoring systems to track the activities of such vessels, collect and report basic fishing data and cooperate with other States in implementing regional inspection schemes.

One of the most contentious achievements of UNFSA was to provide for the possibility of boarding and inspection of fishing vessels on the high seas by States other than the flag State. It is the first global instrument to establish such a procedure and in the process broke with several hundred years of international law. Importantly, however, the power to board and inspect is strictly circumscribed by safeguards designed to preserve at all times the right of the flag State to assert its primary jurisdiction, and indeed to encourage it to do so, and to prevent abuse as well as risk to human life and safety.

Despite these advances in the law, it is evident that not only has the problem of inadequate flag State control not gone away in the context of fisheries, but it continues to increase. It is pertinent to observe here by way of an aside that of the six cases on prompt release of vessels under article 292 of the 1982 Convention that have come before the International Tribunal for the Law of the Sea, all have involved fishing vessels flying so-called flags of convenience. As the number of potential flag States increases (there were 67 in 1952; over 120 now), the problems associated with open registers are likely to increase. One sinister reason for this, which cannot be overlooked, establishes a link between reflagging and over-capacity in the world’s fishing fleet. Too often, reflagging is carried out by the nationals of States which have exhausted the resources of their own EEZs or their regional quotas allocated by RFMOs but seek additional quota in other regions through flags of convenience, often using the flags of developing countries to seek preferential access as “new entrants” to the fishery

The stark realities that must be faced are that high seas boarding and inspection schemes, no matter how innovative, are likely to have only limited results in addressing the problem of recalcitrant flag States.

Despite the somewhat depressing picture presented above, there is reason to be optimistic if we consider what has been achieved in the field of merchant shipping. There, a long period of active standard-setting is gradually giving way to a time of auditing the performance of States parties to the standard-setting conventions and agreements. These audits are supported by a number of active enforcement measures, including for example the maintenance of white lists by IMO, and the use of port State measures to enforce the standards. Of course, it must be borne in mind that two of the fundamental factors that have made this possible are (1) the broad degree of participation in the relevant IMO conventions, and (2) the emphasis on maritime security in the post 9/11 world which has led to the rapid and widespread adoption of initiatives such as the

International Ship and Port Facility Security Code (ISPS Code) and the International Safety Management (ISM) Code.

Nevertheless, it is apparent that fisheries lags far behind the world of merchant shipping in terms of the way in which international standards are elaborated and enforced. A number of practical measures might be taken to improve the present situation.

- a) First, more effort should be made to define the standards that are expected of flag States, based on UNFSA. Where these are inadequately developed, they should be reinforced. The work of the Consultative Group on Flag State Implementation established by the Secretary-General of the United Nations in 2003 represents a good basis in this regard. Ultimately, however, what is needed is a comprehensive set of guidelines on flag State performance with respect to fishing vessels, which could then form the basis for criteria for evaluating the performance of individual flag States (audit) and giving publicity to those that fall short of desirable standards.
- b) Second, increased efforts must be made to ascertain the true beneficial ownership of fishing vessels before they can be registered by flag States or by RFMOs.
- c) Third, owners of fishing vessels and their masters, whatever their nationality, should be made liable for breach of conservation and management measures.
- d) Fourth, members of RFMOs must agree to prevent their nationals from reflagging to States that are not members of the RFMO.
- e) Fifth, intensive audit of flag States is necessary, but will only achieve its full potential as a deterrent to reflagging by more widespread participation in UNFSA and other relevant agreements.
- f) Sixth, port State enforcement of flag State duties, along the lines proposed by FAO in its recently-adopted Model Scheme for Port State Measures (which is itself modelled closely on similar schemes for the enforcement of safety standards for merchant shipping) offers some of the best possibilities for better enforcement of flag State duties, providing port State inspections are linked to flag State obligations clearly spelt out at the regional level.
- g) Seventh, where there has been persistent failure by a particular flag State to perform its duties under the 1982 Convention and UNFSA the possibility of enforcing those duties through recourse to the International Tribunal for the Law of the Sea under Part XV of the 1982 Convention should be investigated further.

5. Implementation of UNFSA by developing countries

One of the interesting features of UNFSA is the way in which it makes provision for the special requirements of developing countries to be taken into account. Part VII of UNFSA requires States to give full recognition to the special requirements of developing countries in relation both to the conservation and management of the fish stocks covered by UNFSA and in relation to the development of fisheries for such stocks.

How Part VII of UNFSA will operate in practice remains to be seen. Although the matter has been on the agenda of the annual informal meeting of States Parties to UNFSA for the past two years, attention so far has focused mainly on the establishment of the special assistance fund required by article 26. That fund was established in 2004 and is now operational. Part VII is

deliberately worded in specific terms, however, and it is clear that there are broader issues to be considered, including the nature of the possible forms of assistance that are envisaged. In 2003, in response to a specific invitation by the General Assembly, the UK Government contributed a very detailed study on the provisions of Part VII of UNFSA concerning requirements of developing States.

The report *inter alia* suggests that emphasis should be placed on improving the capacity of developing States to manage their own fisheries in accordance with the principles in Part II of UNFSA, improving their capacity to participate effectively in relevant RFMOs and improving the institutional capacity of RFMOs themselves to respond effectively to the needs of developing countries and ensure that developing countries are not required to assume a disproportionate burden of conservation action.

The Review Conference would be an ideal opportunity for States Parties, in consultation with major funding sources such as the GEF and the World Bank, to consider ways in which the effectiveness of assistance provided under Part VII might be improved. Identifying areas where most progress can be made and setting clear goals and targets, for example, getting developing countries to participate in RFMOs more effectively, would promote policy coherence and help to achieve the objectives of Part VII.

6. Discrete high seas stocks and destructive fishing practices

There is one further issue that I would like to touch upon briefly. That is the perception that there are substantive gaps in the coverage by UNFSA of the discrete high seas fish stocks.

There is concern that the current legal framework, which is provided by the 1982 Convention (including its Part XI with respect to the mineral resources of “the Area” and their associated biodiversity), the Convention on Biological Diversity and UNFSA, is not sufficient to manage such stocks and to provide a sound basis for effective regulation. This has led to calls for the establishment of marine protected areas on the high seas and for the imposition of a global moratorium on certain grossly unsustainable fishing practices, such as high seas bottom trawling.

In response, the General Assembly, in its most recent resolution on oceans and the law of the sea, called upon States and international organizations to take urgent action to address, in accordance with international law, destructive practices that have adverse impacts on marine biodiversity and ecosystems, including seamounts, hydrothermal vents and cold-water corals.

A global moratorium might be seen as an extreme response to a rather specific problem. Nevertheless, the fact that a substantial coalition of interests is actively pursuing such a measure through the General Assembly can only be indicative of a much broader concern over the ability of the present system of international governance to deliver sustainable management. Such frustration is understandable when one looks, for example, at the situation in the South-west Indian Ocean. There is no doubt that unsustainable fishing practices have led to serial depletion of several deep sea fisheries and severe damage to benthic communities and associated biodiversity as a result. Nevertheless, even the most active proponents of a moratorium on high seas bottom trawling would probably agree that a global moratorium is a crude instrument if used as a proxy for proper management action.

The specific legal problem appears to be a perception that the provisions of UNFSA apply only to straddling and highly migratory stocks and do not cover discrete high seas stocks. This is not necessarily the case. States fishing for discrete high seas stocks are already subject to a

general duty to cooperate to conserve and manage the fisheries under articles 117 – 119 of the 1982 Convention. If we consider UNFSA as an instrument that gives effect to and elaborates upon principles that were already inherent in the 1982 Convention as part of that general duty, then it follows that the principles for conservation and management that UNFSA elaborates, including the basic obligations to conserve biological diversity and to apply the precautionary approach should be applied to discrete high seas stocks as well as to straddling and highly migratory fish stocks. Given the emphasis UNFSA places on ecosystem-based management, it would be illogical to apply the provisions of articles 5 and 6 of UNFSA to straddling and highly migratory stocks and not deal with other stocks in the same way.

Notwithstanding the above view of the legal situation, we cannot ignore the fact that there are real problems in relation to discrete high seas fish stocks. Many such stocks occur in ecologically sensitive areas, such as seamounts. Few of the fish stocks that are currently known to exist are regulated by an RFMO, even where there is an RFMO with competence over the geographical area concerned.

The critical issues therefore are:

- How to establish management measures where none exist, and enforce them effectively, before new fisheries are depleted?
- How to get RFMOs to act to establish conservation and management measures for discrete high seas stocks?

A first step towards achieving the first objective would be to give formal recognition, at the political level, of the application of the principles in UNFSA to all fish stocks on the high seas. This could be done, for example, by a General Assembly resolution. In the short term, such a measure would strengthen the hand of those States who are fishing responsibly on the high seas and wish to cooperate to establish precautionary management arrangements. It would also help to establish a sound basis from which RFMOs might develop and apply more specific conservation and management measures to deal with the problems that are specific to deep sea fisheries.

FAO should be asked urgently to develop technical guidelines under the Code of Conduct relating specifically to the sort of conservation and management measures that need to be taken for deep sea fish stocks. This could pave the way to the development, as a key outcome of the Review Conference in 2006, of a more ambitious Protocol to UNFSA. Such a Protocol might extend the scope of UNFSA to discrete high seas stocks, irrespective of whether they are classified scientifically as straddling or highly migratory stocks, and set out in more detail the specific measures that would apply to such stocks.

With respect to the second issue, there is no fundamental reason why existing RFMOs cannot be used to regulate deep sea fisheries on the high seas including, if necessary, by adopting scientifically-based criteria to designate closed areas around sensitive seamounts and prohibit the use of certain destructive gear types. The problem is, of course, that many RFMOs are constrained by their existing mandates which brings us back to a review of the powers and functions of RFMO's.

I hope the above review of some of the current problems in relation to the implementation of UNFSA and the suggestions for addressing those problems in order to improve ocean governance would be helpful as we prepare for the “Review Conference” next year.
