

Proposals to the fourth draft of Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean

During the processing of the fourth draft of Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean the Ukrainian part have had some comments and proposals, which are proposed to take into account in further work, in particular:

1. The ninth paragraph of Preamble set forth in such wording: “Mindful that effective conservation and management measures must be based on the best scientific advice available and, in particular, on the application of the precautionary approach and an ecosystem approach, which are the scientific background of exploitation and conservation of fisheries resources”.

2. In the paragraph (f) of the article 1 “Definitions” and further in the Draft Convention text, where appropriate, replace the words “fisheries management” with “management of fishery resources” in order to Draft Convention title.

3. The article 2 “Objective” set forth in such wording: “The objective of this Convention is to ensure the long-term conservation and sustainable use of fishery resources on the basis of best scientific advice available while safeguarding the marine ecosystems in which those resources occur.”

4. To the subparagraph (a) of the article 3 “Conservation and Management Principles” concerning the conservation and management of fishery resources add: “and includes: i) registration of natural and anthropogenic caused changes of the sea environment and ecosystems state; ii) stock-assessment and monitoring of the sea biological resources; iii) determining a total allowable catch or total allowable fishing effort”.

5. The subparagraph (a) of the article 3 “Conservation and Management Principles” set forth in such wording: “management and conducting of the fishing shall be carried out through sticking to the conservation and management measures, which are developed on the best scientific advice available, taking into account the impacts on associated and dependent species and the general obligation to protect and preserve the marine environment”.

6. The subparagraph (g) of the article 3 “Conservation and Management Principles” set forth in such wording: “an ecosystem approach to assessment of the fishery resources stocks and determining the total allowable catch”.

7. The subparagraph (i) of the article 3 “Conservation and Management Principles” set forth in such wording: “awareness of necessity to avoid the harmful impacts on the sea environment, conservation of biological diversity, promoting the integrity of the sea ecosystems and highest possible reduction of long-termed and irreversible risks of fisheries activity”.

8. In the subparagraph (b) of the paragraph 2 of the article 6 “Organisation” after words “an Eastern Sub-regional Management Committee, a Western Sub-regional Management Committee” and further in the text, where appropriate, add wording: “which have equal rights”.

9. In the subparagraph (c) of the paragraph 1 of the article 8 “Functions of the Commission” after words “develop rules for the collection, verification, reporting,” add word “storing”.

10. To the subparagraph (a) of the paragraph 2 of the article 10 “Scientific Committee” add: i) determining total allowable catch or total allowable fishing effort based on the best available scientific advice; ii) organisation of collecting scientific data and conducting the database.

11. In connection with few scientific expeditions, the number of which is constantly declining to the article 10 “Scientific Committee” add paragraph 5: “Every national scientific expedition, which is conducted by Contracting Party and every international expedition, which is conducted with participation of Contracting Party, which research the stocks of fishery resources in Conventional Area shall provide Scientific Committee with all received scientific data”.

12. To the paragraph 3 of the article 18 add subparagraph (e): “allocation of the national quotas”.

13. At the end of the subparagraph (c) of the paragraph 3 of the article 18 add such wording: “and a system of utilization of it, including, where appropriate, introducing Olympic system of fishing”.

14. Exclude from the text of Convention the paragraph 4 of the article 22 “Contracting Parties Duties” with the requirement to Contracting Party to be responsible for the “its nationals, fishing vessels owned, operated or controlled by its nationals fishing in the Convention Area and its industries comply with the provisions of this Convention and with the conservation and management measures adopted by the Commission” as this is a duty of Flag State which entitles the mentioned vessel to fly its flag, irrespective of the nationality of the crew-members or shipowner.

15. From the paragraph 3 of the article 26 exclude the measures related to WTO from the terms of reference of the Convention or specify the definite WTO Agreement, under which the Organisation shall use such market-related measures.

16. To the article 26 “Monitoring, Compliance And Enforcement” add paragraph (f): “The programs of international and national scientific monitoring”.

17. The title of the article 27 set forth in such wording “The Programme of permanent international scientific observation” and use this wording further in the text.

18. From the paragraph 1 of the article “The Programme of permanent international scientific observation” exclude words “within two years”. Further

from the text of the paragraph exclude words “and shall be organised in a flexible manner which takes into account the nature of the fishery resources and other relevant factors”. Add: “Program is obligatory and covers all kinds of fisheries without exception”. Subparagraph (a) of the paragraph 2 of the article 27 set forth in a such wording: “organisation by Contracting Parties the obligatory arrangement of international scientific observers on every vessel which flies the flag of Contracting Party”.

19. Exclude paragraphs 1 and 3 from article 31 “Non-Contracting Parties” in compliance with article 34 of Vienna Convention on the Law of Treaties, 1969 with a general rule embracing third states: international treaty shall not incur obligations or claims for the third state without it’s agreement.

The basis of mentioned principle is a principle of respect to the national sovereignty, essence of international law and international treaty, which are based in turn on voluntary agreement of sovereign parties, first of all - sovereign states. In this respect international treaty obliges only it’s contracting parties.

Moreover, measures, provided in paragraph first of this article contradict to one of high seas liberty, determined in article 87 of the United Nations Convention on the Law of the Sea of 10 December 1982, in particular, liberty of fishing.

At the same time, it is necessary to distinguish matters, related to obligatory of international treaty to third states, and matters, related to respect of third states of international treaties, adopted by other states. The only fact of existence of the international treaty incurs obligation to states, which are non-contracting parties to respect this international treaty and legal regime established by it. For example, the states, which are not contracting parties of The Antarctic Treaty (1959) follow the regime of demilitarization and neutralization of Antarctic. The same pertains the United Nations Convention on the Law of the Sea (1982).

20. In the paragraph 1 of article 39 replace the words “Secretary-General” with “Secretariat” according to paragraph 1 of article 102 of the Organisation of United Nations Charter.

21. Set forth the last sentence of the article 41 in such wording: “The participation in this Convention finishes in 90 days from the date of the receipt by the Depositary appropriate notification”.

22. Set forth the conclusive statement of the draft Convention in such wording: “IN WITNESS WHEREOF, the appropriately authorized Plenipotentiaries, have signed this Convention” taking in account that national legislation provide for different procedures of authorization it’s representatives to sign international treaties.

23. Define the official languages of Convention and set forth it in the final provisions.

24. Provide, that in case of underexploitation by Contracting Party it's national quota (if certain resource is caught by quota), the state may delegate it's right for utilizing this quota to other state.

25. Provide a reservation of determined part of total allowable catch or total allowable fishing effort to be used by not-Contracting Parties, which have agreed to cooperate with Organisation. In case of underexploitation of this share of total allowable catch or total allowable fishing effort by entitled State, it should be divided between other Contracting Parties.