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Briefing on the Fisheries Regulatory Framework at the Multilateral Level, UNCTAD, 20 March 2017

Overview of the international legal framework for sustainable fisheries Agreement set out in the 1982 United Nations Convention on the Law of the Sea and the United Nations Fish Stocks

**Statement by the Division for Ocean Affairs and the Law of the Sea, Office of Legal
Affairs, United Nations, delivered by Gabriele Goettsche-Wanli, Director**

Excellencies,
Distinguished delegates,
Ladies and Gentlemen,

It gives me great pleasure to be here today for this briefing on the fisheries regulatory framework at the multilateral level. Let me begin by thanking UNCTAD for organizing this very noteworthy event and for inviting the Division to participate therein.

2017 promises to be an important year for the oceans. The inclusion of a stand-alone goal for oceans, Sustainable Development Goal 14, in the 2030 Agenda for Sustainable Development, and the decision to explore ways and means to promote the implementation of this Goal through the holding of the Ocean Conference in June this year, have given new impetus to international efforts to address the current state of our oceans and seas. This high-level focus on the oceans is both welcome and long-overdue.

Indeed, our oceans require our urgent attention. The First Global Integrated Marine Assessment, completed in 2015, provides a stark picture of the current state of our oceans. Anthropogenic pressures on marine ecosystems, such as marine pollution, overexploitation of marine living resources, coastal degradation, climate change and ocean acidification, are challenging the resilience of the oceans and their resources, as well as their continued ability to provide important ecosystem goods and services to humankind. The United Nations General Assembly has noted with concern the findings of the Assessment that the world's ocean is facing major pressures simultaneously with such great impacts that the limits of its carrying capacity are being, or, in some cases, have been reached.

The ten targets in Goal 14 present an ambitious road-map for the international community's efforts to sustainably manage the oceans and their resources. Fortunately, we already have a comprehensive legal and policy framework for oceans to guide our collective efforts, and provide many of the keys to achieving the targets of Goal 14.

In the fisheries context, important parameters for global action are provided by the 1982 United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement. While I will focus my remarks on the legal framework provided by these two

instruments, it is important to note that there are a number of global and regional instruments, including fisheries instruments developed under the auspices of the Food and Agriculture Organization of the United Nations (FAO), which complement this framework. I will also touch briefly on the role of the General Assembly in further developing the global policy framework for the oceans.

The United Nations Convention on the Law of the Sea, often referred to as the “Constitution for the Oceans”, sets out the legal framework within which all activities in the oceans and seas must be carried out including fishing activities. The Convention stipulates the extent of various maritime zones, and the rights and obligations of States in these zones.

In relation to fisheries, the Convention sets out the sovereignty of the coastal State over its territorial sea. Although foreign vessels are able to exercise the right of innocent passage or transit passage through the territorial sea, they are not permitted to engage in fishing activities absent the express consent of the coastal State.

The Convention also provides for, inter alia, the sovereign rights of coastal States for the conservation and management of living marine resources in the exclusive economic zone (EEZ), where it is estimated that up to 90% of the world’s commercial species are located. Such sovereign rights are accompanied by an obligation to conserve and manage living marine resources by determining the total allowable catch, so as to avoid overexploitation. Nationals of other States fishing within the EEZ are required to comply with the conservation measures and other terms and conditions established by the coastal State.

Similarly, the right of vessels from all States to fish on the high seas is accompanied by an obligation for States to take, or cooperate with other States in taking, measures for their respective nationals necessary for the conservation of the living resources of the high seas and to cooperate with each other in the conservation and management of such resources.

The Convention also requires cooperation in the conservation and management of straddling and highly migratory fish stocks. This duty to cooperate is given effect to and elaborated upon through an implementing agreement to the Convention – the 1995 United Nations Fish Stocks Agreement.

It is important to note that the Convention also contains a dispute settlement mechanism which includes compulsory procedures entailing binding decisions.

The Convention is near universal in its participation, with 168 States Parties, including the European Union. Moreover, most of its provisions are considered to reflect customary international law.

The United Nations Fish Stocks Agreement sets out a comprehensive legal framework for the implementation of those provisions of the Convention that relate to the conservation and management of straddling and highly migratory fish stocks. These two categories comprise the wide majority of high seas fish stocks, including some of the world’s most commercially traded species, such as tuna.

The innovative provisions of the Agreement serve to support and strengthen the regime set out in the Convention by providing a detailed framework for its implementation which includes robust tools and modern conservation and management approaches.

Among other things, the Agreement establishes general principles for conservation and management, such as the precautionary and ecosystem approaches; standard requirements for data collection and sharing; mechanisms for compliance and enforcement of measures, including port State measures; compatibility of conservation and management measures established for the high seas and those adopted for areas within national jurisdiction; and dispute settlement procedures.

The Agreement sets out rights and obligations for flag States and coastal States. It also recognizes the role of regional fisheries management organizations and arrangements (RFMO/As) as constituting the primary mechanism for cooperation between coastal States and high seas fishing States under the Agreement. These organizations and arrangements have substantial responsibilities in relation to conservation and management of straddling and highly migratory fish stocks, as well as non-target and associated or dependent species.

Importantly, the Agreement also recognizes the special requirements of developing States, including in the development of their own fisheries and in their participation in relevant high seas fisheries.

The Agreement currently has 85 States Parties, including most of the world's distant water fishing nations. Despite the limited number of ratifications, in the 22 years since its adoption, the Agreement has already had a considerable impact on the practice of States and RFMO/As, and has provided the impetus for the further development of international law and policy. This includes the establishment of new RFMO/As, the reform of existing RFMO/As and the adoption of robust measures at the regional and national levels. Provisions of the Agreement have been incorporated into General Assembly resolutions on sustainable fisheries, and have provided a benchmark for the development of new instruments by the FAO, such as the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing and the Voluntary Guidelines for Flag State Performance. Moreover, the relevance of the general principles of the United Nations Fish Stocks Agreement to discrete high seas fish stocks has been recognized by the General Assembly and the Review Conference on the Agreement.

The role of the Review Conference is to assess the effectiveness of the Agreement in securing the conservation and management of straddling and highly migratory fish stocks by reviewing the adequacy of its provisions and, if necessary, proposing means of strengthening the substance and methods of implementation of those provisions. The recommendations adopted by the Review Conference in 2006, 2010 and 2016 have stimulated concrete actions by States to improve the sustainability of high seas fisheries, including through the General Assembly, FAO and RFMO/As.

In May 2016, at the most recent Review Conference, participants welcomed the significant progress that had been made in the implementation of several of the recommendations made in 2006 and 2010, while expressing concern at the lack of progress in other areas. The Conference therefore reaffirmed and consolidated the recommendations adopted in 2006 and in 2010, and adopted a set of sturdy new recommendations covering 45 different topics of particular importance for sustainable fisheries.

For example, in relation to fisheries subsidies, the Conference recommended that States and RFMOs implement the commitment under the 2030 Agenda for Sustainable Development to, by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization (WTO) fisheries subsidies negotiation. The Conference also recommended that, consistent with WTO rules, States and RFMOs enhance data availability and transparency on fisheries subsidies in order to fulfil the commitment under the 2030 Agenda, including by making information on subsidies available publicly. The Review Conference also adopted specific recommendations on market-related measures.

The Review Conference furthermore ensured the continuation of the periodic review process by deciding to keep the Agreement under review through the resumption of the Review Conference at a date not earlier than 2020. It also decided to continue the practice of holding informal consultations of States Parties on an annual basis, dedicating them to the consideration of specific issues arising from the implementation of the Agreement.

Distinguished delegates,
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I would, at this point, like to also briefly highlight the important role of the General Assembly in the implementation of the recommendations of the Review Conference, as well as in the broader development of ocean policy. The General Assembly, on an annual basis, considers and reviews developments relating to sustainable fisheries and ocean affairs and the law of the sea more generally, as the global institution having the competence to undertake such a review.

In the context of this review, the General Assembly has over the years played a central normative and policy-setting role through its resolutions, including in relation to fisheries. It has taken numerous actions to strengthen implementation of the Convention and the Agreement and has also addressed specific concerns, such as large-scale pelagic drift-net fishing on the high seas and unauthorized fishing in zones of national jurisdiction. More recently, the General Assembly has undertaken a process to consider measures to address the adverse impacts of bottom fishing on vulnerable marine ecosystems and the long-term sustainability of deep sea fish stocks, which has triggered important actions by States, RFMO/As and the FAO. Last year, the General Assembly conducted a further review of the actions taken by States and RFMO/As, preceded by a two-day workshop, and a number of concrete recommendations were included in the latest General Assembly resolution on sustainable fisheries as a result of this process.

The resolutions have also included provisions related to trade in fish and fish products, for example, with regard to access agreements and arrangements and fisheries disciplines. The General Assembly has also adopted resolutions endorsing the outcomes of the major conferences on sustainable development, with fisheries components, including the “The future we want” and the 2030 Agenda.

A number of General Assembly processes have also addressed sustainable fisheries, including the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. The Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including Socioeconomic Aspects recently oversaw the completion of the First Global Integrated Marine Assessment, I referred to earlier. This Assessment examines, inter alia, the status of the world’s fisheries, as well as their socioeconomic aspects, and can serve as a tool for informed decision-making at all levels.

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As we move forward in the implementation of Goal 14, it is important to recall that UNCLOS and the Agreement already set out legal obligations aimed at effectively regulating harvesting, eliminating overfishing, combatting IUU fishing and addressing destructive fishing practices. The considerable gaps in the implementation of these provisions, however, need to be addressed in a systematic manner in order to achieve the targets in Goal 14. Some key actions that could be taken in this regard are: (1) dramatically increasing capacity-building for developing countries, in particular small island developing States and least developed countries; (2) enhancing scientific understanding of marine ecosystems and to base policy decisions on the best available science, bearing in mind the benefits of applying the ecosystem approaches and a precautionary approach, where appropriate; and (3) improving flag State implementation as well as port State control. It is also important to remember that measures taken to implement Goal 14 must be fully consistent with the international legal framework for oceans, as set out in UNCLOS.

Robust international cooperation at the global and regional levels will also be essential to achieving the various targets. In this regard, it is important to utilize, to the fullest extent possible, existing institutions and processes which have a mandate to consider sustainable fisheries, in particular the General Assembly, the Review Conference on the Agreement and the Committee on Fisheries of FAO. There is already a wealth of knowledge, experience and policy in such institutions which can be leveraged in order to proceed efficiently and effectively. For example, the General Assembly’s latest resolution on sustainable fisheries (71/123 of 7 December 2016) comprises 228 operative paragraphs addressing a broad range of relevant issues.

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Let me conclude by underscoring that the adoption of the 2030 Agenda, in particular its Goal 14, represents a tremendous opportunity for the international community to catalyze efforts to improve the sustainability of the world's fisheries, building on existing initiatives, processes and institutions. A broad range of stakeholders, including non-governmental organizations, representatives of the private sector and other key interests groups have been mobilized to rally around efforts to achieve the targets, providing an opportunity to forge key partnerships.

It is incumbent upon us to seize this momentum and transform it into tangible and long-lasting results through concrete and concerted action. The diplomatic community in Geneva, much like the one in New York, has an important role to play in this regard. I am hopeful that this briefing, as well as tomorrow's Oceans Forum will contribute to these efforts.

The Division for Ocean Affairs and the Law of the Sea as the secretariat of the Convention and the United Nations Fish Stocks Agreement, and in supporting the preparations of the Ocean Conference in close collaboration with the United Nations Department for Economic and Social Affairs, stands ready to assist States as they strive to achieve SDG 14 and other ocean-related goals, including through the implementation of the Convention and the Agreement.

I thank you for your attention.