

INTERNATIONAL COOPERATION WITH THE NANSEN PROGRAMME
COOPÉRATION INTERNATIONALE AVEC LE PROGRAMME NANSEN

(GCP/INT/730/NOR)

in cooperation with/en coopération avec
FAO DEVELOPMENT LAW SERVICE/
SERVICE DROIT ET DÉVELOPPEMENT DE LA FAO

**LEGAL AND INSTITUTIONAL ASPECTS OF MANAGEMENT
ARRANGEMENTS FOR SHARED STOCKS WITH REFERENCE
TO SMALL PELAGICS IN NORTHWEST AFRICA**

**ASPECTS LÉGAUX ET INSTITUTIONNELS DE L'AMÉNAGEMENT DES
STOCKS PARTAGÉS: CAS DES POISSONS PÉLAGIQUES CÔTIERS
DE LA RÉGION NORD-OUEST AFRICAINE**



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by/par
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Consultant

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In this respect the document was presented as a working document to the “Workshop on the management of shared small pelagic fishery resources in Northwest Africa” which was held in Banjul, Republic of the Gambia, from 30 April to 3 May 2002.

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A cet égard, le document a été présenté comme document de travail à l'«Atelier sur l'aménagement des ressources partagées de petits pélagiques en Afrique du Nord-Ouest» qui s'est tenu à Banjul, République de Gambie, du 30 avril au 3 mai 2002.

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Owen, D.

Legal and institutional aspects of management arrangements for shared stocks with reference to small pelagics in Northwest Africa.

Aspects légaux et institutionnels de l'aménagement des stocks partagés: cas des poissons pélagiques côtiers de la région nord-ouest africaine.

FAO Fisheries Circular/FAO Circulaire sur les pêches. No. 988. Rome, FAO. 2003. 258 pp.

ABSTRACT

The present report, following a short introductory section, continues with three major sections. The first reviews and provides a comparative analysis of 39 international arrangements dealing with matters relating to the management of shared stocks. The analysis compares various aspects ranging from the scope of such arrangements to the institutional settings as well as the decision-making processes. A second section reviews existing multilateral arrangements covering the Northwest Africa region, and in particular arrangements including The Gambia, Mauritania, Morocco and Senegal. The aspects of the analyses made in the previous section that would be appropriate for cooperative arrangements among the coastal States of the Northwest African region are identified and options for funding of management arrangements are outlined. The last section of the report draws attention to possible options for cooperative arrangements among the four States listed, and possible themes for such cooperation.

RÉSUMÉ

Le présent rapport, après une brève introduction, continue avec trois sections principales. La première examine et fournit une analyse comparative de 39 dispositions internationales en rapport avec l'aménagement des stocks partagés. L'analyse compare différents aspects tels que l'objet de ces dispositions en milieu institutionnel de même que les processus de prise de décisions. Une deuxième section examine les accords multilatéraux existants couvrant la région de l'Afrique du Nord-Ouest, et en particulier les accords comprenant la Gambie, la Mauritanie, le Maroc et le Sénégal. Les aspects des analyses qui ont été faites dans la section précédente qui seraient appropriés dans le cadre des processus de coopération entre les États côtiers de la région de l'Afrique du Nord-Ouest sont identifiés et des options pour le financement des dispositions d'aménagement sont décrites. La dernière section du rapport se concentre en particulier sur d'éventuelles dispositions de coopération entre les quatre États côtiers mentionnés, et les thèmes envisageables dans le cadre de cette coopération.

FOREWORD

The immediate objective of the Nansen Programme is: to provide *"staff of the fisheries management institutions in the partner countries with additional skills and scientific knowledge on the state of their resources and the environment, to enable them to use these outputs as a basis for planning and monitoring of their rational and sustainable exploitation. Providing technical advice and logistical backstopping (upon request from each national Steering Committee and after approval by the Annual Meetings between NORAD and Institute of Marine Research [IMR]) to IMR and the various partner countries (Angola, Namibia, South Africa, etc.) in their implementation of the Nansen Programme."* To achieve this immediate objective, activities are being undertaken to pave the way towards setting up an agreed mechanism for improved regional cooperation in the development and management of the small-pelagic fisheries (Northwest Africa Region). One of these activities consists of the preparation of this report on legal and institutional aspects of management arrangements for shared stocks with reference to small pelagics in Northwest Africa.

It is hoped that the present report will be of use for the four coastal States participating in the Nansen Programme for Northwest Africa who are striving towards increased cooperation in the management and conservation of shared stocks within the Northwest Africa context.

AVANT-PROPOS

L'objectif immédiat du Programme Nansen est de fournir *«le personnel des institutions administratives des pêches dans les pays partenaires ayant des compétences supplémentaires et une connaissance scientifique sur l'état des ressources et de l'environnement, capables d'utiliser les données de base pour planifier et contrôler leur exploitation rationnelle et durable. Des conseils techniques et un soutien logistique (à la demande de chaque Comité de coordination national et après approbation par les Réunions annuelles entre NORAD et l'Institut de recherche marine – IMR) à l'IMR et aux divers pays partenaires (Angola, Namibie, Afrique du Sud, etc.) et leur mise en œuvre du Programme Nansen.»* Afin d'atteindre cet objectif immédiat, des activités sont entreprises pour trouver les ressources nécessaires à l'établissement d'un dispositif agréé pour une coopération régionale améliorée dans le développement et l'aménagement des pêches de petits pélagiques (région de l'Afrique du Nord-Ouest). L'une de ces activités consiste dans la préparation de ce rapport sur les aspects juridiques et institutionnels des dispositions d'aménagement des stocks partagés avec référence aux petits pélagiques en Afrique du Nord-Ouest.

Il est souhaitable que le présent rapport soit utile aux quatre Etats côtiers participant au Programme Nansen pour l'Afrique du Nord-Ouest qui désirent une coopération accrue de l'aménagement et la conservation des stocks partagés dans le cadre de l'Afrique du Nord-Ouest.

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1. INTRODUCTION

1.1 The meaning of the term “shared stocks”

The terms of reference for this report are in Annex I. The term “shared stocks” needs definition for the purposes of this report. In principle, a “shared stock” could be one that was shared between *inter alia* (a) two neighbouring coastal States, (b) two non-neighbouring coastal States on opposite sides of a gulf or ocean or (c) a coastal State and a flag State (the latter’s vessels fishing on the high seas). Some clarity is therefore needed.

The 1982 Convention on the Law of the Sea (“LOSC”) does not use the term “shared stocks”. Instead, Art 63 LOSC refers to:

- (a) “the same stock or stocks of associated species occur[ring] within the exclusive economic zone of two or more coastal States” (Art 63(1)); and
- (b) “the same stock or stocks of associated species occur[ring] within the exclusive economic zone and in an area beyond and adjacent to the zone” (Art 63(2)).

Nandan, Rosenne and Grandy¹ consider that:

*Article 63 addresses the problems posed by what are commonly called “transboundary stocks” and “straddling stocks”, that is, respectively, stocks which occur within the exclusive economic zone of two or more coastal states, and stocks which occur both within and beyond the exclusive economic zone of a single coastal State.*²

Thus in their view the term “transboundary stocks” refers to Art 63(1) stocks, while the term “straddling stocks” refers to Art 63(2) stocks. The FAO Code of Conduct for Responsible Fisheries seems to take a slightly different view. Thus paragraph 7.1.3 of the Code states that:

*For transboundary fish stocks, straddling fish stocks, highly migratory fish stocks and high seas fish stocks, where these are exploited by two or more States, the States concerned, including the relevant coastal States in the case of straddling and highly migratory stocks, should cooperate to ensure effective conservation and management of the resources. This should be achieved, where appropriate, through the establishment of a bilateral, subregional or regional fisheries organization or arrangement.*³

For the Code of Conduct to be consistent with Nandan, Rosenne and Grandy, it should logically have included transboundary fish stocks in the reference to “relevant coastal States”.

The term “shared stocks” for the purpose of this report will be taken as meaning stocks occurring in the waters of two or more neighbouring coastal States (whether adjacent or opposite neighbours) but not ranging onto the high seas.

1.2 The legal regime for management of shared stocks

For a stock shared between two or more neighbouring coastal States and not ranging onto the high seas, the regime of Art 63(1) LOSC is appropriate. It states that:

¹ p. 640.

² Emphasis added.

³ Emphasis added.

Where the same stock or stocks of associated species occur within the exclusive economic zones of two or more coastal States, these States shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary to coordinate and ensure the conservation and development of such stocks without prejudice to the other provisions of this Part.

Regarding the term “development”, Nandan, Rosenne and Grandy⁴ state that:

The reference to “development” ... relates to the development of those stocks as fishery resources. This includes increased exploitation of little-used stocks, as well as improvements in the management of heavily-fished stocks for more effective exploitation. Combined with the requirement in article 61 of not endangering a given stock by overexploitation, this envisages a long-term strategy of maintaining the stock as a viable resource.

Thus Art 63(1) imposes a duty to “seek ... to agree” measures to *inter alia* ensure the conservation and development of such stocks. Burke states colourfully that “[t]he substantive obligation imposed by Article 63(1) cannot fairly be described as awesome, imposing, or, even, perhaps, very consequential”. Churchill and Lowe⁵ observe that “[n]othing ... is said ... about management objectives or allocation of the catch among interested States, which are the kinds of things that the States concerned need to agree on if there is to be effective management of shared stocks”.

The provisions of the LOSC on marine scientific research are potentially applicable to the management of shared stocks (see *inter alia* Arts 246(3), 246(5)(a) and 249 LOSC). The Code of Conduct, though not a binding instrument, is also relevant through both its provisions on fish stocks generally and those more specifically aimed at shared stocks (see paragraphs 7.1.3 [cited above], 7.3.2 and 12.17).

1.3 Management arrangements considered in this report

This report considers 39 arrangements. The arrangements have been chosen on the basis that: (a) they are arrangements for the management of shared stocks; or (b) the management structure they provide could easily be transferred to shared stocks.

The working definition of fisheries management used in this report is that used in the FAO Technical Guidelines for Responsible Fisheries No.4:⁶

The integrated process of information gathering, analysis, planning, consultation, decision-making, allocation of resources and formulation and implementation, with enforcement as necessary, of regulations or rules which govern fisheries activities in order to ensure the continued productivity of the resources and accomplishment of other fisheries objectives.

Thus some of the arrangements have as their focus conservation and management and others monitoring, control and surveillance.

⁴ p. 647.

⁵ p. 294.

⁶ p. 7.

Annex II contains a summary of each of the 39 arrangements, each summary using standardised headings. The analysis in section 2 of this report is based on these summaries. The 39 arrangements have been selected from a larger pool, discovered by a literature search, an internet search and casual enquiries. (Annex II lists the arrangements in this larger pool, and Annex III contains the references cited in this report and in Annex II.)

The summaries in Annex II, and the analysis that follows, are based on the various arrangements as they are on paper. Commentaries from the literature (or feedback from individuals) have been used to add to some summaries, but this is the exception rather than the rule. Where the analysis that follows identifies strengths and weaknesses, these are based on the arrangement as it appears on paper, rather than as it actually works “on the ground”. A strength on paper could be a weakness in practice; a weakness on paper could be a strength in practice.

2. ANALYSIS

2.1 Introduction

The 39 arrangements under consideration are listed in Table 1. However, comment on the analyses in sections 2.10-2.12 is reserved for the discussion on Northwest Africa in section 3. When the word “arrangement” is used below, it should be taken as actually meaning the instrument that underlies the management arrangement. Thus, for example, reference to an arrangement providing for a duty means a reference to that part of the text of the underlying instrument that creates that duty.

2.2 Nature of arrangement

COMPARATIVE ANALYSIS

With three exceptions, each of the arrangements is a treaty. The three exceptions are:

- (a) Argentina/UK Joint Statement
- (b) Australia/Indonesia MOU
- (c) the Agreed Records of the Mackerel System

COMMENTARY

2.2.1 Joint statements

Joint statements may be helpful in cases of political sensitivity, where a treaty would be seen as politically unacceptable by one or more parties. (Indeed, the Argentina/UK Joint Statement is not signed.) They can provide a political impetus yet be abandoned at short notice. The inherent transient nature of management regimes under joint statements may not inspire confidence in fishery managers. However, this impact can be mitigated by a track record of meetings and collaboration under the joint statement. (For example, since 1990 there have been eighteen regular meetings and at least one ad hoc meeting under the Argentina/UK Joint Statement.)

Table 1: The 39 arrangements under consideration

	Arrangement full name	Short name (for this use in this report)
1	Joint Statement on the Conservation of Fisheries, 1990 (Argentina, United Kingdom)	Argentina/UK Joint Statement
2	Agreement between Argentina and Uruguay for Purposes of Regulating Jurisdiction in the River Plate and Ocean Areas Adjacent and Beyond this River, 1973	River Plate Treaty
3	Memorandum of Understanding between the Government of the Republic of Indonesia and the Government of Australia Concerning the Implementation of a Provisional Fisheries Surveillance and Enforcement Arrangement, 1981	Australia/Indonesia MOU
4	Agreement Relating to Cooperation in Fisheries, 1992 (Australia, Indonesia)	Australia/Indonesia Agreement
5	Treaty concerning Sovereignty and Maritime Boundaries in the area between the two Countries, including the area known as Torres Strait, and Related Matters, 1978 (Australia, Papua New Guinea)	Torres Strait Treaty
6	Agreement on Fisheries between Japan and the People's Republic of China, 1997	Japan/China Agreement
7	Agreement on Fisheries between the Republic of Korea and Japan, 1998	Japan/Korea Agreement
8	Convention on Future Multilateral Cooperation in Northeast Atlantic Fisheries, 1980	NEAFC Convention
9	Protocol on the Conservation, Rational Utilization and Management of Norwegian Spring Spawning Herring (Atlanto-Scandian Herring) in the Northeast Atlantic, 1996 and Agreed Records 1997-2001	Herring System
10	Agreed Record of Conclusions of Fisheries Consultations between the European Community, the Faroe Islands and Norway on the Management of Mackerel in the North-East Atlantic for 2000 and 2001	Mackerel System
11	Agreement between the Government of the Kingdom of Denmark together with the Home Government of the Faroe Islands, on the one hand, and the Government of the United Kingdom of Great Britain and Northern Ireland, on the other hand, relating to the Maritime Delimitation between the Faroe Islands and the United Kingdom, 1999	Faroes/UK Agreement
12	Agreement on Cooperation in the Fishing Industry, 1975 (Norway, Russia)	Norway/Russia 1975 Agreement
13	Agreement Concerning Mutual Relations in the Field of Fisheries, 1976 (Norway, Russia)	Norway/Russia 1976 Agreement
14	Agreement on an Interim Practical Arrangement for Fishing in an Adjoining Area in the Barents Sea, 1978 (Norway, Russia)	Norway/Russia 1978 Agreement
15	Agreement between Iceland, Norway and Russia Concerning Certain Aspects of Cooperation in the Area of Fisheries, 1999	Loophole Agreement
16	Convention on Fishing and Conservation of the Living Resources of the Baltic Sea and the Belts, 1973 (as amended)	Baltic Sea Convention
17	Agreement for the Establishment of a General Fisheries Commission for the Mediterranean, 1997	Mediterranean Agreement
18	Convention Concerning Fishing in the Black Sea, 1959	Black Sea Convention

19	Agreement for the Establishment of the Regional Commission for Fisheries, 1999	Gulf Agreement
20	Agreement Between the Government of the United States of America and the Government of Canada on Fisheries Enforcement, 1990	Canada/US Enforcement Agreement
21	Convention for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, 1953 (as amended)	Halibut Convention
22	Treaty between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon, 1985 (as amended) and Agreement between the Government of Canada and the Government of the United States of America, 1999	Pacific Salmon Treaty
23	South Pacific Forum Fisheries Agency Convention, 1979	FFA Convention
24	Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Interest, 1982	Nauru Agreement
25	Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement, 1982	Niue Agreement
26	Federated States of Micronesia Arrangement for Regional Fisheries Access, 1994	Micronesia Arrangement
27	Maritime Delimitation Treaty between Jamaica and the Republic of Colombia, 1993	Colombia/Jamaica Treaty
28	Agreement on the Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Dominican Republic and the Republic of Colombia, 1978	Colombia/Dominican Republic Agreement
29	Treaty on Delimitation of Marine and Submarine Areas and Maritime Cooperation between the Republic of Colombia and the Republic of Costa Rica, 1977	Colombia/Costa Rica Treaty
30	Treaty on the Delimitation of Marine and Submarine Areas and Associated Matters Between the Republic of Panama and the Republic of Colombia, 1976	Colombia/Panama Treaty
31	Agreement between the Government of Colombia and the Government of Ecuador Relating to the Maritime Boundary between Colombia and Ecuador, 1975	Colombia/Ecuador Agreement
32	Treaty Concerning Delimitation of Marine Areas and Maritime Cooperation Between the Republic of Costa Rica and the Republic of Panama, 1980	Costa Rica/Panama Treaty
33	Delimitation Treaty between the Kingdom of the Netherlands and the Republic of Venezuela, 1978	Netherlands/Venezuela Treaty
34	Fishing Agreement Between the Government of the Republic of Trinidad and Tobago and the Government of the Republic of Venezuela, 1985	Trinidad and Tobago/Venezuela Agreement
35	Convention for the Establishment of the Lake Victoria Fisheries Organization, 1994 (as amended)	Lake Victoria Convention
36	Convention on Fisheries Cooperation Among African States Bordering the Atlantic Ocean, 1991	African Atlantic Convention
37	Convention relative à la détermination des conditions d'accès et d'exploitation des ressources halieutiques au large des côtes des Etats Membres de la Commission sous-régionale des pêches, 1993	SRFC Access Convention
38	Convention sur la coopération sous-régionale dans l'exercice du droit de poursuite maritime, 1993	SRFC Hot Pursuit Convention
39	Convention entre le Gouvernement de la République du Sénégal et le Gouvernement de la République islamique de Mauritanie dans le domaine de la pêche maritime, 1999	Senegal/Mauritania Convention

2.2.2 Memoranda of understanding

Memoranda of understanding are a flexible category of instrument, seen by some States as binding and others as non-binding. The wording used is therefore of critical importance. Indeed, situations may arise where one party considers the instrument to be binding, while the other does not. When considered as non-binding instruments, they permit use of imperative language (with the political message that State carries) without the binding impact that such language would have if contained in a treaty. The Australia/Indonesia MOU provides for a fisheries surveillance and enforcement arrangement and a fisheries line, but both are couched as “provisional”. The sentiments reflected by the text of the savings clause and the provisional nature of the regime were presumably factors that dictated the choice of instrument in this case.

2.2.3 Agreed Records of the Mackerel System

The first page of each Agreed Record in the Mackerel System states that the Record “constitutes an ad hoc arrangement, it being without prejudice to future fisheries arrangement between the Parties”. There is also no statement in either Agreed Record that the Record will be applied from a given date. In view of these factors, the exact nature of the Agreed Records relating to northeast Atlantic mackerel is not clear. The Mackerel System can be seen as consisting of three participants that meet on an annual basis. The annual meeting is in effect the consultative mechanism, the recommendations that it makes apparently being non-binding upon the participants.

2.2.4 Treaties

Treaties are of course covered by the law of treaties (including the 1969 Vienna Convention on the Law of Treaties, where applicable). Two major benefits of treaties are that (a) they are binding on their contracting parties and (b) they are permanent over a specified timeframe unless otherwise terminated, or suspended or withdrawn from. This brings certainty, which is both attractive to fisheries managers and creates a political impetus that may be lacking in non-binding, more transient instruments. Yet they are also flexible instruments. They can be broad political frameworks or very specific technical instruments, applying for, say, just a year or much longer. Having said that, the effectiveness of a treaty of course depends on the political will of its contracting parties.

2.3 Scope

2.3.1 A scope beyond fisheries

COMPARATIVE ANALYSIS

Most of the arrangements relate to fisheries alone (or fisheries and aquaculture). There are ten exceptions [River Plate Treaty; Torres Strait Treaty; Faroes/UK Agreement; the seven delimitation treaties relating to Central America and the Caribbean].

The primary purpose of each of these latter ten treaties is to establish one or more maritime boundaries. Subjects covered by these treaties in addition to maritime boundary delimitation and fisheries include (depending on the treaty concerned): (a) navigation; (b) pollution; (c) research; (d) exploitation of transboundary or near-boundary mineral resources;

(e) protection and preservation of the marine environment; (f) wrecks; and (g) protection of the traditional way of life and livelihood of traditional inhabitants.

COMMENTARY

In principle, there is of course no problem with fisheries being dealt with between neighbours as part of a broader maritime agenda. In practice, with the exception of the Torres Strait and River Plate Treaties, fisheries has been dealt with in the remaining eight treaties above only at the level of broad principles. However, this result is probably more attributable to the primary motivation in those cases being to find a political solution over a boundary than to any more complex reason. If two States wish to formalise their maritime relations in one treaty, including *inter alia* providing for the effective management of shared stocks, there is no reason why they should not do so. Indeed, such an integrated approach should in principle be encouraged.

2.3.2 References to “shared stocks”

COMPARATIVE ANALYSIS

The way in which the arrangements refer to shared stocks, either directly or tangentially, is illustrated in Table 2. In line with the definition of shared stocks adopted in section 1.1 above, note that references to highly migratory stocks or species in these arrangements have not been included in the table.

Direct references to “shared stocks” are made in only three arrangements [Australia/Indonesia Agreement; Pacific Salmon Treaty; Mauritania/Senegal Convention]. Language similar to that in Art 63(1) LOSC is also used in only two arrangements [Australia/Indonesia Agreement; African Atlantic Convention]. Eleven others make more tangential references to shared stocks, and the remainder make no reference at all.

COMMENTARY

The lack of reference to shared stocks in some cases is perhaps attributable to (a) the drafters of those arrangements not having shared stocks particularly in mind (e.g. Faroes/UK Agreement and Colombia/Jamaica Treaty [focus on delimitation], NEAFC Convention [focus on straddling stocks], FFA Convention [focus on highly migratory species]), (b) an assumption by the drafters that coordination because of the shared nature of the stocks was the primary purpose of the arrangement (e.g. Baltic Sea Convention, Herring System, River Plate Treaty [common fishing zone]) or (c) the arrangement in question being somehow subsidiary to an arrangement that does make reference to shared stocks.

Any failure to include reference to shared stocks in an arrangement which is seeking *inter alia* to coordinate management of such stocks is in most circumstances unlikely to cause a problem if all the parties are seeking to achieve that purpose and the various mechanisms provided for in the arrangement result in such coordination. However, it is always possible that problems of interpretation between the parties may arise at some point in the course of the arrangement’s life. On such occasions, it may become very helpful to have the original purposes enshrined within the arrangement itself, as a guide to interpretation.

Table 2: References to shared stocks

	Arrangement	Text used
1	Argentina/UK Joint Statement	None.
2	River Plate Treaty	None.
3	Australia/Indonesia MOU	None.
4	Australia/Indonesia Agreement	Preamble: "Recognising that coastal States are obliged to seek, either directly or through appropriate subregional or regional organisations, to agree upon measures necessary to coordinate and ensure the conservation and development of shared stocks"
5	Torres Strait Treaty	Preamble: "sharing of fisheries resources"
6	Japan/China Agreement	Preamble: "sharing of fisheries resources"
7	Japan/Korea Agreement	None.
8	NEAFC Convention	None.
9	Herring System	None.
10	Mackerel System	None.
11	Faroes/UK Agreement	None.
12	Norway/Russia 1975 Agreement	None.
13	Norway/Russian 1976 Agreement	Preamble: "a substantial proportion of the living resources of the Norwegian Sea and the Barents Sea represent a unified ecosystem used by the fishermen of both countries"
14	Norway/Russia 1978 Agreement	[Agreement not seen.]
15	Loophole Agreement	Preamble: "a considerable part of the living marine resources of the northern Norwegian and Barents Seas represents a single regulated biological stock system"
16	Baltic Sea Convention	None.
17	Mediterranean Agreement	None.
18	Black Sea Convention	None.
19	Gulf Agreement	None.
20	Canada/US Enforcement Agreement	None.
21	Halibut Convention	None.
22	Pacific Salmon Treaty (as amended by 1994 Agreement)	(a) Preamble: "the management of stocks subject to interception is a matter of common concern" (b) Annex IV, Chapter 5: "coho stocks shared by Washington and southern British Columbia fisheries" and "coho stocks shared by fisheries of the United States and Canada"
23	FFA Convention	None.
24	Nauru Agreement	Preamble: "common stocks of fish ... within the Fisheries Zones" (with similar words used elsewhere in the treaty)
25	Niue Agreement	None.
26	Micronesia Arrangement	None.
27	Colombia/Jamaica Treaty	None.
28	Colombia/Dominican Republic Agreement	Art V: "species which go further than ... [the parties] ... respective marine zones"

29	Colombia/Costa Rica Treaty	Art IV: “species that move beyond ... [each party’s] ... jurisdictional zone”
30	Colombia/Panama Treaty	Art V: “species which move beyond ... [the parties] ... respective marine areas”
31	Colombia/Ecuador Agreement	Art 8: “species that migrate from ... [the parties’] ... respective jurisdictional areas”
32	Costa Rica/Panama Treaty	Art V: “migratory species”
33	Netherlands/Venezuela Treaty	Art 10: “living resources in the adjacent waters of both parties”
34	Trinidad and Tobago/Venezuela Agreement	None.
35	Lake Victoria Convention	None.
36	African Atlantic Convention	Art 2(d): “The objectives of this Convention shall be to enable Parties ... to enhance, coordinate and harmonize their efforts and capabilities for the purpose of conserving, exploiting, upgrading and marketing fishery resources, considering in particular fish stocks occurring within the waters under the sovereignty or jurisdiction of more than one Party”
37	SRFC Access Convention	None.
38	SRFC Hot Pursuit Convention	None.
39	Mauritania/Senegal Convention	Preamble: “Conscients de leur appartenance commune à la même région maritime et du caractère partagé de certains stocks exploités”

2.3.3 Provision for consultative mechanisms

COMPARATIVE ANALYSIS

Nine of the arrangements have as their main feature the establishment of a formal consultative mechanism [Argentina/UK Joint Statement; NEAFC Convention; Norway/Russia 1975 Agreement; Baltic Sea Convention; Mediterranean Agreement; Gulf Agreement; Pacific Salmon Treaty; FFA Convention; Lake Victoria Convention].

Nineteen arrangements do provide for a consultative mechanism, but more as a secondary feature rather than their main feature. The typical formula of the instrument in these cases is (a) several provisions establishing duties for the parties, some requiring cooperation and some not; and then (b) a provision on a consultative mechanism. That mechanism can vary from a power to “call for consultations” [Faroes/UK Agreement] to a duty to establish a commission.

In respect of two further arrangements, the consultations between the parties happen simply at the desire of the parties to meet annually [Herring System; Mackerel System]; there is no provision in the arrangement itself for such meetings. In a further two arrangements [SRFC Access Convention; SRFC Hot Pursuit Convention], the parties meet anyway through a pre-existing mechanism. The remaining seven arrangements do not provide for any fisheries consultative mechanism at all.

COMMENTARY

The difference between the arrangements establishing a commission or equivalent as a main feature and those establishing such a mechanism as a secondary feature can be explained as follows. The former have fewer provisions aimed at the parties as individuals but more on the parties acting collectively through the commission. The latter have several provisions aimed at the parties as individuals, including *inter alia* on cooperation, and then use the provisions on the commission to (a) effect some or all of this cooperation, or (b) specify some of it in more detail or (c) focus on one specific area of cooperation. At least in this last instance, the difference is not simply stylistic. Two States may wish to cooperate generally on fisheries through a treaty, but may also wish to reserve one geographic area or stock for attention through a specialised commission. In that case, an arrangement establishing such a commission only as a secondary feature may be more appropriate.

Of the seven arrangements not providing for any consultative mechanism at all, six are delimitation treaties in Central America/Caribbean. These six all include provisions on cooperation in fisheries and so it is unclear why consultative mechanisms are not in turn provided for. The seventh is the Loophole Agreement. The parties are Iceland, Norway and Russia. A consultative mechanism may have been omitted for political reasons. Alternatively it may have been deemed unnecessary since these parties meet annually anyway in relation to both the Herring System and the NEAFC Convention.

2.3.4 Species covered**COMPARATIVE ANALYSIS**

There are three cases of single-species arrangements [Herring System; Mackerel System; Halibut Convention]. Most of the remainder cover all fisheries in the area concerned. However, some of these in turn put particular weight on certain types of fishery (notably the South Pacific arrangements which, expressly or impliedly, focus on highly migratory species). Examples of arrangements excluding species are the River Plate Treaty and the NEAFC Convention. The former expressly excludes marine mammals; the latter excludes “sea mammals, sedentary species ... and, in so far as they are dealt with by other international agreements, highly migratory species and anadromous stocks”.

COMMENTARY

Where different grouping of States are relevant depending on the stock (e.g. the five-participant Herring System compared to the three-participant Mackerel System), or where the institutional machinery required is fundamentally different from one stock to another, a species-specific arrangement may be appropriate. In more general agreements, exclusions are a matter for the parties. However, it may well be appropriate to exclude stocks already under the competence of other arrangements of which the States concerned are parties.

2.3.5 Access rights**COMPARATIVE ANALYSIS**

The main thrust of several arrangements is access rights. In some cases, these may be given among the parties, whether reciprocal or one-way [Japan/China Agreement; Japan/Korea

Agreement; Norway/Russia 1976 Agreement; Loophole Agreement; Trinidad and Tobago/Venezuela Agreement]. In other cases the main motivation for the arrangement is cooperation by the parties with regard to access by distant water fishing States [Nauru Agreement; Niue Agreement; Micronesia Arrangement; SRFC Access Convention; SRFC Hot Pursuit Convention].

COMMENTARY

In principle, one way of achieving cooperation in research, conservation and management, or monitoring, control and surveillance of a shared stock is through cooperation on access or through using such cooperation as a political platform for further cooperation.

2.3.6 Monitoring, control and surveillance

COMPARATIVE ANALYSIS

Six of the arrangements relate to cooperation in monitoring, control and surveillance (“MCS”) without providing for any cooperation in the establishment of conservation and management measures [Australia/Indonesia MOU; Canada/US Enforcement Agreement; Nauru Agreement; Niue Agreement; Micronesia Arrangement; SRFC Hot Pursuit Convention].

Comments: What about the other arrangements. e.g. how many arrangements provided for MCS?

With two exceptions [Australia/Indonesia MOU and Canada/US Enforcement Agreement], these arrangements relate directly to a pre-existing treaty. Thus the Nauru Agreement, Niue Agreement and Micronesia Arrangement can all be related to the FFA Convention, and the SRFC Hot Pursuit Convention can be related to the convention establishing the SRFC.

COMMENTARY

An arrangement dealing specifically with MCS may well be appropriate if cooperation over conservation and management has already been dealt with in an earlier instrument or there is no scope for political agreement on conservation and management cooperation. For example, the Canada/US Enforcement Agreement has been applied in the Gulf of Maine⁷ where there is little or no conservation and management cooperation between the two parties (before or since the 1984 ICJ boundary decision). However, in a political atmosphere of little or no pre-existing conservation and management cooperation, the provisions of an MCS arrangement are unlikely to go beyond flag State enforcement by each party on its side of the line. This is indeed the case with both the Canada/US Enforcement Agreement and the Australia/Indonesia MOU.

2.3.7 Conservation and management

COMPARATIVE ANALYSIS

Four arrangements fail to provide for meaningful cooperation on the control element of MCS, yet have strong provisions on conservation and management cooperation [Mackerel System; Black Sea Convention; Pacific Salmon Treaty; Lake Victoria Convention].

⁷ Herbert, pp. 314-316.

COMMENTARY

In the case of the Mackerel System, it could be argued that some competence for MCS cooperation instead rests with the commission provided for in the NEAFC Convention. However, this does not explain why the Herring System (whose five participants are also all NEAFC Convention parties) does in contrast contain some provisions on control cooperation. In the case of the Black Sea and Lake Victoria Conventions, the omission of cooperation on control is indeed a shortfall;⁸ in the former case it is perhaps explainable only in terms of the politics among the three parties at the time. The Pacific Salmon Treaty's strong and highly detailed focus on conservation and management and enhancement is not a logical justification for its omission of control cooperation. As conjecture, in view of the nature of salmon politics between the two parties, perhaps cooperation on control has been seen as a bridge too far. However, control cooperation is now provided by the Canada/US Enforcement Agreement, which in principle applies to all fisheries (and was in force before the 1999 Agreement was negotiated).

In at least two of the above four cases, politics or the existence of an alternative arrangement is possibly the cause of exclusion of meaningful control cooperation. In the remaining two cases the reason is unclear. MCS is a key element of fisheries management. Though it may be effected to some degree by flag State control and exchange of catch or landings information, there is scope through cooperation of doing much more (see section 2.11 below). However, the omission from the cited four arrangements of meaningful cooperation on control must be seen as a weakness.

2.4 Provision for harmonization

COMPARATIVE ANALYSIS

The term "harmonization" is frequently used in the literature, but seldom defined. The terms "harmonize", "harmonization" or "harmonizing" are also used in some of the arrangements [Torres Strait Treaty; Herring System; Norway/Russia 1976 Agreement; Trinidad and Tobago/Venezuela Agreement; African Atlantic Convention], again without definition.

In this report, harmonized measures will be taken as meaning compatible measures, i.e. measures that fit well together for the purpose of achieving the desired fisheries management objective. Thus although harmonization derives from cooperation, not all cooperation leads to harmonization. In the following analysis, the focus will be on harmonized conservation and management measures within the zone under consideration. Thus harmonized measures related to research, MCS or a matter other than fisheries have not been included.

The arrangements have been analysed for evidence that the parties have wished to place themselves under a duty in respect of harmonization. The method used has been to look for: (a) provision for a primary consultative mechanism that can make binding decisions; (b) provision for quantitative technical measures or quantitative allocations; or (c) use of appropriate words (such as harmonization, unification, coordination, complementarity, compatibility, uniformity). The present analysis has excluded (a) bare cooperation or collaboration, (b) information exchange and (c) primary consultative mechanisms making

⁸ Reynolds, pp. 167-168.

only non-binding recommendations, on the assumption that none of these would at face value be sufficiently likely to lead to harmonization. The results are presented in Table 3.

Of course, where no evidence under these criteria is found, that does not necessarily mean that no harmonization will occur. For example, an arrangement may provide for delegations to “cooperate” in a commission and submit the resulting non-binding conservation and management recommendations to the parties. In practice, the commission may choose to create harmonized measures and the parties may choose to accept them. However, such an arrangement would nevertheless be excluded from the current analysis for the reasons given above.

A look at Table 3 shows that express references to harmonization of legislation are found in only two arrangements [River Plate Treaty; Netherlands/Venezuela Treaty]. In contrast, express references to harmonization of regimes, policies or measures are found in fifteen arrangements. In all 17 of these arrangements, with two exceptions, the harmonization can be described as the desired end point of a process.

In eleven of the seventeen arrangements, a duty on the parties as individuals is involved. In nine of these, the duty is not to harmonize *per se* but *inter alia* to “seek to develop” [Australian/Indonesia Agreement], “consult ... for the purpose of” [Torres Strait Treaty], “endeavour to” [African Atlantic Convention], “initiate work to” [Herring System, 1996 Protocol], “cooperate ... with a view to” [Norway/Russia 1976 Agreement] or “support the broadest international cooperation in order to” [Colombia/Costa Rica Treaty]. In the remaining two, the parties simply agree to “coordinate as much as possible” [Colombia/Dominican Republic Agreement] or “coordinate ... insofar as possible” [Netherlands/Venezuela Treaty].

Nine arrangements provide for primary consultative mechanisms that can in turn make binding recommendations [Japan/China and Japan/Korea Agreements; NEAFC Convention; Herring System (its primary consultative mechanism being the annual meetings of the parties); Baltic Sea Convention; Mediterranean Agreement; Black Sea Convention; Gulf Agreement; Lake Victoria Convention].

Two arrangements require the parties to implement specified quantitative technical measures [Black Sea Convention; SRFC Access Convention] and a further five set allocation tonnages or percentages [Torres Strait Treaty; Herring System; Mackerel System; Halibut Convention; Pacific Salmon Treaty].

COMMENTARY

Among the arrangements analysed, the three routes most likely to lead to harmonization are: (a) to provide for a primary consultative mechanism that can in turn make binding decisions (used by nine arrangements); (b) to place a duty on the parties as individuals to harmonize their measures, or at least to seek harmonized measures (used by seven arrangements); and (c) to provide for quantitative technical measures or allocations in the arrangement (used by seven arrangements). Only one [Herring System, 1996 Protocol] attempts to use all three together.

The remaining arrangements appear to avoid any of these routes, though some instead have aspirations to harmonization, discernible from the wording used.

Table 3: Provision for harmonization

	Arrangement	Provision for harmonization
1	Argentina/UK Joint Statement	None.
2	River Plate Treaty	Art 82: “The ... Commission shall ... [promote] ... studies and presentation of projects on the unification of the laws of the two Parties concerning matters with which the Commission has been entrusted”
3	Australia/Indonesia MOU	[Enforcement only.]
4	Australia/Indonesia Agreement	(a) Preamble: “Recognising that coastal States are obliged to seek ... to agree upon measures necessary to coordinate ... the conservation and development of shared stocks ” (b) Art 3(1): “The Parties shall seek to develop complementary regimes for the conservation, management and optimum utilisation of shared stocks, straddling stocks and highly migratory species.”
5	Torres Strait Treaty	a) Art 13(4): “The Parties shall consult , at the request of either, for the purpose of ... harmonizing their policies with respect to the measures that each shall take pursuant to this Article ... and ensuring the effective and coordinated implementation of those measures”. The measures include <i>inter alia</i> “measures for the prevention and control of ... damage to the marine environment from all sources and activities under its jurisdiction or control” (Art 13(2)) b) Establishes allocation percentages between the parties.
6	Japan/China Agreement	Only in the sense that recommendations of the committee on certain matters are binding .
7	Japan/Korea Agreement	Only in the sense that recommendations (on certain matters) and decisions of the committee are binding .
8	NEAFC Convention	(a) In the sense that the recommendations of the commission are binding (on non-objecting parties). (b) Art 5(2): “The appropriate Contracting Party and the Commission shall accordingly promote the coordination of such recommendations, measures and decisions [i.e. those for straddling stocks].”
9	Herring System	a) In the sense that the conclusions of the parties are binding . b) Protocol, para 3.2: “The Parties shall initiate work to establish harmonized conservation measures in relation to the fishery on the stock.” c) Establishes allocation tonnages between the participants.
10	Mackerel System	(a) 2001 Agreed Record, Annex I, para 8: “... the Parties concur that it is of paramount importance to adopt compatible conservation measures in different management areas ...” (b) NEAFC recommendations, para 2: “This [high seas] allowable catch is established in order to ensure compatibility with the management measures adopted by the relevant coastal States.” (c) Establishes allocation tonnages between the parties.
11	Faroes/UK Agreement	None.
12	Norway/Russia 1975 Agreement	None.
13	Norway/Russia 1976 Agreement	Art 4(2): “The Contracting Parties shall cooperate ... with a view to ensuring the harmonization of any new measures for the regulation of fishing in [specified] areas ... in so far as is practically feasible.”
14	Norway/Russia 1978 Agreement	[Agreement not seen.]
15	Loophole Agreement	None.

16	Baltic Sea Convention	Only in the sense that the recommendations of the commission are binding (on non-objecting parties).
17	Mediterranean Agreement	Only in the sense that the recommendations of the commission on conservation and management measures are binding (on non-objecting parties).
18	Black Sea Convention	Art 8: "With a view to working out and coordinating measures for the application of this Convention, a Joint Commission shall be established." In the sense that the convention (in Art 5) establishes specified quantitative conservation and management measures. In the sense that decisions of the commission on the matter of introducing amendments to Art 5 are binding.
19	Gulf Agreement	Only in the sense that the recommendations of the commission on conservation and management measures are binding (on non-objecting parties).
20	Canada/US Enforcement Agreement	[Enforcement only.]
21	Halibut Convention	Establishes allocation percentages between the parties.
22	Pacific Salmon Treaty	Establishes allocation percentages between the parties.
23	FFA Convention	Preamble: "Desiring to promote regional cooperation and coordination in respect of fisheries policies;" Art 5(2)(a): "In particular the Committee shall promote intra-regional coordination and cooperation in ... harmonization of policies with respect to fisheries management" [Not known whether recommendations of the committee are binding.]
24	Nauru Agreement	[Enforcement only.]
25	Niue Agreement	[Enforcement only.]
26	Micronesia Arrangement	[Enforcement only.]
27	Colombia/Jamaica Treaty	None.
28	Colombia/Dominican Republic Agreement	Art V: "[The parties have agreed to] coordinate as much as possible the measures of conservation that each party applies in its [zones, particularly for those species which go further than their respective marine zone ...]"
29	Colombia/Costa Rica Treaty	Art IV: "[The parties have agreed to] support the broadest international cooperation in order to coordinate the conservation measures which each State applies in [its zone], particularly as regards species that move beyond its ... zone ..."
30	Colombia/Panama Treaty	Art V: "[The parties have agreed to] promote cooperation ... in coordinating the measures for conservation applied by each [party] in [its zone], particularly with regard to species which move beyond their respective [zones] ..."
31	Colombia/Ecuador Agreement	Art 8: "[The parties have agreed to] encourage the most comprehensive international cooperation for the purpose of coordinating those measures for conservation applied by each State in [its zone], particularly in reference to those species that migrate from their respective [zones] ..."
32	Costa Rica/Panama Treaty	Art V: "[The parties will] encourage the fullest international cooperation in order to coordinate the conservation measures each state applies in [its zone], especially with respect to migratory species ..."
33	Netherlands/Venezuela Treaty	Art 10: "For the purpose of properly conserving and using the living resources in the adjacent waters of both nations, the Contracting Parties agree to coordinate their respective legislation and regulations, insofar as possible."
34	Trinidad and Tobago/Venezuela	Art II(3)(a): "For the purpose of harmonizing the rules and measures adopted by each government ... the ... Commission ... shall recommend

	Agreement	to the respective Governments the adoption of rules and measures relating to the management and conservation of these resources.”
35	Lake Victoria Convention	Preamble: “Being convinced that joint action by the Contracting Parties is essential, in order to develop uniform management measures to the extent appropriate ...” Art II(2): “The objectives of the Organization shall be to ... harmonize national measures for the sustainable utilization of the living resources of the Lake ...” In the sense that decisions of the Council of Ministers (inter alia on conservation and management measures) are binding on the parties.
36	African Atlantic Convention	Preamble: “Convinced ... of the need for regional consultation for the purpose of achieving harmonized policies regarding fishery resources exploitation, conservation and processing;” Preamble: “Convinced that ... no rational management of stocks ... may be secured without coordination of policies in this field ...” Art 2(d): “[The objectives of this Convention shall be to enable Parties to] ... coordinate and harmonize their efforts ... for the purpose of conserving [and] exploiting ... fishery resources ...” Art 3(4): “Parties shall endeavour to adopt harmonized policies concerning the conservation, management and exploitation of fishery resources ...” Art 4: “Parties undertake to ... coordinate their actions [regarding the conservation of highly migratory species] within the competent international organizations.” Art 13: “Parties shall endeavour to harmonize their fisheries policies.”
37	SRFC Access Convention	In the sense that the convention establishes specified quantitative conservation and management measures.
38	SRFC Hot Pursuit Convention	[Enforcement only.]
39	Senegal/Mauritania Convention	[Not known whether recommendations of the committee are binding.]

Harmonization of measures is an important element of effective cooperation in fisheries management. Providing for such harmonization adds a level of sophistication to bare cooperation or collaboration. Providing for a primary consultative mechanism that can make binding decisions is one way the parties can seek to bring about harmonization. However, the use of such a mechanism may not be appropriate in all circumstances. In other cases, the parties may simply wish to draft the concept of harmonization into the arrangement. The most popular drafting solution seems to be to place a duty on the parties to undertake some kind of process that will lead to harmonization of regimes, policies or measures.

2.5 Arrangements with some maritime boundary delimitation aspect

COMPARATIVE ANALYSIS

2.5.1 Arrangements establishing one or more maritime boundaries

Twelve of the arrangements establish one or more maritime boundaries, including a fisheries jurisdiction boundary, between the parties. These arrangements have been tabulated below. One of these [Australia/Indonesia MOU] establishes only a “provisional fisheries line”. Seven of the twelve arrangements in turn establish a special zone in relation to the fisheries jurisdiction boundary.

Arrangement	Special zone established in relation to fisheries jurisdiction boundary
River Plate Treaty	“Common fishing zone”
Australia/Indonesia MOU	None
Torres Strait Treaty	(a) “Protected Zone” (b) Regime for the area between seabed boundary and fisheries jurisdiction boundary
Japan/Korea Agreement	Art 9(1) zone and Art 9(2) zone
Faroes/UK Agreement	“Special Area”
Colombia/Jamaica Treaty	“Joint Regime Area”
Colombia/Dominican Republic Agreement	Zone of scientific research and common fishing exploitation
Colombia/Costa Rica Treaty	None
Colombia/Panama Treaty	None
Colombia/Ecuador Agreement	MCS buffer zone
Costa Rica/Panama Treaty	None
Netherlands/Venezuela Treaty	None

2.5.2 Other arrangements, identifying zones as yet undelimited between the parties

In addition, five arrangements, though not delimiting any maritime boundary between the parties, first identify special zones that are to some extent as yet undelimited between the parties and then proceed to apply specified fisheries regimes to these waters:

Arrangement	Identified special zones to which specified fisheries regime is applied
Argentina/UK Joint Statement	(a) “fish stocks in the South Atlantic” (b) “the maritime area defined in the Annex” (c) “waters between latitude 45°S and latitude 60°S”
Japan/China Agreement	“Provisional Measures Zone”
Norway/Russia 1978 Agreement	“Provisional Joint Fishing Zone”
Halibut Convention	“boundary regions”
Trinidad and Tobago/Venezuela Agreement	“Area South of Trinidad and North of Venezuela”

2.5.3 Some remaining arrangements where maritime boundaries are undelimited

Two further arrangements have addressed the need for fisheries cooperation in situations where some or all of the maritime boundaries are undelimited, yet do not comprehensively identify specific zones for the application of that cooperation [Australia/Indonesia Agreement; Canada/US Enforcement Agreement].

COMMENTARY

It is not the mandate of this report to analyse, as a separate subject, the ways in which States have provided for fisheries management in areas where some uncertainty exists in respect of boundaries or where some concession has been made in respect of the boundary.⁹ Instead, analysis of all arrangements together in respect of fisheries management can be found below in sections 2.10-2.12.

⁹ However Churchill (1993) provides a helpful survey and analysis on this matter.

However, two potentially related points will be highlighted at this point. The first is that none of the arrangements in question creating a special zone has more than two parties. In most cases, this result derives from the fact that the main purpose of the arrangement is either to establish a maritime boundary or to manage an area where a boundary is unclear. By their nature, such arrangements will tend to involve only two parties.

There is, though, no reason in principle why an arrangement involving more than two parties could not, as part of its purpose, establish boundary-specific solutions. In practice though, the two States concerned might well prefer either to settle their boundary-specific concerns before commencing negotiations involving one or more other parties or at least to conduct such negotiations in the absence of other States.

The second point is that a large number of arrangements providing for some form of cooperation over fish stocks have developed in the context of uncertainty over maritime boundaries. It is questionable whether these arrangements (or least the parts of them that relate to cooperation over fisheries) would have even arisen if there had in law been certainty over the boundaries between the States concerned. However, the arrangements do nonetheless provide a fascinating array of regimes for cooperation, and these regimes are, as already mentioned, explored further below.

2.6 Geographical scope

COMPARATIVE ANALYSIS

2.6.1 Geographical scope relevant to boundary delimitation or undelimited zone issues

Those arrangements establishing one or more maritime boundaries (see section 2.5 above) first define the position of the boundary. The location of any special zone established in relation to the fisheries jurisdiction boundary is then also defined. For example, the River Plate Treaty defines its common fishing zone in terms of circumferential arcs of a given radius with centres at specified points, while the Faroes/UK Agreement defines the boundary of its “Special Area” using coordinates in a schedule.

Where this zone is simply superimposed on the established boundary such that the boundary remains in place in the background (e.g. River Plate Treaty’s common fishing zone), the arrangement can usually proceed by referring to each party’s waters within that zone. However, where the zone is a solution to some uncertainty over the boundary such that there is no boundary in place in the background (e.g. the Faroes/UK Agreement “Special Area”), the arrangement will refer to the zone by its name but will obviously avoid references to the parties’ waters within that zone.

Those arrangements that do not delimit any maritime boundary but instead identify special zones that are to some extent as yet undelimited between the parties (see section 2.5 above), take a variable approach to identifying the zone. The Japan/China Agreement and the Trinidad and Tobago/Venezuela Agreement both identify the zone concerned with a list of coordinates. In contrast, the Halibut Convention refers to “boundary regions” but makes no attempt to define these further. In all cases, because there is no boundary in place in the background, each arrangement refers to the zone by its name but avoids references to the parties’ waters within that zone.

2.6.2 Geographical scope in all other cases

Several arrangements use a clause to define their scope in terms of geographic features, or coordinates, or lines of latitude/longitude, or a combination of these [NEAFC Convention; Baltic Sea Convention; Mediterranean Agreement; Gulf Agreement]. A shorthand is then used to refer to this zone. The NEAFC and Baltic Sea Conventions refer to “the Convention area”, the Mediterranean Convention and African Atlantic Conventions to “the Region” and the Gulf Agreement to “the Area”. The Norway/Russia 1975 Agreement cross-refers to “the area covered by the [NEAFC Convention]”.

Several arrangements use a clause to define their scope as being the parties’ waters [Japan/China Agreement; Japan/Korea Agreement; Halibut Convention; Micronesia Arrangement]. The Micronesia Arrangement then uses the shorthand of “Arrangement Area” to refer to these waters. In other arrangements, though it is evident that the arrangement is restricted in scope to the parties’ waters, this is not stated in any scope clause [Pacific Salmon Treaty; FFA Convention; Nauru Agreement; Niue Agreement; SRFC Access Convention; SRFC Hot Pursuit Convention; Mauritania/Senegal Convention]. One arrangement [African Atlantic Convention] takes a hybrid approach between referring to geographic and jurisdictional features, by referring to the area comprising specified States.

In some cases, the majority of the provisions apply to the parties’ waters but there are also provisions applicable further afield [Herring System; Mackerel System; Norway/Russia 1976 Agreement; Loophole Agreement]. The Black Sea Convention aspires to applying to the entire Black Sea. However, in that its parties consist of only three States, the geographical scope is to be implied as the waters of the parties and any waters beyond to the extent that actions there do not prejudice the legitimate rights of non-parties.

The Australia/Indonesia Agreement makes no single, express statement about its geographical scope. However: (a) its preamble recalls various bilateral instruments relating to maritime boundaries between the two parties; (b) it refers to “shared stocks, straddling stocks and highly migratory species” and to the parties cooperating “directly or through appropriate international organisations to assure the conservation and management of marine living resources of the high seas”;¹⁰ it refers to the waters of the two parties;¹¹ and it states the parties are to “interpret and implement this Agreement consistently with the existing maritime boundary agreements between the Parties and the 1981 [Australia/Indonesia MOU]”.¹²

The Canada/US Enforcement Agreement equally makes no express statement about its geographical scope; the assumption is then that it applies to any illegal fishing by vessels of one party in the waters of the other party.

2.6.3 Exclusions

Finally, some arrangements in both of the above categories expressly exclude application to certain specified waters. The Baltic Sea Convention and the Gulf Agreement exclude application to the parties’ internal waters. Some arrangements, notably those relating to access rights, expressly or impliedly exclude application to the waters landwards of the

¹⁰ Article 3.

¹¹ Articles 6 & 7.

¹² Article 11.

parties' 12 nautical mile limits [Japan/China Agreement; Japan/Korea Agreement; Norway/Russia 1976 Agreement; Loophole Agreement; Nauru Agreement; Micronesia Arrangement]. The River Plate Treaty takes the same approach in respect of its common fishing zone.

The Micronesia Arrangement excludes "waters closed to fishing in accordance with Schedule 2 of Annex V".¹³ The Japan/China Agreement excludes two specified zones delimited by a lines of latitude and longitude, respectively; Hee Kwon suggests that one of these exclusions is due to the presence of politically sensitive islands.¹⁴ The NEAFC Convention operates a two pillar system, whereby (a) overall the convention applies to the area defined in the scope clause (consisting of coastal States' waters and high seas) and then (b) coastal States' waters are subject to qualified exclusion in several respects. The Mediterranean Agreement requires States, when accepting the agreement, to "state explicitly to which territories their participation shall extend".¹⁵

COMMENTARY

For those parts of an arrangement relating solely to access by foreign vessels to the waters of the respective parties, a limit on the scope to those waters is clearly legitimate. In the arrangements analysed above, States have tended to limit access rights by other States to waters beyond their territorial seas; however, whether this limitation is appropriate in a particular cases will obviously very much depend on the circumstances of the States concerned.

For those parts of an arrangement relating to cooperation on the conservation and management of a stock, legal imperatives may in part dictate the geographical scope of the arrangement. If a highly migratory species or a straddling stock is involved, the cooperative duties in Arts 64¹⁶ or 63(2)¹⁷ LOSC, respectively, apply. Though not yet in force, the Fish Stocks Agreement's duties on cooperation regarding highly migratory fish stocks and straddling fish stocks are also to be borne in mind. Such cooperation duties may widen the appropriate geographical scope of the arrangement to the high seas. In this respect, both the Herring System and the Mackerel System widen their scope to the high seas indirectly, by establishing formal links to the NEAFC Convention process.

If there is no straddling stock or highly migratory stock or species involved, the coastal States may legitimately confine the scope of their arrangement for cooperation on conservation and management to their own waters. Subject to agreement, the States obviously have discretion on what areas are excluded (for example internal waters or territorial waters). There is scope for flexibility here. For example, internal waters could be included for the purpose of, say,

¹³ Article 1.

¹⁴ p. 53.

¹⁵ Article XV.

¹⁶ Article 64 LOSC reads as follows: "(1) The coastal State and other States whose nationals fish in the region for the highly migratory species listed in Annex I shall co-operate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region, both within and beyond the exclusive economic zone. In regions for which no appropriate international organization exists, the coastal State and other States whose nationals harvest these species in the region shall co-operate to establish such an organization and participate in its work. (2) The provisions of paragraph 1 apply in addition to the other provisions of this Part."

¹⁷ Article 63(2) LOSC reads as follows: "Where the same stock or stocks of associated species occur both within the exclusive economic zone and in an area beyond and adjacent to the zone, the coastal State and the States fishing for such stocks in the adjacent area shall seek, either directly or through appropriate subregional or regional organizations, to agree upon the measures necessary for the conservation of these stocks in the adjacent area."

the geographical scope of the TAC but then excluded with regard to access for certain categories of vessel.

In the examples analysed in this report, the geographical scope of the arrangement has been defined either directly by reference to geographic features, coordinates or lines of latitude/longitude or indirectly by reference to zones of jurisdiction. Reference to features, coordinates or lines has been used by those arrangements relating to specific seas (i.e. the Baltic, Mediterranean and Gulf) or by the NEAFC Convention which covers *inter alia* high seas and so needs such reference points. Where there is no specific sea or area of high seas involved, definition of the scope by reference to zones of jurisdiction may well be appropriate. The approach adopted by the African Atlantic Convention of referring to the area comprising specified States is confusing in that it is not immediately clear how much of a State's waters are included; matters only become clearer by inference from some later provisions. In general, a specific clause making clear the scope early on in the arrangement is preferable.

When the parties to an arrangement create a special zone in relation to a contentious maritime boundary, the general tendency is to define the location of that zone. The alternative is to refer to the zone simply as, say, "boundary waters"; however, this simple drafting solution may well bring problems of interpretation later. The special zone is normally given a name, for ease of reference and to avoid the need to refer to the parties respective waters in that context.

2.7 Consultative mechanism in relation to fisheries aspects

Table 4 summarizes the type of primary consultative mechanism provided for by each arrangement, its meeting frequency and the size and/or composition of the delegations (as provided for in the arrangement or in any rules of procedure). The table omits mechanisms with the primary purpose of dispute settlement. Where a commission (or equivalent) is provided for, its name has been emboldened. In most cases, the mandate of the commissions is highly specific to each arrangement. No attempt has been made to summarize the mandate in this section. Instead, reference will also be made to the mandates in sections 2.10-2.12 below.

2.7.1 Types of consultative mechanism

COMPARATIVE ANALYSIS

Seven arrangements do not appear to have any consultative mechanism at all, either directly or indirectly. Six of these are delimitation treaties in Central America/Caribbean; the other is the Loophole Agreement. These arrangements have all been discussed in section 2.3 above.

Four of the arrangements [Australia/Indonesia MOU; Australia/Indonesia Agreement; Faroes/UK Agreement; Canada/US Enforcement Agreement] provide only why "only" for consultations. Two of the arrangements [Herring System; Mackerel System] do not expressly provide for any consultative mechanism. Instead, the fact that in each case the parties decide to meet on an annual basis is the way that the necessary consultations occur. Two of the arrangements [SRFC Access Convention; SRFC Hot Pursuit Convention] involve the consultative mechanism provided under the basic agreement constituting the SRFC. Though

neither of these arrangements expressly provides for a consultative mechanism, in each case the parties may resort to the SRFC mechanism itself.

The remaining arrangements expressly provide for more formal consultative mechanisms, under the name of “commission”, “advisory council”, “committee”, “annual meeting” or “conference”.

COMMENTARY

The four arrangements providing only for consultations [Australia/Indonesia MOU; Australia/Indonesia Agreement; Faroes/UK Agreement; Canada/US Enforcement Agreement] are all bilateral arrangements. Evidently the intention was not to create any kind of institutional structure but nonetheless to leave a channel available if necessary. Such a system may be appropriate where there is less of a need for active cooperation, i.e. cooperation in terms of specified joint actions. However, in that sense the lack of any kind of commission for the Australia/Indonesia Agreement is surprising. This arrangement does, after all, go as far as stating that “[t]he Parties shall seek to develop complementary regimes for the conservation, management and optimum utilisation of shared stocks, straddling stocks and highly migratory species”¹⁸ (see section 2.4 above and Table 3).

The two arrangements that simply rely on the parties deciding to meet on an annual basis [Herring System; Mackerel System] may appear precarious. However, arguably, the main reason that the parties continue to meet on an annual basis is that in each case they wish to prepare their joint position prior to the annual meeting of NEAFC. That way, they may have a coordinated quantitative stance against the non-coastal State parties desiring access to the straddling stocks concerned. Thus what at first sight may appear to be rather fragile arrangements are in fact more robust because of the linkage with the NEAFC Convention.

Assuming a need for regular meetings, and in the absence of an external force driving the need for such meetings, a commission or equivalent, with its mandate and timetable provided for in the arrangement, is an appropriate solution. It is for the parties to decide whether the principal consultative mechanism is, say, a council of ministers or a commission of officials. The exact name given to the mechanism is irrelevant so long as the desired functional elements are provided for and the name does not conflict with these elements. Some of these elements are discussed below. Mandates of commission are discussed further in sections 2.10-2.12 below.

2.7.2 Internal rules

COMPARATIVE ANALYSIS

In arrangements establishing formal consultative mechanisms, the practice is generally for the arrangements themselves to establish the key principles relating to that mechanism, but to omit more detailed internal rules and instead provide for the consultative mechanism to draft its own. Such provision usually refers to both rules of procedure and financial rules.

¹⁸ Article 3(1).

Table 4: Consultative mechanisms

	Arrangement	Primary consultative mechanism
1	Argentina/UK Joint Statement	South Atlantic Fisheries Commission [with no secretariat] ⇒ meets at least twice a year ⇒ Argentinean minister (or ambassador) meets UK official ⇒ no provision for any power or duty to adopt internal rules
2	River Plate Treaty	Joint Technical Commission [with headquarters] ⇒ meets annually; scope for extra meetings at request of either party ⇒ equal number of delegates from each party ⇒ power to draft own internal procedures ; parties to draft statute
3	Australia/Indonesia MOU	(a) parties to take all necessary steps to ensure smooth effective implementation of the “provisional arrangement” (b) consultation (as necessary, but for specified fisheries issues aside from other than the “provisional arrangement”)
4	Australia/Indonesia Agreement	Consultation (duty to hold from time to time at request of either party)
5	Torres Strait Treaty	(a) liaison arrangements [with no secretariat] ⇒ no express provision for meetings ⇒ designation by each party of one representative ⇒ no provision for any power or duty to adopt internal rules (b) Torres Strait Joint Advisory Council [with no secretariat] ⇒ meets when necessary at request of either party ⇒ 9 members from each party (unless otherwise agreed), with quotas from specified categories ⇒ no provision for any power or duty to adopt internal rules (c) consultation (overarching duty, at request of either party; duty to consult on specified issues also)
6	Japan/China Agreement	Japan-China Joint Fisheries Committee [with no secretariat] ⇒ meets annually; also meets as necessary with parties’ agreement ⇒ 2 members from each party ⇒ no provision for any power or duty to adopt internal rules
7	Japan/Korea Agreement	Korea-Japan Joint Fisheries Committee [with no secretariat] ⇒ meets annually; also holds ad hoc meetings with parties’ agreement ⇒ 2 representative and 1 member from each party ⇒ no provision for any power/duty to adopt internal rules
8	NEAFC Convention	North-East Atlantic Fisheries Commission [with an office, secretary and staff] ⇒ meets annually (unless Commission determines otherwise); also holds ad hoc meetings at request of one party and with agreement of 3 other parties ⇒ not more than 2 representatives from each party (who may be accompanied by experts and advisers) ⇒ duty to adopt own rules of procedure and rules for the conduct of its financial affairs
9	Herring System	meeting of parties [with no secretariat] ⇒ meet annually ⇒ [delegation size/composition not specified] ⇒ no provision for any power or duty to adopt internal rules

10	Mackerel System	meeting of parties [with no secretariat] ⇒ meet annually ⇒ delegation size/composition not specified ⇒ no provision for any power or duty to adopt internal rules
11	Faroes/UK Agreement	consultations (at request of each party in respect of specified issues; to be held at not later than 60 days upon receipt of the request)
12	Norway/Russia 1975 Agreement	Joint Commission [with no secretariat] ⇒ meets at least once a year ⇒ one representative and one alternate from each party ⇒ no provision for any power or duty to adopt internal rules
13	Norway/Russia 1976 Agreement	Joint Commission (as established by Norway/Russia 1975 Agreement)
14	Norway/Russia 1978 Agreement	Joint Commission (as established by Norway/Russia 1975 Agreement)
15	Loophole Agreement	None.
16	Baltic Sea Convention	International Baltic Sea Fishery Commission [with an office, secretary and staff] ⇒ meets annually (unless Commission decides otherwise) ⇒ not more than 2 representatives from each party (with such experts and advisers as party determines) ⇒ duty to adopt own rules of procedure and financial rules
17	Mediterranean Agreement	General Fisheries Commission for the Mediterranean [with a secretariat] ⇒ meets annually (normally, unless majority of parties direct otherwise) ⇒ one delegate per party (who may be accompanied by one alternate and by experts and advisers) ⇒ power to adopt own rules of procedure and financial regulations
18	Black Sea Convention	Joint Commission [with no secretariat] ⇒ meets at least once a year ⇒ one representative for each party ⇒ no provision for any power or duty to adopt internal rules
19	Gulf Agreement	Regional Commission for Fisheries [with a secretariat] ⇒ meets annually (normally, unless majority of parties direct otherwise) ⇒ one delegate per party (who may be accompanied by one alternate and by experts and advisers) ⇒ power to adopt own rules of procedure and financial regulations
20	Canada/US Enforcement Agreement	Consultations (as necessary, on specified issues)
21	Halibut Convention	International Pacific Halibut Commission [with a seat, director and staff] ⇒ meets twice a year (and may hold other meetings as necessary) ⇒ 3 members for each party (accompanied by one or more experts or advisers [unless determined otherwise by the Commission]) ⇒ no provision for any power or duty to adopt internal rules (though rules of procedure do actually exist)

22	Pacific Salmon Treaty	<p>Pacific Salmon Commission [with a seat, executive secretary and staff]</p> <p>⇒ meets annually (and may hold other meetings at request of Chairman or of either party)</p> <p>⇒ not more than 4 commissioners from each party (with different rules for accompanying delegates depending on whether meeting is an open meeting or an executive session)</p> <p>⇒ <u>duty to make own by-laws and procedural rules</u></p>
23	FFA Convention	<p>South Pacific Forum Fisheries Agency [consisting of inter alia the Forum Fisheries Committee and a secretariat]</p> <p>⇒ meets at least annually (and special sessions at request of at least four parties)</p> <p>⇒ [delegation size/composition not specified]</p> <p>⇒ <u>duty to adopt rules of procedure and other internal administrative regulations and financial regulations for the FFA</u></p>
24	Nauru Agreement	<p>meeting of parties [seeks FFA secretariat assistance]</p> <p>⇒ meet annually (and additional meetings at request of at least three parties)</p> <p>⇒ [delegation size/composition not specified]</p> <p>⇒ <u>no provision for any power or duty to adopt internal rules</u></p>
25	Niue Agreement	<p>⇒ meeting of parties [no secretariat]</p> <p>meetings to be convened at request of at least three parties</p> <p>⇒ [delegation size/composition not specified]</p> <p>⇒ <u>no provision for any power or duty to adopt internal rules</u></p>
26	Micronesia Arrangement	<p>meeting of parties [no secretariat, though the arrangement's administrator is the FFA director]</p> <p>⇒ meet annually (and special meetings at request of one party with approval of at least two other parties)</p> <p>⇒ [delegation size/composition not specified]</p> <p>⇒ <u>duty to adopt rules of procedure (pending which FFA's rules of procedure apply)</u></p>
27	Colombia/Jamaica Treaty	<p>Joint Commission [no secretariat]</p> <p>⇒ [meetings not expressly provided for; but deadline for completion of specified actions is established]</p> <p>⇒ one representative from each party (who may be assisted by such advisers as is considered necessary)</p> <p>⇒ <u>no provision for any power or duty to adopt internal rules</u></p>
28	Colombia/Dominican Republic Agreement	None
29	Colombia/Costa Rica Treaty	None
30	Colombia/Panama Treaty	None
31	Colombia/Ecuador Agreement	None
32	Costa Rica/Panama Treaty	None
33	Netherlands/Venezuela Treaty	None

34	Trinidad and Tobago/Venezuela Agreement	Trinidad and Tobago/Venezuela Fisheries Commission [with no secretariat] ⇒ meets at least once every six months (or any time at request of parties) ⇒ 3 representatives from each party (together with such advisers as deemed necessary) ⇒ no provision for any power or duty to adopt internal rules
35	Lake Victoria Convention	Council of Ministers [with secretariat] ⇒ meets once every two years (and special sessions if Council so decides or at request of any party); quorum requirement of all parties ⇒ ministers responsible for fisheries (with each party to endeavour to ensure that heads of department for fisheries management, fisheries research, environment, industry and tourism are represented) ⇒ duty to adopt own rules of procedure and the organisation's financial regulations
36	African Atlantic Convention	Conference of Ministers [with secretariat] ⇒ meets once every two years (and special sessions at request of a majority of parties) ⇒ [delegation size/composition not specified] ⇒ no provision for any power or duty to adopt internal rules
37	SRFC Access Convention	None (but parties meet through Sub-Regional Fisheries Commission)
38	SRFC Hot Pursuit Convention	None (but parties meet through Sub-Regional Fisheries Commission)
39	Senegal/Mauritania Convention	Technical Committee [with no secretariat] ⇒ meets annually (and special meetings at request of either party) ⇒ government and industry representatives from each party ⇒ no provision for any power or duty to adopt internal rules

In the arrangements analysed, the provision generally only appears in the arrangements creating “commissions”. However, there are three exceptions to this [FFA Convention; Micronesia Arrangement; Lake Victoria Convention] and six arrangements creating “commissions” contain no such provision [Argentina/UK Joint Statement; Norway/Russia 1975 Agreement; Black Sea Convention; Halibut Convention; Colombia/Jamaica Treaty; Trinidad and Tobago/Venezuela Agreement]. Rules of procedure do in fact exist for the commission established under one of these six arrangements [Halibut Convention]; it may be that the commissions of the other five arrangements listed also have their own rules despite lack of a provision in the arrangement itself.

COMMENTARY

The need for rules of procedure and financial rules depends in part on the degree to which such matters have already been covered in the arrangement. However, in most cases the arrangement itself is unlikely to cover the necessary procedures and financial issues in sufficient detail.

Various models for internal rules exist and in general the adoption of internal rules is to be encouraged. As well as regulating the primary consultative mechanism, such rules can also be used to provide for the mandate of subsidiary bodies. As such, they can contribute to the legal framework in place for the management of the shared stocks in question but avoid the need to too much prescription in the arrangement itself.

2.7.3 Secretariats

COMPARATIVE ANALYSIS

Again, it is generally only the “commissions” *per se* that have their own secretariats. However, there are three exceptions [FFA Convention; Lake Victoria Convention; African Atlantic Convention] and five commissions have no express provision for a secretariat [Argentina/UK Joint Statement; Norway/Russia 1975 Agreement; Black Sea Convention; Colombia/Jamaica Treaty; Trinidad and Tobago/Venezuela Agreement]. Of the thirteen bilateral arrangements with a formal consultative mechanism, only three bilateral expressly provide for a secretariat [River Plate Treaty; Halibut Convention; Pacific Salmon Treaty]. The terminology for “secretariat” varies, including also headquarters [River Plate Treaty] and references to an office (or seat), director (or executive secretary) and staff [NEAFC Convention; Baltic Sea Convention; Halibut Convention; Pacific Salmon Treaty].

COMMENTARY

Whether or not a secretariat is appropriate depends on the work programme of the consultative mechanism. For an arrangement with a large number of parties and/or an active coordination function, a secretariat may well be appropriate for facilitating such coordination (e.g. in terms of administering meetings [including those of subsidiary bodies] or other initiatives [e.g. research programmes]). An arrangement with just two parties may well justify a secretariat if its work programme merits it. This would explain the difference between, say, the Argentina/UK Joint Statement (no secretariat) and the Pacific Salmon Treaty (secretariat). However, though secretariats may be a good idea in theory, they inevitably having running costs. If money not available for secretariat funding, it may be more appropriate to aim for a realistic work programme that can be administered instead by, say, the government offices of the parties. In that event, it needs to be borne in mind that particularly in developing countries the government officials may be relatively few and already overstretched on purely national issues.

2.7.4 Meeting frequency

COMPARATIVE ANALYSIS

Meeting frequency is of course variable, ranging from “as necessary” [Australia/Indonesia MOU; Torres Strait Treaty; Canada/US Enforcement Agreement; Trinidad and Tobago/Venezuela Agreement] to twice a year [Argentina/UK Joint Statement; Halibut Convention] to once ever two years [Lake Victoria Convention; African Atlantic Convention]. The norm however is annual regular meetings. With one exception, the multilateral arrangements do not specify the quorum required to constitute a valid meeting. The exception is the Lake Victoria Convention, which specifies that no meeting is to take place unless all three parties are present.

COMMENTARY

The most appropriate frequency for meetings depends on the work programme, the desired responsiveness of the arrangement and the funding available. The first two factors will be in part determined by the stocks and fisheries covered. In general, meetings held at least annually are probably desirable for effective management of shared stocks. One solution may

be to opt for annual meetings but provide scope for additional special meetings (see below). Regular meetings, rather than ones “as necessary” allow for forward planning and coordination with regular meetings in other relevant forums (e.g. the annual Mackerel System meeting timed to be just prior to annual NEAFC meeting). With respect to quorums in multilateral arrangements, some arrangements specify the quorum required for a vote, rather than specifying the quorum required for a meeting.

2.7.5 Special meetings

COMPARATIVE ANALYSIS

Of the arrangements setting frequencies for their regular meetings, almost all provide for special meetings as an option. The pre-conditions for such meetings are very variable. Of the bilateral arrangements, the trigger may be (a) agreement by both parties [Japan/China Agreement; Japan/Korea Agreement; Trinidad and Tobago/Venezuela Agreement], (b) a request of either party [River Plate Treaty; Pacific Salmon Treaty; Senegal/Mauritania Convention] or (c) as the Commission determines necessary [Halibut Convention]. Of the multilateral arrangements, the number of parties that must be in agreement varies. Two arrangements require at least 3 requesting parties [Nauru Agreement; Micronesia Arrangement - 7 parties]. Two others require at least 4 requesting parties [NEAFC Convention - 6 parties; FFA Convention - 16 parties]. Three require the request of the majority [Mediterranean and Gulf Agreements; African Atlantic Convention].

COMMENTARY

One disadvantage of a provision for special meetings is the risk that it may be abused by parties with strong vested interests. However, with multilateral arrangements there is scope for introducing procedural safeguards to minimise this risk. For example, a requirement for a minimum number of supporting states is sensible. There appears to be no fixed practice based on percentages: in four arrangements with six to sixteen contracting parties, the minimum number hovers around three or four.

In the case of bilateral arrangements, the requirement that the request of one party is sufficient is probably preferable to the need for joint agreement. If one party were to have a concern that the other chose not to debate at that time, a requirement for both parties to agree on the special meeting might well mean no meeting. At least with both parties at the same table, albeit brought there at the request of one party, there is more chance of cooperation on the point of concern than if the parties each remained at home.

2.7.6 Delegations

COMPARATIVE ANALYSIS

Many arrangements provide for a specified maximum number of delegates, in turn referred to as “delegates”, “members”, “representatives”, “commissioners” or “ministers”. Typically, the arrangements allocate a delegation size of two to each party.

However, in general, this maximum number may be accompanied by an unspecified number of experts and advisers and sometimes by alternates. Two arrangements specify the categories from which the delegates are to be drawn [Torres Strait Treaty; Mauritania/Senegal

Convention]. One sets rules for accompanying delegates depending on whether the meeting is an open meeting or an executive meeting [Pacific Salmon Treaty]. One places a duty on each party to ensure that the minister is accompanied by heads of specified government departments [Lake Victoria Convention].

COMMENTARY

To give the work of any consultative mechanism a credibility in the eyes of environmental and industry organisations, such bodies need access to, and some degree of influence over, the decision-making process. Though this may be done by giving such bodies observer status or an involvement in subsidiary bodies, an alternative is to involve them in the parties' delegations in some respect. In terms of industry, this is provided for by the Mauritania/Senegal Convention. It is possible that other arrangements do so through their rules of procedure.

2.8 Subsidiary bodies

Table 5 identifies those arrangements where subsidiary bodies exist (or if not existing, whether they are at least expressly provided for), and in turn identifies the bodies concerned. This section does not address subsidiary bodies established for dispute resolution processes. However, further details of these can be found in Annex II.

COMPARATIVE ANALYSIS

Twenty-three arrangements are not represented in the table. That is because the power or duty to create subsidiary bodies is not provided for in the arrangement and nor is the author aware of any such bodies having been created.

Regarding the cases in the table, the arrangement almost always provides a power or duty to the primary consultative mechanism to establish subsidiary bodies. However, in three arrangements there is no such provision, and yet subsidiary bodies nevertheless have been created [Argentina/UK Joint Statement; Norway/Russia 1975 Agreement; Halibut Convention].

There are two main types of subsidiary body. One type deals with administrative matters (e.g. NEAFC Convention: Finance and Administration Committee and Ad Hoc Working Group on Computerisation of the Secretariat); the other addresses substantive aspects of coordination on research, conservation and management or MCS. Bodies in the latter category are typically arranged in a hierarchical manner (e.g. Lake Victoria Convention: the Fisheries Management Committee reporting to the Executive Committee, in turn reporting to the Policy Steering Committee).

It is unusual for the arrangement itself to specify the names of the bodies to be created. There are two exceptions to this [Pacific Salmon Treaty; Lake Victoria Convention]. In all other cases, the names of the bodies do not derive from the arrangement itself.

There appears to be no relation between the number of subsidiary bodies established under an arrangement and the number of parties to that arrangement.

Table 5: Subsidiary bodies

Arrangement	Parties	Subsidiary bodies
Argentina/UK Joint Statement	2	<ul style="list-style-type: none"> Scientific Sub-Committee (However, no express provision exists for this.)
Australia/Indonesia Agreement	2	Consultation between officials may include convening of technical meetings on marine areas or stocks of mutual special interest (including <i>inter alia</i> pelagic shark, tuna, demersal fin fish and trochus).
Torres Strait Treaty	2	<ul style="list-style-type: none"> Traditional Inhabitants Meeting Environmental Management Committee Joint Australia/Papua New Guinea Fisheries Enforcement Committee (However, no express provision exists for any of these.)
Japan/Korea Agreement	2	Express provision exists for subsidiary bodies.
NEAFC Convention	6	<ul style="list-style-type: none"> Finance and Administration Committee Permanent Committee on Control and Enforcement Informal group to prepare NEAFC's request for scientific advice from ICES Working Group on Blue Whiting Joint NEAFC/NAFO Working Group on Redfish Working Group on the Future of NEAFC Ad Hoc Working Group on Computerisation of the Secretariat
Herring System	5	<ul style="list-style-type: none"> Scientific Working Group (1996 Protocol) Harvest Strategies Working Group (1998 Agreed Record)
Norway/Russia 1975 Agreement	2	<ul style="list-style-type: none"> Permanent Russian-Norwegian Committee for Management and Enforcement Cooperation within the Fisheries Sector (since 1993)
Norway/Russia 1976 Agreement	2	(See Norway/Russia 1975 Agreement.)
Norway/Russia 1978 Agreement	2	(See Norway/Russia 1975 Agreement.)
Baltic Sea Convention	6	<ul style="list-style-type: none"> Standing Working Group on Regulatory Measures Standing Working Group on Finance and Administration Working Group on Control and Enforcement IBSFC Salmon Action Plan Surveillance Group Working Group on Long Term Management Objectives and Strategies for Herring and Sprat Working Group on Fishery Rules
Mediterranean Agreement	6	<ul style="list-style-type: none"> Committee on Aquaculture (since 1995) Scientific Advisory Committee (since 1997) Ad hoc technical panels, to advise the Scientific Advisory Committee in the review of the state of resources and thus in the formulation of management measures for consideration by the Commission
Gulf Agreement	2	Express provision exists for subsidiary bodies.
Halibut Convention	2	<ul style="list-style-type: none"> Conference Board (since 1931) Processor Advisory Group (since 1996) Research Advisory Board (since 1999)

Pacific Salmon Treaty	2	<ul style="list-style-type: none"> • Committee on Finance and Administration • Committee on Scientific Cooperation • Panels ⇒ Southern Panel ⇒ Fraser River Panel ⇒ Northern Panel ⇒ Yukon River Panel ⇒ Transboundary Panel • Technical Committees ⇒ Transboundary Technical Committee ⇒ Northern Boundary Technical Committee ⇒ Chinook Technical Committee ⇒ Technical Committee for the Fraser River Panel ⇒ Coho Technical Committee ⇒ Chum Technical Committee • Selective Fishery Evaluation Committee • Technical Committee on Data Sharing • Working Group on Data Standards
FFA Convention	16	Express provision exists for subsidiary bodies.
Lake Victoria Convention	3	<ul style="list-style-type: none"> • Policy Steering Committee • Executive Committee • Fisheries Management Committee • Scientific Committee • National Committees

COMMENTARY

The only reason in principle for an arrangement to have no subsidiary bodies is that it has no primary consultative mechanism. Of the 23 arrangements not included in the table, only seven have no such primary body [six of the seven Central American/Caribbean boundary arrangements; Loophole Agreement].

The remaining sixteen arrangements not included in the table directly or indirectly provide for a primary consultative mechanism. Six of these sixteen are the enforcement-only arrangements [Australia/Indonesia MOU; Canada/US Enforcement Agreement; Nauru Agreement; Niue Agreement; Micronesia Arrangement; SRFC Hot Pursuit Convention]. However, there is no reason that in principle why an enforcement-only arrangement should not have subsidiary bodies.

Four of the sixteen have consultations alone as their primary consultative mechanism [Australia/Indonesia MOU; Australia/Indonesia Agreement; Faroes/UK Agreement; Canada/US Enforcement Agreement]. However, again, there is no reason in principle why consultations should not be able to spawn subsidiary bodies; indeed the Australia/Indonesia Agreement provides for a form of subsidiary body. In general, then, it is hard to explain why in principle any of the sixteen arrangements should not either provide for or otherwise have subsidiary bodies.

The answer must lie partly in that the number and type of subsidiary bodies is dictated by the circumstances surrounding the consultative mechanism established. Of the arrangements that are in the table, some patterns can be seen.

Of the three arrangements with subsidiary bodies on administrative matters [NEAFC Convention; Baltic Sea Convention; Pacific Salmon Treaty], all have a secretariat. Secretariats create the need for administrative and financial oversight by the parties, and one means of exercising that oversight is for a subsidiary body with an administrative brief to be created. Secretariats may also need attention by the parties for other reasons associated with their function (e.g. NEAFC Convention: Ad Hoc Working Group on Computerisation of the Secretariat). However, of those arrangements in the table, some have a secretariat yet appear not to have a subsidiary body on administrative matters amongst their other bodies (e.g. Mediterranean Agreement; Halibut Convention) suggesting some other means for oversight of the secretariat may exist.

Regarding subsidiary bodies relating to substantive aspects of cooperation, the number needed by will be determined in part by the scope of the cooperation, the arrangement's political or geographical complexity and the funding available. The Pacific Salmon Treaty is one of the most politically and geographically complex arrangements, and this complexity is reflected not only by the detail of the arrangement's provisions but also its highly evolved system of subsidiary bodies. However, it is also relatively well funded.

The degree to which a subsidiary body with a stock assessment or science remit is required will depend in part on whether or not the arrangement uses the services of a science secretariat. For example, NEAFC uses the services of the International Council for the Exploration of the Sea (ICES). This is reflected by the fact that its complement of subsidiary bodies includes an informal group to prepare NEAFC's request for scientific advice from ICES. The whole question of reliance on science secretariats as opposed to relying on the parties to the arrangement is addressed by Ward *et al.* and will not be further discussed here.

Subsidiary bodies may also be an effective means of integrating the fishing industry or environmental groups into the cooperative regime. In the case of the Halibut Convention, the Conference Board represents Canadian and US commercial and sport halibut fishermen, designated by union and vessel owner organisations. The Processor Advisory Group ("PAG") represents halibut processors. At the Commission's annual meetings, the Commission's staff make presentations on stock status, seasons etc. to the Board and the PAG, plus the Commissioners. Each of the Board and the PAG then meets over several days and in turn delivers an independent report to the Commissioners on the staff's presentations. The industry therefore has a strong and integrated role in the regime, through the means of subsidiary bodies.

Four of the arrangements [Torres Strait Treaty; NEAFC Convention; Norway/Russia 1975 Agreement; Baltic Sea Convention] have subsidiary bodies specializing in MCS issues. In general, the numbers of subsidiary bodies with an MCS specialization are likely to increase in response to increased awareness of illegal, unreported and unregulated (IUU) fishing and the growth of ideas for combating this threat.

The last point illustrates that subsidiary bodies provide one mechanism by which the arrangement may respond to current issues. Thus if, say, IUU fishing becomes a threat to the sustainability of the stock concerned, a subsidiary body may be convened to suggest solutions for the duration of the threat. If the threat disappears, the body may be disbanded. This need for responsiveness means that in cases where the arrangement itself specifies the names of the subsidiary bodies to be established [Pacific Salmon Treaty; Lake Victoria Convention], it is

preferable not to overly limit the discretion of the primary consultative mechanism with regard to those other bodies that it may additionally create (or those which it may disband).

Finally, some of the issues already discussed above in section 2.7 for the primary consultative mechanism also apply to subsidiary bodies. Internal rules, meeting frequencies, special meetings, delegations (and decision-making) are all factors that need to be addressed regarding subsidiary bodies.

2.9 Decision-making mechanism of primary consultative mechanism

Table 6 summarizes the decision-making mechanism of the primary consultative mechanism in respect of conservation and management measures and specifies whether its decisions are in turn binding on the parties or merely advisory. Where there are no express provisions in an arrangement on these matters, that arrangement has been omitted from the list. In most cases, the consultative mechanisms concerned have a function extending beyond conservation and management measures. Further details on the functions of the mechanisms in all the arrangements can be found in Annex II.

COMPARATIVE ANALYSIS

In arrangements with two parties, it is logical that decision-making should be by consensus. This is indeed the case with the examples in Table 6. However, consensus decision-making is not confined to the two party arrangements [Herring System; Mackerel System; Black Sea Convention]. Whether the decisions are binding or merely advisory appears to bear no relationship to the number of (intended) contracting parties. With one exception [Lake Victoria Convention], multilateral arrangements using majority voting to adopt binding decisions have an objection procedure.

COMMENTARY

Where the decisions of a consultative mechanism are binding, it is in the interests of the parties to send delegations of sufficient competence and with a sufficiently robust negotiating brief. However, it is also logical that in such cases, any use of majority voting should be accompanied by an objection procedure. Such a system represents a balance between the potentially inhibitory influence of, on the one hand, the need for consensus and, on the other hand, the threat to sovereignty posed by majority voting with no objection procedure.

Where the decisions of a consultative mechanism are merely advisory, it is assumed that one of the reasons for this restriction in the power of the mechanism is the politics of the situation. Thus in a politically sensitive situation, one area for compromise whilst retaining the concept of cooperation over shared stocks could be to agree to a consultative mechanism but not give it the power to make binding decisions. In some instances, this may be the price to pay for at least some cooperation.

Table 6: Decision-making mechanism

Arrangement	Parties	Decision-making mechanism	Nature of decisions
Argentina/UK Joint Statement	2	Consensus	Advisory
River Plate Treaty	2	Consensus	Not known
Torres Strait Treaty	2	Not known	Advisory
Japan/China Agreement	2	Consensus	Binding (on specified matters)
Japan/Korea Agreement	2	Consensus	Binding (on specified matters)
NEAFC Convention	6	Qualified majority (for high seas only), with objection procedure	Binding
Herring System	5	Consensus	Binding
Mackerel System	3	Consensus	Advisory
Norway/Russia 1975, 76 & 78 Agreements	2	Not known	Advisory
Baltic Sea Convention	6	Qualified majority, With objection procedure	Binding
Mediterranean Agreement	6	Qualified majority, With objection procedure	Binding
Black Sea Convention	3	Consensus	Advisory
Gulf Agreement	2	Qualified majority, With objection procedure	Binding
Halibut Convention	2	Concurring vote of at least 2 of each party's 3 Commissioners	Advisory
Pacific Salmon Treaty	2	Consensus	Advisory
Colombia/Jamaica Treaty	2	Consensus	Advisory
Trinidad and Tobago/Venezuela Agreement	2	Not known	Advisory
Lake Victoria Convention	3	Majority	Binding

2.10 Approach to cooperation on research and stock assessment

A mandate may be given to the primary consultative mechanism to *inter alia*:

(a)	receive information on resources and fisheries from the parties [Arg/UK Joint Statement; Baltic Sea Convention; FFA Convention; Lake Victoria Convention] or determine what is to be received [Black Sea Convention];
(b)	recommend the format in which such information is to be provided [Arg/UK Joint Statement] or make regulations for the collection of statistics [NEAFC Convention; Halibut Convention];
(c)	analyse such information [Baltic Sea Convention; FFA Convention] or review the status of fisheries resources and fisheries [Mediterranean and Gulf Agreements];
(d)	assess the impact of conservation measures on fishery resources [NEAFC Convention];
(e)	coordinate exchange of data [NEAFC Convention; FFA Convention; Trinidad and Tobago/Venezuela Agreement];
(f)	propose joint scientific research work [Arg/UK Joint Statement; River Plate Treaty; NEAFC Convention; Mediterranean and Gulf Agreements];
(g)	coordinate scientific research work [River Plate Treaty; Black Sea Convention; Mediterranean and Gulf Agreements; Pacific Salmon Treaty;] including establishing procedures for joint work [Colombia/Jamaica Treaty; Trinidad and Tobago/Venezuela Agreement];
(h)	conduct studies itself [River Plate Treaty; Mediterranean and Gulf Agreements; Halibut Convention].

If there is no duty on the primary consultative mechanism to receive relevant information from the parties, the arrangement may instead be phrased so as to place a duty on the parties to supply the mechanism with such information [e.g. NEAFC Convention; Pacific Salmon Treaty; Lake Victoria Convention].

Sometimes, the number of research tasks allocated to the primary consultative mechanism is reduced because the mechanism relies on a science secretariat (e.g. ICES is used by: NEAFC Convention; Herring System; Norway/Russia 1978 Agreement; Baltic Sea Convention). For example, NEAFC has a Memorandum of Understanding with ICES. Ward *et al.* have recently reviewed the use of science secretariats, and the issues will not be reiterated here. Alternatively, a scientific committee may be created as a subsidiary body to address the some or all of the research and assessment mandate allocated to the primary consultative mechanism [e.g. Argentina/UK Joint Statement; Pacific Salmon Treaty; Lake Victoria Convention]. Rarely, the primary consultative mechanism has a mandate to conduct its own research cruises [Halibut Convention].

Even if there is a primary consultative mechanism in place, there may nonetheless be a duty addressed to the parties as individuals to:

(a)	cooperate on scientific research [Japan/China Agreement; Norway/Russia 1975 Agreement; Colombia/Jamaica Treaty; African Atlantic Convention; Mauritania/Senegal Convention (implemented by a protocol)];
(b)	exchange results of fisheries research [Norway/Russia 1975 Agreement; Black Sea Convention; Trinidad and Tobago/Venezuela Agreement];
(c)	jointly undertake programmes of research under the procedure established by the commission [Trinidad and Tobago/Venezuela Agreement];
(d)	exchange relevant information on fisheries resources [Japan/Korea Agreement; Herring System (catch reports on a monthly basis); Norway/Russia 1975 Agreement; Black Sea Convention; Pacific Salmon Treaty; Trinidad and Tobago/Venezuela Agreement; African Atlantic Convention].

Even if the primary consultative mechanism consists only of consultations there may still be a duty for the parties to: (a) facilitate cooperation in fisheries research; (b) exchange catch/effort data; and (c) exchange results of specified scientific research [Australia/Indonesia Agreement].

If there is no primary consultative mechanism of any form, there may be a duty on the parties to:

(a)	provide each other with research results, jointly coordinate and undertake scientific research, exchange catch information [Colombia/Dominican Republic Agreement, re its zone of scientific research and common fishing exploitation];
(b)	offer each other “the greatest possible facilities” for the purpose of developing activities to exploit and use the living resources of their respective maritime jurisdictional zones through <i>inter alia</i> cooperation in scientific research [Colombia/Costa Rica Treaty; Colombia/Ecuador Agreement];
(c)	promote, encourage and facilitate scientific research [Netherlands/Venezuela Treaty].

One party may be under a duty to allow the other party to carry out research in its waters in specified matters of common interest and according to specified procedures [River Plate Treaty; Pacific Salmon Treaty; Lake Victoria Convention]. The Torres Strait Treaty creates the concept of “residual jurisdiction” (see Annex II). Some arrangements provide that they or their conservation and management measures are not to apply to research cruises [Baltic Sea

Convention; Halibut Convention]. The African Atlantic Convention requires parties to: (a) encourage exchange of experience, twinning of institutions, and optimum use of vessels for research; and (b) to collaborate in the establishment of a data and information bank.

2.11 Approach to cooperation on conservation and management

An analysis of the arrangements' references to harmonization in the context of conservation and management measures has already been made in section 2.4 above and will not be repeated here.

Only rarely do arrangements include specified quantitative conservation and management measures. This ranges from technical measures [Black Sea Convention; SRFC Access Convention] to allocation. Allocation is obviously a key political hurdle for the parties to cross. One arrangement sets out very general principles on allocation criteria [River Plate Treaty]. Others actually establish the allocation tonnages or percentages between the parties, to varying degrees [Torres Strait Treaty; Herring System; Mackerel System; Halibut Convention; Pacific Salmon Treaty]. In the Norway/Russia 1978 Agreement (regarding the provisional joint fishing zone), allocations to third states are to be by agreement and rules on how fish caught by licensed third state vessels are to be deducted from the parties' allocations are set down in the arrangement (see also River Plate Treaty).

Several arrangements provide for the primary consultative mechanism to make decisions on conservation and management, albeit sometimes limited to a special zone has been established in an area where there is uncertainty over the maritime boundary [e.g. Japan/China Agreement; Japan/Korea Agreement]. This function is generally express rather than merely implied [e.g. Japan/Korea Agreement; Russia/Norway 1976 Agreement; Pacific Salmon Treaty; Colombia/Jamaica Treaty; Trinidad and Tobago/Venezuela Agreement; Lake Victoria Convention].

The decisions made by the consultative mechanism may be binding on the parties, or just advisory, depending on the arrangement concerned (see section 2.9 above).

Some consultative mechanisms produce an annual set of their rules [e.g. Baltic Sea Convention; Halibut Convention]. However, the types of conservation and management measure to be decided by the consultative mechanism are generally specified by the arrangement. Examples of measures include:

(a)	determination of TAC [Baltic Sea Convention] or minimum spawning stock biomass [Argentina/UK Joint Statement];
(b)	determination and allocation of TAC [River Plate Treaty, re common fishing zone; NEAFC Convention; Herring System; Mackerel System; Norway/Russia 1978 Agreement; Mediterranean and Gulf Agreements; Halibut Convention, for Area 2];
(c)	determination and allocation of allowable fishing effort [NEAFC Convention; Mediterranean and Gulf Agreements];
(d)	determination of quotas [Japan/China Agreement];
(e)	regulation of quota exchanges and quota transfers [Baltic Sea Convention];
(f)	establishment of closed (or open) areas or seasons [Japan/China Agreement; NEAFC Convention; Baltic Sea Convention; Mediterranean and Gulf Agreements; Halibut Convention];
(g)	regulation of by-catch [Baltic Sea Convention; Halibut Convention], discarding [Baltic Sea Convention], logbooks [Baltic Sea Convention; Halibut Convention], catch reporting [Baltic Sea Convention] gear stowage and marking [Baltic Sea Convention], fishing gear and appliances [NEAFC Convention; Baltic Sea Convention; Mediterranean and Gulf Agreements], catching

	methods [Baltic Sea Convention; Halibut Convention]; and size limits of fish [NEAFC Convention; Baltic Sea Convention; Mediterranean and Gulf Agreements; Halibut Convention];
(h)	introduction of precautionary approach for particular species [Arg/UK Joint Statement] or in general [Mediterranean and Gulf Agreements];
(i)	adoption of long-term management strategies [Herring System; Baltic Sea Convention];
(j)	amendment of quantitative conservation and management measures in the arrangement [Black Sea Convention].

Often the consultative mechanism has a duty to collate information on the conservation and management measures being taken by the parties, or alternatively the parties have a duty to provide such information to the mechanism. Several arrangements expressly allow parties to take stricter measures than those recommended by the consultative mechanism [e.g. Halibut Convention].

Some arrangements establish relevant subsidiary bodies [NEAFC Convention; Herring System; Baltic Sea Convention; Pacific Salmon Treaty; Lake Victoria Convention]. One arrangement provides for the parties to negotiate subsidiary arrangements on conservation and management arrangements for individual fisheries [Torres Strait Treaty]. At least one involves coordination between two of the three parties over to what extent they will allow fishing by the third party in their waters [Loophole Agreement].

The Torres Strait Treaty creates the concept of “residual jurisdiction” (see Annex II). The Norway/Russia 1976 Agreement includes an agreement that neither party will fish for anadromous stocks beyond their respective fisheries jurisdictions. The Black Sea Convention likewise states that the parties are not to fish for *Acipenser nudiventris* for a specified period of years. The Pacific Salmon Treaty (through the 1999 Agreement) proposes staff exchanges to improve cooperation between fisheries managers.

2.12 Approach to cooperation on MCS

In some cases, the primary consultative mechanism has an MCS function, albeit sometimes limited by geographical scope (e.g. to a special zone has been established in an area where there is uncertainty over the maritime boundary). This function may be implied [e.g. Argentina/UK Joint Statement; Japan/China Agreement; Japan/Korea Agreement; Baltic Sea Convention; Mediterranean and Gulf Agreements] or express [e.g. NEAFC Convention; Norway/Russia 1978 Agreement]. The decisions made by the consultative mechanism may be binding on the parties, or just advisory, depending on the arrangement concerned (see section 2.9 above).

Some arrangements have adopted so-called “schemes” related to MCS (e.g. NEAFC’s two schemes, albeit that these relate to the activities of vessels on the high seas). Schemes directed at non-party vessels within the EEZ are potentially useful even for bilateral coastal State arrangements. For example, the Herring System (1996 Protocol) requires parties to cooperate to deter activities of non-party vessels which undermine the effectiveness of agreed conservation and management measures; such cooperation could be started by drafting of a joint scheme of measures.

Four of the arrangements [Torres Strait Treaty; NEAFC Convention; Norway/Russia 1975 Agreement; Baltic Sea Convention] have subsidiary bodies specializing in MCS issues. The

MCS subsidiary body established within the Norway/Russia 1975 Agreement in 1993 has been very active. Measures developed through it have included *inter alia* (Honneland)¹⁹:

(a)	exchange of catch and landings data;
(b)	establishment of procedures for informal information exchange about the situation at sea (facilitated by Norwegian aid in improving communications);
(c)	monitoring of valid fishing and port tickets;
(d)	participation of inspectors from one party in inspections of that party's vessels and in the ports and waters of the other party;
(e)	elaboration of joint conversion factors for fish products of all species (except haddock);
(f)	elaboration of joint procedures for opening and closing fishing grounds;
(g)	establishment of joint seminars for enforcement officers.

Where a special zone has been established in an area where there is uncertainty over the maritime boundary, that arrangement usually provides for flag State control alone [Japan/China Agreement; Japan/Korea Agreement; Norway/Russia 1978 Agreement; Halibut Convention, re "boundary regions"; Colombia/Jamaica Treaty; Trinidad and Tobago/Venezuela Agreement] or for control only by the party that has issued the licence to the vessel [Faroes/UK Agreement; Norway/Russia 1978 Agreement].

However, in these instances cooperation may be facilitated by:

(a)	provision for one party to call other party's attention to breaches by its vessel of joint conservation and management measures [Japan/China Agreement; Japan/Korea Agreement] and a corresponding duty on the other party to take actions and notify these [Japan/China Agreement; Japan/Korea Agreement; Colombia/Jamaica Treaty];
(b)	a duty to exchange information on catches and modes of fishing [Japan/Korea Agreement] and on vessels [Norway/Russia 1978 Agreement];
(c)	a requirement either that neither party authorises third state fishing [Halibut Convention; Colombia/Jamaica Treaty] or that such licensing is to be done under specified conditions [Norway/Russia 1978 Agreement];
(d)	agreement for either party to take enforcement action against a vessel that is not licensed by either party [Norway/Russia 1978 Agreement; Halibut Convention].

If there is no line in place and no special zone, there may nonetheless be a duty to consult to avoid difficulties [Australia/Indonesia MOU, re areas where the provisional line does not apply].

Where a boundary (permanent or provisional) is in place, some arrangements may provide that a party exercising control over vessels licensed by the other party may only do so on its side of the boundary [Australia/Indonesia MOU]. Practice on how one party can enforce its vessels in the other party's waters varies. There may be express recognition that the flag State may not board or stop its vessels in the other party's waters [Japan/Korea Agreement]. Alternatively, it may be expressly stated that each party has the right to enforce the convention in all convention waters in respect of its own nationals and fishing vessels [Halibut Convention] or impliedly stated [Lake Victoria Convention]. One arrangement establishes the general principle that corrective action is only to be taken by the party whose nationality is borne by the vessel or person concerned [Torres Strait Treaty, re Protected Zone]; however, that arrangement then goes on to specify the type of sanction to be taken by the party of nationality in given circumstances (cancellation or suspension of fishing licence). In contrast, some arrangements reassure that the party in whose waters the vessels of the other

¹⁹ pp. 256-259.

party are fishing has the power to ensure compliance [Japan/China Agreement; Japan/Korea Agreement].

Where mutual access rights have been allocated there may be a duty to for each party to supply the other with details of its vessels [Norway/Russia 1976 Agreement (including support vessels); see also River Plate Treaty, re common fishing zone]. One arrangement creates an MCS buffer zone [Colombia/Ecuador Agreement] for the purpose of ensuring that the “accidental presence” of “local” fishermen of either country in that zone should not be considered a violation of the marine boundary. The Torres Strait Treaty provides for special access rights for traditional inhabitants (in the Protected Zone).

In general, cooperation on MCS is facilitated by:

(a)	a duty on each party to ensure compliance by its vessels with the other party’s rules [Australia/Indonesia Agreement; Japan/China Agreement; Japan/Korea Agreement; Norway/Russia 1976 Agreement; Loophole Agreement], including making it an offence to breach the other party’s rules [Canada/US Enforcement Agreement; Torres Strait Treaty; Nauru Agreement] or placing other detailed enforcement duties on the vessel’s party [Micronesia Arrangement];
(b)	a duty on each party either to ensure compliance by its vessels with the commission’s conservation and management measures and to report back to the commission [Baltic Sea Convention] and/or simply to enforce the fishery regimes [Baltic Sea Convention, Pacific Salmon Treaty];
(c)	cooperation on inspection and enforcement [Torres Strait Treaty; Herring System] and inspection and boarding [Halibut Convention];
(d)	exchange of lists of vessels (via the primary consultative mechanism if established) [River Plate Treaty];
(e)	exchange of information on MCS systems and technology [Australia/Indonesia Agreement];
(f)	pooled surveillance [Niue Agreement];
(g)	port State control [Loophole Agreement, Micronesia Arrangement], e.g. bans on landings of illegal catches and denial of port access to illegal vessels [Loophole Agreement];
(h)	provision for one party to call other party’s attention to breaches by its vessel of conservation and management measures, with certain follow-up expectations [Micronesia Arrangement];
(i)	observer programmes [Micronesia Arrangement];
(j)	coordination of laws and regulations on fishing registration and fishing licences [Colombia/Ecuador Agreement];
(k)	conditions for the licensing of third state vessels, including standardisation [Nauru Agreement; Niue Agreement; Micronesia Arrangement (and use of a regional administrator); SRFC Access Convention];
(l)	information exchange on licensed third state vessels [Mauritania/Senegal Convention, Protocol] including standardisation [Nauru Agreement; Niue Agreement];
(m)	regional registers vessels, including agreed eligibility and joint review of registered vessels [Micronesia Arrangement];
(n)	agreed quantitative criteria for the ejection of a vessel from the waters covered by the arrangement [SRFC Access Convention];
(o)	cooperation on hot pursuit [Niue Agreement; SRFC Hot Pursuit Convention, including by additional protocol; Mauritania/Senegal Convention];
(p)	cooperation on extradition [Niue Agreement];
(q)	exchange of personnel [Mauritania/Senegal Convention, Protocol];
(r)	notification in the event of seizure or enforcement action by one party against the other party’s vessels [Australia/Indonesia Agreement; Japan/China Agreement; Japan/Korea Agreement; Micronesia Arrangement];
(s)	express agreement on prompt release [Japan/China Agreement; Japan/Korea Agreement; Micronesia Arrangement].

3. NORTHWEST AFRICA

3.1 Introduction

3.1.1 Overview

For the purposes of this section, Northwest Africa covers following states: Cape Verde, The Gambia, Guinea, Guinea-Bissau, Mauritania, Morocco and Senegal.

The objective of this section of the report is threefold: (a) to apply the headings in section 2 to specified existing multilateral arrangements covering the Northwest Africa region, (b) to identify those aspects of the analyses made in section 2 that would be appropriate for any cooperation arrangement being created from first principles in Northwest Africa and pertinent to the four states participating in the Nansen Programme namely: The Gambia, Mauritania, Senegal, Morocco and (c) to consider funding of management arrangements in Northwest Africa. However, the section starts by analysing the existing legal framework and establishing some assumptions about the fisheries for small pelagics.

3.1.2 The legal framework

The arrangements relating to fisheries management that are in place in the region and that the author has sighted are as follows:

- African Atlantic Convention 1991
- SRFC Convention 1985
- SRFC Access Conventions (1989 and 1993)
- SRFC Hot Pursuit Convention 1993 (and associated 1993 Protocol)
- Guinea-Bissau/Senegal Agreement and Protocol 1993
- Mauritania/Senegal Convention 1999
- FAO Fishery Committee for the Eastern Central Atlantic (CECAF)
- International Convention for the Conservation of Atlantic Tunas (ICCAT)

There are several additional bilateral arrangements referred to by Kelleher.²⁰ These have not been sighted by the author and are not discussed further in this report. However, their details, taken from Kelleher, are provided in Table 7 for the sake of completeness.

3.1.3 African Atlantic Convention

The African Atlantic Convention was adopted in 1991. There are ten contracting parties, though in principle the convention applies to all African Atlantic coastal States. Guinea, Guinea-Bissau, Morocco and Senegal are among the contracting parties; the remaining States in question (Cape Verde, The Gambia and Mauritania) have only signed the convention. The objectives of the convention include *inter alia* to promote regional cooperation on fisheries management and to enhance, coordinate and harmonize the parties' efforts and capabilities for the purpose of conserving and exploiting fishery resources (considering in particular fish stocks occurring within the waters of more than one party) (Art 2). The geographical area covered is assumed to be the waters under the sovereignty and jurisdiction of the contracting parties.

²⁰ Annex 6.

Table 7: Additional bilateral agreements referred to by Kelleher

Parties to arrangement	Date	Comments by Kelleher
Cape Verde/Guinea	04.1989	Reciprocal access, general fisheries cooperation agreement
Cape Verde/Guinea- Bissau	06.1995	Reciprocal access fisheries agreement
Cape Verde/Mauritania	18.11.1995	Convention consolidating fisheries relationships within the limits compatible with the preservation of the resource, optimum level of exploitation; programmes of cooperation on research, surveillance, training, vessel repair, transport; promote joint ventures; harmonize positions ref. international organisations. (2 yrs, auto-renewable).
Cape Verde/Mauritania	25.04.2000	Protocol of Agreement relative to the Coordination of surveillance operations and hot pursuit, and protocol on its application. A further (older) protocol is understood to exist between defence ministries on joint surveillance operations.
Cape Verde/Mauritania	25.04.2000	Convention on cooperation in the area of scientific investigation (signed between the directors of INDP and CNROP).
Cape Verde/Senegal	29.03.1985	Convention on fisheries. Framework agreement on reciprocal fisheries access. Annual protocol to be signed re no. of vessels to operate.
Cape Verde/ Senegal	29.03.1985	(Application Protocol). Tuna vessels authorised to fish in all waters, and sardine vessels (outside 3 miles). No licence fees to be charged. Catches to be declared.
Cape Verde/ Senegal	17.11.1994	Coordination of surveillance and on hot pursuit
Gambia/Senegal	11.11.1992	Senegal-Gambia convention on fisheries. Reciprocal access framework agreement with protocols. Specific number of licences granted, exchanges of information, joint MCS committee. Vessels to be 51% owned by nationals / enterprises of the Parties. Licence fees to be the same as for nationals of each Party. Agreed vessel tonnage for demersal trawlers, sardine and tuna vessels.
Gambia/ Senegal	29.03.1993	On surveillance cooperation
Gambia/ Senegal	25.01.1994	Procès-Verbal. Exchange of GRT by vessel type, implementing SRFC access convention mesh size (40 mm for pelagic trawls). No hot pursuit protocol.
Gambia/Senegal	07.05.1999	Procès-Verbal. Licensing procedures, research. To avoid potential difficulties, the passage of fishing vessels (ref right of innocent passage) to be communicated through a permanent watch on 3370KHz & 3512KHz. Commitment to pursuing joint negotiation of access agreements.
Guinea/Guinea-Bissau	25.01.1980	Not sighted. Amended 26/09/85
Guinea/Guinea-Bissau	21.10.1995	Proposals for harmonizing licence fees and terms and conditions for the landing of fish in each Member State (not resolved).
Guinea/Guinea-Bissau	07.06.1996	Protocol refers to 'Accord' of 25/01/80 amended by 26/09/95. Makes reference to 'licences libres'.
Guinea/Guinea-Bissau	07.06.1996	Protocol and regulation on coordination of surveillance activities and on hot pursuit. Indeterminate duration.

Guinea/Guinea-Bissau	07.06.1996	Procès-Verbal and protocol on surveillance cooperation
Guinea/Guinea-Bissau	Undated.	On artisanal fisheries. Agreement that mesh sizes would correspond to those set by the SRFC: 60mm for beach seine and bonga circle net; 50mm for surface gillnet. 50% of catch to be landed.
Guinea/Guinea-Bissau		On surveillance and hot pursuit
Guinea-Bissau/Senegal	22.12.1978	Reciprocal access framework agreement. Protocols to specify details and application. Harmonized approaches to international fisheries matters (Art 7). Joint research initiatives (Art 8).
G. Bissau/Senegal	24.11.1995	Protocol implementing 22/12/78 agreement. Artisanal fisheries defined (Art.2). Fixed the number of vessels and licence fees (artisanal and industrial). Industrial pelagic fees 100\$/GRT/yr.; tuna 5000\$/yr
Agence de gestion/Guinea-Bissau and Senegal	02.05.1997	Protocol on the management and exploitation of the fisheries resources of the common zone. Defines access agreements and 'fishing (access) contracts'. Defines information provided to the agency (Art. 5. agreements, licences, catches, licence receipts, etc.). Further protocols to be concluded on research and disputes. Validity 1 year, renewable automatically.
Agence de gestion/Guinea-Bissau and Senegal	18.12.1997	Annex to protocol of 2/05/97 on surveillance of the common zone. Based on Art. 18 of the Agreement of 12/06/95 - deals with practical application and arrangements
Mauritania/Senegal	1983	Reciprocal fisheries access agreement (1983); mainly concerning artisanal fishermen; encourages joint ventures (Art. 6); annual protocol to determine access conditions; applicable only to 100% owned Ma., or Sn. Vessels; exchange of port facilities.
Mauritania/Senegal	14.01.2000	Hot pursuit protocol
Mauritania/Senegal	14.01.2000	To resolve artisanal fisheries disputes
Morocco/Senegal	1979	Framework agreement on fisheries and merchant marine.

The institutional framework comprises the Conference of Ministers, the Bureau and the Secretariat (Art 17(1)). Parties are to adopt protocols addressing measures, procedures and standards aimed at implementing the provisions of the Convention (Art 19). In 1999, the Conference adopted an institutional protocol and rules of procedure. The rules of procedure allow for the Conference to create working groups (rules of procedure, Art 20).

The Conference is the governing and decision-making body with respect to fisheries cooperation among the parties; it is to determine the general policy and work programme of the Conference, to formulate recommendations and to promote coordination of the parties' positions (Art 17(1)(a); protocol, Art 2(1)). The Bureau is the coordinating organ of the Conference; one of its functions is to put relevant recommendations to the Conference (protocol, Art 3(1)(b)). The Secretariat is the executive organ (Art 17(1)(b) & (c)) and is located in Morocco (protocol, Art 4).

The Conference is to hold regular sessions once every two years and special sessions at the request of a majority of the parties (Art 17(1)(a)). Decision-making in the Conference, unless otherwise expressly provided for by the convention, is by majority-voting (Art 16, rules of procedure) though consensus is not excluded (rules of procedure, Art 17). The rules of

procedure mention both “decisions” and “recommendations” of the conference; however, whether or not either category is binding on the parties is not clear.

The parties are to combine their efforts to ensure the conservation and rational management of their fishery resources and take concerted action for the assessment of fish stocks occurring within the waters under the sovereignty or jurisdiction of more than one Party (Art 3(1)). They are to exchange scientific information regarding fishery resources, statistics relating to catch and fishing effort and other data relevant to the conservation and management of fish stocks with the objective of achieving their optimum utilization (Art 3(3)) and are to endeavour to adopt harmonized policies concerning the conservation, management and exploitation of fishery resources, in particular with regard to the determination of catch quotas and, as appropriate, the adoption of joint regulation of fishing seasons (Art 3(4); see also Art 13).

Parties are to work and collaborate with all the means at their disposal (or which they may jointly acquire) to ensure the monitoring, control and surveillance, including technical control, of fishing vessels operating in the region (Art 5). With a view to promoting the dissemination of *inter alia* scientific data and information regarding the region’s fisheries, parties are to collaborate in the establishment and operation of a data and information bank, in cooperation with relevant subregional, regional and international organizations (Art 15). With a view to achieving the objectives of the convention, parties are also to cooperate *inter alia* with relevant subregional, regional and international organizations (Art 20).

3.1.4 The SRFC Convention

The SRFC Convention was adopted in 1985 and amended in 1993.²¹ The convention establishes the SRFC, whose members are Cape Verde, The Gambia, Guinea, Guinea-Bissau, Mauritania, and Senegal. The objectives of the SRFC include *inter alia* harmonizing over the long term the policies of the members regarding preservation, conservation and exploitation of their marine resources (Art 2). As such, it is assumed that the convention applies to the waters of the SRFC’s members and potentially applies to cooperation on any of research and stock assessment, conservation and management, and MCS. The SRFC’s organs consist of the Conference of Ministers, the Coordination Committee and a secretariat (Art 4). The secretariat is located in Senegal (Art 3).

The principal organ is the Conference of Ministers, with the objectives of defining the objectives on sub-regional cooperation and deciding on all matters relating to the preservation and exploitation of marine resources in the sub-region (Art 5). The Conference has regular meetings every two years, with scope for special meetings if requested by the president of the Conference or by the majority of the members (Art 7). Decision-making in the Conference is by consensus (Art 8). It is assumed that decisions by the Conference are binding on the parties.

The Coordination Committee has the function of *inter alia* making recommendations to the Conference on matters to be examined (Art 9). The Committee meets annually and otherwise when necessary (Art 11). The secretariat, with the approval of the Conference, is to organise technical meetings as necessary for the purpose of reviewing scientific, technical, legal and

²¹ Convention Establishing the Sub-Regional Fisheries Commission, 29 March 1985. The author was provided with an electronic version of the original 1985 convention by the FAO, and with an electronic version of the 1993 amendments by the CSRP secretariat.

economic issues and other subjects relating to the cooperation programme adopted by the Conference (Art 14).

Of note, the secretariat may cooperate as much as necessary with national and international bodies to ensure collaboration and effective coordination of planned actions (Art 18). Members of the SRFC are to adopt additional protocols addressing measures, procedures and standards aimed at implementing the provisions of the Convention (Art 25). It is not known whether any rules of procedure have been drafted for the SRFC. However, the convention itself makes no express provision for the creation of subsidiary bodies other than those expressly mentioned as being the SRFC's main organs.

The SRFC Convention provides the SRFC with legal personality (Art 1). However, it is questionable whether this personality extends to international legal personality and whether the SRFC has the power to enter into treaties with States or other international organisations. For the purposes of this report, it will be assumed that the SRFC does not have such power and lacks international legal personality.

3.1.5 CECAF

CECAF was established in 1967 under Article VI-2 of the FAO Constitution by Resolution 1/48 of the FAO Council. The current membership consists of 21 coastal States (including Northwest African States), 11 non-coastal States and the European Community. The area of competence coincides largely with FAO Statistical Area 34 and the Committee covers all marine fishery resources within this area.

The Committee is the decision-making body but is to report to the FAO Director-General (statute, Art 5). It may establish sub-committees or working parties on problems of major importance or of a specialized nature (statute, Art 4(i)). The Committee currently has only one subsidiary body, the Scientific Sub-Committee. The secretariat is provided by the FAO.

In 1992, the Committee's Terms of Reference were amended. The 1992 Terms of Reference include *inter alia*:

to promote the collection, interchange, dissemination and analysis or study of statistical, socio-economic, biological and environmental data and other marine fishery information,
to establish the scientific basis for regulatory measures leading to the conservation and management of marine fishery resources; to formulate such measures through subsidiary bodies, as required, and to make appropriate recommendations for the adoption and implementation for these measures,

Thus CECAF has a role both in research and stock assessment and in conservation and management measures, though only in an advisory context. So far, the greatest strengths of CECAF have occurred in collection, collation and analysis of data (CECAF/XV/2000/6, para 31). Although CECAF has made a number of recommendations on fisheries management, implementation of these is on a voluntary basis and has been poor in a number of States (CECAF/XV/2000/6, paras 29 & 31 and footnotes 4 & 22). Transforming CECAF from a body established under Article VI of the FAO Constitution into a body established under Article XIV of the FAO Constitution has been mooted but not acted upon.

3.1.6 ICCAT

ICCAT²² covers the conservation of tunas and tuna-like species in the Atlantic Ocean and adjacent seas. Cape Verde, Guinea and Morocco are contracting parties. (Senegal was a contracting party until 1988.) About 30 species are of direct concern to ICCAT.²³ Though the competence of ICCAT's commission extends to the waters of the coastal State contracting parties, it will be assumed that none of the species of direct concern to ICCAT are relevant in the current analysis.

3.1.7 Assumptions about small pelagics in Northwest Africa

For the purposes of this chapter, it will be assumed that the small pelagics in question are neither highly migratory stocks nor straddling stocks. In other words, it will be assumed that the stocks concerned are migratory but remain within the confines of the waters of the coastal States of Northwest Africa.

Were such stocks to be straddling, the duty in Art 63(1) LOSC²⁴ would apply. Were such stocks highly migratory, the 1982 Convention provision on highly migratory species (Art 64 LOSC)²⁵ would however not apply, since none of the species concerned (those listed in Annex I of the 1982 Convention) are small pelagics. However, once the Fish Stocks Agreement enters into force, were the small pelagic stocks concerned to be either "highly migratory fish stocks" (and hence no longer restricted to the "highly migratory species" listed in Annex I of the 1982 Convention) or "straddling fish stocks", the duties in that Agreement would apply to any of the States that were contracting parties.

The distribution of the various species of small pelagics will not be taken into account for the purposes of this analysis. It will be assumed that in general fisheries for small pelagics off Northwest Africa are multispecies and that small pelagics are shared between the relevant coastal States, whether by all States together or by only some of them. It will also be assumed that these small pelagics are fished not only by flag vessels of the States concerned, but also by foreign flagged vessels. With respect to both categories of vessel, it will be assumed that illegal fishing poses a threat to the sustainability of the stocks concerned, and that overcoming this threat therefore needs to be taken into account.

3.2 Nature of arrangement

In view of the existence of the African Atlantic Convention, the SRFC Convention and CECAF, the principal question must be whether any new instrument is indeed required for the purpose of cooperation over management of small pelagics in Northwest Africa.

²² International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966; entered into force: 21 March 1969; as amended by Protocols of 1984 and 1992

²³ These are stated by the ICCAT website (www.iccat.es) to be the following: "Atlantic bluefin (*Thunnus thynnus thynnus*), yellowfin (*Thunnus albacares*), albacore (*Thunnus alalunga*) and bigeye tuna (*Thunnus obesus*); swordfish (*Xiphias gladius*); billfishes such as white marlin (*Tetrapturus albidus*), blue marlin (*Makaira nigricans*), sailfish (*Istiophorus albicans*) and spearfish (*Tetrapturus pfluegeri*); mackerels such as spotted Spanish mackerel (*Scomberomorus maculatus*) and king mackerel (*Scomberomorus cavalla*); and, small tunas like skipjack (*Katsuwonus pelamis*), black skipjack (*Euthymus alletteratus*), frigate tuna (*Auxis thazard*), and Atlantic bonito (*Sarda sarda*)". This list is presumably based on Art IV(1) of the Convention, which refers to "tuna and tuna-like fishes (the Scombriformes with the exception of the families Trichiuridae and Gempylidae and the genus *Scomber*) and such other species of fishes exploited in tuna fishing in the Convention area as are not under investigation by another international fishery organization".

²⁴ See footnote 17.

²⁵ See footnote 16.

3.2.1 Cooperation with the African Atlantic Convention

One function of the convention's Bureau is to put relevant recommendations to the Conference. The Conference is in turn to formulate recommendations. In theory, this system of consultative mechanisms could be used to adopt research and stock assessment or conservation and management measures specific to small pelagics. Thus the Bureau could draft recommendations on these matters for the Conference, and the Conference could formulate them further and adopt them.

In practice, however, a primary consultative mechanism meeting only every two years is unlikely to be compatible with the management needs of fisheries for small pelagics, and delegations composed of ministers may be inappropriate for detailed decisions on a particular fishery. Thus if cooperation over the management of small pelagics between the convention parties were to be achieved, it would need to be through some amendment of the existing system of consultative mechanisms.

Furthermore, the scope and membership of the convention extends well beyond the coastal States of Northwest Africa. It is not known if there are any subsidiary bodies dealing with fisheries on a sub-regional basis. In any event, the maintenance or introduction, as appropriate, of institutional machinery enabling a focus on Northwest Africa would be helpful.

The fact that Cape Verde, The Gambia and Mauritania are not contracting parties to the convention is also relevant. If the convention is to be used as a forum for cooperation in Northwest Africa on small pelagics, the reason for the lack of accession by these three States to the convention could be investigated and perhaps resolved.

3.2.2 Cooperation within the SRFC

One function of the SRFC's Coordination Committee is to make recommendations to the Conference of Ministers on matters to be examined. The Conference is in turn to decide on all matters relating to the preservation and exploitation of marine resources in the sub-region.

As with the African Atlantic Convention discussed in section 3.2.1 above, this system of consultative mechanisms could in theory be used to adopt research and stock assessment or conservation and management measures specific to small pelagics. Thus the Coordination Committee could make recommendations on this matter to the Conference, and the Conference could in turn adopt them. However, the same problems as outlined for the African Atlantic Convention apply to the SRFC: the primary consultative mechanism is a forum of ministers and it meets only every two years. An amendment of the system would therefore be needed.

The fact that Morocco is not a member of the SRFC is also relevant. If the objective is cooperation on small pelagics throughout Northwest Africa, some means would be needed of linking Morocco into the activities of the SRFC. Possibilities might include a MOU or joint statement between Morocco on the one hand and either Mauritania or all the members of the SRFC on the other.

3.2.3 Cooperation within CECAF

CECAF has been constrained by several factors including *inter alia*: lack of funding, a complacent attitude and lack of commitment to CECAF of some members; low participation and attendance at the sessions of the Committee and the meetings of its subsidiary bodies; inadequate implementation of its recommendations; problems of communication and inadequate secretariat work (CECAF/XV/2000/6; para 8).

As with the African Atlantic Convention, the membership of the Committee extends well beyond the coastal States of Northwest Africa and there are currently no CECAF subsidiary bodies dealing with fisheries on a sub-regional basis.

Though the body has the power to formulate conservation and management measures, it may only recommend their adoption and implementation. In general, the track record of CECAF in collection, collation and analysis of data has been stronger. The Committee might therefore provide an effective forum for cooperation on research and stock assessment and perhaps also conservation and management measures merely of an advisory nature.

However, the degree to which it performs either of these roles needs to be considered in light of the fact that two non-FAO sub-regional arrangements currently exist within the geographical area covered by CECAF: the SRFC and the Regional Fisheries Committee for the Gulf of Guinea (COREP). It could be argued that these non-FAO bodies themselves provide the sub-regional emphasis that is currently missing within CECAF, and as such would be the most appropriate vehicles for any cooperation on a sub-regional basis. The counter argument is that some States (notably Morocco in the case of Northwest Africa) are not parties to these non-FAO sub-regional arrangements.

More ambitiously, it has been suggested that CECAF “might provide ... the necessary expertise for discussing common management problems and elaborate solutions for shared stocks and the framework within which the countries jointly or individually can decide on the appropriate actions for implementation” and also that “[t]he Committee might wish to include in the functions of the Commission wider scientific and technical tasks, performing a role similar to the International Council for the Exploration of the Sea” (CECAF/XV/2000/6, paras 32 and 34(c) respectively).

With regard to the first of these ideas, one possibility is that CECAF might provide a forum for consultation among the non-FAO sub-regional arrangements, especially if the coastal States in the sub-region between the SRFC and COREP sub-regions were also to form a non-FAO sub-regional arrangement. With regard to the second idea, a science secretariat role might indeed become appropriate if cooperation on conservation and management instead took place largely on a sub-regional basis.

3.2.4 Conclusion

The institutional machinery of both the African Atlantic Convention and the SRFC is not geared to active management of small pelagics, either in terms of research and stock assessment or in terms of conservation and management measures. This is because the decision-making body in each case is a consultative mechanism consisting of ministers, who normally meet only once every two years. In each case, some amendment of the existing system of consultative mechanisms would be needed.

If the African Atlantic Convention were to be used in preference to the SRFC, the lack of accession by Cape Verde, The Gambia and Mauritania would need addressing. If the SRFC were to be used in preference to the African Atlantic Convention, some means of linking Morocco into the activities of the SRFC would be needed. Possibilities include a MOU or joint statement between Morocco on the one hand and either Mauritania or all members of the SRFC on the other.

CECAF may provide a suitable forum for limited forms of cooperation. Its strengths lie in collection, collation and analysis of data, but it has also made a number of recommendations on fisheries management. All of its work though is currently on an advisory basis. Though there is a Scientific Sub-Committee, there is no subsidiary body dealing only with Northwest Africa. Furthermore, the reported lack of support of CECAF, and the existence of non-FAO sub-regional arrangements in its geographical area do not promote confidence in CECAF as a suitable arrangement for cooperation.

Despite the shortfalls of all three arrangements, it would be logical in view of their pre-existence to solve these shortfalls rather than invent a new arrangement. A discussion of the likelihood of solving these shortfalls is beyond the scope of this report. However, any low likelihood of solving the shortfalls should not be seen as a barrier to cooperation. If none of the three arrangements can be used, the possibility remains of neighbouring States forming, say, bilateral or trilateral cooperation arrangements. In terms of cooperation, it's important to mention the 14th Ordinary Session of the Ministers Conference of the Sub-Regional Commission on Fisheries, which took place from 19 to 20 of September 2001, in Nouakchott, Mauritania. This Commission is considered as an important instrument of cooperation and economic integration for countries members. During this session, a delegation from Sierra Leone confirmed the will of the country to become member. The conference resulted in the adoption of a Declaration called "Nouakchott Declaration" on Illegal, Unreported and Unregulated fishing. In this Declaration, the states members expressed their will to prevent those illegal activities and their support to the international plan of action for the same purpose.

3.3 Scope

3.3.1 A scope beyond fisheries

A. Existing arrangements

In the case of the African Atlantic Convention, the SRFC Convention and CECAF, the scope in each case does not extend beyond fisheries.

B. Arrangements from first principles

The principal issue in this report is the cooperative management of small pelagics. Beyond that, the question is whether there are other issues that should be included in any arrangement. Though it is beyond the scope of this report to suggest such issues, it is reasonable to suggest at this stage that the question should be given some thought if the concept of a small pelagics arrangement develops.

3.3.2 References to “shared stocks”

A. Existing arrangements

Art 2(d) of the African Atlantic Convention states that: “The objectives of this Convention shall be to enable Parties ... to enhance, coordinate and harmonize their efforts and capabilities for the purpose of conserving, exploiting, upgrading and marketing fishery resources, *considering in particular fish stocks occurring within the waters under the sovereignty or jurisdiction of more than one Party*” (emphasis added). However, neither the SRFC Convention nor the CEEFAC Statute or 1992 Terms of Reference refer to shared stocks.

B. Arrangements from first principles

In any arrangement focusing on management of small pelagics, it would be logical to refer to shared stocks in the preamble and, say, in the “objectives” section. One solution could be to use text from Art 63(1) LOSC [e.g. Australia/Indonesia Agreement and the African Atlantic Convention].

3.3.3 Provision for consultative mechanisms

The question of consultative mechanisms will be considered in section 3.7 below.

3.3.4 Species covered

A. Existing arrangements

The African Atlantic Convention covers fishery resources in general (Art 3). The SRFC Convention addresses marine resources in general (Art 2). The 1992 CEEFAC Terms of Reference refer to “marine fishery resources”.

B. Arrangements from first principles

Any cooperation arrangement need not be expressly restricted in title or purpose to small pelagics. For example, establishing a consultative mechanism that allowed for decisions to be made on fisheries management for shared stocks in general would avoid the need for duplication of mechanisms for the various different types of shared stocks. However, any general consultative mechanism would need to be sufficiently flexible and responsive to be effective with regard to small pelagics.

The scope of an arrangement in terms of species covered may be dictated by the political situation. For examples, States working together for the first time in the context of conservation and management measures may be unwilling to create a framework arrangement for management of shared stocks in general, but may be happy to start with an arrangement expressly limited to specified species (e.g. small pelagics, or even particular species of small pelagics). Satisfactory progress with regard to the particular species concerned might then lead to new arrangements for further species or to the drafting of a general framework arrangement.

3.3.5 Access rights

A. Existing arrangements

In the case of the African Atlantic Convention, the SRFC Convention and CECAF, there is no express provision for (a) reciprocal or one-way access among the parties or (b) agreement between the parties on an access regime for foreign flagged vessels. However, the SRFC Access Convention establishes a legal framework regarding access by vessels to a party's waters, and the SRFC Hot Pursuit Convention establishes principles regarding the exercise of the right of hot pursuit in respect of the parties' flag vessels and vessels of other flag States. Furthermore, Kelleher has recently produced a report on access regimes for foreign-flagged vessels for the SRFC.

B. Arrangements from first principles

If the politics permit, there may be scope for reciprocal or one-way access among the States involved in any cooperation arrangement. However, if access is to be an element in cooperation over shared stocks, rather than simply a tool for political cooperation or raising of funds, it should be carefully integrated into any cooperation arrangement. The details of integration will of course depend on what degree of cooperation the States have in mind.

Suppose that State A and State B are neighbouring coastal States in Northwest Africa, and that A allows fishing access to its waters by B to fish for a shared stock. As a starting point, one would expect the agreement to require that B's vessels are bound by the conservation and management regime applicable in A's waters. However, this regime might already have been agreed jointly between A and B (and be equally applicable in B's waters). The degree to which A and B then cooperate on MCS to ensure that B's vessels meet the regime in A's waters is for A and B to decide between themselves.

Section 2.12 above contains a wide array of examples of MCS cooperation. For example, A could require that all landings by B's vessels in B's ports are notified to A. A and B could enter into a reciprocal enforcement agreement [e.g. Canada/US Enforcement Agreement] whereby each makes it an offence to breach the other's regime. A and B could then establish an accompanying procedure by which in the event of one of B's vessels offending and then fleeing from A's waters back to B, A could notify B and expect certain follow-up. If A and B had previously agreed a total allowable catch for the species concerned, and allocated this between them, one would also expect agreement on whether the catch by B's vessels in A's waters should be deducted from A's allocation or B's allocation (as appropriate).

The purpose of this example is not to define how access should be integrated into a cooperation arrangement between two or more States. It is simply to make the point that there is scope for allowing access and yet also making it part of the cooperation, indeed perhaps even adding some cooperation provisions specific to the matter of access.

Beyond reciprocal or one-way access by vessels flying the flag of a party to a cooperation arrangement, there is also the question of access by vessels of third-parties. Vessels flagged to States outside the region play a very important part in the harvesting of small pelagics in Northwest Africa. For example, Kelleher states that "[t]he industrial fleets fishing for small pelagics [within the SRFC members' waters] ... are comprised almost entirely of distant-water vessels".

Once again, suppose that State A and State B are neighbouring coastal States in Northwest Africa and have agreed to cooperate over a shared stock. Suppose that a third-party vessel has been licensed to fish in A's waters for that stock. A seeks B permission for this third-party vessel to fish in B's waters. In those circumstances, B would not necessarily be interested in agreeing to this request since B might stand to gain more financially by negotiating directly with the third-party vessel itself.

However, if A and B are truly interested in cooperating over the shared stock, there may be scope for agreeing between themselves an access regime for foreign flagged vessels. Examples from the South Pacific are already available for scrutiny [e.g. Nauru Agreement; Niue Agreement; Micronesia Arrangement]. Furthermore, as stated above, Kelleher has recently produced a report on this subject for the SRFC.

The options for an agreed access regime for foreign flagged vessels will not be elaborated here. The point is simply made that just as for access regarding a neighbour's vessels, there is scope for integrating third-party access into cooperation arrangements for shared stocks, at the levels of *inter alia* conservation and management and MCS.

3.3.6 Arrangements dealing only with MCS or only with conservation and management

A. Existing arrangements

The African Atlantic Convention has provisions both on conservation and management and on MCS. On conservation and management, the parties are to endeavour to adopt harmonized policies concerning the conservation, management and exploitation of fishery resources, in particular with regard to the determination of catch quotas and, as appropriate, the adoption of joint regulation of fishing seasons (Art 3(4)). On MCS, the parties are to work and collaborate with all the means at their disposal, or which they may jointly acquire to ensure the monitoring, surveillance and control, including technical control, of fishing vessels operating in the region (Art 5).

CECAF too potentially makes provision for both conservation and management and MCS. Thus the 1992 CECAF Terms of Reference provide for making "appropriate recommendations for the adoption *and implementation* for [conservation and management] measures" (emphasis added).

In the SRFC Convention, the mandate of the Conference of Ministers is put very broadly, to include *inter alia* deliberating on any issue regarding the preservation and exploitation of the sub-region's marine resources. That this applies to both conservation and management and MCS is corroborated by the SRFC Access Convention (on conservation and management) and the SRFC Hot Pursuit Convention and 1993 Protocol (on MCS).

The SRFC Hot Pursuit Convention and 1993 Protocol are not specific to any particular stock; they apply to fisheries in general. Thus, were a new arrangement on management of small pelagics to be adopted within the SRFC, there are at least two possibilities regarding MCS. One would be to avoid provision for MCS in that arrangement, instead developing further the general system of MCS cooperation provided for by the SRFC Hot Pursuit Convention and 1993 Protocol (e.g. through further protocols). The other would be to include MCS cooperation with the new arrangement on small pelagics.

B. Arrangements from first principles

An arrangement dealing with MCS only might well be appropriate if an arrangement on conservation and management proved to be a political step too far. As has been illustrated in section 2.12 above, there are degrees of cooperation on MCS. The amount of cooperation can be chosen to match the amount of political will that exists. Furthermore, since MCS cooperation is indeed such a flexible concept, it would be disappointing if any arrangement that did address conservation and management cooperation did not also provide for some form of MCS cooperation.

3.4 Provision for harmonization

A. Existing arrangements

The African Atlantic Convention contains many direct or implied references to harmonization of conservation and management measures (e.g. preamble, Arts 2(d), 3(4), 4 and 13). The SRFC Convention also refers directly to harmonization of such measures (preamble, Art 2, Art 5). However, in both cases the references in effect go no further than pronouncing harmonization merely as an aspiration. The 1992 CEEFAC Terms of Reference make no direct or implied references to harmonization of conservation and management measures.

B. Arrangements from first principles

Harmonization of conservation and management measures, in the sense defined in section 2.4 above, is a sensible goal for any arrangement aiming to achieve cooperation in conservation and management. As a minimum, it could be provided for in an arrangement on small pelagics in terms of an aspiration, e.g. “the parties shall endeavour to harmonize their respective conservation and management measures”. Thus the duty is to try to harmonize, rather than to actually harmonize.

Such wording may be more acceptable to States that may feel uneasy with the whole notion of cooperation on conservation and management measures.

To take a step further than simply creating a duty to try to harmonize, there are three main possibilities: (a) to provide for a primary consultative mechanism that can in turn make binding decisions; (b) to provide for quantitative technical measures in the arrangement; or (c) to provide for percentage or tonnage allocations in the arrangement. All of these require substantial political will.

In a multilateral situation, option “(a)” above may be acceptable if there is a suitable objection procedure. This is discussed further in section 3.7 below. Option “(b)” may create inflexibility. For example, the SRFC Access Convention 1993 establishes a minimum mesh size for pelagic trawlers of 40mm (see Art 5 and Annex II) across all SRFC members. To change this figure would require an amendment to the convention. For improved flexibility, it might be more appropriate for matters such as mesh size to be established and amended instead by appropriate consultative mechanisms.

Option “(c)” is a particularly tough political hurdle to cross. In general, allocation is made on the basis of specified criteria. Examples of such criteria include zonal attachment, historical catch records and conservation efforts. However, States may be reluctant to lock themselves

into a formula that (a) may be based on unreliable statistics or (b) may prove difficult to alter if the circumstances change (e.g. small pelagics changing their distribution according to changes in climate).

Admittedly, agreement over a total catch or effort and allocation of this total among the States is a very useful foundation for cooperation. But cooperation is not impossible without it. In view of the potential difficulties in agreeing allocation, failure to provide for quantified allocations in an arrangement should not be seen as a reason for not proceeding with cooperation in conservation and management in other directions.

3.5 Arrangements with some maritime boundary delimitation aspect

All seven States in question in this section have established exclusive economic zones or exclusive fishing zones.²⁶ With the exception of boundaries in relation to Cape Verde, the only maritime boundary that remains undelimited between the States in question is that between Mauritania and Senegal. The effectiveness of the maritime boundary delimited between Mauritania and Morocco in 1976 appear to be in doubt²⁷ and as far as Cape Verde is concerned, only its maritime boundary with Senegal has been delimited.

The lack of certainty in relation to some maritime boundaries among the States concerned may have implications for the management regimes for shared stocks. If two neighbouring States wish to commence cooperation over their shared small pelagics, those States may need to pay more attention to boundary regions that may previously have been “ignored” from the point of view of research and stock assessment, conservation and management, or MCS.

To facilitate this, the uncertain status of these waters can either be clarified by the delimitation of a boundary (whether permanent or provisional [e.g. Australia/Indonesia MOU]) or at least acknowledged by the establishment of a special zone in which a specified fisheries regime can in turn be applied as part of the overall cooperation effort.

Several of the arrangements considered in section 2.5 above provide examples of the latter [Faroës/UK Agreement; Colombia/Jamaica Agreement; Argentina/UK Joint Statement; Japan/China Agreement; Norway/Russia 1978 Agreement; Halibut Convention; Trinidad and Tobago/Venezuela Agreement]. Furthermore, in Northwest Africa itself, Guinea-Bissau and Senegal are parties to a 1993 agreement²⁸ establishing a “joint exploitation zone” in the vicinity of their maritime boundary.²⁹ However, it is important to point out that this zone is not part of an overall arrangement between the two States to manage shared stocks throughout

²⁶ Churchill and Lowe, pp. 463-471.

²⁷ Charney and Alexander, vol I, pp. 294 and 885.

²⁸ Management and Cooperation Agreement between the Government of the Republic of Senegal and the Government of the Republic of Guinea-Bissau, 14 October 1993 (entered into force: 21 December 1995), reproduced in Chamey and Alexander, vol III, pp. 2257-2259.

²⁹ This zone is situated between the 268° and 220° azimuths drawn from Cape Roxo (with a qualified exception of the parties' territorial seas) and lies to either side of the boundary originally delimited in 1960. The zone is to be jointly exploited by the parties (Art 1). “Fishery resources” are to be allocated among the parties on a 50:50 basis (Art 2). The parties are to establish an “International Agency” for the exploitation of the zone and this agency is to succeed both parties “with respect to the rights and obligations arising out of the agreements concluded by each of the States Parties relating to exploitation of the resources of the zone” (Arts 4-5). A protocol of 1993 (Protocol of Agreement Relating to the Organization and Operation of the Agency for Management and Cooperation between the Republic of Senegal and the Republic of Guinea-Bissau, 12 June 1995 [entered into force: 21 December 1995], reproduced in Charney and Alexander, vol III, pp. 2260-2278) elaborates on the means for implementation of the 1993 agreement, including institutional machinery consisting of “the Agency for Management and Cooperation”, “the Enterprise” and “the Authority” and details relevant to fisheries in the zone.

their respective waters. Instead, it is a specific, negotiated response to concerns by Guinea-Bissau over the validity of the maritime boundary originally delimited in 1960.³⁰

Nevertheless, the concept of the joint exploitation zone, or of the zones established by the other arrangements mentioned above, is something that might find application in relation to the waters off Northwest Africa in the event that any maritime boundaries in the region prove difficult to delimit.

3.6 Geographical scope

A. Existing arrangements

In the case of the African Atlantic Convention and the SRFC Convention, it is assumed that the geographical area covered is the waters under the sovereignty and jurisdiction of the contracting parties. The African Atlantic Convention uses the term “the Region” and defines this as “the area comprising the above-mentioned States” (Art 1(2)(a) (the latter being the African States bordering the Atlantic). The SRFC Convention refers to “the sub-region’s marine resources” (Art 5). In contrast, the Statute of CEEAC refers to “the marine fishery resources of the area defined under 1 above”, “1” defining an area in terms of geographical features, coordinates and lines of latitude and longitude.

B. Arrangements from first principles

As mentioned in section 3.1.7 above, for the purposes of this section it will be assumed that the small pelagic stocks concerned are migratory but remain within the confines of the waters of the Northwest African coastal States concerned. As such, there would be no legal imperative under the Law of the Sea Convention or the Fish Stocks Agreement to include a high seas element to the arrangement.

If a cooperation arrangement is addressing a stock shared between, say, two States and that stock potentially ranged widely throughout those States’ waters, it would be logical for the geographical scope to be defined in a way that covered all the waters of those States. Any exceptions (e.g. internal waters, protected areas) could then be provided for later. As mentioned in section 2.6, there are two broad approaches to defining such an area. One is to refer to geographic features, coordinates or lines of latitude/longitude. The other is to refer to zones of jurisdiction. The latter approach would be appropriate in this case.

In the case of Northwest Africa, the latter approach is facilitated by the fact that many of the maritime boundaries between the States are delimited. However, some boundaries are not delimited, another is in doubt and one has a joint exploitation zone associated with it. In an arrangement involving an undelimited boundary or a boundary that is in doubt, there are two broad options. One is to overlook the uncertainty and carry on regardless. This may be a simpler drafting solution but may well present problems of interpretation at a later point. The other is to somehow accommodate that uncertainty expressly in the drafting.

There are in turn two further broad options. One is use the approach taken in the Argentina/UK Joint Statement, concluded in the light of a fundamental disagreement between the parties over sovereignty in relation to the Falkland Islands/Malvinas. The Joint Statement

³⁰ See generally Chamey and Alexander, vol III, pp. 2251-2255 and Chamey and Alexander, vol I, pp. 867-870.

refers *inter alia* to “fish stocks in the South Atlantic” and to “waters between latitude 45°S and latitude 60°S”, rather than referring to the two parties’ waters.

The other option is to comprehensively identify a specific zone in relation to that boundary (see section 3.5 above). This is a politically more challenging solution, but one that may help to avoid future interpretation difficulties. If a zone were to be created, it would obviously be prudent to define its geographical extent in the arrangement. Such a definition would probably be most appropriately done by reference to geographical features, coordinates or lines of latitude/longitude.

3.7 Consultative mechanism in relation to fisheries aspects

A. Existing arrangements

The consultative mechanisms of the African Atlantic Convention, the SRFC Convention and CECAF have already been discussed in sections 3.1.3 to 3.1.5 above.

B. Arrangements from first principles

A multilateral consultative mechanism established to manage shared small pelagics could of course take many forms. This is illustrated by the wide variety of mechanisms illustrated in Table 4 and analysed in section 2.7 above. However, drawing on that variety and analysis, one possible form is as follows:

- (a) a consultative mechanism dedicated to operational fisheries management for shared stocks (including small pelagics), with a mandate to decide *inter alia* conservation and management measures and accompanying MCS measures;
- (b) receiving administrative support from a secretariat;
- (c) informed by a subsidiary body dedicated to the provision of scientific advice on fish stocks;
- (d) meeting annually, with scope for special meetings at lesser intervals subject to approval by a qualified majority;
- (e) with delegations composed of government officials, but also providing the opportunity for participation by relevant interest groups;
- (f) having the power to draft its own rules of procedure (and financial rules, if appropriate) but potentially subject to approval by the parties;
- (g) having the power to adopt decisions by qualified majority voting (with an objection procedure), such decisions being binding on the parties.

The basis for these elements is as follows (working backwards, from “(g)” to “(a)”). In a multilateral forum, qualified majority voting allows progress that a need for consensuality might inhibit. Yet provision for an objection procedure by individual States avoids threats to State sovereignty. With an objection procedure in place, a power to adopt binding decisions becomes more acceptable and avoids the need for a further, time-consuming, round of approval-seeking from governments by each of the delegations. A consultative mechanism of the type envisaged would need rules of procedure even if the key principles (such as voting and the binding nature of decisions) were laid down in any, say, treaty text. The rules would need to cover issues such as size and nature of delegations, triggers for special meetings, provision for a scientific advice body, links with any secretariat and substantive mandate of the consultative mechanism itself.

Having delegations composed of officials rather than ministers is probably appropriate for operational decisions on conservation and management measures (and associated MCS measures). However, the officials should obviously be empowered to act with due authority and bring a robust negotiating brief to the table. If delegations include representatives from, say, industry and environment groups, the credibility of their decisions is likely to be enhanced in the eyes of those groups. Regular meetings are desirable for fisheries management, but annual meetings may be too infrequent for small pelagics. However, element “(a)” of the scheme proposes that the consultative mechanism be established for conservation and management of shared stocks in general. If small pelagics demand more frequent meetings, these can be arranged. However, the cost of special meetings does need to be borne in mind. Annual meetings could be timed to match those of other relevant forums (subject to the timing of any fishing seasons).

Conservation and management measures should be based as much as possible on scientific advice. Once again, costs become relevant here. For the provision of scientific advice, there are two broad options: use of a science secretariat or use of a subsidiary body composed of the parties’ national researchers. These two approaches have recently been compared in detail by Ward *et al.* and will not be further discussed here. Administrative support from a secretariat is also potentially a costly affair. However, in the case of the SRFC, advantage could be taken of the existing secretariat (though this would still have cost implications). Finally, the consultative mechanism should have a mandate not just to take conservation and management measures but also relevant MCS measures. A conservation and management remit broader than just small pelagics would avoid duplication of schemes for different types of shared stocks.

3.8 Approaches to cooperation

This section does not seek to prescribe the detailed measures on small pelagics that parties to any cooperation arrangement should take through a consultative mechanism or otherwise. However, having in section 2 analysed the types of measure taken by the 39 arrangements under consideration there, it may still be useful to provide some examples, based on that analysis, of what cooperation measures for small pelagics might look like. This have been done below for each of research and stock assessment, conservation and management and MCS. In each case, it is assumed that a consultative mechanism of the type proposed in section 3.7 above has been adopted.

3.8.1 Research and stock assessment

The functions of the consultative mechanism could include the following:

(a)	specification of the types of data and information to be supplied by the States;
(b)	specification of the format and timetable by which such data and information are to be provided;
(c)	analysis of such data and information in order to assess the status of stocks and the impact of conservation and management measures on stocks;
(d)	adoption of procedures for implementation of joint marine scientific research programmes;
(e)	adoption and coordination of such programmes;
(f)	coordination of the exchange of relevant data and information between States.

If a subsidiary body were to be established to provide scientific advice on fish stocks, some of these functions (e.g. analysis of data and information) could be allocated to that body.

3.8.2 Conservation and management

The functions of the consultative mechanism could include the following:

(a)	determination and allocation of total allowable catch or effort;
(b)	regulation of quota exchanges and quota transfers;
(c)	establishment of closed (or open) areas or seasons;
(d)	regulation of by-catch, discarding, logbooks, catch reporting, fishing gear and appliances (including stowage and marking), and size limits of fish;
(e)	adoption of precautionary approach;
(f)	adoption of long-term management strategies;
(g)	collation of conservation and management measures adopted by the States;
(h)	coordination of the exchange of relevant data and information between States.

Any failure by the States concerned to agree on allocation need not mean that further conservation and management cooperation agreement is then impossible. For example, harmonized technical measures may still be relevant and useful even in the absence of any agreement on total allowable catch or allocation.

If a particular species of small pelagic demanded special attention, a subsidiary body (e.g. a working group) could be established to address that species.

3.8.3 Monitoring, control and surveillance

The functions of the consultative mechanism could include adoption of MCS measures. MCS measures could be adopted individually; alternatively a coherent scheme could be drawn up and adopted. The array of MCS measures summarized in section 2.12 above is very broad. Indeed, comparison of section 2.12 with sections 2.10 and 2.11 demonstrates that the variety of MCS measures that has evolved is much greater than the corresponding variety of research and stock assessment measures or conservation and management measures.

Elements of a MCS scheme relevant to small pelagics could include the following:

(a)	a general duty on each party to ensure compliance by its vessels with another party's rules and with conservation and management measures adopted by the consultative mechanism;
(b)	a duty on each party to make it an offence under its national legislation for its vessels to breach another party's rules;
(c)	a duty on each party to undertake specified and verifiable follow-up procedures against its vessels in the event of being notified by a party of breach by those vessels of that latter party's rules;
(d)	a duty on each party to undertake fisheries management port State control of foreign- flagged fishing vessels and support vessels, in specified circumstances;
(e)	a duty on each party to ensure that its vessels cooperate with the authorities of the coastal or port State during boardings and inspections;
(f)	a standardised observer programme;
(g)	a duty on each party to exchange, via the consultative mechanism, news on any enforcement action taken in respect of any vessel;
(h)	a duty on each party to exchange, via the consultative mechanism, lists of their respective vessels and observations of vessels not on these lists;
(i)	a duty on each party to take enforcement action against vessel in its waters that is not on the parties' pooled list of vessels and yet is engaged in fishing activities.

The tasks of drafting the scheme could be allocated to a subsidiary body (e.g. an MCS working group). The elements “(a)” to “(j)” above all involve the MCS resources of one State remaining within that State’s waters or land territory. However, there is also scope for adoption of measures or a scheme relating to *inter alia*: hot pursuit; pooled MCS activities; exchange of MCS resources (including personnel); and enforcement by a party against its vessels irrespective of their location. Furthermore, with regard to third-party vessels, there is scope for standardisation in the fields of licensing and access conditions and for regional registers.

3.9 Funding

The issue of funding of management arrangements may be divided into funding of the administrative budget and the funding for participation by parties at meetings.

Regarding the administrative budget, the approach adopted by the Indian Ocean Tuna Commission (IOTC) may be helpful in the context of an arrangement for Northwest Africa (acknowledging that item “(b)” below is not relevant since all the State parties to any arrangement for Northwest Africa are likely to be parties with fishing operations). The IOTC approach has been designed to cater for differences among the parties in terms of *inter alia* GNP and average catches. It is not unique; other arrangements also take into account average catch per party and some index of economic status (e.g. NEAFC Convention [Art 17(4)]; Convention on the Conservation and Management of Fishery Resources in the South-east Atlantic Ocean [Art 12(3)]; Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Art 18(2)).

The budget of the IOTC is divided among the contracting parties to the underlying convention. The formula for calculating the parties’ contributions is based on four elements: (a) 10% of the budget to be divided equally among the parties; (b) 10% to be divided equally among the parties with fishing operations; (c) 40% to be divided among the parties on the basis of per capita GNP, weighted according to the economic status of the parties in accordance with the World Bank classification; and (d) 40% to be divided among the parties in proportion to their average catch, weighted by a coefficient reflecting their development status.

An alternative approach is to ignore differences of economic status and average catches between the parties. This approach has been taken for example by the parties to the Lake Victoria Convention; Art 4 provides that once donations have been taken into account, the remainder of the administrative budget is to be met by equal contributions from the three parties. (See also, for example, Halibut Convention, Art III(1).) Obviously, the approach of ignoring differences of economic status and average catches may be more appropriate where such differences are minimal.

Regarding attendance at meetings, the standard approach adopted by management arrangements is for the individual parties to fund their own attendance. Obviously, though, there is scope for minimising the number of meetings and for timing such meetings to coincide with others. In cases where a State (rather than the secretariat) hosts the meeting, one approach could be for the hosting State to cover the hosting costs (and for such meetings to be rotated among the parties) while an alternative could be for some or all of those costs to be met out of the administrative budget.

4. THE GAMBIA, MOROCCO, MAURITANIA AND SENEGAL

4.1 Introduction

This section will consider these States alone, on the basis they are the States participating in the Fridtjof Nansen Programme for Northwest Africa.

4.2 The legal framework

This section will consider matters in light of the following arrangements:

- African Atlantic Convention
- SRFC Convention
- CECAF
- Cooperation Agreement in Fishing Sector between the Kingdom of Morocco and the Islamic Republic of Mauritania.

Morocco and Senegal are contracting parties to the African Atlantic Convention, while The Gambia and Mauritania are only signatories. The Gambia, Mauritania and Senegal are contracting parties to the SRFC Convention, while Morocco is not. All four States in question are members of CECAF. Morocco and Mauritania have signed an agreement for the cooperation between the two states in marine fisheries related matters . These four arrangements, and the scope for cooperation within each of them, has already been discussed in section 3 above.

4.3 Arrangements for cooperation

The choice of arrangement for cooperation among the four States is far from immediately clear. In the case of each of the existing four arrangements, only a portion of the membership of the arrangements is in issue. Furthermore, in the case of the African Atlantic Convention only two of the four States in question are parties, and in the case of the SRFC Convention only three of the four States are parties. In these circumstances, and in view of the current weak position of CECAF, it is suggested that two broad options are available.

The first is for the four States in question to form an arrangement among themselves. The justification for this would be that (a) it would allow focus on the unit of principal interest to the Fridtjof Nansen Programme for Northwest Africa and (b) it would allow negotiation between the four States from first principles (e.g. those suggested in sections 3.3 to 3.8 above). It need not be a treaty; on the contrary a MOU or joint statement among the States might be more appropriate.

Its chief disadvantage is that it would ignore the significant cooperation arrangements already in place. Further, it would potentially need to be integrated with any existing bilateral arrangements existing between any of the four States in question (e.g. the arrangements between The Gambia/Senegal, Mauritania/Senegal, Morocco/Senegal, and Morocco/Mauritania [see Table 7]).

The second broad option would instead be to use any of the existing arrangements. However, use of such arrangements would require (as appropriate):

(a) accession to the African Atlantic Convention by The Gambia and Mauritania coupled with an amendment of the existing system of consultative mechanisms and introduction of a sub-regional approach (see section 3.2.1 above); or

(b) a means of linking Morocco into the activities of the SRFC coupled with an amendment of the existing system of consultative mechanisms (see section 3.2.2 above); or

(c) strengthening of the position of CECAF coupled with introduction of a sub-regional approach (see section 3.2.3 above).

4.4 Themes for cooperation

The possible themes for cooperation are research and stock assessment, conservation and management, and MCS. Elements of cooperation under each of these themes have already been suggested in sections 3.8.1, 3.8.2 and 3.8.3, respectively. However, the following broad points can be made:

(a) the degree to which cooperation in any of the themes is attempted can be tailored to match the amount of political will that exists;

(b) in general, research and stock assessment is the least politically-contentious theme for cooperation;

(c) cooperation in conservation and management need not be accompanied by cooperation in MCS (though in principle this is desirable);

(d) cooperation in MCS need not be preceded by cooperation in conservation and management.

4.5 Conclusion

Political circumstances are likely to drive both the nature of any cooperation arrangement between the four States in question and the theme and degree of any cooperation. The broad options on arrangements and themes for cooperation have been described in sections 4.3 and 4.4 above. Beyond these broad options, the availability of more detailed options will depend to a large extent on whether an existing arrangement is being used or whether a new arrangement is created. In either case, the more detailed options in sections 3.5 and 3.8 above are relevant. In the case of a new arrangement being created, the more detailed options in sections 3.3, 3.4, 3.6 and 3.7 are relevant. Though geared to arrangements for cooperation over small pelagics in Northwest Africa generally, the discussion in those sections (3.3 - 3.8) is equally applicable to The Gambia, Mauritania, Morocco and Senegal.