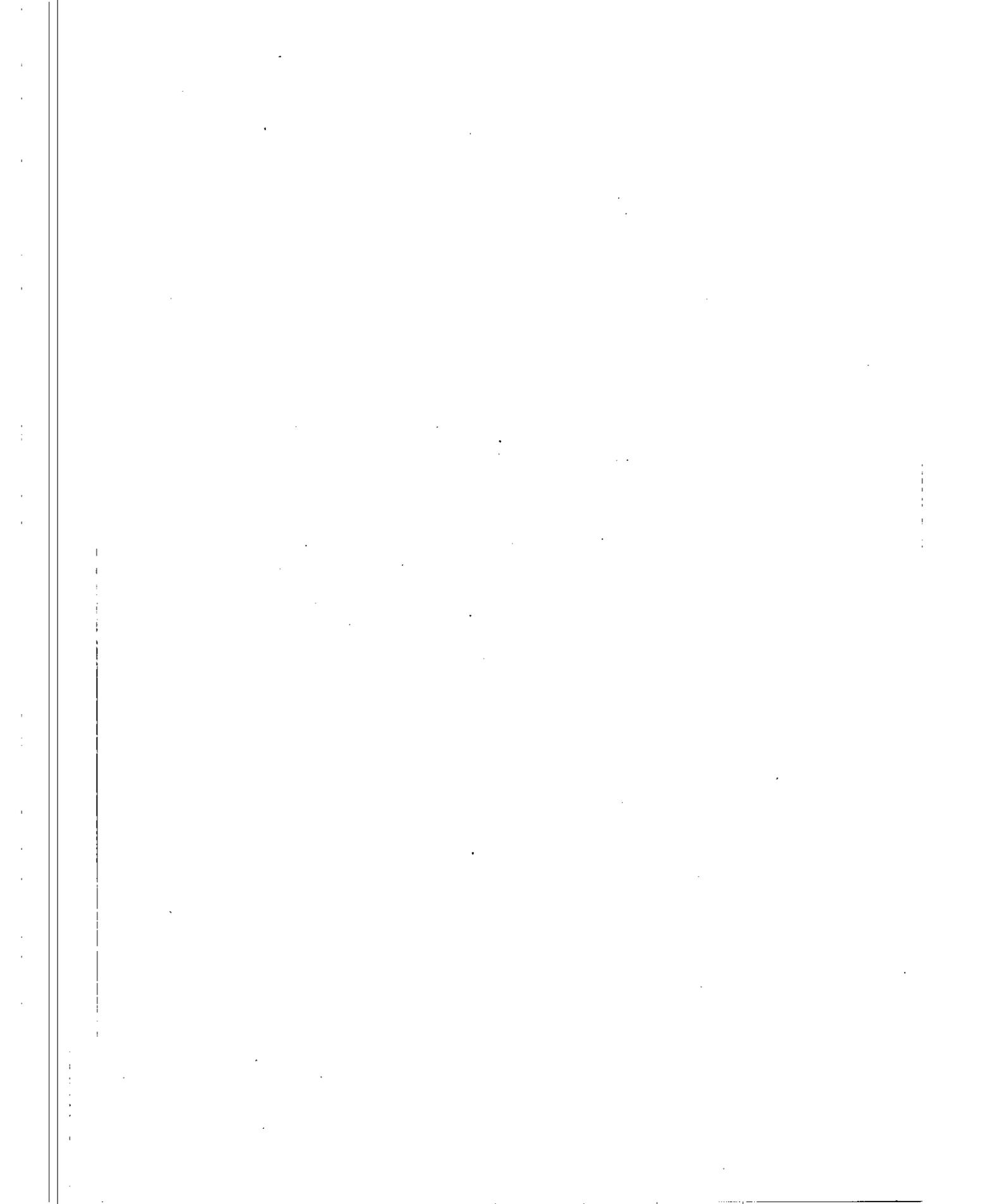


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Procedures (DSP)  
3-5 February 1999  
Bergen, Norway**

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**Report of the Working Group on Dispute Settlement  
Procedures (DSP)**  
(GC Doc. 99/2)

**3-5 February 1999  
Bergen, Norway**

The Working Group was organized in accordance with the joint decision by the General Council and Fisheries Commission at the 20<sup>th</sup> Annual Meeting, 14-18 September 1998 (item 4.5 of the General Council Report, GC Doc. 98/7).

**1. Opening of the Meeting**

The Chairman, Mr. Stein Owe (Norway), opened the meeting at 09.00 on 3 February 1999. The following Contracting Parties were represented at the meeting: Canada, Denmark (in respect of the Faroe Islands and Greenland), Estonia, European Union, Iceland, Japan, Latvia, Lithuania, Norway and the United States (Annex 1).

In his introduction, the Chairman referred to his revised Chairman's Paper (DSP WG Working Paper 99/1 – attached as Annex 2), which was based upon the initial Chairman's Paper (DSP WG Working Paper 98/3 – Annex 3). The General Council in September 1998 authorised the continuation of the work of the Group under the existing terms of reference. The Chairman anticipated that substantial progress would be made at this meeting. Contracting Parties were asked to clearly express their views and positions.

**2. Appointment of the Rapporteur**

Mr. Andrew Thomson (EU) was appointed Rapporteur.

**3. Adoption of the Agenda**

The provisional agenda was adopted (Annex 4).

**4. Review of the Chairman's revised paper on a NAFO dispute settlement mechanism and examination of any other possible elements in a NAFO dispute settlement mechanism**

i. The revised Chairman's Paper

The Chairman referred to the changes made to his original paper and reminded delegates of the background to this exercise in establishing a specific NAFO dispute settlement procedure. Just to follow the procedures set out in the UN Convention on the Law of the Sea (UNCLOS) and the 1995 UN Agreement would potentially involve a much slower resolution of disputes between NAFO Parties. This could give rise to damage to NAFO stocks. Furthermore, the provisions set out in the 1995 UN Agreement would not apply to discrete stocks.

As far as the format of a Dispute Settlement Procedure is concerned, the Chairman stressed that it was too early at this stage to know whether a separate protocol or an amendment to the NAFO Convention would be more appropriate. It was even suggested by one Party that a General Council resolution would be the most effective means of introducing DSP and allow for a rapid entry into force of such a scheme.

On the question of the desirability of a specific NAFO DSP, the Chairman recommended to continue discussions on the *possible elements* of such a DSP while leaving this question pending, not prejudging the final views of the Parties.

The actual changes set out in the revised Chairman's Paper were indicated by the Chairman. He felt that these changes took account of the discussion, which had taken place in conjunction with the NAFO Annual Meeting in September 1998. (The changes are either highlighted in bold in case of an addition, or indicated by "(-)" in the text in case of a deletion.)

There was a wide-ranging discussion on this paper. Initial comments from Contracting Parties commended the Chairman on the work he had carried out. Nobody felt that there was a need to replace the existing procedures in the framework of UNCLOS or the UN Agreement; nevertheless some felt there was a need for NAFO to draw upon those procedures and have its own DSP. Some delegations stressed the importance of this exercise as it would be used as an example for other regional fisheries organisations in the future. NAFO also needed to obtain rapid results in cases of dispute. As to the desirability of DSP, many delegations reserved their positions while one delegation proposed that this was a question which should be discussed at the level of the General Council.

- On the **new paragraph 4 to Article XII** of the Convention, the delegate of Canada felt this paragraph attempted to pick up on the Canadian initiative. He proposed that the provision should state explicitly that the declaration, any further measures adopted by the objecting state and any other post-objection behavior could be challenged and trigger the dispute settlement procedures. Canadian delegate also proposed that the provision specify that the declaration include reasons for the objection, a rationale for the autonomous measures (including scientific basis) and details on flag state enforcement of the autonomous measures.

Many delegations felt that it was important that the Party making an objection be required to explain the reasoning behind that objection. Having such information would be useful in allowing the Parties to better assess a particular situation and might even prevent dispute in the first place. One delegation questioned whether post-objection behaviour should form part of the substance of the DSP as this would risk moving the focus away from the substantive to the formal.

- Regarding the changes to **new paragraph 2 of Article...**, the Chairman's paper was aimed at narrowing the gaps between Parties. The Canadian delegate took the view that the UN Agreement already provided for a broad dispute settlement mechanism and no further mechanism was needed. If, however, Contracting Parties wanted a broad dispute settlement mechanism that applied to NAFO, Canada would agree to a provisional implementation of the UN Agreement that bound all Contracting Parties to that Agreement and applied the UN Agreement to discrete stocks as well as to straddling stocks. Some Parties, however, felt that it was necessary to have specific NAFO procedures because not all Contracting Parties have ratified UNCLOS or the UN Agreement.

- Concerning **new paragraph 3 of Article...**, this was felt by the European Union Delegation to be the cornerstone of the original EU paper upon which the Chairman's papers were based. It addressed the fundamental issue of the need for speedy reaction in the case of dispute and allowed to draw upon NAFO expertise. The ad hoc panel would be obliged to report and if possible, to make recommendations. Any dispute not resolved by the ad hoc panel would pass to the general procedures.

This issue was discussed at length by the Parties and there were a wide variety of views expressed. It was clear that if there was no longer a dispute between Parties, then the procedures would cease. Similarly, if the panel was not desired by either Party to a dispute, it would not take place. One delegation expressed concern that the panel could be abused. Other delegations suggested that the panel could be noncompulsory and nonbinding. Notions of mediation and conciliation came up in the discussion, and the delegate of Canada questioned the value of the panel. He suggested that it did not add to the options available to states under Part XV of UNCLOS, that it might promote disputes where none existed now by offering options to immediate resolution of differences, and that the panel would slow a definitive resolution of differences by forcing a nonbinding process on Contracting Parties before they could resort to a binding one.

- On the **new paragraph 4 of Article...**, the Chairman pointed out that the idea was to have provisional measures in place at all stages of the process.

It was noted that in the event of an objection, the proposal of the Fisheries Commission was no longer binding for the Contracting Party concerned. It could then be difficult to accept the proposal as provisional measure. Article 290 of UNCLOS and Article 31 of the UN Agreement would allow for the application of provisional measures. It was, nevertheless pointed out that there could be a time-gap between the start of a dispute and the introduction of provisional measures. The EU delegate underlined that it was of the utmost importance that the Parties retain control of any procedures and therefore it was necessary for provisional measures to be available if desired. The EU delegate also indicated that with the establishment of a NAFO-specific DSP, a fast-track approach would be available. Some delegations said that the provisional measures were important and wanted the Chairman's text kept on the table. Deletion of this provision would exacerbate the effect of the delay in finding a definitive solution if a non-binding panel process was imposed on Contracting Parties.

- With regard to the **new paragraph 5 of Article...**, there was some discussion as to the necessity of these references in view of the existence of paragraph 2, but it was pointed out that the objectives of these two paragraphs are entirely different.

The delegate of Denmark (in respect of Faroe Islands & Greenland) felt that there might be a problem of time limits and produced a text on the calendar of events according to DSP WG Working Paper 99/1 (DSP WG Working Paper 99/2 – Annex 5). This paper highlighted the practical time implications involved in an ad hoc panel process as described in the Chairman's paper. They stressed the need in NAFO DSP for urgency in dealing with matters. The paper enabled the delegates to have a constructive discussion on improving procedures.

- Finally, the delegates examined the **new Annex to Article...**, where the Chairman had essentially added a new paragraph in point 3 to cover clashes of nationality. However, there were discussions on the Annex as a whole. Discussion focused on the number of panellists in an ad hoc panel and touched upon who should be allowed to be present during the proceedings. Views were expressed that the different interests represented in a dispute should be reflected and that it was essential for transparency that other NAFO Contracting Parties should have the opportunity to be present. It was also stated that the panel itself should retain a degree of independence from the Parties to the dispute and that the options open to it should not be limited in any way. Delegates also had a brief discussion on the rules to be established by the General Council in respect of fees and expenses.

The Working Group briefly examined the draft rules of procedure for the panel proceedings, but felt that it was more important at this stage to concentrate on the substance of the DSP.

ii. First EU paper

As a first and preliminary attempt to rationalise the outcome of the first round of discussions, the EU delegation produced a paper (Annex 6) which would replace new paragraph 3 of Article... of the Chairman's paper. This new paragraph would give the Parties the opportunity to opt out of the panel procedure. If a dispute arose in the context of a Fisheries Commission proposal, the Parties would be obliged to consult within a given time-frame (to be set out in an operative section of the DSP) in an attempt to resolve the issue or agree on the type of DSP to be followed. This would mean the choice of either an agreement between the Parties, the use of an ad hoc panel or the resort to general dispute settlement procedures including binding decisions.

Following a number of enquiries from other delegates, the EU delegate explained that it was for the Parties involved to choose the procedures. Once an ad hoc panel was established, no opt-out would be possible. With the use of optional procedures, there would be incentives for the Parties to use the NAFO DSP.

iii. Latvian paper

The Latvian delegate explained that its paper (DSP WG Working Paper 99/3 – Annex 7) was based on the original EC proposal of April 1998. Technical issues were moved out of the main body of the text and into the annexes. They felt that the right direction to take was one involving a voluntary dispute settlement procedure. Only if this were not possible should the binding procedures be considered. Finally, from a procedural point of view, they felt that the adoption by the General Council was preferable to an amendment to the Convention.

iv. Second EU paper

The EU delegate explained that its second paper (DSP WG Working Paper 99/4 – Annex 8) was meant as a working paper and was an attempt to put on paper a number of ideas, which still had to be refined. It incorporated the elements contained in their first paper, concentrating on a skeleton of operative parts with the annexes and procedural elements left aside. A declaration of intent had been introduced in paragraph 1, rather than as a separate article, since it was felt that this was the subject of co-operation between Parties. Paragraph 2 had been simplified. Paragraph 3 introduced a preliminary consultation phase with time limits for the work of the panel. Paragraph 4 covered provisional application of measures and finally, paragraph 5 remained unchanged from the Chairman's paper.

v. Discussion of the Latvian and second European Union papers

An extensive discussion of these two papers followed.

The Canadian delegate felt that the papers were expressing the views of the respective Parties rather than trying to bridge gaps, and thus were of a limited value. He continued to see no need for a separate NAFO DSP although they would consider such if that was the consensus of the Parties. Other Parties felt that the proposals on the table helped to clarify some of the issues discussed at the meeting. It was noted that the elements of concern raised in the Latvian paper had been incorporated into the EU paper.

The EU delegation explained that their idea was to have a broad mechanism, which would cover all kinds of disputes, but that the panel procedure set out in paragraph 3 would apply to conservation and management measures under Article XI of the Convention. Any disputes

concerning budgetary matters would be dealt with in the context of the general procedures set out in paragraph 2.

It was agreed that both papers should be examined in greater detail before any further consideration took place

vi. Conclusions to be drawn from the discussion

The delegate of Norway pointed out that the main objective of establishing a NAFO DSP was to resolve disputes between NAFO members. Measures were required which would allow for matters to be dealt with early and quickly during the fishing season. The Danish paper had enabled Parties to see some of the time constraints, which may arise during a dispute. They stressed that they would very much insist on a requirement to give reasons for objections even if no NAFO DSP were brought about. This was supported by the delegates of Denmark (in respect of Faroe Islands & Greenland) and Iceland.

The EU delegate stressed that it was now up to the NAFO Contracting Parties to design a DSP scheme which would take full account of the peculiarities of NAFO itself. He felt that their paper had been well received by other Parties as an attempt to bridge gaps, and the EU delegation was encouraged to continue its work along these lines. Particular emphasis was laid upon the desirability set out under Article 10 of the 1995 UN Agreement for NAFO to have its own DSP. The EU delegate felt that the discussions on this line should continue.

The delegate of Denmark (in respect of Faroe Islands and Greenland) underlined the need for urgency in the eventual procedures, in particular they noted the need to give certainty to the fishermen.

### **5. Report to the General Council**

Following the extensive discussion which took place at this meeting, the Working Group agreed that it would be necessary to digest the information, which had been produced, so that further guidance can be given to the Chairman. No further paper will be produced by the Chairman at this stage. This report of the Working Group, which reflects the current state of the discussions, will be forwarded to the General Council. It was pointed out that the General Council should consider the questions at issue and give guidance to the Working Group.

It was recommended that the Working Group should be authorised to continue its work. The Working Group considered that it might be appropriate to meet again inter-sessionally during the spring of 2000, and possibly also in conjunction with the Annual Meeting in September 1999.

### **6. Other matters**

There were no other issues discussed.

### **7. Adjournment**

The meeting adjourned at 13.00 on 5 February 1999.

### **Disposition of Report**

The Report was considered by the General Council at the 21st Annual Meeting, September 1999.

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**NAFO SECRETARIAT**

B. Cruikshank, Senior Secretary

**Annex 2. Revised Chairman's Paper**  
(DSP W.G. Working Paper 99/1)

**Settlement of disputes within NAFO – Proposal for amendments to the NAFO Convention**

*New Paragraph 4 of Article XII (existing Paragraph 4 to be renumbered Paragraph 5)*

4. An objection according to paragraph 1 **and** a notice of intention not to be bound by a measure according to paragraph 3 shall be accompanied by a declaration of the Commission member's intentions **following the objection or notice of intention not to be bound**. The declaration of intentions shall specify any autonomous measures to be established.

*Article...*

1. Contracting Parties shall cooperate in order to prevent disputes.
2. The provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereafter referred to as the "1982 UN Convention") shall apply mutatis mutandis to any dispute between Contracting Parties concerning the interpretation or application of this Convention.

Nevertheless, where **such** a dispute between Contracting Parties concerns one or more straddling fish stocks, Part VIII of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (hereafter referred to as the "1995 UN Agreement") shall apply mutatis mutandis.

The relevant parts of the 1982 UN Convention **and** the 1995 UN Agreement shall apply whether or not the Contracting Parties are also Parties to these instruments.

3. *Without prejudice* to paragraph 2, any dispute concerning the interpretation or application of a proposal adopted by the Commission pursuant to Article XI of this Convention (-) shall first be submitted to an ad hoc panel constituted as provided in Annex... to this Convention at the request of a Contracting Party.

The panel shall confer with the Contracting Parties concerned and shall endeavor to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes. To this end, the panel may make recommendations which it considers appropriate to preserve the respective rights of the Contracting Parties concerned and to prevent damage to the fish stocks in question.

Any dispute of this character not so resolved shall, if one of the Contracting Parties concerned so requests, be referred to binding procedures for the settlement of disputes as provided in paragraph 2.

4. When ad hoc panel procedures are requested the Contracting Parties concerned shall apply **provisionally** the relevant proposal adopted by the Commission until **the dispute is resolved through such procedures, referred to binding procedures for settlement of disputes or dispute settlement procedures are terminated**.

Pending the (-) settlement of a dispute referred to in paragraph 3 by **binding procedures**, the parties to the dispute shall apply provisionally any recommendation made by a panel, unless they otherwise agree on **provisional** arrangements (-) or one of the parties concerned requests the court or tribunal to which the dispute has been submitted in accordance with paragraph 2 to prescribe any appropriate provisional measure. **Any recommendation made by a panel shall be applied until such provisional measures are established by the court or tribunal. For the purpose of this sub-paragraph, should there be no recommendation by the ad hoc panel the relevant proposal adopted by the Commission shall replace such a recommendation as provisional measure.**

5. A court, tribunal or panel to which any dispute has been submitted under this Article shall apply the relevant provisions of this Convention, of the 1982 UN Convention and, of the 1995 UN Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the 1982 UN Convention **and the 1995 UN Agreement**, with a view to ensuring the conservation of the fish stocks concerned.

*Annex...to the Convention – Panel referred to in paragraph 3 of Article...*

1. The Executive Secretary shall establish and maintain a list of experts who are willing and able to serve as panelists. Each Contracting Party shall be entitled to nominate up to five experts whose competence in the legal, scientific or technical aspects of fisheries covered by this Convention is established. The nominating Party shall provide information on relevant qualifications and experience of each of its nominees. The nominees may be nationals of any Contracting Party.
2. A Contracting Party may request, by written notification addressed to the Chairman of the General Council, the establishment of a panel referred to in paragraph 3 of Article... . The notification shall be accompanied by a statement of the claim and the grounds on which it is based. The Chairman of the General Council shall promptly transmit a copy of the request, through the Executive Secretary, to each Contracting Party.
3. The panel shall consist of three members, unless the Parties to the dispute otherwise agree. Within ( ) days of the date of the transmission of the request to the Contracting Parties, the Party instituting proceedings and the other Party shall each select one panelist. Both Parties shall, within a period of ( ) days following the selection of the second panelist, agree on the selection of the third panelist, who shall not be a national of either Party and shall not be of the same nationality as either of the first two panelists. The third panelist shall chair the panel.

If the Parties have not reached agreement within the prescribed period on the selection of the third panelist, that panelist shall be selected from the list, at the request of either Party and within ( ) days of the notification of this request, by the Chairman of the General Council, unless the Parties agree on any other means of selection of the third panelist.

**If the Chairman of the General Council is of the same nationality as any party to the dispute the third panelist shall be selected by the Vice-Chairman of the General Council. If the Vice-Chairman is also of the same nationality as one of the parties to the dispute the selection shall be performed by the Executive Secretary.**

4. Where more than one Contracting Party request the establishment of a panel related to the same subject matter, a single panel shall be established. In disputes between more than two Contracting Parties, Parties of the same interest shall select one panelist jointly by agreement.
5. Any Contracting Party which is not a Party to the dispute may attend all hearings of the panel, make written and oral submissions to the panel and receive the submissions of each Party to the dispute.
6. On request of a Party to the dispute, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the parties to the dispute so agree.
7. Unless the Parties to the dispute otherwise agree, the panel shall, within ( ) days of hearing the case, make its recommendation referred to in paragraph 3 of Article... . The recommendation shall be confined to the subject matter of the dispute and state the reasons on which it is based. Reasons in writing shall be communicated to the Chairman of the General Council, through the Executive Secretary, within ( ) days of the recommendation.
8. The recommendation of the panel shall be made by a majority of its members, who may not abstain from voting.
9. The General Council shall establish the rules of procedure, ensuring that each Party to the dispute shall be given full opportunity to be heard and to present its case. The panel may adopt such additional rules of procedure as it deems necessary.
10. The rules regarding expenses and the level of fees for panelists shall be established by the General Council.

#### DRAFT GENERAL COUNCIL RULES OF PROCEDURE FOR AD HOC PANEL PROCEEDINGS

##### OPERATION OF PANELS

1. The Chair of the panel shall preside at all of its meetings. A panel may designate to the Chair authority to make administrative and procedural decisions.
2. Except as otherwise provided in these rules, the panel may conduct its business by any means, including by telephone, facsimile transmission or computer links.
3. If a panelist dies or withdraws, a replacement shall be selected as expeditiously as possible in accordance with the selection procedure followed to select the former panelist.

4. Any time period applicable to the panel proceeding shall be suspended for a period beginning on the date the panelist dies or withdraws and ending on the date the replacement is selected.

#### PLEADINGS

5. The Party instituting proceedings shall deliver its written submission to the Executive Secretary of NAFO no later than ( ) days after the date on which the last panelist is selected. The submission shall describe the nature of the dispute and include the Party's claim and the grounds on which it is based.
6. The other Party to the dispute shall deliver its written submission to the Executive Secretary no later than ( ) days after the date of delivery of the written submissions of the Party instituting proceedings.
7. In disputes between more than two Contracting Parties, Parties of the same interest may make a joint submission.
8. Any Contracting Party which is not a Party to the dispute may deliver a written submission to the Executive Secretary no later than within the time limit set out in paragraph 6.
9. The Executive Secretary shall forward the written submissions immediately upon receipt by the most expeditious means practicable to the other participating Parties and to the members of the panel.

#### HEARING

10. The Chair shall fix the date and time of the hearing in consultation with the Parties to the dispute and the other members of the panel. The hearing shall be convened no later than ( ) days following the formation of the panel.
11. The hearing shall be held at the headquarters of NAFO, or at such other place as may be agreed by the Parties to the dispute.
12. The hearing shall be conducted by the panel in the following manner, ensuring that the Parties to the dispute are afforded equal time:
  - (i) Argument of the Party or Parties instituting proceedings;
  - (ii) Argument of the other Party or Parties;
  - (iii) Presentation by any Contracting Party which is not a Party to the dispute

In disputes between more than two Contracting Parties, Parties of the same interest may represent each other.

#### DISTRIBUTION OF RECOMMENDATIONS BY A PANEL

13. Upon receipt recommendations by a panel and subsequent reasons in writing shall forthwith be transmitted to all NAFO Contracting Parties by the Chairman of the General Council through the Executive Secretary.

#### CLERK

14. The Executive Secretary of NAFO shall serve as clerk to any panel and provide for all necessary facilities and arrangements.

#### EXPENSES, FEES AND COSTS

15. The expenses of the panel, including the remuneration of its members, shall be borne by the parties to the dispute in equal shares.

The level of fees for Panelists and experts shall be established by the General Council and adjusted when called for.

**Annex 3. Initial Chairman's Paper**  
(DSP W.G. Working Paper 98/3)

**Settlement of disputes within NAFO – Proposal for amendments to the NAFO Convention**

*New Paragraph 4 of Article XII (existing Paragraph 4 to be renumbered Paragraph 5)*

4. An objection according to paragraph 1 or a notice of intention not to be bound by a measure according to paragraph 3 shall be accompanied by a declaration of the Commission member's intentions as to relevant fishing operations or control and enforcement measures. The declaration of intentions shall specify any autonomous measures to be established.

*Article...*

1. Contracting Parties shall cooperate in order to prevent disputes.
2. The provisions relating to the settlement of disputes set out in Part XV of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereafter referred to as the "1982 UN Convention") shall apply mutatis mutandis to any dispute between Contracting Parties concerning the interpretation or application of this Convention.

Nevertheless, where a dispute between Contracting Parties concerns one or more straddling fish stocks, Part VIII of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (hereafter referred to as the "1995 UN Agreement") shall apply.

The relevant parts of the 1982 UN Convention or the 1995 UN Agreement shall apply whether or not the Contracting Parties are also Parties to these instruments.

3. Without prejudice to paragraph 2, any dispute concerning the interpretation or application of a proposal adopted by the Commission pursuant to Article XI of this Convention, or a matter related hereto, shall first be submitted to an ad hoc panel constituted as provided in Annex... to this Convention at the request of a Contracting Party.

The panel shall confer with the Contracting Parties concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes. To this end, the panel may make recommendations which it considers appropriate to preserve the respective rights of the Contracting Parties concerned and to prevent damage to the fish stocks in question.

Any dispute of this character not so resolved shall, if one of the Contracting Parties concerned so requests, be referred to binding procedures for the settlement of disputes as provided in paragraph 2.

4. When ad hoc panel procedures are requested the Contracting Parties concerned shall apply the relevant proposal adopted by the Commission until such procedures have been terminated.

Pending the binding settlement of a dispute referred to in paragraph 3, the parties to the dispute shall apply provisionally any recommendation made by a panel, unless they otherwise agree on arrangements of equivalent effect or one of the parties concerned requests the court or tribunal to which the dispute has been submitted in accordance with paragraph 2 to prescribe any appropriate provisional measure. Recommendations made by a panel shall be applied until such provisional measures are in effect.

5. Any court, tribunal or panel to which a dispute has been submitted under this Article shall apply the relevant provisions of this Convention, of the 1982 UN Convention and, as appropriate, of the 1995 UN Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the 1982 UN Convention, with a view to ensuring the conservation of the fish stocks concerned.

*Annex...to the Convention – Panel referred to in paragraph 3 of Article...*

1. The Executive Secretary shall establish and maintain a list of experts who are willing and able to serve as panelists. Each Contracting Party shall be entitled to nominate up to five experts whose competence in the legal, scientific or technical aspects of fisheries covered by this Convention is established. The nominating Party shall provide information on relevant qualifications and experience of each of its nominees. The nominees may be nationals of any Contracting Party.
2. A Contracting Party may request, by written notification addressed to the Chairman of the General Council, the establishment of a panel referred to in paragraph 3 of Article... . The notification shall be accompanied by a statement of the claim and the grounds on which it is based. The Chairman of the General Council shall promptly transmit a copy of the request, through the Executive Secretary, to each Contracting Party.
3. The panel shall consist of three members, unless the Parties to the dispute otherwise agree. Within ( ) days of the date of the transmission of the request to the Contracting Parties, the Party instituting proceedings and the other Party shall each select one panelist. Both Parties shall, within a period of ( ) days following the selection of the second panelist, agree on the selection of the third panelist, who shall not be a national of either Party and shall not be of the same nationality as either of the first two panelists. The third panelist shall chair the panel.

If the Parties have not reached agreement within the prescribed period on the selection of the third panelist, that panelist shall be selected from the list, at the request of either Party and within ( ) days of the notification of this request, by the Chairman of the General Council, unless the Parties agree on any other means of selection of the third panelist.

4. Where more than one Contracting Party request the establishment of a panel related to the same subject-matter, a single panel shall be established. In disputes between more than two Contracting Parties, Parties of the same interest shall select one panelist jointly by agreement.
5. Any Contracting Party which is not a Party to the dispute may attend all hearings of the panel, make written and oral submissions to the panel and receive the submissions of each Party to the dispute.
6. On request of a Party to the dispute, or on its own initiative, the panel may seek information and technical advice from any person or body that it deems appropriate, provided that the parties to the dispute so agree.
7. Unless the Parties to the dispute otherwise agree, the panel shall, within ( ) days of hearing the case, make its recommendation referred to in paragraph 3 of Article... . The recommendation shall be confined to the subject-matter of the dispute and state the reasons on which it is based. Reasons in writing shall be communicated to the Chairman of the General Council, through the Executive Secretary, within ( ) days of the recommendation.
8. The recommendation of the panel shall be made by a majority of its members, who may not abstain from voting.
9. The General Council shall establish the rules of procedure, ensuring that each Party to the dispute shall be given full opportunity to be heard and to present its case. The panel may adopt such additional rules of procedure as it deems necessary.
10. The rules regarding expenses and the level of fees for panelists shall be established by the General Council.

#### **Annex 4. Agenda**

1. Opening by the Chairman, Stein Owe (Norway)
2. Appointment of Rapporteur
3. Adoption of the Agenda
4. Review of the Chairman's revised paper on a NAFO dispute settlement mechanism and examination of any other possible elements in a NAFO dispute settlement procedure
5. Report to the General Council
6. Other matters
7. Adjournment

**Annex 5. Calendar of Events According to Proposal in DSP W.G. WP 99/1**  
**- Presented by Delegation of Denmark (in respect of Faroe Islands & Greenland)**  
(DSP W.G. Working Paper 99/2)

<u>Event</u>	<u>Date/Deadlines</u>	<u>Source</u>
a) NAFO decision	September, year 1	
b) Notification by Secretary	late September, year 1	
c) Deadline for objection	late November, year 1	
d) Request for panel	no deadline	Annex para. 1
e) Transmittal of request	promptly	Annex para. 2
f) Selection of 2 panelists	( ) days after e	Annex para. 3
g) Selection of 3rd panelist	( ) days after f	Annex para. 3
h) Submission by Party instituting proceedings	( ) days after g	RoP 5
i) Submission by the other Party/third Parties	( ) days after h	RoP 6
j) Hearing	( ) days after g	RoP 10
k) Panel recommendation	( ) days after j	Annex para. 7
l) Panel recommendation applies provisionally	? ?	

### Annex 6. First European Union Working Paper

3. Where the dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article XI or matters related thereto Parties to the dispute shall within x days proceed to an exchange of views regarding its settlement through an *ad hoc* panel procedure.

Where a dispute has been submitted to the *ad hoc* panel procedure, the panel constituted as provided in Annex ... to this Convention shall at the earliest possible opportunity confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously. Within x weeks after being constituted the panel shall present a report to the Parties concerned. The report shall as far as possible include any recommendations which the panel considers appropriate to resolve the dispute.

Where a dispute has not been resolved through agreement between the Parties following an *ad hoc* panel procedure or any other means to which the Parties agree it shall be referred, if one of the Parties concerned so requests, to a binding DSP as provided in para. 2.

**Annex 7. Latvian Working Paper**  
(DSP W.G. Working Paper 99/3)

*Article...*

1. Contracting Parties shall cooperate in order to prevent disputes.
2. Where the dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article XI or matters related thereto Parties to the dispute shall within x days proceed to an exchange of views regarding its settlement through an *ad hoc* panel procedure.

Where a dispute has been submitted to the *ad hoc* panel procedure, the panel constituted as provided in Annex ... to this Convention shall at the earliest possible opportunity confer with the Parties concerned and shall endeavour to resolve the dispute expeditiously. Within x weeks after being constituted the panel shall present a report to the Parties concerned **and the Chairman of the General Council, through the Executive Secretary**. The report shall as far as possible include any recommendations which the panel considers appropriate to resolve the dispute.

Where a dispute has not been resolved through agreement between the Parties following an *ad hoc* panel procedure or any other means to which the Parties agree it shall be referred, if one of the Contracting Parties so requests, to a binding DSP as provided in para. 2.

3. A court, tribunal or panel to which **any** dispute between Contracting Parties has been submitted under this Article shall apply the relevant provisions of this Convention, Part XV of the United Nations Convention on the Law of the Sea of 10 December 1982 (hereafter referred to as the "1982 UN Convention"), Part VIII of the United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks of 4 August 1995 (hereafter referred to as the "1995 UN Agreement"), as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the 1982 UN Convention **and the 1995 UN Agreement**, with a view to ensuring the conservation of the fish stocks concerned.

The relevant parts of the 1982 UN Convention **and the 1995 UN Agreement** shall apply **mutatis mutandis** whether or not the Contracting Parties are also Parties to these instruments.

**Annex 8. Second European Union Working Paper  
(DSP Working Group W.P. 99/4)**

*[obligation to cooperate]*

1. Contracting Parties shall cooperate in order to prevent disputes.  
In particular, any Contracting Party may invite a Commission Member that has objected to a proposal of the Commission or has given notice of its intention not to be bound by a measure of the Commission to state the reasons for its objection or its notice of intention, as well as to describe the conservation and management measures it has taken or intends to take for the fishery resource in question.  
*[1<sup>st</sup> sentence from Chairman's paper; voluntary declaration of intent added]*

*[binding dispute settlement procedure]*

2. Without prejudice to para. 3 a Contracting Party may refer any dispute concerning the interpretation or application of the Convention to DSP.  
Such procedures shall be governed mutatis mutandis by the provisions relating to the settlement of disputes set out in Part XV of UNCLOS or, where the dispute concerns one or more straddling stocks, by the provisions set out in Part VIII of the UN Agreement.  
The relevant parts of UNCLOS and the UN Agreement shall apply whether or not the Parties to the dispute are also State Parties to these instruments.  
*[rephrase of No. 2 of Chairman's paper to make text simpler.]*

*[ad hoc panel procedure]*

3. Where the dispute concerns the interpretation or application of a proposal adopted by the Commission pursuant to Article XI or matters related thereto Parties to the dispute shall within x days after the notification of the dispute to the Executive Secretary proceed to an exchange of views regarding its settlement through an *ad hoc* panel procedure. When the Parties do not agree to such a procedure or to any other peaceful means to resolve the dispute, the dispute shall be referred, if one of the Parties concerned so requests, to a binding DSP as provided in para. 2.

Where a dispute has been submitted to the *ad hoc* panel procedure, the panel constituted as provided in Annex ... to this Convention shall at the earliest possible opportunity confer with the Parties concerned and shall endeavour to resolve the dispute

expeditiously. Within x weeks after being constituted the panel shall present a report to the Parties concerned. The report shall as far as possible include any recommendations which the panel considers appropriate to resolve the dispute.

Where a dispute has not been resolved through agreement between the Parties following an *ad hoc* panel procedure it shall be referred, if one of the Parties concerned so requests, to a binding DSP as provided in para. 2.

*[text of yesterday's paper slightly modified to take into account comments from delegations]*

*[provisional application during and after ad hoc panel procedure]*

4. Where the Parties to a dispute have agreed to submit the dispute to the *ad hoc* panel procedure, they may agree at the same time to apply provisionally the relevant proposal adopted by the Commission until the report of the panel or the dispute is resolved, whichever occurs first.

Pending the settlement of disputes according to para. 2 the Parties to the dispute shall apply provisionally any recommendation made by a panel where the Parties had agreed an *ad hoc* panel procedure. That provisional application shall cease when the Parties agree on arrangements of equivalent effect, when a court or tribunal to which the dispute has been submitted in accordance with para 2 has taken a provisional or definitive decision or, in any case, at the end of the calendar year in which the report of the panel has been presented.

*[text of the Chairman's paper adapted to the new subpara. 3]*

*[law to be applied by court, tribunal or panel]*

5. A court, tribunal or panel to which any dispute has been submitted under this Article shall apply the relevant provisions of this Convention, of the 1982 UN Convention, of the 1995 UN Agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the 1982 UN Convention and the 1995 UN Agreement, with a view to ensuring the conservation of the fish stocks concerned.

*[same text as the Chairman's paper]*