



**GENERAL FISHERIES COMMISSION FOR  
THE MEDITERRANEAN  
COMMISSION GÉNÉRALE DES PÊCHES  
POUR LA MÉDITERRANÉE**



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**Information note on clauses relating to the settlement of disputes<sup>1</sup>**

1. At the meeting of the “GFCM Task Force – Working Group on the Amendment of the GFCM Legal Framework” (Istanbul, Turkey, 19-21 February 2014), experts from GFCM Contracting Parties requested information on dispute settlement methods in place in the GFCM, as well as in other Statutory Bodies established under Article XIV of the Constitution of FAO, and in additional Regional Fisheries Management Organizations (RFMOs)<sup>2</sup>.

2. In accordance with Paragraph 13 on “Interpretation and settlement of disputes” of the *Principles and Procedures which Should Govern Conventions and Agreements Concluded under Articles XIV and XV of the Constitution, and Commissions and Committees Established under Article VI of the Constitution* (contained in Section O of the Basic Texts, and hereinafter referred to as Principles and Procedures):

*Each convention and agreement shall contain a suitable provision regarding its interpretation and settlement of disputes. Among alternative procedures for settlement of disputes are conciliation, arbitration, or reference to the International Court of Justice. The nature of the provision for settlement of disputes should be determined in the individual convention or agreement by the character and objective of the particular instrument involved.*

3. In accordance with Article XVII on “*Interpretation and Settlement of Disputes*” of the Agreement for the Establishment of the General Fisheries Commission for the Mediterranean (GFCM Agreement) currently in force:

*Any dispute regarding the interpretation or application of this Agreement, if not settled by the Commission, shall be referred to a committee composed of one member appointed by each of the parties to the dispute, and in addition an independent chairman chosen by the members of the committee. The recommendations of such a committee, while not binding in character, shall become the basis for renewed consideration by the parties concerned of the matter out of which the disagreement arose. If as the result of this procedure the dispute is not settled, it shall be referred to the International Court of Justice in accordance with the Statute of the Court, or, in the case of a Regional Economic Integration Organization that is a Member of the Commission, it shall be submitted to arbitration unless the parties to the dispute agree to another method of settlement.*

<sup>1</sup> This info note was prepared by the FAO Legal Office.

<sup>2</sup> Minutes of the Task-Force Working Group on the Amendment of the GFCM Legal Framework, GFCM:ES/2014/Inf.4, paragraph 10.

4. A similar provision is set out in most conventions and agreements concluded under Article XIV of the FAO Constitution. It is worth noting that, to date, no conciliation committee has been established for the purpose of settling a dispute between GFCM Contracting Parties.

5. The present document offers an overview of the dispute settlement methods available under international law and provides an outline of the dispute settlement mechanisms in place in relevant international conventions, including FAO Article XIV Statutory Bodies and other RFMOs.

### **Dispute Settlement mechanisms in International Law**

6. Multilateral treaties normally contain detailed dispute resolution provisions with a view to resolving those disputes, controversies or claims which may arise out of a treaty. Within FAO legal framework, Member Nations of Article XIV Statutory Bodies may provide for rules and set up appropriate mechanisms for resolving disputes regarding the interpretation and application of a relevant convention or agreement.

7. Means for settling international disputes are negotiation, enquiry, mediation, conciliation, arbitration and judicial settlement, resort to regional agencies or arrangements<sup>3</sup>.

- **Negotiation**

Parties to a treaty may try to resolve a dispute arising under that treaty by direct negotiation or consultation amongst themselves in private, usually through diplomatic channels. In most RFMOs, negotiation among the Parties involved is the first resort for resolving the dispute.

- **Good offices, enquiry, conciliation and compulsory conciliation**

If negotiations do not resolve the dispute, it may be necessary or desirable to involve a third party. Good offices, enquiry, and conciliation imply an increasing level of involvement by third parties. In good offices, the third party acts as an essentially passive channel of communication between the disputants. In mediation, the third party plays a more active role, facilitating a compromise or providing an impartial advice to help resolve the dispute.

The Parties may also decide to set up a conciliation commission to investigate the dispute and propose the terms of a settlement. Unless otherwise provided in the treaty, such terms of settlement recommended are not binding on the Parties to the dispute.

In GFCM, whenever any dispute arising from the interpretation or application of the GFCM Agreement is not settled by the Commission, the Parties to the dispute may presently refer the dispute to a committee committed to recommend the terms of a settlement. Such committee is composed of one member appointed by each party to the dispute and an independent chairperson chosen by the members of the committee.

- **Judicial settlement**

The Members to an international convention or organization may decide to refer a dispute for a judicial settlement, whose decisions are binding upon the parties. In particular, the parties to a dispute may alternatively agree to set up an *ad hoc* arbitral tribunal whose composition and terms of reference they jointly determine, or defer

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<sup>3</sup> See Article 33 of the Charter of the United Nations (UN charter). Negotiation, enquiry, mediation, conciliation are voluntary in nature and part of a preliminary phase where the parties seek to settle the dispute more informally and without recourse to judicial settlement.

the dispute to a standing tribunal, such as the International Court of Justice or the International Tribunal for the Law of the Sea.

The advantage in setting up an arbitral tribunal is that the Parties have more control over the process and the applicable procedures of the tribunal. The advantages of the judicial settlement mechanism include having the court or tribunal and procedures already established as well as judges available to hear the disputes. Many treaties establishing RFMOs provide for the possibility to set up arbitral tribunals or to refer the matter to the International Tribunal on the Law of the Sea established under the UN Convention on the Law for the Sea.

In the GFCM Agreement currently in force, as a last resort, the dispute is referred to the International Court of Justice in accordance with the Statute of the Court. Whenever the dispute involves a Regional Economic Integration Organization that is a Member of the Commission (presently, the European Union), the dispute has to be submitted to arbitration, unless the parties to the dispute agree to another method of settlement.

8. Some international conventions – such as the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRFMO) and the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO) – provide for different settlement methods for disputes of a technical nature and for disputes on the interpretation or implementation of the Convention respectively. Many other treaties, instead, simply encourage recourse to any peaceful or amicable means available under international law, leaving to the Parties the choice to agree upon on one of the dispute settlement instruments referred above.

9. The tables contained in Appendixes I, II and III illustrate the dispute settlement methods in place in the UN Law of the Sea Convention and global fisheries instruments subsequently adopted (Appendix I), in the FAO Article XIV Bodies (Appendix II) and RFMOs (Annex III), respectively. The tables reflect a common trend, i.e. an important level of involvement by third parties in the settlement of disputes.

### Appendix I

#### Settlement of disputes under the UN Law of the Sea Convention and the global fisheries instruments subsequently adopted

International Convention	Dispute Settlement Methods
<b>United Nations Convention on the Law of the Sea ( the “LOS Convention”)</b>	<ol style="list-style-type: none"> <li>1) By a peaceful means of their own choice;</li> <li>2) Conciliation;</li> <li>3) Subject to acceptance of the jurisdiction, ITLOS, ICJ, arbitral tribunal or special arbitral.<sup>4</sup></li> </ol>
<b>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 (Fish Stock Agreement)</b>	<ol style="list-style-type: none"> <li>1) By negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice;</li> <li>2) Dispute settlement methods set out in the LOS Convention.</li> </ol>
<b>Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (Compliance Agreement)</b>	<ol style="list-style-type: none"> <li>1) Reciprocal consultation;</li> <li>2) Negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice;</li> <li>3) ICJ or ITLOS.</li> </ol>
<b>Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (Agreement on Port State Measures)</b>	

<sup>4</sup> The sequence of settlement procedures is taken from Article 33 of the UN Charter.

## Appendix II

## Dispute Settlement Methods in Article XIV Statutory Bodies

Article XIV Statutory Body	Dispute Settlement Methods
<b>Regional Animal Production and Health Commission for Asia and the Pacific (APHCA)</b>	1) Settlement by the Commission; 2) Conciliation committee; 3) ICJ, unless another method of settlement is agreed upon.
<b>Asia-Pacific Fishery Commission (APFIC)</b>	
<b>Central Asian and Caucasus Regional Fisheries and Aquaculture Commission (CACfish)</b>	
<b>Commission for Controlling the Desert Locust in South-West Asia (SWAC)</b>	
<b>Commission for Controlling the Desert Locust in the Central Region (CRC)</b>	
<b>Commission for Controlling the Desert Locust in the Western Region (CLCPRO)</b>	
<b>General Fisheries Commission for the Mediterranean (GFCM)</b>	
<b>International Poplar Commission (IPC)</b>	
<b>International Rice Commission (IRC)</b>	
<b>Regional Commission for Fisheries (RECOFI)</b>	
<b>Indian Ocean Tuna Commission (IOTC)</b>	
<b>European Commission for the Control of Foot-and-Mouth Disease (EUFMD)</b>	1) Conciliation committee
<b>International Treaty on Plant Genetic Resources for Food and Agriculture (IT-PGRFA)</b>	1) Negotiation; 2) Good offices or mediation; 3) Arbitration or ICJ; 4) Conciliation commission.
<b>International Plant Protection Convention (IPPC)</b>	1) Reciprocal consultation; 2) Conciliation committee; 3) Complementary dispute settlement procedures provided for in other international agreements dealing with trade matters.
<b>Plant Protection Agreement for Asia and Pacific Region (APPPC)</b>	1) Settlement by the Commission; 2) Conciliation committee.

## Appendix III

## Dispute Settlement Methods in other RFMOs (including Centres for Marketing Information and Advisory Services)

RFMOs and Centres for Marketing Information and Advisory Services	Dispute Settlement Methods
<b>Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (CCBSP)</b>	1) Available peaceful means as the Parties may agree upon.
<b>Regional Convention on Fisheries Cooperation among African States Bordering the Atlantic Ocean</b>	
<b>Convention on Future Multilateral Cooperation in North-East Atlantic Fisheries (NEAFC)</b>	1) Available peaceful means as the Parties may agree upon; 2) Conciliation expert panel; 3) Dispute settlement mechanisms set out in UNCLOS or in the Fish Stock Agreement.
<b>Regional Organization for the Conservation of the Environment of the Red Sea and Gulf of Aden (PERSGA)</b>	1) Available peaceful means as the Parties may agree upon; 2) Council; 3) Committee for the Settlement of Dispute.
<b>Mekong River Commission (MRC)</b>	1) Commission shall first make every effort to resolve the issue; 2) Negotiation; 3) Mediation.
<b>Convention on the Conservation And Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC)</b>	1) Dispute settlement mechanisms set out in the Fish Stock Agreement.
<b>Final Act of the Conference on the Southern Indian Ocean Fisheries Agreement (SIOFA)</b>	1) Dispute settlement mechanisms set out in UNCLOS or in the Fish Stock Agreement; 2) Arbitration.
<b>Convention for the Protection of the Marine Environment of the North-East Atlantic (OSPAR)</b>	1) Inquiry or conciliation within the Commission; 2) Arbitration.
<b>Caribbean Regional Fisheries Mechanism (CRFM)</b>	1) Ministerial Council for decision; 2) Arbitration.
<b>Convention for the Establishment of the Lake Victoria Fisheries Organization</b>	1) Negotiation, conciliation or similar means; 2) Arbitration.
<b>Bay of Bengal Programme Inter-Governmental Organization (BOBP-IGO)</b>	1) Negotiation, conciliation or similar means; 2) Governing Council recommendation; 3) Arbitration.

<b>RFMOs and Centres for Marketing Information and Advisory Services</b>	<b>Dispute Settlement Methods</b>
<b>Commission for the Conservation of Southern Bluefin Tuna (CCSBT)</b>	1) Negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice; 2) ICJ or Arbitration.
<b>The Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR)</b>	1) Negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice; 2) ICJ or Arbitration.
<b>Convention on the Conservation of Migratory Species of Wild Animals (CMS)</b>	1) Negotiation; 2) Permanent Court of Arbitration.
<b>Centre for Marketing Information and Advisory Services for Fishery Products in Latin America and the Caribbean (INFOPECSA)</b>	1) Negotiation, conciliation or similar means; 2) General Assembly for final decision.
<b>Constitution of the Centre for Marketing Information and Advisory Services for Fishery Products in the Arab Region (INFOSAMAK)</b>	
<b>Agreement for the Establishment of the International Organisation for the Development of Fisheries in Eastern and Central Europe (EUROFISH)</b>	1) Negotiation, conciliation or similar means; 2) Governing Council for recommendation; 3) Arbitration.
<b>Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Cooperation Services for Fishery Products in Africa (INFOPÊCHE)</b>	
<b>Agreement for the Establishment of the Intergovernmental Organization for Marketing Information and Technical Advisory Services for Fishery Products in the Asia and Pacific Region (INFOFISH)</b>	
<b>Agreement on the Network of Aquaculture Centres in Asia and the Pacific (NACA)</b>	
<b>Agreement on the International Dolphin Conservation Program (AIDCP)</b>	1) Reciprocal consultation; 2) Any peaceful means they may decide upon in accordance with international law.
<b>Latin American Organization for Fisheries Development (OLDEPESCA)</b>	1) Reciprocal consultation; 2) Conciliation Commission; 3) Any peaceful means they may decide upon in accordance with international law.

RFMOs and Centres for Marketing Information and Advisory Services	Dispute Settlement Methods
<b>Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (SPRFMO)</b>	<p>1.a) For disputes on the interpretation or implementation of the Convention, available peaceful means as the Parties may agree upon.</p> <p>1.b) For disputes of a technical nature, conciliation expert panel;</p> <p>2) Dispute settlement mechanism set out in the Fish Stock Agreement.</p>
<b>Agreement on the Conservation of Albatrosses and Petrels (ACAP)</b>	<p>1.a) For disputes on the interpretation or implementation of the Convention, dispute settlement mechanism provided in the Convention on the Conservation of Migratory Species of Wild;</p> <p>1.b) For disputes of a technical nature, consultation among the Parties together with the Chair of the Advisory Committee;</p> <p>2.b) Technical arbitration panel.</p>
<b>Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO)</b>	<p>1.a) For disputes on the interpretation or implementation of the Convention, negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice;</p> <p>1.b) For disputes of a technical nature, conciliation expert panel;</p> <p>2) Dispute settlement mechanisms set out in UNCLOS or in the Fish Stock Agreement.</p>
<b>International Convention for the Conservation of Atlantic Tunas (ICCAT)</b>	No dispute settlement mechanism.
<b>Convention for the Establishment of an Interamerican Tropical Tuna Commission (IATTC)</b>	
<b>Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries (NAFO)</b>	
<b>North Atlantic Salmon Conservation Organization (NASCO)</b>	
<b>International Convention for the Regulation of Whaling (IWC)</b>	
<b>The North Pacific Marine Science Organization (PICES)</b>	
<b>North Atlantic Marine Mammal Commission (NAMMCO)</b>	
<b>North Pacific Anadromous Fish Commission (NPAFC)</b>	