CHAPTER TWO

THE FISH STOCKS AGREEMENT

INTRODUCTION

The UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks was convened in April 1993 on request of the UN General Assembly.\(^1\) It was mandated to identify and assess problems relating to conservation of these fish stocks, to consider means for improving cooperation between states and to formulate appropriate recommendations. The conference came on the initiative of the 1992 UN Conference on Environment and Development, which had identified several problems relating to high seas fisheries.\(^2\) The problems included unregulated fishing and insufficient cooperation between states. The conference was thus to address the shortcomings of the UN Law of the Sea Convention provisions on the high seas, especially Article 63(2).

On 4 August 1995, after six sessions, the conference adopted without a vote the 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\(^3\) (hereafter ‘Fish Stocks Agreement’ or the ‘Agreement’).\(^4\) The Fish Stocks Agreement was opened for signature 4 December 1995.

It entered into force on 11 December 2001 following the 30\(^{th}\) ratification. By mid-October 2005 there were 56 state parties to the Fish Stocks Agreement, including the European Community, compared with 149 state parties to the UN Convention on the Law of the Sea (hereafter LOSC).\(^5\)

\(^3\) The Arabic, Chinese, English, French, Russian and Spanish texts of the Fish Stocks Agreement are equally authentic, Art. 50. This analysis will be based on the English text.
The Fish Stocks Agreement is comprehensive, consisting of 50 articles divided into 13 parts, in addition to two annexes. The Chairman of the Conference has identified the three pillars of the Fish Stocks Agreement. The first pillar consists of the conservation and management principles, the second pillar ensures that the measures are adhered to and complied with, and the third pillar provides for peaceful resolution of disputes. The obligation to cooperate on the conservation of living marine resources has been strengthened by according the regional fisheries management organizations more authority. The Fish Stocks Agreement also provides for non-flag state enforcement and the incorporation of the LOSC dispute settlement procedures into the regional fisheries management organizations.

Upon the adoption of the Fish Stocks Agreement, the Chairman of the Conference claimed it contained a substantive and effective response to the mandate given by the UN General Assembly. In the preamble of the Fish Stocks Agreement it is described as a means to address the problems identified by the above-mentioned 1992 conference. This raises questions whether the Fish Stocks is an effective response, which will be discussed in this chapter under the following themes:

- the right and obligation to cooperate
- material principles for cooperation
- procedural principles for cooperation
- mechanisms for compliance and enforcement and dispute settlement

The impact of the Fish Stocks Agreement on the law of the sea largely depends on the number of states and which states that become parties to it. The Fish Stocks Agreement is, like other treaties, binding only on the states parties. Regional fisheries management organizations and arrangements (hereafter RFMO/As) are central mechanisms in the implementation of the Fish Stocks Agreement. These RFMO/As may not become parties to the Fish Stocks Agreement. Therefore one is dependent on the member states of the RFMO/As to become parties to ensure that it will be implemented. If a minority of members are parties to the Fish Stocks Agreement, they may not be able to implement its provisions. Some of the provisions of the Agreement require all member states to be parties, to ensure effective imple-