Island Nation Management of Extended Jurisdiction

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RESUMEN

Se comentan los problemas y beneficios de la extensión de la exclusiva jurisdicción pesquera con referencia a las naciones isleñas. Se hace énfasis particular en actitudes aparentes, prácticas legislativas y administrativas de los Gobiernos de las Bahamas y Bermuda. Se hacen recomendaciones generales a las naciones insulares para que examinen costos y posibilidades de reclamación, y desarrollen posibilidades administrativas en las áreas de extendida jurisdicción pesquera.

We are not entirely sure that we are qualified to address this Institute on the subject matter as described by the title of this paper. Bermuda, while being an island, is still not a "nation" but rather enjoys the dubious distinction of being a "colony"—or "dependent territory" if one is sensitive about colonialism. On the other hand, because Bermuda has been self-governing since 1620 and passed its first fisheries conservation regulation 359 years ago, we have had considerable experience (most of it unsuccessful) with fisheries management.

The doctrine of extended fisheries jurisdiction, or for simplicity's sake call it "nationalism at sea," has been gaining momentum since the early 1950's when Ecuador, Peru and Chile laid unprecedented claims to exclusive fishing rights of huge areas of the Pacific Ocean and had the "effrontery" to enforce these claims with gunboats. Now nearly thirty years later, this wave of nationalism has spread world-wide to countries that receive some real (or imagined) economic benefit from increased areas of fisheries jurisdiction. That there is no international law or convention permitting the grabbing of large chunks of the "open seas" for exclusive fisheries management by coastal states appears irrelevant, and some countries have even laid claim to 200-mile economic zones—a concept not even considered in the 1958 Geneva Convention on the Law of the Sea.

Speaking at a Law of the Sea Institute Conference in Bermuda in 1974, Mr. Austin Laing of the British Trawlerman's Association admitted his bias, and said, in reference to the rising tide of unilateral nationalism of the seas, "The hope must be, however, that exclusive jurisdiction will not be confused with exclusive use of the coastal state and that fish which could be economically harvested by others will not be allowed to die of old age simply because their capture is beyond the capacity of the coastal state." This concept has, in fact, been an integral part of the various negotiating texts of the Third Conference on the Law of the Sea (UNCLOS III). The problem, as always, is not the written law but the interpretation of it. When there continues to be argument

and conflict over catch quotas in regions such as the ICNAF (International Commission for Northwest Atlantic Fisheries), you might well ask what hope Island nations have for rational management of their areas of extended jurisdiction.

How does an Island nation obtain exclusive jurisdiction? Well, it is very simple really: you just make a unilateral declaration that the sea within 200 miles of base lines of your territorial sea shall be your exclusive fishing zone. (If the island is a dependent territory then the "mother" country must make this declaration on your behalf.)

The first problem arising out of a proclamation is a conflict of opinion between neighboring states regarding boundaries. The normal theoretical solution is the half distance rule. Country "A" claims all that area of sea halfway between the baselines of "A" and "B." But is half the distance halfway between respective baselines, or can "A" claim more if country "B" only has a 12-mile EFZ? The answer we suggest is that country "A" can do as it pleases as long as it is prepared to enforce its claims. It is operating outside the Geneva convention in any case.

Jamaica, at one stage of negotiations at UNCLOS III, proposed another concept which we believe she still favors. This was termed the concept of the "matrimonial sea." Hence the fisheries resources, their regulation and management in the extended areas of jurisdiction of two or more countries would be shared. Jamaica, being semi-landlocked (by neighboring islands), has still not claimed an extended EFZ and, we believe, is trying to work something out with her neighbors.

With the convoluted nature of boundaries of the Bahamas' EFZ with neighboring states we are sure it will be a long time before her conflicts are resolved. Especially since, in absence of an agreement, the Bahamas claims everything up to twelve miles of the neighboring state's base lines [Section 11 [2] Fisheries Resources (Jurisdiction & Conservation) Act, 1977, Bahamas].

What every Island nation needs is boundaries like those of Bermuda which come in conflict with no other area of exclusive fisheries jurisdiction, because this allows a simple approach to legislation.

The second problem stemming from unilateral declaration of extended fisheries jurisdiction is to get other countries to respect your claims. Fortunately for those countries now claiming a 200-mile EFZ, the concept is widely accepted, but "gunboat diplomacy" at sea is still necessary for proper management and this is where Island nations generally come up short, lacking any effective surveillance or patrol capability.

The third problem is to properly manage the resources within the EFZ and, in the spirit of the proposed UNCLOS III text, allow surpluses to be harvested by other countries. It is necessary therefore to produce some enacting legislation. This can be simple as in Bermuda's case, complicated like the Bahamas legislation, or very nearly incomprehensible like the U.S. Fisheries Conservation and Management Act. Fortunately, the U.S. is *not* an Island nation and merits no further discussion.

Both Bermuda and the Bahamas have made provision in their legislation for the licensing of foreign fishing interests to use surplus stocks. But from this

point the treatment of exclusive fisheries jurisdiction by these two countries differs.

The Bahamas requires a treaty with the state to which the foreign fishing vessel belongs (or under whose flag it sails) to acknowledge the Bahamas EFZ. It subsequently requires each state to submit applications for foreign fishing licenses for its vessels, but issues the licenses directly to the vessels stating the terms and conditions imposed on each vessel. Where a foreign vessel has contravened the Bahamas Fisheries Act, the vessel committing the alleged offence is seized and the master or owners taken to court, but not the state to which the vessel belongs. It is difficult therefore to understand the purpose of including treaty requirements in such legislation. If another state recognizes your claim to a 200-mile EFZ, its nationals will apply for licenses to fish that zone. If a state does not recognize your claim (and therefore would not enter a treaty), its nationals would not apply for licenses; they would fish in the zone and would likely be supported by their state's naval forces.

The Bermuda approach is to negotiate licenses directly with the owners or charterers of each individual vessel. This approach was taken because in a court of law (even under Bahamas legislation) it is the master of the vessel who is ultimately responsible.

In Bermuda's case, and we are certain in the case of every other Island nation in the Gulf and Caribbean, information necessary for making rational management decisions in an extended area of fisheries jurisdiction is lacking. What do you do about management of your own nationals and your (moral) obligations to allow others to harvest surpluses if you have little information on the fish stocks? This question is further complicated by geography and resources of the region. With the exception of Bermuda, all Island nations have "overlapping" boundaries and, with the exception of the Bahamas, the potential for increased fisheries consists of highly migratory species.

The mind boggles at the prospect of having to draw equable boundaries among the Island nations of the Caribbean, but it is certain this problem will have to be faced eventually. You might well wonder what hope there is for settlement of boundary disputes in the Caribbean when two historically friendly nations like the U.S. and Canada cannot resolve their differences. The question of management or even the discussion of migratory stocks in this situation is mind destroying.

For the time being, the Bahamas has declared no surpluses of fisheries resources within her EFZ although stocks in moderate depths (the slope) are known to be underexploited. It appears the Bahamian Government with its present ambitious scheme of education and development is racing old man time and will attempt to harvest these stocks herself before they die of old age. Of course, the fishery for the most valuable resource in the Bahamas, the spiny lobster (crawfish), is not affected by extended jurisdiction considerations. By Bahamian definition, modelled after U.S. legislation dealing with homarid lobsters, the spiny lobster is a "creature of the shelf." Because there is no substantial difference in the habits of these two types of lobsters, this would seem to be a reasonable interpretation of the Convention on Resources of the Continental Shelf.

It is interesting to note that Bahamas legislation also follows that of the U.S. in the treatment of highly migratory species. Species of tuna (but not billfish, flying fish, jacks, etc.) are not recognized as being "fishery resources" (Section 2 [1], Fisheries Resources (Jursidiction & Conservation Act, 1977) and are therefore not subject to Bahamian legislation. The theory one presumes is to rely on management of these resources by international organizations such as the International Commission for the Conservation of Atlantic Tunas (ICCAT). By excluding tuna-like fishes from the legislation, the Bahamas has given away the ability to decide who can carry out exploitation of these resources within limits (if any) imposed by ICCAT. Because the U.S. has more tuna boats fishing in the zones of other countries than at home, one can understand—but not condone—her stance on highly migratory species. The only reason we can see for the Bahamas position is to earn, as they say, "brownie points." It would seem to cost the Bahamas nothing to do this and she has provided for the future by including a "Section 2(2)" in her Act enabling the (Fisheries) Minister to declare any species of living organism a "fisheries resource" without amending the high principles of section 2(1) of her Fisheries Act.

We suggest the Bermuda approach to management of an extended area of fisheries jurisdiction has been pragmatistic. Having precious little information on stocks within our old 12-mile EFZ, Bermuda declared a 200-mile EFZ knowing only that the oriental longline fleet seasonally moved through the zone and sometimes reported catches to ICCAT which were published two years later. Information generously supplied to our Fisheries Division by the U.S. National Oceanic and Atmospheric Administration (NOAA) of catch and effort of the longline fleet is gratefully acknowledged. This data contained only Japanese effort but it was broken down into 5° squares and supplied some catch per unit effort figures.

Presently, the Bermuda fishing fleet only has the capability of exploiting the inner 50-mile radius of its EFZ. Stocks beyond this zone are clearly surplus and the Government has been licensing foreign vessels to fish in the outer 150 miles on a country to vessel basis (no treaties involved) during 1978 and 1979.

Somewhat to our surprise, 15 foreign vessels obtained licenses to fish in our EFZ in 1978 and 39 in 1979. What does this mean to Bermuda? Potentially, quite a lot. Bermuda foreign vessel licenses were issued for a modest price and with a list of terms or conditions designed to supply us direct information on catch and effort, to provide training opportunities for Bermudians and to safeguard the usage of resources within our EFZ. For practical purposes each vessel applying for a license must obtain a Bermuda shipping agent to handle his financial affairs. The vessel owner/captain must agree to fish beyond 50 miles from baselines, keep daily catch and effort logs and make returns of these to the Government. These vessels must be prepared to take a Bermudian on board as a trainee or observer.

In 1978, 7 of the 16 licensed foreign vessels were Taiwanese and 9 were Korean. The average size of the vessels was about 250 tons and they usually carried a crew of 25 men. The general lifestyle and average height of the

oriental crews of these vessels discouraged any interest from Bermudian nationals to go to sea with them. In 1979 with the addition of 23 vessels, things have not been much better. Of these vessels, 10 are Korean, 26 Taiwanese, 1 is Japanese and 2 are Faroese (Denmark). With the latter 2 vessels rests our hope of getting Bermudians to sea on commercial longliners.

The Faroese vessels are larger (400 compared with 250 tons), carry a smaller crew (12 compared with 25) and use a continuous longline as opposed to the basket system. These Faroese vessels are modified side trawlers that have gone into ground fish longlining, shark (porbeagle) longlining and are now trying their hand at tuna (and marlin, shark, swordfish, and others). Whether they will be as successful as the oriental vessels remains to be seen, but we do now at least have Bermudians willing to go to sea on longliners.

To say that we have had trouble collecting statistics from the foreign licensed vessels is an understatement. Our data is fragmentary and the greatest hope for future information rests on applying economic pressures through the company that has all but two of the oriental boats on charter. This company, a Japanese one, based in St. Maarten in the Dutch West Indies, has agreed not to accept fish until fishing logs are completed. Information we receive will be copied to ICCAT for their use, because their success in collecting detailed information from the Korean and Taiwanese fleets in the Atlantic has also not been good. If programmed, this data could give considerable information on the fisheries hydrography of tuna-like species if combined with physical parameters being measured by NOAA. Obviously, neophyte tuna fishing countries such as Bermuda would like to see this happen. For the present, all effort is going into the collection of data for subsequent analysis.

A side benefit to the licensing of foreign fishing vessels has been the collection of annual fees. These amounted to $22,000 in 1978 and just over $50,000 in 1979. The fact that vessels license at all surprises us somewhat. However, the relatively low annual fees ($1,000 and $1.00 per gross registered ton of vessel) and high penalties for illegal fishing probably encourage vessels to license. There is no correlation between fees and catches to encourage honesty in completing statistics forms.

Bermuda, on her own, has absolutely no capability of surveillance or enforcement of her EFZ beyond 30 to 50 miles. We do, in fact, have only one trump up our sleeve. Being a colony, the Royal Navy are fisheries inspectors under our Fisheries Act and they occasionally have a presence in our part of the Atlantic. Another method of assuring interest in obtaining licenses is to invoke "rumor." But, like the boy who cried wolf, we expect this has severe limitations. Last year just before relicensing time, a rumor spread through the oriental fishing fleets that two vessels had been seized by the Bermuda "navy." We don't know who started the rumor, but we did double the size of our foreign fishing fleet in 1979. As Professor Giulio Pontecorvo of Columbia University, N.Y. has so aptly pointed out (1977), the inter-relationship between extended fisheries jurisdiction and fisheries in the western North Atlantic revolves around cost. He suggests cost can be categorized in four areas: surveillance and enforcement of regulations pertaining to extended

areas of jurisdiction; internal administration of licensing programs, collecting of statistics and the like; international negotiations, particularly in boundary disputes and historical fishing rights; and most importantly, in both economic and biological research necessary to make management decisions. To this list we would add the cost of *not* extending fisheries jurisdiction. This latter is the most difficult to measure and cannot be calculated in dollars and cents alone.

Island nations need not be apologetic in their dealings with neighboring continental states, maritime states, or even the so-called disadvantaged land-locked states, particularly in claiming a share of the world's fisheries resources. To most Island nations, particularly those in the Caribbean, the sea and its contents are the only natural resources they have. That they do not have the money or machinery to immediately manage these resources in the sophisticated way that large industrialized countries would expect, should not be a deterrent to claiming jurisdiction and working towards management. Pontecorvo (1977) sums this up by saying: "For all states if they approach their problems with appreciation of their complexity and by a process of successive approximations, they can realize the yield from the resources as a contribution to national well-being—an opportunity that is particularly important for the small island state."

REFERENCE

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