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## Significant Fishery Management Issues in the Law of the Sea Conference: Illusions and Realities

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# Significant Fishery Management Issues in the Law of the Sea Conference: Illusions and Realities

FARIN MIRVAHABI\*

*The author discusses several significant fishery issues left unsettled by the Third United Nations Law of the Sea Conference. Attention is also focused on some fishery provisions of the Informal Composite Negotiating Text which may be incorporated into the final treaty. Finally, the fishery problems encountered in the presence or absence of a treaty are explored. Ms. Mirvahabi notes that the absence of a treaty may result in the use of the doctrine of laissez-faire/laissez-passer creating a chaotic situation. On the other hand, the presence of a treaty although not immediately resolving law of the sea issues, will nevertheless act as a foundation for further sea-related determinations by ocean users.*

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#### INTRODUCTION

Like previous sessions, the Sixth Session of the Third United Nations Conference on the Law of the Sea (UNCLOS), which was held in New York City from 23 May to 15 July 1977, failed to produce a final comprehensive treaty on the law of the sea. This failure has raised the issue whether the Conference is capable of producing any treaty in the near future.

The purpose of this Article is to examine some of the significant fishery issues. Nevertheless, at the outset, it is appropriate to briefly discuss the Conference itself.<sup>1</sup>

Many observers believe that the success or failure of this Conference will not have any impact on the world public order. It is true

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1. On the background and preparation for the Law of the Sea Conference, see A STAFF REPORT ON THE UNITED NATIONS SEABED COMM., THE OUTER CONTINENTAL SHELF AND MARINE MINERAL DEVELOPMENT, SENATE COMM. ON INTERIOR AND INSULAR AFFAIRS, 92D CONG., 1ST SESS., THE LAW OF THE SEA CRISIS, pt. 1 (Comm. Print 1972); *id.*, pt. 2, at 5-16 (Comm. Print 1972); COMM. TO STUDY THE ORGANIZATION OF PEACE, 23D REPORT, THE UNITED NATIONS AND THE OCEANS, CURRENT ISSUES IN THE LAW OF THE SEA (Jun. 1973); COMM. TO STUDY THE ORGANIZATION OF PEACE, 21ST REPORT, THE UNITED NATIONS AND THE BED OF THE SEA (II) (June 1970); COMM. TO STUDY THE ORGANIZATION OF PEACE, 19TH REPORT, THE UNITED NATIONS AND THE BED OF THE SEA (Mar. 1969); *Law of the Sea: Hearing Before the Subcomm. on Oceans and Atmosphere of the Senate Comm. on Commerce*, 92d Cong., 2d Sess. (1972); W. BURKE, SOME THOUGHTS ON FISHERIES AND A NEW CONFERENCE ON THE LAW OF THE SEA (Law of the Sea Inst., U. of R.I., Occasional Paper No. 9, 1971); Knight, *Issues Before the Third United Nations*

that the success of UNCLOS will not resolve the existing problems in the Middle East, Rhodesia, or South Africa, but it will definitely reduce some of the political pressures in intergovernmental relations. For example, the executive branch of the United States Government pleaded with Congress for several years to prevent the enactment of a 200-mile fishing zone, as this would harm the United States' relations with Japan, the Soviet Union, and other distant-water fishing nations which were fishing in waters adjacent to the coastal areas of the United States.<sup>2</sup> Nevertheless, the United States Fishery Conservation and Management Act of 1976<sup>3</sup> was passed by Congress, but only after the majority of the delegates in UNCLOS had agreed on a 200-mile exclusive fishing zone. The political pressure was further reduced when some other coastal States extended their fishing zones to 200 miles through similar legislation.

In emphasizing the significance of UNCLOS, one may say the mere fact that it exists makes it important. But a more sophisticated argument includes the following: (i) There are 150 participating States (some non-United Nations members), including all the newly independent States which did not participate in the 1958 Geneva Conference on the Law of the Sea; (ii) there are twenty-five topics and sixty sub-topics for discussion; and (iii) the negotiations in this Conference are related to other problems of the world community, such as food, population, environment, energy, resource management and transfer of technology.

Unlike the 1930 Hague Conference and the 1958 Geneva Conference on the Law of the Sea, which were designated for codification of the pre-established rules and customs of international law, the present Law of the Sea Conference has developed new concepts, such as the common heritage of mankind, exclusive economic zones, transit

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*Conference on the Law of the Sea*, 34 LA. L. REV. 155 (1974); Knight, *The Draft United Nations Convention on the International Seabed Area: Background Description and Some Preliminary Thoughts*, 8 SAN DIEGO L. REV. 459, 477-86 (1971); Pardo, *Development of Ocean Space—An International Dilemma*, 31 LA. L. REV. 45 (1970); Sohn, *A Tribunal for the Sea, Bed or the Oceans*, 32 ZEITSCHRIFT FÜR AUSLÄNDISCHES ÖFFENTLICHES RECHT UND VÖLKERRECHT 253 (1972); Stevenson & Oxman, *The Preparation for the Law of the Sea Conference*, 68 AM. J. INT'L. L. 1 (1974).

2. See *Fisheries Jurisdictions: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 94th Cong., 1st Sess. 88 (1975) (statement of John N. Moore).

3. 16 U.S.C. § 1801 (1976).

passage, and the rights of landlocked States. Furthermore, the Conference is trying to achieve a new international legal order as well as a new international economic order.

It should be noted here that the success of UNCLOS in concluding a comprehensive universal treaty will not resolve the law of the sea problems immediately, for the problems of ratification, reservation and interpretation always begin following the drafting of treaties. On the other hand, in the absence of a treaty, and based on the doctrine of *laissez-faire/laissez-passer*, the users of the ocean may create chaotic situations.

Based on the foregoing general discussion, this Article will now turn to fisheries. Fishery negotiations are almost exhausted in Committee II of UNCLOS, and the fishery part of the Informal Composite Negotiating Text (ICNT)<sup>4</sup> is almost agreed upon. Therefore, this Article will examine some of the significant fishery provisions of the ICNT which may be incorporated into the final treaty and the fishery problems inherent in the presence or absence of a treaty.

## THE 200-MILE EXCLUSIVE ECONOMIC ZONE

### *Evolution of the Concept*

The claims and practices of the Latin American nations concerning their adjacent seas, inspired by the Truman Proclamation,<sup>5</sup> are considered the original bases for formulation of the new economic zone doctrine.<sup>6</sup> The Santiago Declaration of 1952 was the first multilateral

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4. The Informal Composite Negotiating Text, U.N. Doc. A/Conf. 62/WP. 10 (1977) [hereinafter cited as ICNT], is the outcome of the Sixth Session of UNCLOS.

5. Pres. Proc. No. 2667, 3 C.F.R. 67 (1945), reprinted in 13 DEP'T STATE BULL. 485 (1945).

6. For discussions and analyses of the economic zone, see F. GARCIA AMADOR, *LATIN AMERICA AND THE LAW OF THE SEA* (Law of the Sea Inst., U. of R.I., Occasional Paper No. 14, 1972); D. JOHNSON & E. GOLD, *THE ECONOMIC ZONE IN THE LAW OF THE SEA: SURVEY, ANALYSIS AND APPRAISAL OF CURRENT TRENDS* (Law of the Sea Inst., U. of R.I., Occasional Paper No. 17, 1973); Ad Hoc Comm. on the Law of the Sea, International Section of the ABA, *Information Report on the Law of the Sea: Understanding the Debate on the Ocean Space*, 8 INT'L LAW. 688 (1974); Aguilar, *The Patrimonial Sea*, in *THE LAW OF THE SEA: NEEDS AND INTERESTS OF DEVELOPING COUNTRIES* 161 (L. Alexander ed. 1973); Alexander, *The Extended Economic Zone and United States Ocean Interest*, 10 COLUM. J. WORLD BUS. 35 (1975); Alexander & Hodgson, *The Impact of the 200-Mile Economic Zone on the Law of the Sea*, 12 SAN DIEGO L. REV. 569 (1975); Hollick, *The Origins of the 200-Mile Offshore Zones, Notes and Comments*, 71 AM. J. INT'L L. 494 (1977); Katz, *Consequences of the Economic Zone Catch Opportunities of Fishing Nations*, 2 MAR. STUDY MANAGEMENT 144 (1975); Osieke, *The Contribution of States from the Third World to the Development of the Law of the Continental Shelf and the Concept of Economic Zone*, 15 INDIAN J. INT'L L.

agreement which established maritime zones of 200 miles for Chile, Ecuador and Peru.<sup>7</sup> The Latin Americans find the origin of their claims in a natural law philosophy that would justify the special interests of coastal States in the so-called "patrimonial sea." Patrimonial is not synonymous with territorial, but it is coterminous with an inherent right of the coastal State based on geographical continuity and pre-existent international claims.<sup>8</sup> This doctrine was reflected in the Lima Conference of 1954,<sup>9</sup> the Meeting of the Inter-American Council of Jurists of 1956,<sup>10</sup> the Declaration of Montevideo of 1970,<sup>11</sup> the Declaration of Lima of 1970,<sup>12</sup> and the Declaration of Santo Domingo of 1972.<sup>13</sup>

During the 1950's and the 1960's, claims to a 200-mile maritime zone also received support from newly independent States which were ready to challenge any rules of international law laid down by colonial powers in the 1958 Geneva Conference on the Law of the Sea. In its resolution of 1971, the Organization of African Unity (OAU) established a national economic zone of 212 miles from the baseline, in the oceans and seas surrounding Africa.<sup>14</sup> The Meeting of Yaounde, coupled with the meetings sponsored by the African-Asian Legal Consultative Committee in 1971, 1972, 1973, and 1974,<sup>15</sup> strengthened the formulation of the exclusive economic zone in the third UNCLOS.<sup>16</sup>

#### *Law of the Sea Conference and the Economic Zone*

More than 100 participants in the Caracas Session of UNCLOS, either through written or oral statements, supported the adoption of the 200-mile exclusive economic zone. However, there was a debate

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311 (1975); Pollard, *The Exclusive Economic Zone—The Elusive Consensus*, 12 SAN DIEGO L. REV. 600 (1975); Quénedec, *La Zone Economique*, 79 REV. GEN. DROIT INT'L PUB. 321 (Avril-Juin 1975).

7. F. GARCIA AMADOR, *LATIN AMERICA AND THE LAW OF THE SEA* (Law of the Sea Inst., U. of R.I., Occasional Paper No. 14, 1972).

8. See D. JOHNSON & E. GOLD, *supra* note 6, at 2.

9. See PAN AMERICAN UNION, *RECORDS AND DOCUMENTS OF THE THIRD MEETING OF THE INTER-AMERICAN COUNCIL OF JURISTS* 30 (provisional edition 1956).

10. See D. JOHNSON & E. GOLD, *supra* note 6, at 3-4.

11. U.N. Doc. A/A.C. 138/34 (1970).

12. U.N. Doc. A/A.C. 138/28 (1970).

13. U.N. Doc. A/A.C. 138/80 (1972).

14. U.N. Doc. A/Conf. 62/C. 2/L. 82 (1974).

15. See D. JOHNSON & E. GOLD, *supra* note 6, at 6-7; Njenga, *Africa*, in *PERSPECTIVES ON OCEAN POLICY* 87, 94-95 (Ocean Pol'y Project, John Hopkins U., 1974).

16. The Latin American and African claims although sharing the same

concerning the rights and duties of the coastal State within the zone. The debate continued in the Geneva Session of 1975 in the same manner as it had in Caracas.<sup>17</sup> Finally, the negotiations in Committee II resulted in Article 45 of the Single Negotiating Text (SNT),<sup>18</sup> which describes the rights and duties of the coastal State within the zone. The zone, however, seems to be territorial with respect to the exclusive sovereign rights of the coastal State over the resources and international with respect to other uses, such as freedom of navigation and overflight. This dual characteristic of the zone raises the question whether the zone should have the judicial status of the high seas. On the one hand, the SNT establishes strong sovereign rights for the coastal State concerning the living and nonliving resources within its zone. On the other hand, it enumerates some of the high-seas freedoms.<sup>19</sup> To complicate the matter even further, Article 73 of the SNT defines the high seas as "all parts of the sea that are not included in the exclusive economic zone . . . in the territorial sea . . . ." <sup>20</sup> The same formula is adopted by the Revised Single Negotiating Text (RSNT)<sup>21</sup> and the ICNT.<sup>22</sup> Some commentators have noted that "the zone is neither territorial, nor high seas, but *sui generis*."<sup>23</sup>

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characteristics, have different approaches. Njenga, *Africa*, in PERSPECTIVES ON OCEAN POLICY 87, 96-97 (Ocean Pol'y Project, John Hopkins U., 1974).

17. For details on the Caracas (1974) and Geneva (1975) sessions of the Conference, see LAW OF THE SEA: CARACAS AND BEYOND (F. Christy, T. Clingan, J. Gamble, H. Knight & E. Miles eds. 1975); Hollick, *Commentary to PERSPECTIVES ON OCEAN POLICY 21* (Ocean Pol'y Project, John Hopkins U., 1974); Stevenson, *The Caracas Session in Review: Remarks on the Second Session of the Third Law of the Sea Conference*, in PERSPECTIVES ON OCEAN POLICY (Ocean Pol'y Project, John Hopkins U., 1974); Amerasinghe, *Basic Principles Relating to the International Regime of the Oceans at the Caracas Session of the U.N. Law of the Sea Conference*, 6 J. MAR. L. & COM. 213 (1975); Balpuri, *The Soviet Views on the Law of the Sea at the Caracas Session*, 15 INDIAN J. INT'L L. 383-89 (1975). See also Caminos, *The Law of the Sea at the Caracas Session: A Brief Evaluation*, 14 COLUM. J. TRANSNAT'L L. 80 (1975); Gardner, *Post Caracas: Striking a Bargain for Settlement at Geneva*, 14 COLUM. J. TRANSNAT'L L. 3 (1975); Henkin, *A Close Look at Some Issues for Geneva—Ocean Policy, Marine Environment and Fisheries*, 14 COLUM. J. TRANSNAT'L L. 56 (1975); Hollick, *LOS III: Prospects and Problems*, 14 COLUM. J. TRANSNAT'L L. 92 (1975); Oxman & West, *Issues to be Resolved in the Second Substantive Session on the Law of the Sea*, 14 COLUM. J. TRANSNAT'L L. 87 (1975); Stevenson & Oxman, *The Third United Nations Conference on the Law of the Sea: The 1975 Geneva Session*, 69 AM. J. INT'L L. 763 (1975).

18. U.N. Doc. A/Conf. 62/WP. 8/pt. 2 (1975). Article 45 of the Single Negotiating Text has become Article 60 of the ICNT.

19. U.N. Doc. A/Conf. 62/WP. 8/pt. 2, arts. 45 & 46.

20. *Id.*, art. 73. See also ICNT, *supra* note 4, art. 86.

21. U.N. Doc. A/Conf. 62/WP. 8 Rev. 1/pt. 2, arts. 44-46, 75 (1976).

22. See note 4 *supra*.

23. Stevenson & Oxman, *The Third United Nations Conference on the Law of the Sea: The 1975 Geneva Session*, 69 AM. J. INT'L L. 763, 778 (1975).

The foregoing discussion reflects some of the exclusive economic zone problems and proposals that were negotiated by UNCLOS, but it does not include the issues that were not raised. One of these missing proposals could have suggested a narrower zone for fishing purposes. Scientific research has proven that the most abundant fishing areas of the ocean are found within the first eighty miles of the coastal States. Therefore, the question remains: why the 200-mile fishing zone?

In favor of the 200-mile exclusive economic zone one may argue that the zone was established conveniently for the exploitation of both living and nonliving resources of the seabed and subsoil and the superjacent waters of the coastal State. Second, the majority of States are coastal and therefore can benefit from such zones. Third, the zone usually includes the continental shelf of the coastal State. Finally, such a zone is useful in fencing out foreign fishing vessels.

There are, however, counterarguments to the 200-mile exclusive fishery zone. First, the zone may be to the advantage of a coastal State with mineral resources because there is a limited number of States with the know-how and technology of seabed mining; therefore, the coastal State will not face congestion problems in the zone, whereas for a fishing coastal State, congestion of fishing vessels is an inevitable problem. Next, the license-fee formula may attract more newcomers to the area. Furthermore, the existence of the zone will not discourage the distant-water fishing nations which have traditionally fished in the area. In addition, the 200-mile zone does not cover the highly migratory fish species that swim over thousands of miles. The cost of enforcement of fisheries jurisdiction is another item for consideration. Finally, the economic gain from an eighty-mile abundant fishing zone may be more desirable than the political and ideological gains from a 200-mile fishing zone.

### *Treaty Approach*

The status of the exclusive economic zone upon the conclusion of a universal treaty (assuming that the treaty will incorporate INCT) will be *sui generis*, as noted before. In other words, the coastal State will have exclusive jurisdiction over most of the activities in the zone, but the international community can also enjoy certain limited rights.

It is interesting to note that the concept of sovereignty in the present UNCLOS negotiations is not treated as it was in the



nineteenth century. Part V of the INCT,<sup>24</sup> which deals with exclusive economic zone topics, refers to "sovereign rights,"<sup>25</sup> "exclusive rights,"<sup>26</sup> "exclusive jurisdiction,"<sup>27</sup> and "jurisdiction."<sup>28</sup> These references may be interpreted to mean that the right of the coastal State within its economic zone is not as complete as sovereignty. Moreover, there are always certain duties attached to the rights of the coastal State, and this is a theme which can be seen throughout the ICNT.

It is not difficult to predict that all coastal States will most likely extend their fishing zones to 200 miles upon the conclusion of a law of the sea treaty. But the interesting issue is whether these States which have in the past treated such zones as territorial seas will sign the treaty. A coastal State with a 200-mile territorial sea<sup>29</sup> may either sign the treaty with certain reservations or may ratify it and change its national legislation concerning the territorial sea. There is also the possibility that such a State will not sign the treaty at all. In that case, the present State practice with respect to such claims may continue.<sup>30</sup>

### *Non-Treaty Approach*

In the absence of a universal law of the sea treaty, one can easily predict that most coastal States will probably extend their fishing zones to 200 miles.<sup>31</sup> But the crucial point here is whether the continuation of such State practice after a considerable period of time constitutes customary international law. For several centuries, and prior to the 1958 Geneva Conference on the Law of the Sea, customary international law played a significant role in governing

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24. ICNT, *supra* note 4, pt. V.

25. Article 56 refers to the coastal State's sovereign rights "for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and subsoil and the superjacent waters." *Id.*, art. 56(1)(a).

26. *Id.*, art. 60(1).

27. *Id.*, art. 60(2).

28. *Id.*, art. 56(1)(b).

29. The list at the Office of the Geographer, United States Department of State, indicates that the following nine States are presently claiming a 200-mile territorial sea: Argentina, Brazil, Ecuador, El Salvador, Liberia, Panama, Peru, Sierra Leone, and Somalia. At the Geneva Session of UNCLOS, in 1975, despite the favoritism towards the 200-mile exclusive economic zone, Ecuador was still seeking support for its 200-mile territorial sea proposal. See U.N. Doc. A/Conf. 62/C. 2/L. 88 (1975).

30. See text accompanying notes 43-54 *infra*.

31. At the present time the list available at the Office of the Geographer, United States Department of State, indicates that the following 27 States have claimed 200-mile fishing zones: Angola, Bangladesh, Benin, Canada, Chile, Comoros, Costa Rica, Cuba, Denmark, Federal Republic of Germany, France, Guatemala, Iceland, India, Ireland, Maldives, Mexico, Mozambique, Nicaragua, Norway, Pakistan, Portugal, Senegal, Sri Lanka, the United Kingdom, the United States, and the Soviet Union.

maritime relations among States. Therefore, creation of new customary laws as a result of the failure of UNCLOS is not unusual. Nevertheless, repetition of the State practice with respect to 200-mile fishing zones cannot establish customary international law unless and until such practice has been acquiesced to by other States.<sup>32</sup>

In its unilateral claim, the coastal State may establish exclusive or preferential rights. Exclusive jurisdiction of the coastal State can be interpreted as exclusion of foreign fishermen, whereas, in the case of preferential rights based on some agreements, the coastal State usually allows foreign fishermen to operate in its fishing zone.

"Exclusive" and "preferential" rights were discussed at the 1958 Geneva Conference on the Law of the Sea. But the Conference, by adopting the "special situation" resolution,<sup>33</sup> recognized the preferential rights of a coastal State which was economically dependent upon the fishery resources of the adjacent waters.<sup>34</sup>

In the absence of a law of the sea treaty, access to the fishery resources within the 200-mile zone can only be obtained through bilateral agreements between the coastal State and the fishing nation involved.<sup>35</sup> The same alternative is available for the "historic

32. For a discussion on customary law, see Fisheries Jurisdiction Case (United Kingdom v. Norway), [1951] I.C.J. 132, 138-39, 191. For details on customary international law, see E. LAUTERPACHT, *THE DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT* 368 (1958); M. MCDUGAL & P. FELICIANO, *LAW AND MINIMUM PUBLIC ORDER—THE LEGAL REGULATION OF INTERNATIONAL COERCION* 361 (1961); Kunz, *The Nature of Customary International Law*, 47 AM. J. INT'L L. 662 (1953); McDougal, *The Hydrogen Bomb Tests and the International Law of the Sea*, 49 AM. J. INT'L L. 356 (1955); Wright, *Custom as a Basis for International Law in the Post-War World*, 2 TEX. INT'L L.F. 147 (1966).

33. Resolution on Special Situations Relating to Coastal Fisheries, U.N. Doc. A/Conf. 13/L. 56 (1958).

34. The resolution was mainly adopted to benefit Iceland and a few other States which were dependent on their fisheries. The preferential rights of Iceland were recently discussed by the International Court of Justice when the court delivered its opinion in the Fisheries Jurisdiction Case (United Kingdom v. Iceland) (Merits), [1974] I.C.J. 4. See Briney, *The Icelandic Fisheries Dispute: A Decision is Finally Rendered*, 5 GA. J. INT'L & COMP. L. 248 (1975).

35. See, e.g., Agreement Concerning Shrimps, May 9, 1972, United States-Brazil, reprinted in LEGISLATIVE REFERENCE SERVICE, 93D CONG., 2D SESS., TREATIES AND OTHER INTERNATIONAL AGREEMENTS ON FISHERIES, OCEANOGRAPHIC RESOURCES, AND WILDLIFE TO WHICH THE UNITED STATES IS PARTY 627-42 (Comm. Print 1974). Also see other United States bilateral agreements on fisheries with Canada, Columbia, Cuba, Denmark, Germany, India, Japan, the Soviet Union, and others. For bilateral fishery agreements of other States, see NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA 573-86 (U.N. Legislative Series 1976), U.N. Doc. ST/LEG/SER.B/18.

rights"<sup>36</sup> States because the 200-mile fishing zone covers all historic waters. The 1958 Geneva Conference discussed the historic rights through a resolution which agreed that in case of conflict between preferential rights and historic rights, the former should prevail.<sup>37</sup> The only reference to historic rights in the ICNT can be found in the latter part of paragraph 3 of Article 62,<sup>38</sup> which requires the coastal State to consider "the need to minimize economic dislocation in States whose nationals have habitually fished in the zone . . ."<sup>39</sup> Of course, such vague references are open to varying interpretations.

One can predict that with regard to future State behavior, lack of agreement in the law of the sea conference may create more situations such as the "Cod war"<sup>40</sup> and the "Tuna war,"<sup>41</sup> which in turn can lead to some form of economic retaliation<sup>42</sup> or to political or legal conflict. Such conflict may arise in the future, despite past history of ocean use showing only a few violent incidents concerning fisheries. Furthermore, the bilateral agreements which have usually followed such incidents are indicative of fishing nations' efforts in finding amicable solutions to their fishery problems.

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36. On historic fishing rights, see F. GARCIA AMADOR, *THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA* 206, 207, 209 (2d ed. 1963); D. JOHNSTON, *THE INTERNATIONAL LAW OF FISHERIES—A FRAMEWORK FOR POLICY-ORIENTED INQUIRIES* 243, 287 (1965).

37. UNCLOS II, OFFICIAL RECORDS, Committee of the Whole (2d mtg.) 41, para. 21, U.N. Doc. A/Conf. 19/8 (1960).

38. ICNT, *supra* note 4, art. 62(3).

39. *Id.*

40. Iceland's adoption of a 12-mile fishery zone in the late 1950's caused several clashes between the Icelandic protection vessels and those of the British Royal Navy. These incidents are usually known as the "Cod war." The Icelandic fishery disputes with the United Kingdom finally came before the International Court of Justice in 1972. See *Fisheries Jurisdiction Case (United Kingdom v. Iceland) (Merits)*, [1974] I.C.J. 4; *id.* (Order), [1972] I.C.J. 4. See also M. DAVIS, *ICELAND EXTENDS ITS FISHERIES LIMITS: A POLITICAL ANALYSIS* (1963); Bilder, *The Anglo-Icelandic Fisheries Dispute*, 1973 WIS. L. REV. 37; Goldsworthy, *Interim Measures of Protection in the International Court of Justice*, 68 AM. J. INT'L L. 258 (1974); Goy, *The Icelandic Fisheries Question*, 87 J. DU DROIT INT'L 370 (1960); Green, *The Territorial Sea and the Anglo-Icelandic Dispute*, 9 J. PUB. L. 53 (1960); Katz, *Issues Arising in the Icelandic Fisheries Case*, 22 INT'L & COMP. L.Q. 83 (1973); Khan, *The Fisheries Jurisdiction Cases—A Critique*, 15 INDIAN J. INT'L L. 1 (1975); Tiewul, *The Fisheries Jurisdiction Cases (1973) and the Ghost of Rebus Sic Stantibus*, 6 N.Y.U. J. INT'L L. & POL. 455 (1973); Comment, *The Making of a Case for the International Court of Justice: Icelandic Fishing Rights*, 6 COMP. & INT'L L.J. S. AFR. 394 (1973); Recent Decisions, *International Court of Justice—Procedure—Temporary Relief in the Form of Interim Measures Granted on Prima Facie Evidence of Jurisdiction and Jurisdiction of the Merits Found on Basis of Prior Agreement to Compulsory I.C.J. Jurisdiction*, 7 VAND. J. TRANSNAT'L L. 512 (1974).

41. See text accompanying note 43 *infra*.

42. Withholding foreign assistance, for example, can be an economic retaliation by a developed State against a developing State. By contrast, the latter may put an embargo on raw materials against the former. See, e.g., 22 U.S.C. § 1975 (Supp. V 1975).

*National Legislation on the 200-Mile Fishing Zone*

The existing national legislation on 200-mile fishing zones also presents a prediction of future behavior in the absence of a law of the sea treaty. Although detailed discussion on existing national fishery laws is not within the scope of this Article, it is appropriate to present a brief review of controversial laws of some Latin American States. Between 25 January and 1 February 1975, seven United States fishing vessels were seized by the Government of Ecuador within Ecuador's 200-mile maritime zone. The fines and the cost of purchase of the confiscated catch amounted to a \$3,000,000 loss for United States fishermen.<sup>43</sup> Of course, based on the Fishermen's Protective Act of 1967 and through a special fund administered by the Departments of State and Commerce, the United States fishermen are always repaid for such loss.<sup>44</sup> It is interesting to note that although Ecuador has constitutionally established a 200-mile territorial sea,<sup>45</sup> it does not prohibit foreign fishing operation within this zone so long as the foreign fishing vessels carry "a registration certificate, a fishing permit and other relevant documents."<sup>46</sup> Five of the aforementioned seized American vessels did not have licenses; the other two were in excess of 600 net registered tons and therefore violated Ecuadorian law.<sup>47</sup> According to the Peruvian General Fishing Law of 1971,<sup>48</sup> foreign fishing vessels can operate in the Peruvian "jurisdictional sea" so long as they pay \$500 for a certificate of registry and "\$20 for a fishing permit, per net register ton."<sup>49</sup> Similar provisions can be found in the Brazilian law of 1971.<sup>50</sup>

43. See *Fish and Wildlife Briefings: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 94th Cong., 1st Sess. 159 (1975).

44. *Id.* at 159-61. See also 22 U.S.C. §§ 1971-1979 (1975).

45. See Article 6 of the Political Constitution of the Ecuadorian State, Registro Oficial No. 133 of 25 May 1967, reprinted in NATIONAL LEGISLATION AND TREATIES RELATING TO THE TERRITORIAL SEA 79 (U.N. Legislative Series 1970), U.N. Doc. ST/LEG/SER.B/15; Fishery Laws of Ecuador, Registro Oficial No. 299 of 2 June 1961, reprinted in *id.* at 631; Registro Oficial No. 353 of 31 October 1961, reprinted in *id.* at 79 (Supp.); Registro Oficial No. 273 of 19 June 1964, reprinted in *id.* at 632.

46. Article 6 of the Political Constitution of the Ecuadorian State, Registro Oficial No. 133 of 25 May 1967, reprinted in NATIONAL LEGISLATION AND TREATIES RELATING TO THE TERRITORIAL SEA 79 (U.N. Legislative Series 1970), U.N. Doc. ST/LEG/SER.B/15.

47. *Fish and Wildlife Briefings: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 94th Cong., 1st Sess. 159 (1975).

48. See, NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA 315-18 (U.N. Legislative Series 1974), U.N. Doc. ST/LEG/SER.B/16.

49. General Fishing Law of 1971, art. 35, reprinted in *id.* at 317.

50. Decree No. 68,459 of April 1, 1971 on Fishing Zones, art. 7, reprinted in *id.*

In short, the Latin American States have not excluded foreign fishing operations from their 200-mile maritime zones, but they have placed restrictions, increased registration or license fees, and imposed severe penalties for the violation of fishing laws. For example, violation of the fishing laws of Argentina entails a fine of \$5,000 to \$100,000;<sup>51</sup> that of Mexican laws varies from 25,000 to 100,000 pesos.<sup>52</sup>

It is not easy to predict whether other coastal States will follow Latin American policy of excessive license fees and penalties. But in the case of penalties, the broad language of Article 73 of the ICNT,<sup>53</sup> which recognizes the right of the coastal State to impose penalties for violation of its fishery laws,<sup>54</sup> may indeed lead to such practices.

These Latin American fishery laws, although historically controversial, are presently compatible with the fishery provisions of the ICNT. Such compatibility is not surprising, as the idea of a 200-mile exclusive fishing zone began in Latin America. Furthermore, the fishery parts of the ICNT are a combination of various fishery proposals submitted to UNCLOS. On the one hand, these proposals reflect the national interests and national legislation of the States involved. On the other hand, recent national legislation on exclusive fishing zones indicate that most coastal States have followed the general framework recommended by the SNT or its substitutes. Although such a cycle cannot guarantee any uniformity in future national legislation on exclusive fishing zones, it may establish certain patterns.

## CONSERVATION REGIMES

### *Universal Approach*

On the universal level, fishery regulations are presently based on the 1958 Geneva Convention on Fishing and Conservation of the Living Resources on the High Seas, which came into force on March

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at 272. Under a special agreement between Brazil and the United States in force since 1972, the United States pays a flat fee to Brazil annually. In exchange, the United States is able to issue licenses to United States fishermen and regulate their operations under United States laws. See *Fish and Wildlife Briefings: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 94th Cong., 1st Sess. 159 (1975).

51. See Act No. 17,500 of 25 October 1967 concerning the Promotion of Fisheries, as amended by Act No. 20,136 of 5 February 1973, art. 12(b), reprinted in NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA 271 (U.N. Legislative Series 1976), U.N. Doc. ST/LEG/SER.B/18.

52. Act of 29 December 1971 on Taxes and on Fees for Fisheries, art. 18 (II), reprinted in *id.* at 336.

53. ICNT, *supra* note 4, art. 73.

54. *Id.*

20, 1966.<sup>55</sup> While declaring the rights of States to engage in fishing on the high seas, the Convention imposes a duty upon all States to adopt necessary conservation measures, either individually or in cooperation with one another.<sup>56</sup> The conservation referred to in the Convention was based on maximum sustainable yield to achieve maximum supply of food for human consumption and other maritime products.<sup>57</sup> The pressure behind the Convention was twofold. First, some nations believed that by empowering the coastal States to pass legislation on high seas fisheries, the claims to a wider territorial sea (beyond three miles) would be reduced. Second, nations which had made some agreements concerning the high seas fisheries were trying to receive Convention support.<sup>58</sup> In short, the Convention tried to get all the interested States to participate in a conservation program and made such a program an international obligation for all participants.

However, a number of weaknesses prevented the Convention from achieving its conservation goals. Unilateral conservation measures undertaken by the coastal State, especially when such State was hundreds of miles away from the fishing areas on the high seas, were not effective enough to attain the conservation objectives. Furthermore, formulation of conservation measures was based only on stocks of fish rather than region or other criteria. Finally, there was a lack of concern over the allocation of resources and enforcement of the conservation program.<sup>59</sup>

Despite these weaknesses, the 1958 Geneva Fishing Convention became "a moral code"<sup>60</sup> for member fishing nations as well as non-

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55. Convention on Fishing and Conservation of the Living Resources of the High Seas, U.N. Doc. A/Conf. 13/L. 54 (1958). For details on the Convention, see F. GARCIA AMADOR, *THE EXPLOITATION AND CONSERVATION OF THE RESOURCES OF THE SEA* 187-94 (2d ed. 1963); Harrington, *The Future of the Geneva Convention on Fishing and the Conservation of the Living Resources of the Sea*, in *THE FUTURE OF THE SEA'S RESOURCES* 62, 62-65 (L. Alexander ed. 1968); Bishop, *The 1958 Geneva Conference on Fishing and Conservation of the Living Resources of the Seas*, 62 COLUM. L. REV. 1206, 1213 (1962); Crutchfield, *The Convention on Fishing and Living Resources of the High Seas*, 1 NAT. RESOURCES LAW. 114, 114-24 (1968).

56. U.N. Doc. A/Conf. 13/L. 54, art. 1 (1958).

57. *Id.*, art. 2.

58. F. CHRISTY & A. SCOTT, *THE COMMON WEALTH IN OCEAN FISHERIES* 172 (1965).

59. See Bishop, *The 1958 Geneva Conference on Fishing and Conservation of the Living Resources of the Sea*, 62 COLUM. L. REV. 1213, 1224 (1958) (statement of Max Sorensen, Head of the Danish Delegation to the Geneva Conference).

60. A. KOERS, *INTERNATIONAL REGULATIONS OF MARINE FISHERIES* 118 (1973).

members.<sup>61</sup> Now, the question is why such a moral code failed to establish a unique fishery conservation policy. The answer is simple. Drafters of the Fishing Convention, like other negotiators in the 1958 Geneva Conference, were still following Hugo Grotius' doctrine on *Mare Liberum*.<sup>62</sup> Therefore, unlike the participants in the present Law of the Sea Conference who are worried about the allocation and management of ocean resources, the participants in the 1958 Geneva Conference were seeking a free sea up to the three-mile territorial sea of the coastal State. This goal explains why the 200-mile fishing zone was a forbidden subject in 1958.

### *Regional Approach*

The problem of conservation was realized by the fishing nations long before the Geneva Conference. Solutions were usually sought through bilateral and multilateral treaties. These conservation treaties were basically concerned with maximum sustainable yield, research, or regulation. A good example of this group is the Bering Sea fur seal controversy between Britain and the United States, which resulted in the Bering Sea Fur Seal Arbitration of 1892,<sup>63</sup> and the multilateral Convention of 1911,<sup>64</sup> with Russia and Japan as two additional parties. This latter agreement resulted in a series of regulations and agreements concerning the North Pacific fur seal fisheries.<sup>65</sup>

Another regional conservation measure based on the abstention doctrine emerged in 1923. This conservation method, which was introduced by Canada and the United States, while maximizing the yield of halibut in the North Pacific, was later incorporated into the International North Pacific Fishery Convention of 1952, where Japan agreed to abstain from taking salmon in the designated area.<sup>66</sup>

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61. For example, the two great fishing nations, Japan and the Soviet Union, were among those States that did not ratify the Convention; nevertheless, they followed its guidelines in their bilateral or multilateral agreements on fisheries.

62. H. GROTIUS, *MARE LIBERUM* (1608).

63. See 1 J. MOORE, *HISTORY AND DIGEST OF THE INTERNATIONAL ARBITRATION TO WHICH THE UNITED STATES HAS BEEN A PARTY* 770 (1898).

64. L. LEONARD, *INTERNATIONAL REGULATION OF FISHERIES* 55-95 (1944). See also *Interim Convention on the Conservation of North Pacific Fur Seal*, Feb., 1957, reprinted in *LEGISLATIVE REFERENCE SERVICE, 93D CONG., 2D SESS., TREATIES AND OTHER INTERNATIONAL AGREEMENTS ON FISHERIES, OCEANOGRAPHIC RESOURCES, AND WILDLIFE TO WHICH THE UNITED STATES IS PARTY* 374-86 (Comm. Print 1974).

65. *Interim Convention on the Conservation of North Pacific Fur Seal*, Feb., 1957, reprinted in *LEGISLATIVE REFERENCE SERVICE, 93D CONG., 2D SESS., TREATIES AND OTHER INTERNATIONAL AGREEMENTS ON FISHERIES, OCEANOGRAPHIC RESOURCES, AND WILDLIFE TO WHICH THE UNITED STATES IS PARTY* 374-86 (Comm. Print 1974).

66. See F. CHRISTY & A. SCOTT, *THE COMMON WEALTH IN OCEAN FISHERIES* 173, 188 (1965). Abstention as a "general principle" was rejected in the 1958 Geneva

Other conservation measures adopted by recent regional agreements include the quota system, closed sea, closed season, and restrictions on gears.<sup>67</sup>

### *Law of the Sea Conference and Conservation*

Despite its recognition of coastal States' sovereign rights in the exclusive economic zone, the ICNT imposes certain duties upon the coastal State to adopt conservation measures,<sup>68</sup> to maintain maximum sustainable yield through full utilization and elimination of over-exploitation,<sup>69</sup> to determine the "allowable catch", and to give other States access to the surplus of the allowable catch if the coastal State itself does not have the capacity to harvest such catch in its entirety.<sup>70</sup>

Unlike the 1958 Geneva Fishing Convention, which was only concerned with the biological aspects of fisheries for conservation purposes,<sup>71</sup> the ICNT requires the coastal State to adopt a conservation program which considers biological, economic, technical, social and environmental factors of fisheries.<sup>72</sup> For example, Article 61

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Conference. The Soviet delegate argued that the principle has no economic foundation and furthermore was discriminating against newcomers, *i.e.*, the newly independent States. See 5 UNCLOS, 3d Comm. (6th mtg.) 8, para. II, U.N. Doc. A/Conf. 13/41; *id.* 3d Comm. (36th mtg.) 104-05, paras. 10-17. See also International Law Comm'n (8th sess.), paras. 61, 63, 65, 78-80, U.N. Doc. A/CN.4/99/Add. 1 (1956); Oda, *Japan and the United Nations Conference on the Law of the Sea (1959)*, 3 JAPANESE ANN. INT'L L. 65, 79-82 (1959).

67. See, NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA (U.N. Legislative Series 1976), U.N. Doc. ST/LEG/SER.B/18; *id.* (U.N. Legislative Series 1974), U.N. Doc. ST/LEG/SER.B/16; *id.* (U.N. Legislative Series 1970), U.N. Doc. ST/LEG/SER.B/15. See also *Fish and Wildlife Briefings: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 94th Cong., 1st Sess. 150 (1975). On the United States-Japanese agreement concerning salmon and the king and tanner crab, see NATIONAL LEGISLATION AND TREATIES RELATING TO THE LAW OF THE SEA 795-802, 803-07 (U.N. Legislative Series 1974), U.N. Doc. ST/LEG/SER.B/16. On the problems arising out of the quota system, see *Fish and Wildlife Briefings: Hearings Before the Subcomm. on Fisheries and Wildlife Conservation and the Environment of the House Comm. on Merchant Marine and Fisheries*, 94th Cong., 1st Sess. 157-60 (1975); *Recent Developments in the Law of the Sea: A Synopsis*, 12 SAN DIEGO L. REV. 665, 668-72 (1975).

68. ICNT, *supra* note 4, art. 61.

69. *Id.*

70. *Id.*, arts. 61(1), 62(2).

71. Convention on Fishing and Conservation of the Living Resources of the High Seas, art. 2, U.N. Doc. A/Conf. 13/L. 54 (1958). Article 2 only refers to "optimum sustainable yield" as a conservation method.

72. ICNT, *supra* note 4, art. 61. For details on the constitutive elements of fisheries, such as biological, economic, technical and political, see Mirvahabi,



indicates that in order to achieve maximum sustainable yield, the coastal State's conservation program should consider "relevant environmental and economic factors . . . , fishing patterns, [and] the interdependence of stocks . . . ."73

A review of the conservation formula of the ICNT indicates that the negotiators in UNCLOS have tried to introduce certain guidelines which form a basis for each coastal State's adoption of its own conservation measures. The formula has also advocated all constitutive elements of fishery to avoid the fishery conservation problems of the past. The success of the ICNT formula, however, depends upon the coastal States' reactions.

### *Treaty Approach*

Upon world-wide ratification of the Law of the Sea Treaty (based on the ICNT), one may make a number of predictions. The first assumption would be the enactment of new conservation laws by all coastal States following the treaty recommendations. Because the treaty only provides certain frameworks, not specific standards, the outcome, of course, would be more than fifty different conservation policies. Had the treaty offered useful conservation standards, the value of these international standards, whose acceptance or rejection depended on the coastal States' discretion, would still have been questionable. In other words, such a standard may be interpreted as no standard at all.

A second possibility relates to non-compliance by a developing coastal State. A sophisticated conservation program needs an adequate budget and sufficient scientific data, both of which probably cannot be provided by most developing coastal States whose fisheries are based on small-scale operations. Lack of sufficient data and statistics may also cause problems for a developing coastal State, even in adopting its allowable catch formula.

Dispute over allowable catch is closer to reality than prediction. The allowable catch may dissatisfy distant water fishing nations which may then try to find new areas for their operations. New areas can be 200-mile fishing zones of other States or the high seas. With respect to the former, the traditional conflict between the coastal State and the distant water fishing State will continue despite the new location. As regards the high seas, through its efforts a distant water fishing nation may even develop the unattractive or forgotten species of the high seas. By contrast, a large number of distant water

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*SNT: Conservation and Management of Fisheries in the Exclusive Economic Zone, Sec. III., 9 J. MAR. L. & COM. (1978) (in press).*

73. ICNT, *supra* note 4, art. 61(3).

fishing nations may operate on the high seas and overexploit the resources. An encouraging allowable-catch formula, on the other hand, may lead to congestion and overexploitation of fishery resources within the 200-mile exclusive economic zones.

Another classification of the allowable-catch problem should distinguish between the policy of the developed State and that of the developing State. Should a technologically advanced coastal State decide to fence out the distant water fishing nations within its exclusive economic zone, it can do so by exploiting the entire allowable catch itself. In such cases, the only solution available to distant water fishing nations lies within the dispute-settlement mechanism.<sup>74</sup>

The allowable-catch formula, in the case of a developing coastal State with a weak conservation policy or none at all, may create more complications. Pressured by its treaty obligation, a developing coastal State may permit foreign fishermen to harvest the allowable catch so long as the license fee or other fees are paid. The fees may be extremely high in the case of abundant fishing zones, or low in the case of a fishing area with less attractive fish species. In both instances, the outcome would be congestion of fishing vessels in the area and application of the conservation measures of the flag States. This method of fishing operations will be disastrous as far as conservation is concerned. However, if the developing coastal State prefers the continuation of small-scale fishing operations by its nationals and the collection of license fees from foreign fishermen, it is free to do so, for there is no international authority<sup>75</sup> to question the conservation regimes of the coastal States.

An ambitious developing State which intends to develop its fishing industry, on the other hand, may enter into service, management or marketing contracts, or any other form of joint venture with foreign companies. This possibility may be a stimulus not only for the fishing industry but also for other industries of the coastal State. Joint ventures can also result in cooperation between foreign and local scientists, exchange of data and statistics, training of the local staff, and possibly the transfer of fishing technology. This approach may be the best method of utilization and conservation of fisheries for developing coastal States.

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74. On dispute settlement provisions of the ICNT, see ICNT, *supra* note 4, pt. XV.

75. For a discussion on the possibility of a global fishery organization, see text accompanying notes 110-26 *infra*.

### *Non-Treaty Approach*

A successful law of the sea treaty will not improve fishery conservation regimes immediately. In the absence of a treaty, the fishery provisions of the ICNT may still inspire the decisionmakers.

An interesting issue which should be raised here is whether the failure of the Law of the Sea Conference will revive the 1958 Geneva Fishing Convention. In the absence of a treaty, as noted before, all coastal States will most likely adopt the 200-mile exclusive economic zones; and because the zone is not regarded as high seas for fishing purposes, the Geneva Convention will make a very small contribution.<sup>76</sup> The present State practice on conservation, however, will most likely continue. This may lead to conservation regimes contrary to international standards, or no conservation program for some coastal States. The present unbalanced allocation system of fishery resources will probably continue if the coastal States decide to prevent foreign fishing in their economic zones and utilize the resources themselves. This, in turn, can bring legal battles before international tribunals. For example, in the absence of the treaty, and prior to the establishment of the 200-mile zone as a customary international law, distant water fishing States can consider the zone as part of the high seas and exploit the fishery resources. Does this mean more "cod wars" and "tuna wars"? The possibility of such conflict is not remote. Nevertheless, it is more probable that the fishing nations will resolve their fishery problems through bilateral and regional agreements.

#### REGIONAL FISHERY PROBLEMS

##### *Existing Problems in Certain Regions*

Regional fishery problems<sup>77</sup> relate not only to fish species but also to the number of fishing nations operating in the region, their fishing methods, and other considerations. The following may illustrate some of these regional problems.

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76. For the role of the Geneva Fishing Convention, see notes 55-62 and accompanying text *supra*.

77. For details on regional fishery organizations and their problems, see INTERNATIONAL STUDIES OF FISHERY ARRANGEMENTS (working papers published for Resources for the Future, Inc., 1972-1974). These papers include the works of Christy, *Alternative Arrangements for Marine Fisheries: An Overview*; Crutchfield & Lawson, *Alternatives for Management of the West African Fisheries*; Kasahara & Burke, *North Pacific Fisheries Management*; Miles, *Alternative Organizational Arrangements to Facilitate Global Arrangements of Fisheries*; Salla & Norton, *Tuna: A Summary of Current Status, Expected Trends, and Alternative Management Arrangements*; Tussing & Hiebert, *Fisheries of the Indian Ocean*. See also Christy, *Disparate Fisheries: Problems for the Law of the Sea Conference and Beyond*, 1 OCEAN DEV. & INT'L L.J. 337 (1974); Christy, *Northwest Atlantic Fisheries Arrangements: A Test of the Species Approach*, 1 OCEAN DEV. & INT'L L.J. 65 (1973).

### The North Pacific

There are only a few fish species in the North Pacific, but each has a large population and a long history of use.<sup>78</sup> The first conservation treaty for the fur seal was formulated in this region.<sup>79</sup> The abstention doctrine also emerged in this area.<sup>80</sup> For many years only four States—the Soviet Union, Japan, Canada, and the United States—were operating in the North Pacific; in recent years, however, the new entrants have created problems in reaching agreement. Another problem in the region concerns certain fish species which have remained completely unregulated.<sup>81</sup>

### The East Central Atlantic

Unlike the North Pacific area, the East Central Atlantic region has a large number of fish species, but only a few of them have large populations. The number of fishing nations amounts to forty, half of which are distant water fishing States with highly advanced fishing technology. Two regional bodies, the Committee for the East Central Atlantic Fisheries (1969) and the International Commission for the Southeast Atlantic Fisheries (1971), have been established for regional management. Due to conflicting interests and the large membership, these bodies have not been successful in formulating a meaningful conservation regime for the region.<sup>82</sup>

### The Indian Ocean

With the exception of tuna, most fishery resources of the Indian Ocean are either underexploited or have not reached the maximum-sustainable-yield level. In spite of efforts by the Indian Ocean Fisheries Commission and scientific data published and distributed by the Soviet Union, lack of information is still one of the problems that impede improvements of the fishery resources in the Indian Ocean.<sup>83</sup>

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78. Christy, *Disparate Fisheries: Problems for the Law of the Sea Conference and Beyond*, 1 OCEAN DEV. & INT'L L.J. 337, 340 (1974).

79. See notes 63-65 and accompanying text *supra*.

80. See note 66 and accompanying text *supra*.

81. Christy, *Disparate Fisheries: Problems for the Law of the Sea Conference and Beyond*, 1 OCEAN DEV. & INT'L L.J. 337, 341 (1974). See also Kasahata & Burke, *North Pacific Fisheries Management*, in INTERNATIONAL STUDIES OF FISHERY ARRANGEMENTS (working papers published for Resources for the Future, Inc., 1972-1974).

82. Christy, *Disparate Fisheries: Problems for the Law of the Sea Conference and Beyond*, 1 OCEAN DEV. & INT'L L.J. 337, 342-43 (1974).

83. *Id.* at 344-46. See also Tussing & Hiebert, *Fisheries of the Indian Ocean*,

Unlike the 1958 Geneva Fishing Convention, which adopted a universal approach towards fishery problems, the Informal Single Composite Text favors regionalism. Throughout the fishery provisions, the ICNT requires cooperation between coastal States and subregional or regional fishery organizations. In Article 61, the ICNT adds "global organization" to these organizations. Article 61 encourages the coastal States to adopt a conservation program in accordance with recommended subregional, regional, or global minimum standards.<sup>84</sup> It further adds that proper conservation measures should be sought through cooperation of the coastal State and regional, subregional and global organizations.<sup>85</sup> The coastal State's cooperation with "regional"<sup>86</sup> or "appropriate international organizations"<sup>87</sup> is also required for conservation of anadromous, highly migratory fish species and marine mammals.

Recognition of regional or international fishery organizations referred to by the ICNT is easy,<sup>88</sup> but the vague language of the ICNT concerning global organizations is questionable. The 1958 Fishing Convention explicitly involved the Food and Agricultural Organizations (FAO) as part of fishery conservation schemes.<sup>89</sup> The ICNT's silence on the FAO should not be interpreted as exclusion of this agency, for the FAO's Committee on Fisheries is the most experienced existing global fishery organization. By their general reference to "global organizations," the drafters of the ICNT could have meant the inclusion of the FAO and other United Nations agencies<sup>90</sup> which have in the past been involved in some fishery programs.<sup>91</sup>

### *Treaty Approach*

The ICNT has stressed the significant role of the regional fishery organizations in resolving the regional fishery problems, but the past

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in INTERNATIONAL STUDIES OF FISHERY ARRANGEMENTS (working papers published for Resources for the Future, Inc., 1972-1974).

84. ICNT, *supra* note 4, art. 61(3).

85. *Id.*, art. 61(2).

86. *See id.*, art. 66(5) (cooperation for conservation and management of anadromous fish species).

87. *See id.*, art. 64 (cooperation for conservation of highly migratory species); *id.*, art. 65 (cooperation for protection of marine mammals).

88. For a list of names, functions and structures of regional fishery organizations, see A. KOERS, INTERNATIONAL REGULATION OF MARINE FISHERIES 77-277 (1973).

89. Convention on Fishing and Conservation of the Living Resources of the High Seas, U.N. Doc. A/Conf. 13/L. 54, art. 5 (1958).

90. The list includes, *inter alia*, United Nations Development Program, Intergovernmental Oceanic Commission (UNESCO), Intersecretarial Committee on Scientific Programs Relating to Oceanography and Aquatic Science and Fisheries Information System. On inclusion of FAO, *see* note 110 *infra*.

91. *See* text accompanying notes 110 & 119 *infra*.

failure of existing organizations<sup>92</sup> proves the contrary. With the exception of one or two,<sup>93</sup> these organizations have thus far not been able to contribute to the management of world fisheries. Lack of enforcement power, inadequate budgets, and the absence of capacity for scientific research are the major reasons.

Adoption of the 200-mile fishing zones will cover a large area of the ocean that is presently under the jurisdiction of regional fishery organizations. This extension may even diminish the importance of the relevant organizations. However, a wider fishing zone does not end the regional fishery problems; it may only shift a set of problems from one region to another or transfer jurisdiction from a regional body to a coastal State. For example, the distant water fishing States which in the past had to follow regional standards set by fishery organizations would now have to deal with the standards of the coastal States.

Thus, if the existing regional fishery bodies continue their present practice, the existence or absence of a law of the sea treaty would not make any difference in future management of fisheries. There is a need for restructuring the fishery organizations. The ICNT does not describe the functions, responsibilities or powers these organizations may assume. Nevertheless, the idea of involving fishery organizations in future decisionmaking processes may encourage the fishing nations to reorganize them.

### *Non-Treaty Approach*

In the absence of a law of the sea treaty, State practice concerning regional fishery problems will prevail. Present practice seeks solutions through bilateral or multilateral agreements.

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92. Some of the well-known fishery organizations are the International Commission for the Northwest Atlantic Fisheries (1949), *reprinted in* LEGISLATIVE REFERENCE SERVICE, 93D CONG., 2D SESS., TREATIES AND OTHER INTERNATIONAL AGREEMENTS ON FISHERIES, OCEANOGRAPHIC RESOURCES, AND WILDLIFE TO WHICH THE UNITED STATES IS PARTY (Comm. Print 1974); International North Pacific Fisheries Commission (1952), *reprinted in id.* at 231; The Indo-Pacific Fisheries Council (1961), *reprinted in id.* at 244; International Whaling Commission (1946), *reprinted in id.* at 345; The Inter-American Tropical Tuna Commission (1951), *reprinted in id.* at 223; International Commission for the Conservation of Atlantic Tunas (1966), *reprinted in id.* at 214. Discussion on structures and functions of these fishery organizations is beyond the scope of this study; however, the outstanding work of A. KOERS, INTERNATIONAL REGULATIONS OF MARINE FISHERIES (1973), is highly recommended. *See also* authorities cited note 77 *supra*.

93. The International Commission for Northwest Atlantic Fisheries (ICNAF),

The unilateral extension of fishing zones to 200 miles will definitely have some impact on the function of the regional fishery bodies. Thus, elimination or reorganization of some of these regional bodies is foreseeable. One may also anticipate the creation of new fishery organizations if the coastal States follow the ICNT suggestions.

It should be noted here that the establishment of new fishery bodies cannot lead to a unique system of conservation and management of fisheries so long as the activities of these organizations are not coordinated. Uncoordinated fishery efforts have, both in the past and at present, created different conservation standards for the same fish species in different regions.

Another criticism relates to the fact that some of these fishery organizations are species-oriented<sup>94</sup> and may therefore preserve one fish species at the expense of the others.<sup>95</sup>

Lack of a law of the sea treaty may also encourage the fishing States to grant control and management of fisheries to non-fishery regional organizations.<sup>96</sup> The first category includes the United Nations groups, such as the Organization of American States (OAS) and the Organization of African Unity (OAU). The second category would encompass the European Economic Community (EEC). The first group is too politically oriented. Furthermore, the slow decision-making process in these organizations is incompatible with the dynamic nature of the fishery problems.<sup>97</sup> The EEC, on the other hand, may be a better choice.<sup>98</sup>

#### CONCLUSION

##### *Law of the Sea Conference: A Final Appraisal*

So far, this Article has discussed the existing fishery problems and hypothesized the consequences of non-agreement in the Law of the

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for example, has been considered a successful regional fishery organization. For some of the activities of ICNAF, see Christy, *Northwest Atlantic Fisheries Arrangement: A Test of the Species Approach*, 1 OCEAN DEV. & INT'L L. 65, 67-77 (1973).

94. See A. PARDO & E. BORGESE, *THE NEW INTERNATIONAL ECONOMIC ORDER AND THE LAW OF THE SEA* 169 (2d ed., Occasional Paper No. 5, 1976).

95. The problem relates to the so-called "food web," or marine life cycle, in which larger fish consume smaller fish, and so on. For details on this biological aspect of fisheries, see F. CHRISTY & A. SCOTT, *THE COMMON WEALTH IN OCEAN FISHERIES* 65-67 (1965). A good example is the problem of the preservation of whales and krill in Antarctica, for the latter is the food of the former. See A. PARDO & E. BORGESE, *supra* note 94.

96. See note 72 *supra* and text accompanying notes 67-73 *supra*.

97. *Id.*

98. *Id.* On EEC and the law of the sea, see TRILATERAL TASK FORCE ON THE OCEANS, *A NEW REGIME FOR THE OCEANS* (Triangle Paper No. 9, 1975); Vignes, *The E.E.C. and the Law of the Sea*, in III *NEW DIRECTIONS IN THE LAW OF THE SEA*

Sea Conference with respect to fisheries. Nonetheless, because fishery is a part of the so-called "package deal," and so long as UNCLOS insists on covering the realm of the law of the sea only in one universal treaty, it is appropriate to evaluate the Conference as a whole and to predict its progress or failure in the future.

Contrary to the popular belief that UNCLOS has failed, the outcome of each session of the Conference indicates that there are more agreements than disagreements among the negotiators. Consensus has already been achieved in Committee II on most traditional law of the sea issues. Therefore, it is not improbable that the Conference will eventually have to replace the "package deal" doctrine with that of separate treaties. Had the Conference followed the 1958 Geneva Conference system, a fisheries treaty would probably have been the first outcome.

The Conference may also come up with an ambiguous treaty and let future interpretation or dispute-settlement mechanisms fill the lacuna. That being the case, those who prefer the existence of any law of the sea code over "non-agreement" may have to face disputes and legal battles, followed by an imperfect treaty. Further, such a treaty will not be acceptable to those who have already objected to any immature treaty and are expecting a viable one.

#### The Role of the Group of 77

Despite their political and economic power, the developed States cannot succeed in formulating a "developed-State" treaty because of the voting power of the Group of 77.<sup>99</sup> Conversely, the latter can lead the Conference to adopt a "Group of 77" treaty. Prediction of the consequences of such a treaty will be made later,<sup>100</sup> but at this stage of negotiations it is obvious that the Group of 77 does not have any intention of agitating the pre-existing conflicts between the developed and the developing States. Furthermore, the solidarity of the Group may be weakened if some members decide to support the developed States' proposals in order to secure their foreign assist-

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335, 337 (R. Churchill, K. Simmonds & J. Welch eds. 1973); Hardy, *Regional Approaches to Law of the Sea Problems: The European Community*, 24 INT'L & COMP. L.Q. 336 (1975). For the recent decision of the EEC in extending the fishery zone to 200 miles, see THE ECONOMIST, Dec. 18, 1976, at 49-50; *id.*, Dec. 4, 1976, at 64; *id.*, Nov. 6, 1976, at 67-68. .

99. The Group of 77, with more than 100 members, includes developing States from Latin America, Africa, Asia and Oceania. 18 KEESING'S CONTEMPORARY ARCHIVES 25377 (1972).

100. See text accompanying notes 108-09 *infra*.



ance in financial, technical or political support. After certain compromises and trade-offs, the Law of the Sea Conference may still come up with a Group of 77 Treaty. But this means that the Group must have definitely procured the tolerance of the developed States in advance.

The conference may formulate a treaty which only lays down certain general rules concerning each subject and leaves the details to future negotiations among States or national legislation. The idea of general frameworks on deep seabed mining issues has already been rejected by the Group of 77, which tries not only to create a broad control for the Seabed Authority but also to enumerate various activities on seabed mining which can be controlled by the Authority.<sup>101</sup>

The Group of 77's support of a powerful seabed authority reflects the former's distrust of the developed States and its interest as the real beneficiary of the law of the sea treaty. It is a well-known fact that the developed States with deep seabed mining technology are better off without a law of the sea treaty, and their seabed mining companies will be happier without an international seabed authority.<sup>102</sup>

In their decision-making process, the representatives of the developed States in the Conference have to consider not only the political goals of their governments but also the practical aspect and economic return of any proposal for their commercial enterprises. Private companies in the United States, for example, are constantly trying to change Federal regulations; in some instances, they even hope for deregulation.<sup>103</sup> Obviously, with such an attitude, United States companies do not wish to be regulated by a powerful international authority sitting, for example, in Jamaica.<sup>104</sup> Further, supervision by an international regulatory seabed authority which does not even possess the relevant technology can be frustrating. The interest groups and lobbyists at home create an added concern for United States representatives, as the creation of an international organization is always an additional burden to the United States taxpayers. The interest groups can also pressure Congress for approval of the pending legislation on deep seabed mining.<sup>105</sup>

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101. On deliberation of Committee I, which deals with the issue of deep seabed mining and also for the role of Group of 77 in that Committee, see authorities cited note 17 *supra*.

102. See Aguilar, *How Will the Future Deep Seabed Regime be Organized?*, in *LAW OF THE SEA: THE EMERGING REGIME OF THE OCEANS* 43 (J. Gamble & G. Pontecorvo eds. 1974); Barkenbus, *Seabed Negotiations: The Failure of United States Policy*, 14 *SAN DIEGO L. REV.* 623 (1977).

103. Domestic oil industry is a good example.

104. Jamaica has been proposed as the seat of the Authority.

105. Enactment of Fishery Conservation and Management Act of 1976, 16

The Group of 77, on the other hand, distrusts foreign companies and favors a powerful seabed authority which can support its rights in the future. The Group is not troubled by inefficiency, the slow machinery of international organizations or the lengthy waiting periods expected for the first economic gain.

The distrust shown by the developing States towards foreign companies or their governments is rooted in the era of colonialism. Although it is no longer fashionable to talk about colonialism, the policy of the Group of 77 in the Law of the Sea Conference indicates that the bitter memory of political or economic colonialism is still alive. On the other hand, with its voting power, the Third World has created a system of international colonialism directed towards the developed States. This system, which has monopolized decision-making processes in recent international negotiations, can also affect the outcome of UNCLOS.

### *Non-Agreement*

The United Nations Conference on the Law of the Sea may continue or terminate in the future without producing any treaty. The outcome in either case may create a set of similar problems. As an international forum, a pending conference may play a significant role in the process of establishing customary international law. A similar possibility may exist even after the termination of an unsuccessful conference. The ICNT and the deliberations of UNCLOS may establish customary international law, as the outcome of the 1930 Hague Conference on Codification of the Law of the Sea<sup>106</sup> and the 1960 Geneva Conference on the Law of the Sea<sup>107</sup> have both done.

The fact that the law of the sea developed through customary international law during the past few centuries may raise another issue as to whether customary law should be preferred over a written agreement. Advantages and disadvantages in customary international law as well as those of international legislations have been dis-

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U.S.C. §§ 1801-1882 (1976), was due to pressure by the United States coastal fishermen, especially those from New England.

106. See Hudson, *The First Conference for the Codification of International Law*, 24 AM. J. INT'L L. 447 (1930); Reeves, *The Codification of the Law of Territorial Waters*, 24 AM. J. INT'L L. 486 (1930).

107. See generally Dean, *The Second Geneva Conference on the Law of the Sea: The Fight for Freedom of the Seas*, 54 AM. J. INT'L L. 751 (1960); Franklin, *The Law of the Sea: Some Recent Developments*, 33 S. CAL. L. REV. 357 (1960); Jessup, *The Law of the Sea Around Us*, 55 AM. J. INT'L L. 104 (1961).

cussed in detail elsewhere.<sup>108</sup> The relevant issues here should be whether the contemporary problems relating to law of the sea can be resolved through the customary-law process. The magic word is technology. With revolutionary changes in technology, even a modern written agreement might become outdated within a very short time, not to mention customary rules. Of course, the stability and functional advantages of customary rules cannot be ignored; therefore, one may foresee the application of these rules to certain future problems of the law of the sea. But the applicability of customary international law in the case of fisheries or deep seabed mining, for example, is most unlikely because of the time and technology elements involved.

In the absence of the Law of the Sea Conference and the treaty, States may resolve the law of the sea problems through their unilateral actions or bilateral or multilateral agreements. Whereas unilateral actions do not affect the status of fisheries drastically, they seem unthinkable in the case of deep seabed mining at the present time. For example, even initial action by a developed State for the exploitation of the deep seabed resources may incite a hostile reaction by the Group of 77 and lead to legal suits before national or international tribunals. Warned by the risk of unilateral action, the developed States may, as a group, conclude their own treaty. Can the Group of 77 bring class-action suits against individual member States or the newly established international organization? This is a question of undeniable significance.

On the other hand, one may predict that because the Group of 77, with more than 100 members, has a better chance of formulating a viable treaty, it may do so without fearing the reactions of the developed States.

A Group of 77 treaty may raise the following questions: Would the developed States have a strong case against a widely accepted treaty? Would the foreign mining companies be willing to work for the Group of 77 without their governments' political support? Would they be able to work with a Group of 77 seabed authority? Would the oil-exporting nations within the Group of 77 risk their capital?

The hypotheses or possibilities and consequences of non-agreement can continue. Realistically, however, the interrelated problems of food, population, economics, energy and environment are not individual State concerns. Such commonality dictates that the world community avoid violence and the use of force at sea.

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108. See generally 6 G. HACKWORTH, *INTERNATIONAL LAW* 542, 547, 553 (1943); E. LAUTERPACHT, *DEVELOPMENT OF INTERNATIONAL LAW BY THE INTERNATIONAL COURT* 368 (1958); Kunz, *The Nature of Customary International Law*, 47 *AM. J.*

Whether the hypotheses discussed in the preceding pages become realities has to be answered in the future. The only tenable theory at this point relates to the fact that so long as the needs for raw materials (for the developed States) and for foreign assistance (for the developing States) exist, amicable law of the sea alternatives or agreements, whether written or unwritten, can be predicted.

#### *A Possible Solution for the Conservation of Fisheries*

Through theoretical analysis, this Article has predicted some of the fishery management problems of the future. Whether these hypotheses become future reality is not the issue. Hypothesization on certain unclear law of the sea issues may be a good exercise for a lawyer's thinking. However, scientific findings which have produced accountable readings in hundreds of books, articles, papers, and United Nations documents indicate that, unlike deep seabed mining, most of the fishery problems are known to mankind. Thus, what is not known about the future of fisheries should not hinder the solution-finding process for what is known concerning present problems. For example, one can predict that technological changes might even create a system of animal husbandry<sup>109</sup> for highly migratory fish species in the future. Would this change the migratory nature of fish and make them respect man-made boundaries at the present time?

As noted before, UNCLOS has not established a global fishery-management regime. The ICNT has repeatedly referred to subregional, regional or global organizations without any specific names.<sup>110</sup>

Regional fishery organizations have already been discussed;<sup>111</sup> therefore, the emphasis here will be only on global organizations. Since the beginning of the law-of-the-sea negotiations in the early 1970's, various proposals on global conservation of fisheries have

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INT'L L. 662 (1953); McDougal, *The Hydrogen Bomb Tests and the International Law of the Sea*, 49 AM. J. INT'L L. 356 (1955); Wright, *Custom as a Basis for International Law in the Post-war World*, 2 TEX. INT'L L.F. 147 (1966). The constitutive element of customary law was also discussed in the Fisheries Case (United Kingdom v. Norway), [1951] I.C.J. 138-39, 191.

109. For a discussion on fencing the fish through electrical currents system as well as other systems, see F. CHRISTY & A. SCOTT, *THE COMMON WEALTH IN OCEAN FISHERIES* 96, 97, 101, 102 (1965).

110. FAO has been mentioned in Article 2 of Annex VII of the ICNT as a responsible fishery agency to provide lists of fishery experts for dispute settlement purposes. ICNT, *supra* note 4, Annex VII. See also text accompanying notes 84-91 *supra*.

111. See text accompanying notes 92-93 *supra*.

been made by fishery experts. These proposals can be examined in two categories.

### First Category

This proposal<sup>112</sup> seeks a global management regime in which a coastal State, a group of States, or regional or global institutions would assume management responsibilities in certain areas or on certain fish species.<sup>113</sup>

It further suggests that the "management entity" (whether a State or regional or global organization) should have the exclusive right to regulate the resources within its jurisdiction.<sup>114</sup> Other significant principles introduced in this proposal include the establishment of a global specialized agency whose main functions would be the collection of scientific information and the adoption of a dispute-settlement mechanism,<sup>115</sup> enforcement by the "management entity,"<sup>116</sup> and a dispute-settlement formula.<sup>117</sup>

This proposal has three weaknesses. First, its suggestions on management goals are too general to produce any functional use in the future. Second, the proposal does not distinguish between the management problems of coastal States and those of the high seas. Third, it confers equal regulatory and enforcement power upon States as well as regional and global organizations.

Obviously, a global fishery organization cannot assume regulatory or enforcement power in the exclusive economic zone. Such power is even questionable with respect to the high seas.

In short, the proposal has tried to establish certain global standards. However, in the process, it has mixed the rights and duties of the individual State with those of regional and global organizations. A global fishery regime can be achieved only if the rights, duties, functions and powers of the management entities are distinctively appropriated. By assuming equal power for a coastal State and a global fishery organization, the proposal will not only create confusion, overlapping jurisdictions and duplicated management efforts, but will also lead to a set of similar but not global standards.

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112. The proposal is the outcome of the work of an expert group on the law of the sea, sponsored by the American Society of International Law. See AMERICAN SOCIETY OF INTERNATIONAL LAW, PRINCIPLES FOR A GLOBAL FISHERIES MANAGEMENT REGIME (report of the Working Group on Living Marine Resources 1974.)

113. *Id.* at 2.

114. *Id.* at 3, 11.

115. The dispute-settlement mechanism refers to violation of the global criteria related to the function of the agency. *Id.* at 8.

116. *Id.* at 18-20.

117. *Id.* at 13-16.

## Second Category

Inspired by the Portuguese paper on institutional requirements of the SNT,<sup>118</sup> and based on suggestions made in a meeting of a subcommittee of the Committee on Fisheries (COFI) in Lisbon in March of 1976,<sup>119</sup> the second proposal suggests reorganization of FAO's Committee on Fisheries as a global organization responsible for management of fisheries on a worldwide basis.<sup>120</sup> The proposal further suggests universalization of COFI's membership<sup>121</sup> and establishment of the following within COFI: a Council for the representation of regional fishery commissions; an Enterprise for the management of fisheries in the international area; an independent Secretariat and an able fishery-research system to be incorporated into the Intergovernmental Oceanic Commission (IOC); dispute-settlement machinery; and an independent budget from a Trust fund, license fees and activities of the Enterprise.<sup>122</sup>

Having followed Ambassador Pardo's "common heritage of mankind" doctrine, the proposal is very much along the lines of the Seabed Authority proposals. The creation of "Enterprise," "Secretariat," "Council," and reference to "the international area" rather than the high seas are examples of the similarity.

It is obvious that at this stage of the law of the sea negotiations, participants in UNCLOS are not willing to create a strong regulatory authority for the exploitation of high seas fisheries. Furthermore,

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118. In the Fourth Session of UNCLOS, the Delegation of Portugal circulated a paper indicating the references which were made throughout the SNT and the RSNT to subregional, regional and global organizations. The Delegation further asked the United Nations Secretariat to provide the Conference with an "annotated director" of the United Nations agencies which are involved with law of the sea activities. See A. PARDO & E. BORGESE, *supra* note 94, at 20, 168.

119. See COFI/76/10, March 1976, paras. 60, 62, 66; document COFI/C/4/76/4; document COFI/C/4/76/5.

120. The proposal is made in an occasional paper written by Dr. Arvid Pardo and E. Mann Borgese. Dr. Pardo's "common heritage of mankind" doctrine was first introduced to the Seabed Committee in 1967. See A. PARDO & E. BORGESE, note 94 *supra*.

121. *Id.* at 175. COFI was established in 1965 within FAO's Fisheries Department and has been open to all member nations which would notify the Director-General of their intention to become members. As of 9 March 1976, COFI has 49 members, each having one vote. See DIRECTORY OF FAO STATUTORY AND PANELS OF EXPERTS, as of March 1976, at 43; 2 FOOD AND AGRICULTURE ORGANIZATION OF THE UNITED NATIONS 125-26 (1976).

122. A. PARDO & E. BORGESE, *supra* note 94, at 171-75.

the revenue derived from these resources in a narrow high seas (after delimitation of the exclusive economic zone) might not suffice for the maintenance of a global fishery organization. For the same reason, creation of an enterprise for direct exploitation of the resources is meaningless.

Even assuming that the said problem would not arise, the distant water fishing nations would prefer negotiations with coastal States for the exploitation of resources in abundant areas of their economic zones over dealing with an international fishery enterprise for limited high seas fisheries.

Another problem found within this proposal relates to the universalization of COFI's membership.<sup>123</sup> Leading fishing nations with larger contributions to a regulatory global organization will most likely seek weighted-vote formulas.

### Final Recommendations

Throughout this Article, suggestions have been made on functions of the coastal States and the regional fishery organizations concerning conservation and management of fisheries. As regards the global fishery organization, the expertise and experience of COFI makes it the most eligible organization for assuming global management responsibility. Of course, COFI has to be given more independence, power, and an adequate budget in order to fulfill the management goals. As far as the power of COFI is concerned, and considering the eventuality of the exclusive economic zone, it seems more appropriate for COFI to assume an advisory rather than a regulatory role.

Based on the foregoing, the new COFI should establish the following:

*A Scientific Research Center.* The idea is not to create a public fishery library but to establish a worldwide monitoring and data collection system. The Center can also be a financial source through the selling of its services to those fishing nations which are in need of scientific findings on their fisheries.

*Annual Regional Meetings.* The reports of regional fishery organizations, United Nations or non-United Nations organizations (involved with fisheries) and the scientific findings of the Center should be circulated in these meetings. The meetings should conclude with lists of recommendations for the management of fisheries.

*Regional Training Centers.* COFI should encourage the leading fishing nations to establish training centers for assisting developing

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123. See text accompanying note 121 *supra*. See also ICNT, *supra* note 4, pt. XI (seabed), § 5.

fishing nations. The costs may be shared by the host State and COFI. The training courses may bring the fisheries scientists together to improve understanding, may harmonize the fishing patterns, and may finally lead to international cooperation among all regional fishing nations.

*Fisheries Disputes Subcommittees.* Dispute settlement should be left to provisions of the treaty on the law of the sea; but in the absence of such treaty, the ICNT formulas<sup>124</sup> should be followed. However, whenever needed, COFI can establish ad hoc subcommittees to avoid disputes among its members.

*A Regional Subcommittee.* A regional subcommittee composed of all regional fishery bodies should be established in order to eliminate duplication of fishery efforts, overlapping jurisdictions, and so on. The subcommittee should transfer the data received from regional bodies to the scientific center of COFI.

*The Antarctica Commission.* The potentiality of Antarctica is promising; therefore, under the auspices of the FAO,<sup>125</sup> or based on a new constitutional provision, COFI should establish a permanent Antarctica Commission for regulating the fisheries in the region. The Commission can carry out its responsibilities with the cooperation of the International Whaling Commission and the Antarctic Treaty States.<sup>126</sup> In its supervisory capacity, COFI will be indirectly involved in the regulatory scheme.

Based on the proposed formula, COFI can publish a Code of Conduct for fishing nations every few years. Such a code may receive more recognition and be more practical than any regulatory fisheries laws.

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124. See ICNT, *supra* note 4, pt. XV.

125. Under the auspices of FAO, in the past several regional fishery bodies have been established in the Central Eastern Antarctic, the Southwest Atlantic, the Indo-Pacific, the Indian Ocean, the Mediterranean and the Caribbean.

126. Krill and whales are the two most important fish species in Antarctica. However, for the group of 13 States that are members to the Antarctica Treaty of 1959, the region is important not only for fisheries but also for fresh water, gas, oil and other minerals. The treaty members are very much opposed to the idea of placing Antarctica under the Seabed Authority or having new entrants in the area. See NEWSWEEK, Oct. 3, 1977, at 93. For information on the Antarctic Treaty, see 402 U.N.T.S. 71 (1960); *The Antarctic Treaty: Hearings Before the Senate Comm. on Foreign Relations*, 86th Cong., 2d Sess., 5572 (1960); Hayton, *The Nations and Antarctica*, 10 OESTERR. ZEITSCHRIFT FÜR ÖFFENTLICHES RECHT 368 (1960); Jessup, *Sovereignty in Antarctica*, 41 AM. J. INT'L L. 117 (1947); Official Documents, *Conference on Antarctica*, 54 AM. J. INT'L L. 476 (1960).



Although the above discussion was not intended to be predictive, one cannot help wondering about the future of fisheries. It is foreseeable, for example, for the Seabed Authority (if established) to assume fishery-management responsibilities in the future. Based on its broad power, the Authority can issue licenses for the high seas or for Antarctica. It can also involve itself in the exploitation of the resources directly. On the other hand, new scientific theories and the increasing global needs for food and fishmeal in only a few decades might assimilate the significance of fisheries to that of the seabed minerals at the present time. What would follow, then, would be the creation of a strong regulatory fisheries authority. The theory may sound more realistic by making reference to the first Law of the Sea Conference. No one predicted a seabed authority in 1958.