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Moritaka Hayashi

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SOVIET POLICY ON INTERNATIONAL REGULATION OF HIGH SEAS FISHERIES

MORITAKA HAYASHI*

Over the past several years, the fishing activities of the Soviet Union have grown so rapidly that today she is the third largest fishing state in the world, trailing only Peru and Japan in total catch.¹ To make such vigorous growth possible, the Soviet fishing fleet has been developed into the world's largest and most modern, and its fishing activities have been expanded into almost every corner of the world's oceans. In fact, the Soviet Union has increased her fishing operations so extensively that today it is estimated that over 90% of her total catch is being made by long-distance ocean going vessels.²

The markedly increased fishing of the high seas by the Soviet Union (and other countries as well) has caused various problems related to international law. Some of these problems are today so serious that unless proper means of accommodation are found, they may possibly lead to the creation of dangerous amounts of friction between competing nations, or the monopoly of the fishing resources by a small number of states, or worse yet, the total depletion of certain stocks of fish. In an attempt to avoid such a chaotic situation, fishing countries have already

*LL.M. (Waseda and Tulane); M.A. (Pennsylvania). Lecturer, Hosei University; Fellow, Woodrow Wilson International Center for Scholars.

1. The Soviet Union's total catch in 1969 was about 6.5 million metric tons as compared with Peru's 9.1 million and Japan's 8.6 million. FAO, 28 Y.B. OF FISHERY STATISTICS at a-18 (1970).

2. GEORGETOWN UNIVERSITY CENTER FOR STRATEGIC AND INTERNATIONAL STUDIES, SOVIET SEA POWER 94 (1969). The Soviet Union is the world's leading owner of larger fishing vessels. Their expansion plans continue "full speed," with the recent announcement by the Fishery Ministry of a thirty per cent increase in factory stern trawlers to be built in the country for 1970-75. 33 COMMERCIAL FISHERIES REVIEW, April 1971, at 58.

concluded several dozens of agreements (bilateral as well as multilateral) concerning fishing on the high seas. The purpose of this article is to review Soviet participation in such international agreements and to determine the salient features of her approach to international cooperation in regard to high seas fishing.

I

THE SOVEREIGNTY HYPOTHESIS

In pursuing the analysis, the primary focus will be placed on the often-mentioned Soviet attitude towards sovereignty in international law. It is frequently pointed out in Western literature that the Soviet concept of sovereignty is "absolute" or that Soviet international law theory puts great emphasis on the concept of state sovereignty.³ Whether this is true or not in *practice* in every field of international law has not been proven. Such an assertion has generally been taken literally from the writings of the Soviet publicists. It is a mere hypothesis — what shall be called the "sovereignty hypothesis" — that has yet to be tested by actual Soviet behavior. This is particularly important since in Soviet international law, doctrine and practice are, it is justly warned,⁴ not always the same.

How, then, can one go about "testing" the sovereignty hypothesis in relation to the field of fisheries regulations on the high seas?

It is submitted that the best manner in which to test it is through the

3. For example, Prof. Quigley points out that "(u)nderlying much of Soviet theory of international law is the Soviet emphasis on the concept of state sovereignty," Quigley, *The New Soviet Approach to International Law*, 7 HARV. INT'L L. J. 1, 22 (1965). See also K. GRZYBOWSKI, SOVIET PUBLIC INTERNATIONAL LAW 32-33 (1970). Although a Soviet textbook says that the concept of absolute sovereignty is incompatible with contemporary international peaceful coexistence, SOVIETSKOE GOSUDARSTVO I MEZH DUNARODNOE PRAVO 166-67 (Kozhevnikov ed. 1967), Ramundo points out that a departure from earlier positions is "more apparent than real," and the Soviets still maintain "the primacy of state sovereignty as the fundamental, underlying principle of coexistence." B. RAMUNDO, PEACEFUL COEXISTENCE 92 (1967).

4. "On many occasions Soviet legal theory is strongly influenced, indeed is often directly inspired, by positions taken by Soviet diplomats in international conferences or organizations, or in bilateral diplomacy. However, on other occasions Soviet jurists write what in effect is a brief for changing the law to accord with Soviet interests; and in the latter case their theoretical positions may or may not accord with State practice or represent official views. And increasingly Soviet international lawyers express views which clearly are personal and are not necessarily shared by their own colleagues." Butler, *Some Recent Developments in Soviet Maritime Law*, 4 INT'L LAWYER 702 n. 17 (1970).

enforcement of these regulations. By enforcement, we mean the process of putting rules of law into execution through actual use or threat of legitimate physical force.⁵ Examples of this are arrest, a criminal or civil trial, and the entry of a judgment by a court.⁶

Enforcement of any rule at the international level requires a state to take or refrain from taking certain action regardless of its desirability at that particular moment. It requires acceptance of the exercising of a jurisdiction other than its own state authority over a particular subject matter which has heretofore been exclusively within the jurisdictional sovereignty of the state. This is clearly at variance with the concept of sovereignty that is recognized to include "a situation in which a state has the right to control internal relations affecting the population within its territory and is not restricted, in this sense, by the similar right of any other state affecting the condition of its territory or population."⁷ Thus, the more a state accepts the jurisdiction of an outside power, whether it is another state or an international authority, the more that state acknowledges limitations on its sovereignty. It can also be assumed that acceptance of an international authority's jurisdiction involves a greater degree of limitation of sovereignty than does acceptance of that of another state on the basis of reciprocity.

In order to assess systematically the degree of sovereignty limitation recognized by the Soviet Union in the context of fisheries regulations one may usefully employ a scale developed by Robert L. Friedheim for his analysis of the United Nations debate on ocean resources.⁸ This scale, the "nationalism-internationalism scale," identifies four models of national attitudes toward the ocean resources:

- (1) Normative nationalist,
- (2) Functional nationalist,
- (3) Functional internationalist,
- (4) Normative internationalist.⁹

5. Some define "enforcement" as "the process by which an arrangement is made effective, or . . . the process designed to compel obedience to the rules." A. KOERS, *THE ENFORCEMENT OF FISHERIES AGREEMENTS ON THE HIGH SEAS: A COMPARATIVE ANALYSIS OF INTERNATIONAL STATE PRACTICE 2* (Univ. of Rhode Island Law of the Sea Institute Occasional Paper No. 6, 1970). This seems to be too broad a definition for this analysis. A strict legal definition that differentiates from a mere inspection of compliance or a recommendation of rule application is more desirable.

6. See *RESTATEMENT (SECOND) FOREIGN RELATIONS LAW OF THE UNITED STATES* § 6, comment *a* at 20 (1965).

7. K. GRZYBOWSKI, *supra* note 3, at 32.

8. R. FRIEDHEIM, *UNDERSTANDING THE DEBATE ON OCEAN RESOURCES* (Univ. of Denver Monograph Series in World Affairs, vol. 6, no. 3, 1969).

9. The characteristics of these models can be summarized as follows: *Normative*

The model attitudes, modified to reflect varied approaches to the narrower issue of the enforcement of high seas fisheries regulations, evidence the following properties:

(1) *Normative nationalists* adopt a strict notion of state sovereignty. They exercise state jurisdiction to the fullest extent possible, both in its territorial and personal aspects. This means that on the high seas the flag state has exclusive jurisdiction over a fishing vessel and persons on board. Although this is a principle embodied in the 1958 Convention on the High Seas, the Convention keeps a path open for exceptions by special agreements.¹⁰ Normative nationalists are reluctant to enter into such special agreements, adhering to the strict flag-state principle.

(2) *Functional nationalists* take the view that although nation-states

Nationalists urge that nation-states deserve the resources to survive and prosper. They rely on the core concepts of the nation-state—"territoriality" and "sovereignty"—and hope to extend these to water-covered areas beyond their geographically fixed dry land territories.

Functional Nationalists rely on one fundamental assumption: that the nation-state is still viable, perhaps the most useful institution to entrust decisions requiring political and economic power. They argue that despite the apparent decline in the capacity of the nation-state to solve all major problems which it faces, it can solve some of them. Although those who advocate such solutions are nationalist in form they are functional in substance. Their concern is to solve problems in the short run, and for this they need the nation-state with its claim to a defined territory, known practice and established administrative structure. While normative notions of nationalism are not absent in the ideas and proposals presented by functional nationalists, there is less emphasis upon them and less sentiment for the nation-state as the repository of "nationhood."

Functional Internationalists are conscious of those who use the oceans and are willing to perform service for users. Basic to all functional internationalist proposals is the notion of the growing interdependence of states in the modern world and the belief that many problems transcend national borders and cannot be solved by traditional state mechanisms. There is a recognition that certain functions can be most effectively performed at the international level. Inherent in the functional internationalist schemes are: (1) concentration on a specific problem rather than the system as a whole; and (2) preference for an international agency to perform specific tasks.

Normative Internationalists have the hope of internationalizing all or part of the world's oceans or their resources as a key element in a grand design to assure world peace and prosperity. Normative Internationalist proposals often share one or more of six characteristics: (1) concern for the central problems of world politics; (2) awareness that the end they seek is the development of a sense of world community; (3) concentration upon problems of conflict; (4) concern for formal organization, particularly, insistence upon development of international enforcement mechanisms; (5) ethical obligation to redistribute the world's wealth; and (6) the attempt to provide the United Nations with a source of independent income. *Id.* at 2-30.

10. Convention on the High Seas, *opened for signature* April 29, 1958, art. VI, [1962] 2 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 [hereinafter cited as Geneva Convention].

are no longer the best machinery for solving problems of high seas fisheries, they can still play a major part in their solution. They might agree to entrusting an international authority with power to decide certain policy issues, but they restrict enforcement power solely to national authorities. Functional nationalists argue for such national jurisdiction not because they favor it ideologically but because nation-states are believed to be the most efficient institutions to deal with the problems. In other words, it is considered to be functionally more effective for nation-states to retain the power of enforcement than to give it to an international body.

(3) *Functional internationalists* hold that the international system has undergone a revolutionary change, and that nation-states are no longer the best institutions to serve the needs of men. In the modern world where more and more problems tend to be transnational, they argue that transnational solutions are in order. They do not urge that every problem of high seas fisheries can best be settled by international authorities, but only that international authorities can at least help supervise the enforcement of high seas fisheries regulations. They do not, however, go so far as to deprive the nation-states of enforcement power; instead, they allow international bodies to exert some degree of control over the process of enforcement by individual nation-states.

(4) *Normative internationalists* fully extend the functional internationalist's view and argue that international bodies should have extensive jurisdiction over the matter of enforcing fishing regulations on the high seas. Under this view, an international agency is directly responsible for arresting and punishing fishermen of any state. Nation-states can also retain enforcement power, but it is subject to the final review of a superior international authority.

II

POLICY STATEMENTS ON THE CONSERVATION OF LIVING RESOURCES

Generally speaking, treaties concerning the regulation of high seas fisheries deal with two different types of activities. One is the conservation (and rational exploitation) of living resources, the other is the conduct of fishing operations.¹¹ Treaties relating specifically to fishing

11. "Fishing operations" include the identification and marking of fishing vessels

operations are few in number, and the only multilateral convention in which the Soviet Union participates, the Convention on Conduct of Fishing Operations in the North Atlantic signed in London in 1967, is not yet in force. Since no other significant treaty has been concluded in this area by the Soviet Union, the following analysis will focus on treaties concerned with the first type of activities, the conservation of resources.

It was once widely believed that the living resources of the sea were inexhaustible. Now this view is generally held invalid, and measures calling for the conservation of the resources while still allowing rational exploitation have been proposed by many scientists as well as economists and lawyers. Soviet writers on the law of the sea generally agree. Thus, according to a standard Soviet maritime law text:

"It can be stated that an international legal principle is now being developed, according to which all States not only have the right to engage in fishing on the high seas but must also take measures to protect fishery preserves (i.e., to fish rationally)."¹²

It is possible for a coastal state to take two approaches to such conservation measures on the high seas. One is unilateral and the other bilateral or multilateral, i.e., international. While the former usually insists on "special rights" of coastal states based mainly on geographical proximity, the latter denies such special rights and emphasizes necessity of agreement among interested countries. Although some Soviet policy statements are found in the 1955 Rome Conference on the conservation of living resources of the sea,¹³ it was at the 1958 Geneva Conference on the Law of the Sea that the Soviet delegates began to take less ambiguous views on this issue. The Soviet preferences which were made clear in the debates of the Geneva Conference can be summarized in the following three points:

First, the Soviet Union is "wholeheartedly in favor" of the principle of the conservation of the living resources of the high seas, and generally considers that the solution of the problems of fisheries regulations based on conservation measures should be sought through international cooperation.¹⁴

and gear, signals to be used by fishing vessels and certain rules which must be observed by such vessels on fishing grounds. J. E. CARROZ AND A. G. ROCHE, *The International Policing of High Sea Fisheries*, 6 CANADIAN YEARBOOK OF INTERNATIONAL LAW 61, 65 (1968).

12. P. D. BARABOLYA, ET AL., *MANUAL OF INTERNATIONAL MARITIME LAW* 227 (1966).

13. See F. DE HARTINGH, *LES CONCEPTIONS SOVIÉTIQUES DU DROIT DE LA MER* 95 (1960).

14. 5 Official Records of the UN Conference on the Law of the Sea (third com-

Second, she is against extreme unilateralism in extending coastal states' exclusive jurisdiction over high sea fisheries for conservation purposes. In particular, she denounces the so-called "abstention principle" as at variance with the principle of equality of rights and freedom of the high seas.¹⁵

Third, she would nevertheless allow a coastal state the right to take unilateral measures to regulate fishing subject to certain conditions. For example, if a coastal state is fishing a certain stock in an area where it alone has or intends to make efforts to increase the size of the stock, then, the Soviets believe that state has the right to adopt unilateral measures.¹⁶

More specifically, her approach can be illustrated by the following proposal by the Soviet delegation to the Third Committee:

1. Any coastal State having a special interest in the maintenance of the productivity of the living resources of any area of the high seas adjacent to its territorial sea may, to this end, adopt unilateral measures of conservation appropriate to any stock of fish or other marine resources in any area of the high seas adjacent to its territorial sea, provided that negotiations to that effect with other States concerned have not led to an agreement within a reasonable period of time.

2. The measures which the coastal State adopts under the previous paragraph shall be valid as to other States only if the following requirements are fulfilled:

- (a) That scientific evidence shows that there is an urgent need for measures of conservation;
- (b) That the measures adopted are based on appropriate scientific findings;
- (c) That they do not discriminate against foreign fishermen;
- (d) That they are essential, in order to ensure that the general steps taken by that State to safeguard the reproduction of the living marine resources are effective.¹⁷

With the exception of paragraph 2 (d) and other minor modifications, the essence of this proposal was adopted by the Conference. It appears in Article 7 (1), (2) of the Convention on Fishing and Conservation of the Living Resources of the High Seas.¹⁸ Although the Soviet Union has not ratified the Convention, it is not because of the provisions relating to conservation policy, but rather because of those concerning

mittee) 7, UN Doc. A/CONF. 13/41 (1958).

15. *Id.* at 8, 104.

16. *Id.* at 58.

17. 5 Official Records of the UN Conference on the Law of the Sea (third committee) Annex at 147, UN Doc. A/CONF. 13/C.3/L.42 (1958).

18. *Opened for signature* April 29, 1958, [1966] 1 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 286.

the compulsory procedure for settlement of disputes and the prohibition of reservations.¹⁹

It is clear from the above that the Soviet Union, as far as policy statements are concerned, is essentially in favor of taking an international approach to the conservation of high seas fishery resources. Only in exceptional cases and under strictly limited conditions would she allow unilateral measures of coastal states to be taken.

How, then, are these policy preferences reflected in the treaty practice of the Soviet Government? How "international" are the measures envisaged in the treaties? How effective are they purported to be in terms of their enforcement? These are the questions addressed in the next sections.

III

TREATY PRACTICE ON HIGH SEAS FISHERIES

Before proceeding to analyze Soviet attitudes toward enforcement of fisheries regulations, an attempt should be made to examine principal features of the major high seas fisheries agreements to which the Soviet Union is a party. This will offer a general idea on the kinds of arrangements she has accepted to date.

A. Multilateral Conventions

1. *Interim Convention on the Conservation of North Pacific Fur Seals*

During the latter half of the nineteenth century, there was a great expansion in the seal harvest in the North Pacific. This led to clear signs of depletion of the fur seal stock, necessitating some form of protective measures.

In an effort to curb this abuse, the Convention for the Protection of Fur Seals in the North Pacific Ocean, was concluded in 1911 by the United States, Russia, Japan and Canada.²⁰ The parties to the Convention agreed to ban pelagic sealing and set up a system of enforcement of the regulations by the men of war of the signatories. The Soviet Union confirmed her adherence to this treaty in 1926, issuing a regulation restrict-

19. WILLIAM E. BUTLER, *THE SOVIET UNION AND THE LAW OF THE SEA* 193 (1971); See also BARABOLYA, ET AL., *supra* note 12, at 227.

20. For the background of this Convention see D.M. JOHNSTON, *THE INTERNATIONAL LAW OF FISHERIES* 264 ff. (1965).

ing fur seal hunting.²¹ This Convention proved to be the first Soviet commitment to the regulation of rational exploitation of maritime resources.²²

The 1911 Convention was terminated by Japan in 1941 in accordance with its provisions. Although there followed a period without international regulation in the North Pacific sealing, except for a U.S.-Canadian provisional accord, the substance of the 1911 Convention was revived in 1957 when the Interim Convention on the Conservation of North Pacific Fur Seals²³ went into force among the same four parties.

The new Convention sets up the North Pacific Fur Seal Commission composed of one member from each party. The Commission has the duty to formulate and coordinate research programs for the rational exploitation and conservation of the fur seal resources and to recommend such programs to the parties for implementation. It has also the power to recommend appropriate measures necessary for the conservation of the fur seal resources.²⁴ In order to implement the ban on pelagic sealing, a system of mutual inspection and seizure of vessels based on the 1911 scheme was stipulated.²⁵

2. *International Convention for the Regulation of Whaling*

Although attempts to regulate whaling at the international level date back to the late 1930's, all the pre-World War II regulations were limited in scope and membership. A genuine effort to establish international regulation came in 1946 when all the whaling nations met in a Washington conference. As a result, the International Convention for the Regulation of Whaling²⁶ was adopted. It came into force on November 10, 1948. The Convention set up the International Whaling Commission (IWC) which has power to recommend and conduct research relating to whales and whaling, and to collect, study and disseminate information relating to the conservation of the resources.²⁷

21. K. GRZYBOWSKI, *supra* note 3, at 170.

22. *Id.*

23. Feb. 9, 1957, [1957] 2 U.S.T. 2283, T.I.A.S. No. 3948, 314 U.N.T.S. 105 [hereinafter cited as Interim Convention on Seals]. The Convention was extended for six years in 1963 and for 18 years in 1969.

24. *Id.* art. V.

25. *Id.* art. VI.

26. *Opened for signature* Dec. 2, 1946, 62 Stat. 1716 (1948), T.I.A.S. No. 1849, 161 U.N.T.S. 72 [hereinafter cited as IWC Convention]. The signatory states were: Australia, Argentina, Brazil, United Kingdom, Denmark, Canada, the Netherlands, New Zealand, Norway, Peru, USSR, USA, France, Chile, and South Africa. Later Iceland, Mexico, Panama, Sweden, and Japan adhered to the Convention.

27. *Id.* art. IV.

The Commission also has the power to adopt, by a three-fourths majority, regulations with respect to the conservation and utilization of whale resources. Such regulations are to be adopted in the form of amendments to the Schedule attached to the Convention, and are to become effective, as a rule, ninety days after notification of the parties.²⁸

The Schedule as it stands now forbids taking and killing certain species, with or without time limitations, designates sanctuaries in the Atlantic, Pacific and Indian Oceans, and sets forth the maximum catch of whales permissible during the open seasons in the Antarctic. It also requires each factory ship to have at least two inspectors appointed by the Government of the flag state and, in case of land stations, "adequate inspection" must be maintained. A stronger system of inspections, to be conducted by truly international teams, is currently being prepared.²⁹

3. *International Convention for the Northwest Atlantic Fisheries*

The Northwest Atlantic is one of the oldest and most developed international fishing grounds. Confronted with signs of the depletion of some species in the area, interested countries met in Washington, D.C. to conclude a convention for the investigation, protection and conservation of fishery resources in the area. On February 8, 1949, they adopted the International Convention for the Northwest Atlantic Fisheries.³⁰ This Convention came into force on July 3, 1950, and the Soviet Union, having begun to fish in the area covered by the Convention in the late fifties, adhered to it on April 10, 1958.

The Convention established the International Commission for the Northwest Atlantic Fisheries (ICNAF) composed of representatives from all the parties. Decisions of the Commission are determined by a two-thirds vote of the parties. Among the Commission's functions are: to make scientific investigations and to collect and analyze information on the state of fishery resources; to study and appraise information on possible conservation measures; and to disseminate reports and various data concerning fisheries in the Northwest Atlantic area.³¹

The Convention has also established five Panels, one for each of the five "sub-areas" of the Northwest Atlantic. Each Panel is responsible for

28. *Id.* arts. III, V.

29. *See* pp. 156-58 *infra*.

30. *Opened for signature* Feb. 8, 1949, [1950] 1 U.S.T. 477, T.I.A.S. No. 2089, 157 U.N.T.S. 157 [hereinafter cited as ICNAF Convention]. The Parties are: United Kingdom, Denmark, Iceland, Spain, Italy, Canada, Norway, Poland, Rumania, Portugal, USA, Federal Republic of Germany, France, USSR, and Japan.

31. *Id.* art. VI.

reviewing the fisheries of its sub-area and information, including scientific data, relevant to them. The Panel may recommend studies and investigations to the Commission, and must investigate and report on any matter referred to it by the Commission. The Panels may also make recommendations to the Commission for joint action by the parties for the protection and conservation of the resources. Based on such recommendations, the Commission may draw up proposals for keeping certain stocks of fish at a level permitting the maximum sustainable catch by the application of appropriate conservation measures. These measures include establishing open and closed seasons, closing portions of sub-areas, fixing size limits for any species, prohibiting certain gear and setting an over-all catch limit for any species.³²

In practice, this procedure of developing regulatory measures has caused problems because any party on the Panel in question may object or make reservations to a Commission proposal. Such reservations themselves must be accepted by all parties concerned in order to become effective. Thus at present, ICNAF has a "serious accumulation of proposals, and amendments and reservations to proposals which had not been fully accepted."³³ Once the proposals become effective, however, the parties are obligated to take necessary measures to implement them and to report to the Commission on such measures.³⁴ In addition to this, ICNAF has recently adopted a scheme for international inspection of enforcement of its regulatory measures.³⁵

4. *West Pacific Research Agreement*

In 1956, the USSR, China, North Vietnam, and North Korea signed an Agreement Concerning Cooperation in Conducting Fishery, Oceanological, and Limnological Research in the Western Pacific Ocean.³⁶ Later, Mongolia acceded to it and China withdrew from it.³⁷ The purpose of the Agreement was to establish a system of cooperation in fish-

32. *Id.* arts. VII, VIII.

33. C. E. LUCAS, INTERNATIONAL FISHERY BODIES OF THE NORTH ATLANTIC 19 (Univ. of Rhode Island Law of the Sea Institute Occasional Paper No. 5, 1970).

34. ICNAF Convention, art. XII.

35. See *vp.* 154-55 *infra*.

36. June 12, 1956, 18 Sbornik Deist. Dogovorov 347, 6 SOV. STAT. AND DEC. 367 (1970) [hereinafter cited as West Pacific Research Agreement].

37. According to an unconfirmed source, the Soviet Union concluded an agreement with North Korea in 1967, after Peking's withdrawal from the Northwest Pacific Fisheries Commission, for cooperation on fisheries. A Joint Fisheries Commission was also established afterwards. 132 COMMERCIAL FISHERIES REVIEW, July 1970, at 56.

ery as well as oceanological and limnological research aimed at working out scientific principles for the conservation of marine life and securing the maximum sustainable catch. The area covered by the Agreement is the western part of the Pacific including the Japan Sea, Yellow Sea, East China Sea, and South China Sea, as well as "adjacent border waters" of the parties.³⁸

The Agreement established a Commission for Fishery Research of the Western Pacific Ocean (the West Pacific Fishery Commission). The principal functions of the Commission are to work out joint research and organize mutual exchange of independent research findings; to work out measures needed to maintain and increase the fishery resources; and to draw up plans for scientific and technical cooperation and mutual aid in fisheries.³⁹ The Commission can, if it deems necessary, make recommendations on these matters by a simple majority vote. Such recommendations are transmitted to the parties and become effective if the party or parties concerned give notice of their approval to the permanent Secretariat.⁴⁰

Although the provisions of the Agreement are broad enough for the Commission to recommend "measures needed to maintain and increase the fishery resources,"⁴¹ no concrete measure nor system of enforcement is stipulated.

5. Black Sea Fishery Agreement

The Soviet Union has concluded a similar agreement for joint efforts in scientific research and development of fishing in the Black Sea. The Agreement was signed on July 7, 1959 by the USSR, Rumania and Bulgaria.⁴² In addition to the provisions for cooperation in scientific research and development of fishing efforts, the Agreement prescribes minimum permissible sizes for the catch of eight named species of fish, and requires that those of smaller size be thrown back into the sea. Taking of certain species is totally prohibited.⁴³

The Agreement has also established a Mixed Commission which has, among others, the following functions:⁴⁴

38. West Pacific Research Agreement, art. 1.

39. *Id.* art. 3.

40. *Id.* art. 2.

41. *Id.* art. 3 (3).

42. Convention Concerning Fishing in the Black Sea, July 7, 1959, 377 U.N.T.S. 203 [hereinafter cited as Black Sea Fishery Agreement].

43. *Id.* art. 5.

44. *Id.* art. 9.

- (1) to work out agreed measures relating to the regulation of fishing and the techniques of commercial fishing;
- (2) to make changes in the minimum size and species of fish which are made subject to regulation; and
- (3) to coordinate national research projects concerning fishing in the Black Sea.

The Mixed Commission can adopt "decisions" concerning point (2) above, and it can make recommendations on all other matters. Although unanimity is required for the adoption of such decisions and recommendations by the Mixed Commission, recommendations become binding automatically unless one of the parties gives notice of objections to them within four months of adoption.⁴⁵

6. *Northeast Atlantic Fisheries Convention*

Since the middle of the nineteenth century, several multilateral attempts have been made to regulate fishing activities in the Northeast Atlantic, especially in the North Sea, in order to prevent depletion of the resources. After World War II, a London Conference of 1946 — International Overfishing Conference — adopted the North Sea Convention of 1946,⁴⁶ to which the Soviet Union acceded in 1958. The Convention prescribed the minimum size of meshes to be used, and the minimum measurement for twelve species of fish which can be taken. It also established a Permanent Commission of the International Fisheries.

In spite of some merits, the 1946 Convention suffered from several weaknesses, and failed to prevent overfishing effectively.⁴⁷ Therefore, in 1959 the Northeast Atlantic Fisheries Convention⁴⁸ was concluded covering the whole Northeast Atlantic from the Barents Sea to the Strait of Gibraltar. The new Convention stipulated, in addition to the rules

45. *Id.* arts. 9, 10.

46. The Convention for the Regulation of the Meshes of Fishing Nets and the Size Limits of Fish, April 5, 1946, 231 U.N.T.S. 199. The Convention came into force in 1954.

47. Lucas, Regulation of North Sea Fisheries under the Convention of 1946, PAPERS PRESENTED AT THE INTERNATIONAL TECHNICAL CONFERENCE ON THE CONSERVATION OF THE LIVING RESOURCES OF THE SEA 172 ff. (1955). U.N. Doc. A/CONF.10/7.

48. *Opened for signature* Jan. 24, 1959, 486 U.N.T.S. 157 (effective June 1963) [hereinafter cited as NEAFC Convention]. The member states are: Belgium, Denmark, France, Federal Republic of Germany, Poland, Spain, Sweden, United Kingdom, and USSR.

concerning mesh and size limit, new measures relating to fishing gear and appliances, closed seasons and areas, and fishing efforts. It also provided for measures to increase marine resources. In place of the Permanent Commission, a new Northeast Atlantic Fisheries Commission was formed with powers to make recommendations for national as well as international measures of control on the high seas fisheries by means of a vote of two-thirds of its members.⁴⁹ Under this new mandate, the NEAFC has been quite active in establishing schemes of enforcement at national and international levels.⁵⁰

B. *Bilateral Agreements*

1. *Northwest Pacific Fisheries Convention (with Japan)*

Although the Japanese fishing operations in the North Pacific were suspended for several years after World War II, the Japanese resumed commercial fishing in 1952 when the San Francisco Peace Treaty went into effect. Soon afterwards, they began to intensify their activities, especially in the northwestern part of the Pacific. By 1955, the yearly increase in the Japanese salmon catch off the coast of the USSR caused great alarm to the Soviets, just about the same time as the Japanese-Soviet talks on the resumption of normal relations came to a deadlock on the territorial issue of the Northern Islands.

Thereupon, the Soviet Union announced the so-called "Bulganin Line" on the high seas in the western part of the Bering Sea, closing in effect part of the Bering Sea and the entire Sea of Okhotsk to Japanese fishermen.⁵¹ Following strong protests by the Japanese Government, the Soviet Union entered into negotiations with Japan in April 1956, and as a result, a Convention Concerning the High Seas Fisheries of the Northwest Pacific Ocean⁵² was concluded between the two countries.

The Convention covers the high seas of the whole northwestern part of the Pacific, including the Bering Sea, the Sea of Japan and the Sea of Okhotsk. It stipulates regulations on salmon, herring and king crab fisheries, and provides various methods of control. In addition, it has established the Northwest Pacific Fishery Commission which meets an-

49. *Id.* art. 13.

50. See pp. 153-54 *infra*.

51. For the background of the "Bulganin Line," see Ohira, *Fishery Problems between Soviet Russia and Japan*, 2 JAPANESE ANNUAL OF INT'L L. 1 (1958); Ginsburgs & Shrewsbury, *The Soviet-Japanese Fisheries Problem in the North-West Pacific*, 5 INT'L STUDIES 259 (1964).

52. May 14, 1956, 17-18 Sbornik Deist. Dogovorov 312, 6 SOV. STAT. & DEC. 359 (effective Dec. 12, 1956) [hereinafter cited as Northwest Pacific Fisheries Convention].

nually. Among the Commission's functions are:

- (1) to revise, based on scientific data, the regulatory measures stipulated in the Annex of the Convention;
- (2) to decide on the annual total catch and fix the national quota for each country;
- (3) to prepare and coordinate projects for joint scientific investigations on the fishery resources, and make recommendations to the Parties; and
- (4) to make recommendations on the questions of conservation and increase of the fishery resources.⁵³

Each party is explicitly obliged to take necessary measures to enforce the regulation on its own citizens and to report to the Commission on the measures adopted.⁵⁴ In addition to such national control measures, the Convention establishes a system of mutual enforcement, allowing on-board inspection by the other party's officials.⁵⁵

2. *Northeast Atlantic Seals Agreement (with Norway)*

In an effort to establish international cooperation for the purpose of attaining the optimum productivity of seal stocks in the northeastern Atlantic, the governments of the Soviet Union and Norway concluded an Agreement on Measures to Regulate Sealing and to Protect Seal Stocks in the Northeast Atlantic on November 22, 1957.⁵⁶

The regulations binding upon nationals of the two countries are set forth in the Annex to the Agreement. These include designation of hunting areas, prohibition of the hunting of certain species of seals throughout the year or during prescribed months, and prohibitions of the use of poisonous substances and other methods which result in considerable loss of wounded animals.

The Agreement has established a Commission whose major functions are to make proposals concerning the hunting regulations, joint or independent scientific research and its coordination, and control over the implementation of the hunting regulations.⁵⁷ However, the proposals,

53. *Id.* art. 4.

54. *Id.* art. 6.

55. *Id.* art. 7. See p. 29-30 *infra*.

56. 20 Sbornik Deist. Dogovorov 485, 6 Sov. STAT. & DEC. 371 (1970), 309 U.N.T.S. 629 [hereinafter cited as *Northeast Atlantic Seals Agreement*].

57. *Id.* arts. 3, 4.

which must be adopted unanimously by the Commission, become binding only if they are also approved by the two Governments.⁵⁸

3. *Agreement on King Crab Fisheries (with the U.S.)*

On February 5, 1965, the Soviet Union entered into an Agreement Relating to Fishing for King Crab⁵⁹ with the United States. The Agreement allows the Soviet fishermen to carry out commercial fishing on the U.S. continental shelf in the eastern Bering Sea, and also fixes the limit on the total annual catch by the Soviets.⁶⁰ It prohibits the catch of female and smaller-sized crabs,⁶¹ and the use of fishing gear other than pot and tangle net.⁶²

In addition to the duty of each party to enforce the above regulations on its own nationals and vessels, the Agreement further obligates each state to accept inspection by the other party's officers.⁶³ This Agreement was originally to last for two years, but was extended for two years in 1967, 1969 and 1971.

IV

ENFORCEMENT OF HIGH SEAS FISHERIES REGULATIONS

From this review of the Soviet treaty practice, it is clear that the Soviet Union does not currently follow a policy of unilateralism, constituting an extreme normative nationalist approach to the question of high sea fisheries regulation. On the contrary, she is now an active participant in a number of arrangements for both conservation and rational exploitation of marine resources. Not all such arrangements, however, show strong commitments by the Soviet Government to internationalism in this field. The degree of such commitments can best be analyzed by focusing on the system of enforcement of the agreed regulations. As mentioned earlier, this is also the key point by which to test the sovereignty hypothesis.

58. *Id.* art. 7.

59. [1965] 1 U.S.T. 24, T.I.A.S. No. 5752, 541 U.N.T.S. 97 [hereinafter cited as King Crab Fisheries Agreement].

60. *Id.* para. 2.

61. *Id.* Appendix, para. 2 (a).

62. *Id.* Appendix, para. 2 (b).

63. *Id.* para. 3. See p. 151 *infra*.

A. Enforcement Mechanisms

The international agreements outlined may be classified into the following groups according to the kind of enforcement mechanism they contemplate:

Type of Enforcement Mechanism	Treaties
1. Potential authority to recommend enforcement schemes ⁶⁴	West Pacific Research Agreement Black Sea Fishery Agreement Northeast Atlantic Seals Agreement
2. National Enforcement	Northeast Atlantic Seals Agreement King Crab Fisheries Agreement
3. National Enforcement with International Supervision	IWC Convention ICNAF Convention NEAFC Convention Northwest Pacific Fisheries Convention
4. Mutual Inspection of National Enforcement	King Crab Fisheries Agreement
5. Mutual Enforcement	Interim Convention on the North Pacific Fur Seals Northwest Pacific Fisheries Convention
6. International Inspection of National Enforcement	ICNAF Convention NEAFC Convention IWC Convention (proposed)
7. International Enforcement	(none)

Each of the enforcement mechanisms listed must be examined as it has been developed and applied by the fishery commissions since the treaties were signed. This will allow the characteristics of the systems which the Soviet Union prefers in her actual practice of high seas fishery management to be determined.

64. This is not really a type of enforcement but is listed here for convenience.

1. *Potential Authority to Recommend Enforcement Schemes*

The treaties cited in the first category confer on their commissions potential authority to recommend enforcement schemes. The West Pacific Research Agreement gives the Commission the power to "work out . . . measures needed to maintain and increase the fishery resources,"⁶⁵ and recommend them to the parties. These recommendations will become effective with the approval of each party concerned.⁶⁶

In a similar manner, the Black Sea Fishery Agreement lists as one of the Commission's functions to "work out agreed measures relating to the regulation of fishing for the purpose of maintaining and increasing the fishery stocks of the Black Sea" and to "consider other questions which may be entrusted to it by the Contracting Parties."⁶⁷ The Commission may make recommendations about these matters to the parties, whose unanimous approval is necessary for them to take effect.⁶⁸

The mandate of the commissions in the above two agreements is clearly broad enough to cover measures of enforcing regulations on fishery conservation. But unless the commissions take action, these agreements depend on the national authority of the flag states for their enforcement.

The Northeast Atlantic Seals Agreement is a little more specific about enforcement measures. The Commission is empowered, "if it is deemed necessary, to submit proposals to the two Governments concerning control over the implementation of the regulation governing hunting operations set forth in the Annex to this Agreement."⁶⁹ The approval of each party is required in this case.⁷⁰ The Agreement also obligates each party to take measures necessary to ensure its observance. Thus enforcement falls exclusively under the national enforcement system unless the Commission activates the provision and seeks a joint scheme.⁷¹

2. *National Enforcement*

The treaties noted in this category have explicit provisions obligating each state party to take measures necessary for carrying out the agreement.

65. West Pacific Research Agreement, art. 3, para. 3.

66. *Id.* art 3, para. 4.

67. Black Sea Fishery Agreement, art. IX, paras. 1, 6.

68. *Id.* art. X.

69. Northeast Atlantic Seals Agreement, art. IV, para. c.

70. *Id.* art. VII, para. 1.

71. No action seems to have been taken in this connection to date.

These provisions can be divided into two groups: those without a duty to report to international commissions or the other parties, and those with such a duty.

Some treaties have only simple provisions to the effect that each party is obliged to carry out such measures as may be necessary to ensure observance of the agreement in general⁷² or the specific regulations incorporated in the agreement.⁷³ No international control is involved in any of these treaties in any form. Each party is completely free to adopt any type of enforcement measure. This can be categorized as a Normative Nationalist approach.

3. National Enforcement with International Supervision

A group of treaties impose on the parties not only an obligation to take necessary measures for enforcement, but also a requirement to submit reports on measures actually taken to the international fishery commissions. The ICNAF Convention includes an article by which the parties have agreed to take necessary action to make effective the provisions of the Convention, and they are bound to transmit to the Commission a statement of such action.⁷⁴ The Commission then publishes a summary of such statements in its annual reports.

A similar system is found in Article 13 (1) of the NEAFC Convention which requires party states:

to take in its territories and *in regard to its own nationals and its own vessels* appropriate measures to ensure the application of the provisions of this Convention and of the recommendations of the Commission which have become binding on that Contracting State and the punishment of infractions of the said provisions and recommendations. (emphasis added.)

The parties are again obligated to transmit to the Commission a statement of the actions taken by them for the above purposes.⁷⁵ Most of the above measures would be at the initiative and discretion of the parties, but there could be cases where the Commission makes "recommendations" for national (and international) measures of control on the high seas for the same purposes.⁷⁶ These recommendations, which may be taken by a two-thirds majority, would become binding

72. Northeast Atlantic Seals Agreement, art. VIII.

73. King Crab Fisheries Agreement, para. 3.

74. ICNAF Convention, art. 12.

75. NEAFC Convention, art. XIII, para. 2.

76. *Id.* art. XIII, para. 3.

upon the state concerned unless it objects to them within ninety days of the date of notice.⁷⁷

A very detailed enforcement provision is found in the Northwest Pacific Fisheries Convention. Article 6 states:

(1) The Contracting Parties shall take appropriate and effective measures for the purposes of carrying out the present Convention.

(4) The Contracting Parties agree, for the purpose of rendering effective the provisions of this Convention, to enact and enforce necessary laws and regulations with regard to their nationals, organizations, and fishing vessels, with appropriate penalties against violations thereof, and to submit to the Commission a report on any action taken by them with regard thereto.

However, the most detailed national enforcement scheme spelled out in any international agreement is contained in the International Whaling Convention. The Convention requires each government not only to take appropriate measures to ensure the application of the provisions, but specifically imposes a duty on it to punish infractions against the provisions by persons and vessels under its jurisdiction.⁷⁸ Prosecution for such infractions must be instituted by the government having jurisdiction over the offense.⁷⁹ All the laws and regulations and their changes relating to whales and whaling must be transmitted to the Commission.⁸⁰ In addition, each government must appoint and maintain on each factory ship under its flag at least two "inspectors of whaling" for the purpose of maintaining twenty-four hour inspection. Each land station must likewise be placed under "adequate inspection" by government-appointed inspectors.⁸¹ Each government has a further obligation to transmit to the Commission "full details of each infraction of the provisions" of the Convention by persons or vessels under its jurisdiction as reported by its inspectors. Such report must contain a statement of measures taken for dealing with the infraction as well as of penalties imposed.⁸² In order to put these regulations into practice, the Commission has adopted a standard form which is to be completed and filed with the Commission each year before its annual meeting. The information which the form demands includes "the manner in which inspection was carried out," "whether any factory ships or whale catchers operated in prohibited areas," and "the number of whales taken

77. *Id.* art. VIII.

78. IWC Convention, art. IX, para. 1.

79. *Id.* art. IX, para. 3.

80. *Id.* Schedule, para. 15.

81. *Id.* Schedule, para. 1 (a), (b).

82. *Id.* art. IX, para. 4.

in violation of the Convention."⁸³

Under the four treaties just outlined, the Soviet Union has assumed the obligation to report her national enforcement actions to supervisory commissions. In some cases, i.e., NEAFC Convention and International Whaling Convention, the enforcement measures which have to be taken are not entirely at her discretion. Submitting reports to an international body means subjecting national actions to some sort of international public review. Thus the commissions can theoretically bring psychological and political pressures against a negligent party. This has actually been done by IWC, NEAFC, and ICNAF. For example, the Infractions Committee of NEAFC reviews reports of the parties and forwards them to the Plenary Commission. The latter again discusses the reports, and its summary will be published in the annual reports. If it considers enforcement by a state inadequate, it expresses its concern.⁸⁴ Although these are not legal pressures and therefore have no binding effect, they may well be important enough to be characterized as having a kind of supervisory function. In this sense, even though these systems of enforcement are national in form, they are not absolute but functional in substance. Thus they represent the Functional Nationalist approach.

4. *Mutual Inspection of National Enforcement*

The King Crab Fisheries Agreement with the United States provides for a procedure under which one party may inspect the other's state of self-enforcement. If one of the parties requests permission to observe, the other party must provide the opportunity for such observation by permitting duly authorized officers to board its vessels engaged in king crab fishing in the eastern Bering Sea. The boarding officers will make a report on the result of their observations, and the report will be forwarded to the government of the vessel's flag state for appropriate action.⁸⁵

This is another example of the Functional Nationalist approach. Enforcement power is in the hands of a national government, but it is obliged to perform certain internationally agreed functions under the other party's inspection.

83. A. KOERS, *supra* note 5, at 27.

84. *Id.* at 25-31.

85. King Crab Fisheries Agreement, para. 3.

5. *Mutual Enforcement*

This is a system of enforcement of high seas fisheries regulations wherein a party to an agreement is entitled to make on-the-spot checks to determine if regulations are being observed by another party's fishermen, and to seize and arrest vessels and persons suspected of violations.⁸⁶

The Soviet Union is currently a party to two treaties which incorporate such mechanisms of enforcement. The most elaborate procedure for such a system is found in the Interim Convention on the Conservation of North Pacific Fur Seals. In order to implement the ban on pelagic sealing, a duly authorized official of any of the parties may first board and search any vessel flying one of the parties' flag on the high seas when he has reasonable cause to believe that she is violating the Convention. If the official, after searching the vessel, continues to have reasonable cause to believe that the vessel or anybody on board is committing an offense, he may seize or arrest them. The arresting party must promptly notify the party having jurisdiction over the suspected vessel or person, and hand them over at an agreed place. If the detained party's country cannot receive the offender immediately, the arresting party may keep the vessel or person under surveillance within its own territory. However, this may only be done upon request by the offender's country and under conditions agreed upon by both parties.⁸⁷

The Convention further spells out the procedure for trial of vessels or persons thus arrested. The trial of such cases is placed exclusively within the jurisdiction of the party to which the vessel or person belongs. The arresting party must promptly furnish the witnesses or their testimony and other proofs necessary to establish the offense to the authorities of the trying party.⁸⁸ If any punitive measures are taken

86. A classic example of a mutual enforcement system was the North Sea Police Convention of 1882, May 6, 1882, 73 BRIT. FOR. STATE PAPERS 39, IX Martens Nouveau Recueil, ser. 1, at 556, 1 UN LEG. SER., LAWS AND REGULATIONS ON THE REGIME OF THE HIGH SEAS 179 (English trans.). See A. KOERS, *supra* note 5, at 9-10; Aglen, *Problems of Enforcement of Fisheries Regulations*, in THE LAW OF THE SEA: THE FUTURE OF THE SEA'S RESOURCES 19-20 (L. Alexander ed. 1967).

The existing treaties providing for seizure or arrest to which the Soviet Union is not a party are: Convention with Canada concerning the Sockeye Salmon Fisheries, May 26, 1930, art IX, 50 Stat. 1355 (1937), T.S. No. 918; International Convention for the High Seas Fisheries of the North Pacific Ocean, done May 9, 1952, art. X, para. 1, [1953] 1 U.S.T. 380, T.I.A.S. No. 2786, 205 U.N.T.S. 65; Convention with Canada on Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, Mar. 2, 1953, art. II, para. 1, [1954] 1 U.S.T. 5, T.I.A.S. No. 2900, 222 U.N.T.S. 77.

87. Interim Convention on Seals, art. VI.

88. *Id.* art. VI, paras. 3, 4.

against the offenders, their full details must be communicated to all the other parties not more than three months after being adjudged.⁸⁹

A very similar mutual enforcement procedure is found in the Northwest Pacific Fisheries Convention⁹⁰ which was concluded before the Fur Seals Convention. The provisions of the earlier convention differs in only two minor points: (1) the delivery of a suspected vessel or person must be made at the place of the detention or seizure unless another place is agreed upon; and (2) the report of national measures for punishment must be filed with the Commission rather than with the other party.⁹¹

The Fisheries Convention's scheme, however, has been supplemented by subsequent practice. Under informal agreements between the two governments reached in 1965 and 1966, Japan consented to an arrangement whereby Soviet inspectors are to be stationed on board Japanese salmon fishing vessels and also at certain fishing bases in Hokkaido, Japan's northern-most island.⁹²

The procedure found in the two treaties just outlined is of great significance from the viewpoint of sovereignty restriction. By it, the Soviet Union has agreed to let other states' enforcement jurisdiction extend to her own vessels and fishermen. Although she retains the ultimate power to punish suspects, the results of such punishment are also made subject to the other parties' critical review.

It is quite clear in this case that underlying the enforcement mechanism is a belief in the functional necessity of enforcing international regulations in a more objective manner than by merely allowing enforcement by national authorities of the offender's state. Since, however, it still uses the instrument of nation-states as its means of enforcement, it remains a Functional Nationalist approach.

6. *International Inspection of National Enforcement*

Reference has already been made to the provisions for national enforcement with a duty to report to an international commission under the Northeast Atlantic Fisheries Convention. In practice, the NEAFC has gone further and successfully developed a "Scheme of Joint Enforcement" which is in more exact terms a scheme not of joint enforcement, but rather one of joint inspection of national enforcement.⁹³ The Conven-

89. *Id.* art. VI, para. 6.

90. Northwest Pacific Fisheries Convention, art. VII.

91. *Id.* art. VI, para. 4.

92. 27 COMMERCIAL FISHERIES REVIEW, June 1965, at 43; 28 *id.* June 1966, at 48.

93. For our definition of enforcement see p. 133, *supra*.

tion commission adopted it in May, 1967 acting under the mandate of Article 13 (3) which grants it the authority to make recommendations for national and international measures of control on the high seas.⁹⁴ According to the Scheme, inspectors from each party are given authority to board fishing vessels of any party in the Convention zones in order to ascertain if the regulations are being observed. They can, for this purpose, inspect the nets, other fishing gear, and any relevant documents. They can also take photos of any net which is found to be contrary to the regulations together with an identification mark approved by the Commission. The inspectors, however, have no power to enforce regulations in case a violation is found. This may not seem to be significantly different from the procedure of mutual inspection of national enforcement which was discussed earlier. However, the significant and distinctive aspect of this scheme is the strong international control of the inspectors and inspection procedures. This enables it to be designated a system of international inspection of national enforcement. It provides that the parties must give the names of inspectors and of vessels used for inspection to the Commission although the inspectors are nominated by each party from among its fishing inspection organs. Every inspector must carry a certificate authorized by the Commission and containing a statement that the inspector is authorized to act in accordance with the provisions approved by the Commission. The vessels for inspection must carry a special flag approved by the Commission, and the inspectors must draw up a report on the inspection in the form approved by the Commission. The Scheme further requires parties to inform the Commission annually by March of their provisional inspection plans for the coming year. This enables the Commission to coordinate national plans and make suggestions for this purpose as it deems necessary.

The Soviet Union has attached a reservation to the Scheme to the effect that she does not consider herself bound by those provisions allowing the inspection of catches and nets kept in vessels' holds, which the Soviet Union regards as irrelevant to the Convention's purpose.⁹⁵

The NEAFC's Scheme of Joint Enforcement is followed almost literally by ICNAF which has recently adopted a Scheme of Joint International Enforcement.⁹⁶ ICNAF was originally given no power to discuss or recommend measures of enforcement. However, by the "Protocol Relating to

94. REPORT OF THE SIXTH MEETING, NEAFC, ANNEX (May 1968). The Scheme went into force on January 1, 1970.

95. A. A. VOLKOV, MARITIME LAW 98 (1969).

96. ICNAF, PROCEEDINGS OF THE TWENTIETH MEETING, Appendices I, II, and III (1970); 20 ICNAF ANNUAL PROCEEDINGS 21-22 (1969-1970).

Measures of Control"⁹⁷ which was signed in 1965 and entered into force in December 1969, the Commission is authorized to make on its own initiative proposals for national and international measures of control on high seas fishery regulations.

In 1966-67, the Commission had lengthy discussions on control measures using the proposed scheme of joint enforcement of NEAFC as their basis of discussion.⁹⁸ The Commission then recommended that an *ad hoc* Committee on Trawl Regulation consider the matter. They adopted a slightly amended form of NEAFC's Scheme and submitted it to the 1968 Annual Meeting. After it was empowered by the Protocol Relating to Measures of Control to recommend an enforcement scheme in late 1969, the Commission in 1970 adopted the Scheme of Joint International Enforcement⁹⁹ which entered into force on July 1, 1971. The Soviet Union also filed a reservation in this instance excepting the inspection below deck as well as the control of fish size from the Scheme's coverage.¹⁰⁰

It should also be noted that ICNAF has been successful in completing bilateral exchanges of fisheries inspection officers among the member states, including those between the United States and the USSR during the year 1968-69.¹⁰¹ Such experience would undoubtedly be conducive to successful implementation of the Joint Enforcement Scheme.

A stronger international inspection scheme has recently been worked out by parties to the International Whaling Convention, but it has not been ratified by some parties.

The history of an international observer scheme within the IWC goes back to 1959 when an amendment to Article 5 (1) (Methods of Inspection) of the 1946 Convention enabled the Commission to deal with the observer scheme proposed by Norway. It was agreed in principle at the Annual Meeting of 1959 that the factory ships engaged in the Antarctic whaling should carry some other parties' observers than those of the flag state. These observers were to serve independent of any party or authority other than the Commission. However, this plan made no further progress after Norway and the Netherlands withdrew from the Commission in mid-1959. The question was placed on the agenda again at the Fourteenth Annual Meeting (1962), and as a result of meetings between the five

97. *Opened for signature* Nov. 29, 1965, T.I.A.S. No. 6840, 5 INT'L LEG. MAT. 718 (1966).

98. 17 ICNAF ANNUAL PROCEEDINGS 21 (1966-1967).

99. *Id.*

100. ICNAF, PROCEEDINGS OF THE TWENTIETH ANNUAL MEETING, Proceeding No. 15, at 2 (1970).

101. 19 ICNAF ANNUAL PROCEEDINGS 20 (1968-1969).

Antarctic pelagic whaling nations in 1963, details of an International Observer Scheme were agreed upon. According to the proposed Scheme, the five states were to nominate observers in numbers equivalent to the number of each state's whaling expeditions. They were to be appointed to serve in the expedition of the other four states. All the observers were to be appointed by the Commission and to be given power to verify the observance of the Convention and the Schedule in regard to the taking of whales and their utilization by the expedition.¹⁰²

The 1963 Scheme was not implemented for the 1963-64 season due to a lack of time for discussion of its implementation procedure.¹⁰³ In 1964, however, delegates of the Scheme's signatory countries agreed on draft rules for its implementation. Later the governments of Japan, Norway, the Netherlands, and the United Kingdom formally accepted the rules, but the Soviet Union refused to do so without prior revision of the arrangements governing national quotas on a basis satisfactory to her.¹⁰⁴ Moreover, in the Seventeenth Meeting (1965), she added another condition to the effect that the International Observer Scheme should be extended to cover all land stations for Antarctic whaling as well.¹⁰⁵

The 1963 Scheme thus expired at the end of the 1965-66 season without being brought into operation. The Commission then agreed at the Eighteenth Meeting to set up a working group to draw up a new scheme to cover both pelagic and land station whaling.¹⁰⁶ The working group met in June 1967 and submitted a report on the International Observer Scheme¹⁰⁷ to the Commission. An important innovation in the working group's recommendation was the establishment of several regional schemes rather than a single all-embracing one. Each regional scheme was to be negotiated among the countries participating in whaling in the region concerned. It was also recommended that such regional schemes should take the 1963 Scheme as their basis.¹⁰⁸ The Commission adopted the working group's recommendation and invited the countries concerned to establish regional schemes along the proposed line.

During subsequent years, despite the Commission's urgings to put the regional schemes into operation as soon as possible, no substantive steps were taken by whaling states until the Twenty-third Meeting

102. IWC, FIFTEENTH REPORT OF THE COMMISSION 20-21 (1963-1964).

103. *Id.* at 7.

104. IWC, SIXTEENTH REPORT OF THE COMMISSION (1964-1965). The Soviet Union insisted on this condition repeatedly in subsequent years.

105. IWC, SEVENTEENTH REPORT OF THE COMMISSION 21-22 (1965-1966).

106. IWC, EIGHTEENTH REPORT OF THE COMMISSION 9 (1966-1967).

107. IWC, NINETEENTH REPORT OF THE COMMISSION 20-22 (1967-1968).

108. *Id.* at 20-21.

(1971) when a special meeting on the International Observer Scheme was held with representatives from Australia, Canada, Japan, Norway, South Africa, the USSR, and the U.S. These countries agreed on the contents of a draft International Observer Scheme. According to the draft,¹⁰⁹ an observer is appointed by the Commission to each expedition for pelagic whaling, and to each land station or group of land stations. The observers are chosen from those who are nominated by each member government and are responsible to the Commission though their salaries and other emoluments are paid by the respective nominating government. They are prohibited to seek or receive instructions from any authority other than the Commission.

They are specifically assigned to verify the observance of the provisions of the Convention and the Schedule in regard to the taking and rational utilization of whales. For this purpose, they are to be given every facility needed and access to all the relevant records and data. The observers must notify the master or manager of the expedition or land station and the senior national observer of any infraction they find. The latter then informs the Commission. The draft of the Scheme provides that the observers are to be given the status of senior officers or officials by the receiving state.

In the latest development, three draft agreements concerning the International Observer Scheme have recently been prepared covering the North Pacific factory ships, Antarctic factory ships, and North Pacific land stations respectively. In September 1971, the negotiators of the Soviet Union, Japan, and Norway initialed the agreement concerning the Antarctic factory ships, and those of the first two countries also agreed on the scheme covering the North Pacific factory ships.¹¹⁰ However, according to Japanese Government sources, the Soviet fleet departed for the Antarctic in early October before the ratification of the first agreement, and thus without international observers on board.¹¹¹ This means the International Observer Scheme has not effectively materialized for the 1971-72 season as far as the Antarctic factory ship whaling is concerned. The agreement concerning the North Pacific factory ships is still waiting for ratification which is required if the Scheme is to be put into effect in the spring of 1972.

109. IWC, Draft International Observer Scheme, June 22, 1971 (mimeo.).

The purpose of an observer scheme is "to maintain surveillance whenever whales are being delivered to the factory ship or land station or are being processed." *Id.*

110. N.Y. Times, Oct. 8, 1971, at 12, cols. 4, 5.

111. *Id.*

Reviewing the attitudes of the Soviet delegates toward the International Whaling Commission and its related functions, it is difficult to draw a firm conclusion regarding their serious willingness to accept an international observer scheme. Although they have often insisted on the need for such a scheme,¹¹² they have frequently shown an unwillingness to accept the final adoption of a scheme by imposing new conditions. One such condition has been the necessity of renegotiating a national quota system; another was the inclusion of land stations among the places to be inspected; a third was related to purely technical questions of treaty interpretation and meeting procedure. However, if the Soviet Union ratifies the recent agreement on the North Pacific Scheme, she would be among the first states to accept a full-fledged international inspection system.

In the practice of these three most recent Conventions, an international body, i.e., each of the Commissions, is engaged directly or indirectly in conducting inspection of rule-compliance by the nationals or ships of party states. In the case of NEAFC and ICNAF, this is to be done by national inspectors who are appointed by each party state and responsible only to that state, but who perform their duties under substantial control of the Commission.

In the case of IWC, inspectors who are almost entirely free from national control, act functionally like international civil servants.

In all cases, a basic understanding among the party states seems to be that, despite their reluctance to give up their individual enforcement powers, the contemporary high seas fishery situation requires them to submit to a certain degree of international inspection of such enforcement. This fits these latest conventions squarely into the category of the Functional Internationalist models.

CONCLUSION

The survey of the contemporary Soviet treaty practice on high seas fisheries with its emphasis on the enforcement mechanisms leads to some interesting conclusions regarding the initial sovereignty hypothesis.

To summarize the findings of the preceding sections, there are four treaties classified as Normative Nationalist, six as Functional Nationalist,

112. See, e.g., IWC, SEVENTEENTH REPORT OF THE COMMISSION 22 (1965-1966); IWC, NINETEENTH REPORT OF THE COMMISSION 22 (1967-1968); Draft International Observer Scheme, June 22, 1971 (mimeo).

three as Functional Internationalist and none as Normative Internationalist; some of them, however, tend to be overlapping. The treaties can be placed on a nationalism-internationalism scale as follows:

Normative Nationalist	Functional	Functional	Normative Internationalist
West Pacific Research Agreement	IWC Conv. ICNAF Conv. NEAFC Conv.	ICNAF Conv. NEAFC Conv. IWC Conv. (proposed)	
Black Sea Fishery Agreement	Northwest Pacific Fisheries Conv. King Crab Fish- eries Agreement		
King Crab Fisheries Agreement	North Pacific Fur Seals Conv.		
Northeast Atlantic Seals Agreement			

From this chart, it is possible to draw the following observations:

(1) All the high seas fishery treaties which are most significant in terms of the international fishery grounds that they cover, and of the participation of major fishing countries, belong to Functionalist models, i.e., either Functional Nationalist or Functional Internationalist.

(2) All the treaties with only Communist participation are Normative Nationalist while all Functionalist treaties have non-Communist participation. This finding fortifies the characterization of Functionalist models as being freer from ideological considerations.

(3) There is no Normative Internationalist treaty. However, this is not unique to Soviet practice; such a treaty does not yet exist.

In the final analysis, the "sovereignty hypothesis" set forth at the beginning of this article cannot find proof in the contemporary Soviet practice in the field of high seas fisheries regulation. On the contrary, the Soviet Union has demonstrated a rather strong willingness to make exceptions to her jurisdictional sovereignty in this particular field of international law. This is true, ironically, in the case of East-West arrangements. If this general trend continues in the future, and one may

fairly predict it will, development of closer East-West cooperation in the form of stronger Functionalist models in this area may well be expected. Whether or not it will take the form of Functional Internationalist rather than Nationalist models may depend substantially on the future successful implementation of the inspection schemes of ICNAF, NEAFC, and IWC conventions.