

United Nations Conference on the Law of the Sea

Geneva, Switzerland
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Documents:
A/CONF.13/C.3/L.1-29

Annexes

Extract from the *Official Records of the United Nations Conference on the Law of the Sea, Volume V (Third Committee (High Seas: Fishing: Conservation of Living Resources))*

after such consultation, by the Secretary-General of the United Nations. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

3. If the parties to the dispute fall into more than two opposing groups, the arbitral commission shall, at the request of any of the parties, be appointed by the Secretary-General of the United Nations, after consultation with the President of the International Court of Justice and the Director-General of the United Nations Food and Agriculture Organization, from amongst well qualified persons specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the appointment shall be filled in the same manner as provided for the initial selection.

4. Except as herein provided, the arbitral commission shall determine its own procedure. It shall also determine how the costs and expenses shall be divided between the parties.

5. The arbitral commission shall in all cases be constituted within three months from the date of the original request and shall render its decision within a further period of five months unless it decides, in case of necessity, to extend that time limit.

Article 58

1. The arbitral commission shall, in the case of measures

unilaterally adopted by coastal States, apply the criteria listed in paragraph 2 of article 55. In other cases it shall apply these criteria according to the circumstances of each case.

2. The arbitral commission may decide that pending its award the measures in dispute shall not be applied.

Article 59

The decisions of the arbitral commission shall be binding on the States concerned. If the decision is accompanied by any recommendations, they shall receive the greatest possible consideration.

FISHERIES CONDUCTED BY MEANS OF EQUIPMENT EMBEDDED IN THE FLOOR OF THE SEA

Article 60

The regulation of fisheries conducted by means of equipment embedded in the floor of the sea in areas of the high seas adjacent to the territorial sea of a State, may be undertaken by that State where such fisheries have long been maintained and conducted by its nationals, provided that non-nationals are permitted to participate in such activities on an equal footing with nationals. Such regulations will not, however, affect the general status of the areas as high seas.

DOCUMENT A/CONF.13/C.3/L.1

Mexico: proposal

*[Original text: Spanish]
[7 March 1958]*

Articles 57 to 59

Replace the text of the draft articles 57, 58 and 59 prepared by the International Law Commission by the following text:

“Disputes concerning the matters to which the present provisions relate shall be settled by the States concerned by the modes of pacific settlement provided for in Article 33 of the Charter of the United Nations.”

If the above proposal is approved, it will be necessary to make the corresponding changes in articles 52 to 56 inclusive.

DOCUMENT A/CONF.13/C.3/L.3

France: proposal

*[Original text: French]
[13 March 1958]*

Article 51

Replace the draft article by the following text:

“A State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged, shall adopt such measures as may be required in those circumstances for regulating and controlling fishing activities in that area when necessary for the purpose of the conservation of the living resources of the high seas.”

Article 52

PARAGRAPH 2

Replace the words “within a reasonable period of time” by the words “within two years”.

Article 53

PARAGRAPH 2

Replace the words “within a reasonable period of time” by the words “within two years”.

Article 54

PARAGRAPH 3

Replace the words "within a reasonable period of time" by the words "within two years".

Article 55

Replace the draft article by the following text :

"Having regard to the provisions of paragraph 1 of article 54, any coastal State which desires, with a view to the maintenance of the productivity of the living resources of the sea, to adopt 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, must open negotiations to that effect with the other States concerned.

"If these negotiations do not lead to an agreement within two years, any of the parties may initiate the procedure provided for in article 57. Pending the arbitral decision, none of the measures contemplated by the coastal State may be carried out."

Article 56

PARAGRAPH 1

Add after "the necessary measures of conservation" the words "at the same time mentioning the scientific findings which in its opinion make such measures necessary."

PARAGRAPH 2

Replace the words "within a reasonable period" by the words "within two years".

Article 57

PARAGRAPH 2

(a) In the first sentence, replace the words "Except as provided in paragraph 3" by the words "If the parties to the dispute fall into two opposing groups."

(b) In the third sentence, replace the word "nominated" by the word "designated".

(c) In the third sentence, add after the words "not parties to the dispute" the words: "selected because of their special knowledge of legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled".

Article 58

PARAGRAPH 1

Replace paragraph 1 of the draft article by the following text :

"The arbitral commission shall, in the case of measures proposed by coastal States, apply the following criteria :

- (1) The urgency of the measures of conservation must be capable of being scientifically established ;
- (2) The measures of conservation must be based on appropriate scientific findings ;
- (3) The measures of conservation must not discriminate against foreign fishermen.

"In other cases, the arbitral commission shall apply these criteria according to the circumstances of each case."

PARAGRAPH 2

Delete paragraph 2.

DOCUMENT A/CONF.13/C.3/L.4***Federal Republic of Germany: proposal**

*[Original text : French]
[17 March 1958]*

Articles 51 to 56

Replace articles 51 to 56 by the following provisions :

Article A

Any State whose nationals are engaged in fishing in any area of the high seas where the nationals of other States are not thus engaged, shall enact provisions applicable to its nationals for regulating and controlling fishing activities in that area when the conservation of the living resources of the high seas so require.

Article B

Where

- (a) Scientific evidence shows that there is a need for measures of conservation in certain areas of the high seas or for certain stocks of fish, and
- (b) The proposed conservation measures are based on appropriate scientific findings,

the States whose nationals are engaged in fishing in those areas or in the capture of the stocks of fish shall, at the request of one of them, undertake negotiations on suitable joint measures which shall be binding on their own nationals.

Article C

Any State having a special interest in the conservation of the living resources of a given area of the high seas shall be entitled, under the conditions laid down in article B, to request one or more other States whose nationals are engaged in fishing in the same area to enter into negotiations and to participate, on an equal footing, in agreements on the necessary measures of research and conservation, even if the nationals of such State or States are not engaged in fishing in the said area.

Within the meaning of this article, a State shall be deemed to have a special interest in the conservation of the living resources of a given area of the high seas when its own fisheries are exploiting the same stocks of fish in another area of the high seas or off its own coast and it can prove that such stocks are threatened with exhaustion owing to fishing activities in the first area.

* Incorporating document A/CONF.13/C.3/L.4/Corr.1.

Article D

When measures of conservation have been adopted under articles A, B and C, and nationals of other States come and fish the same stock or stocks of fish or exploit other resources of the high seas in the same area, but such States do not prescribe the same measures for their nationals, the States which have prescribed them for theirs may, in accordance with the principles set forth in

article B, request the aforesaid other States to enter into negotiations with a view to prescribing measures of conservation for their own nationals.

Article E

When, in the cases mentioned in articles B, C and D, no agreement is reached on measures of conservation within a reasonable period, any State concerned may initiate the procedure provided for in article 57.

DOCUMENT A/CONF.13/C.3/L.5**Philippines: proposal**

[Original text : English]
[19 March 1958]

Article 54

1. Insert the following paragraph after paragraph 1 :

“ 2. The inhabitants of a coastal State have a preferential right to catch fish in any area mentioned in paragraph 1 of the present article, but no coastal State shall prohibit the nationals of other States from fishing in said area, after the needs of its population have been reasonably assured.”

2. Paragraphs 2 and 3 of the original text should be re-numbered 3 and 4 respectively.

Article 57

Amend paragraph 1 by deleting the full stop at the end of the sentence and adding the following : “ or unless there is a treaty between them for the same purpose.”

DOCUMENT A/CONF.13/C.3/L.6**Nepal: proposal**

[Original text : English]
[19 March 1958]

Article 49

Add the following new article after article 49 :

“ Humane methods of catching and slaughtering the living creatures of the sea must be used whenever such methods are developed to a practical state.”

DOCUMENT A/CONF.13/C.3/L.7**Burma: proposal**

[Original text : English]
[20 March 1958]

Article 49

After the words “ to their treaty obligations ” insert the words “ to the rights of the coastal States as set out in article 68.”

Article 51

At the beginning of the article add the phrase “ Subject to the rights of coastal States as set out in article 68.”

Article 60

Delete the article.

DOCUMENT A/CONF.13/C.3/L.8**Sweden: proposal**

[Original text : English]
[21 March 1958]

Article 50

Add the following sentence :

“ Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.”

DOCUMENT A/CONF.13/C.3/L.9**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 51

1. After the words “ activities ” add the words “ of its nationals ”.
 2. Add a new paragraph reading: “ The adopted measures shall be based on appropriate scientific findings.”
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DOCUMENT A/CONF.13/C.3/L.10**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 52

Amend paragraph 1 as follows :

1. After the word “ agreement ” add the words “ for their nationals ”.
 2. At the end of the paragraph add the following :
“ These measures shall be based on appropriate scientific findings.”
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DOCUMENT A/CONF.13/C.3/L.11**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 53

PARAGRAPH 1

At the end of paragraph 1 add the words “ but shall not discriminate against them ”.

PARAGRAPH 2

The last sentence should be amended so as to read :

“ The measures adopted shall remain obligatory for the nationals of other States pending the final award of the arbitration body, unless the parties concerned have authorized, in the agreement establishing arbitration, the arbitration body to suspend the adopted measures even earlier.”

DOCUMENT A/CONF.13/C.3/L.12**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 53 A

Add a new article, 53 A, after article 53, reading as follows :

" 1. A coastal State is authorized to adopt, in a belt of the high seas adjacent to its territorial sea, measures regulating and controlling the exploitation of the living resources of the sea and reserving an exclusive right of fishing for its nationals. The breadth of this belt, together with the breadth of territorial sea, shall not extend beyond twelve miles.

" 2. The character as high seas of this belt and the right of free and unimpeded navigation in it are in no way affected.

" The boundary of this belt between two States, the coasts of which are opposite each other at a distance less than the double extent of the belts of the high seas adjacent to their territorial seas, referred to in paragraph 1 of the present article, or between two adjacent States, is, in the absence of agreement, the median line every point of which is equidistant from the nearest points on the outer limit of the territorial sea of each State concerned."

DOCUMENT A/CONF.13/C.3/L.13**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Articles 54 and 55

Articles 54 and 55 should be merged into one article to read as follows :

" 1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high sea adjacent to the belt referred to in article 53 A, or, if a coastal State has not established such a belt, adjacent to its territorial sea.

" 2. A coastal State may in any area of the high seas adjacent to the maritime belt referred to in article 53 A, or, if a coastal State has not established such a belt, adjacent to its territorial sea, adopt unilateral conservation measures for regulating and controlling fishing activities up to a distance not exceeding one hundred miles, measured from the outer limit of the maritime belt referred to in article 53 A or from the outer limit of its territorial sea respectively.

" The measures adopted shall be based on scientific findings and shall not discriminate against foreign fishermen.

" 3. If a State or States, whose fishermen had been regularly engaged in fishing activities in an area of the high seas before the adoption of conservation measures on the part of a coastal State, do not accept the measures so adopted, they may initiate the procedure contemplated by article 57. The measures adopted shall remain obligatory

pending the arbitral award, unless the interested parties have authorized, in the agreement establishing arbitration, the arbitration body to suspend the adopted measures even earlier.

" 4. If the breadth of the high seas between the maritime belts, as described in article 53 A, of two States, the coasts of which are opposite each other, is smaller than the double of the breadth referred to in paragraph 2 of the present article, the boundary of the area of the high seas up to which a coastal State may adopt the unilateral measures referred to in paragraph 2 of the present article shall be, in the absence of an agreement, the median line every point of which is equidistant from the nearest points on the outer limit of the territorial sea of each of the States concerned. The same criterion of delimitation shall apply in the case of two adjacent States.

" 5. If a coastal State has not adopted the measures referred to in paragraph 2 of the present article, a State or States whose nationals are regularly engaged in fishing activities in that area of the high seas cannot adopt conservation measures of their own, but may, if they so wish, approach the coastal State with a view to a joint adoption of conservation measures. If the coastal State and the States concerned do not reach agreement, any of the interested parties may initiate the procedure contemplated by article 57."

DOCUMENT A/CONF.13/C.3/L.14

Yugoslavia: proposal

[Original text : English]
[21 March 1958]

Article 57

Replace article 57 by the following text :

" 1. In the case of any disagreement between States under articles 52, 53, 55 and 56, the dissatisfied party shall request the other party to seek a solution of the dispute by peaceful settlement.

" If the dispute cannot be settled by diplomatic means, the parties shall resort to mutual consultation for the purpose of settling the dispute in accordance with some of the methods of pacific settlement of international disputes provided for in Article 33 of the United Nations Charter.

" If no agreement is reached within three months from the date of the request to settle the dispute in the manner provided for in the preceding paragraph, the parties to the dispute shall set up an arbitration body. The arbitration body shall consist of five arbitrators, unless decided differently by the parties concerned. Each of the parties to the dispute shall nominate two arbitrators, but only one of the arbitrators nominated by each side may be a national of a State on that side, while the other member shall be a national of a third State.

" The arbitrators shall be appointed within two months. The nominated arbitrators shall designate a chairman by mutual agreement. The chairman may not be a national of one of the States involved in the dispute, nor a national of a State of which a national has already been appointed as arbitrator.

" If, within a period of two months, the arbitrators do not reach agreement concerning the designation of the

chairman, both governments, or any one of them, may request the Secretary-General of the United Nations to nominate a chairman. The Secretary-General shall make this appointment within one month from the date of the receipt of the request for the appointment.

" 2. The parties to the dispute may determine by agreement the volume of the dispute and the procedure and also determine how the costs and expenses shall be divided between the parties. If the parties fail to provide for this, the arbitrators shall settle these matters by their decisions.

" The arbitration body shall convene within one month from the date of its appointment. It shall provide both parties to the dispute with the opportunity to submit their suits and shall hold a public contradictory hearing, unless stipulated differently in the agreement on the establishment of arbitration. The decision shall be brought and rendered public within one month from the date of the ending of the hearing.

" 3. The arbitrators shall, when making their decisions, adhere to the present rules and to the agreements between the parties, as well as to other sources of international law applicable to the parties, and shall not bring decisions *ex aequo et bono* without the express authorization of the parties to the dispute.

" The decisions of the arbitration body shall be adopted by a majority of votes and signed by all the arbitrators. The award of the arbitration body shall be explained and may, in addition to the decision, embody recommendations to the parties to the dispute."

DOCUMENT A/CONF.13/C.3/L.15

Yugoslavia: proposal

[Original text : English]
[21 March 1958]

Article 58

Amend to read as follows :

" 1. The arbitration body shall note in its award whether the measures adopted by the respective States, which are the object of a given dispute, are, or are not, in conformity with the present rules and, if not, in what they depart from these rules.

" 2. In bringing its award the arbitration body shall apply the following criteria :

" (a) Whether the State demanding the alteration or cancellation of adopted measures is authorized, on the basis of the present rules, to submit such a request ;

" (b) Whether scientific evidence shows the necessity of conservation measures ;

" (c) Whether the adopted measures are based on scientific findings and are appropriate for the purpose ;

" (d) Whether the measures discriminate against foreign fishermen."

DOCUMENT A/CONF.13/C.3/L.16**Yugoslavia: proposal**

[Original text : English]
[21 March 1958]

Article 59

1. Replace the first sentence of article 59 by the following :

“If the arbitration body finds that the measures adopted by a respective State which are the object of dispute are not in accordance with the present rules, the respective State shall comply with the decision of the arbitration body and conform the adopted measures to the present rules as soon as possible.”

2. In the second sentence, replace the word “decision” by the word “award”.

DOCUMENT A/CONF.13/C.3/L.19**Thailand: proposal**

[Original text : English]
[25 March 1958]

Article 53

Delete the last sentence of paragraph 2.

Article 55

Delete the last sentence of paragraph 3.

Article 57

In paragraph 1, replace the words “an arbitral commission of seven members” by the words “the International Court of Justice”.

Articles 58 and 59

Delete the articles.

DOCUMENT A/CONF.13/C.3/L.20**Netherlands: proposal**

[Original text : English]
[25 March 1958]

Article 49

Replace the text adopted by the International Law Commission by the following :

“Nationals and ships of all States have the right freely to engage in fishing on the high seas. This right is subject to existing treaty obligations and to the provisions contained in the following articles concerning conservation of the living resources of the high seas.”

DOCUMENT A/CONF.13/C.3/L.21**Costa Rica, Mexico, Peru and United Arab Republic:* proposal**

[Original text : Spanish]
[25 March 1958]

Article 50

Add the following paragraph :

“Conservation programmes should be formulated with due regard to the special interest of the coastal State in the maintenance of the productivity of the resources of the high seas in the vicinity of its coasts.”

* At the 16th meeting, Chile asked to be included as a co-sponsor.

DOCUMENT A/CONF.13/C.3/L.22**Venezuela: proposal**

[Original text : Spanish]
[26 March 1958]

Article 51

Add the following phrase at the beginning of the article :
“Without prejudice to the rights and interests of the coastal State as provided for in this convention . . .”

DOCUMENT A/CONF.13/C.3/L.23**Venezuela: proposal**

[Original text : Spanish]
[26 March 1958]

Article 52

Insert the following phrase in paragraph 1 after the words “at the request of any of them,” :
“and without prejudice to the rights and interests of the coastal State as provided for in this convention.”

DOCUMENT A/CONF.13/C.3/L.24**Italy: proposal**

[Original text : French]
[26 March 1958]

Articles 49, 51 to 54 and 56

In the text of articles 49, 51, 52 (para. 1), 53 (para. 1), 54 (para. 2) and 56 (para. 1), replace the word “nationals” by the words “national ships”.

DOCUMENT A/CONF.13/C.3/L.25**Italy: proposal**

[Original text : French]
[26 March 1958]

Article 52

Replace paragraph 1 by the following :
“1. If the national ships of two or more States have been regularly engaged, for not less than three years, in fishing the same stock or stocks of fish or other marine resources in any area of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such resources.”

DOCUMENT A/CONF.13/C.3/L.26**Italy: proposal**

[Original text : French]
[26 March 1958]

Article 55

Insert the following paragraph after paragraph 1 :

“ In seas whose average breadth is less than one hundred miles, the measures which the coastal State adopts under the previous paragraph shall not have effect beyond ten miles from the normal baseline or the straight baseline, as the case may be, unless all the coasts belong to the same State.”

DOCUMENT A/CONF.13/C.3/L.27**Italy: proposal**

[Original text : French]
[26 March 1958]

Article 55 A

After article 55 add a new article, 55 A, to read as follows :

“ The measures adopted by virtue of articles 51, 52 and 55 shall, before their entry into force, be communicated by the States which ordered them to all the States signatories of this convention.”

DOCUMENT A/CONF.13/C.3/L.28**United Kingdom of Great Britain and Northern Ireland: proposal**

[Original text : English]
[26 March 1958]

Article 51

- (1) After “ fishing ” insert “ any stock or stocks of fish or other living marine resources ”.
- (2) Delete “ for regulating and controlling fishing activities ”.
- (3) For “ the living resources of the high seas ” substitute “ those living resources ”.

- (2) After “ area ” insert “ or areas ”.

Additional article

Insert new article, immediately following article 55, as follows :

“ Where the stock or stocks of fish or other living marine resources are subject to regulation by any conservation commission of which the States concerned are members, the negotiations referred to in articles 52, 53 [54 and 55] shall be conducted through that commission.”

Article 52**PARAGRAPH 1**

- (1) Before “ marine resources ” insert “ living ”.

DOCUMENT A/CONF.13/C.3/L.29***Poland and Union of Soviet Socialist Republics: proposal**

[Original text : Russian]
[26 March 1958]

Article 53

Draft this article as follows :

“ 1. Subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States may engage on an equal footing in fishing the same stock or stocks of fish or other marine resources in the same area.

“ 2. The measures adopted shall be applied without discrimination also to the said States, unless these raise the question of varying or clarifying such measures by proposing to enter into negotiations.”

* Incorporating A/CONF.13/C.3/L.29/Add.1.