

United Nations Conference on the Law of the Sea

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Document:

Text of articles adopted by the Third Committee (A/CONF.13/L.21, annex)

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I

Text of articles adopted by the Third Committee (A/CONF.13/L.21, annex)*Article 49*

1. All States have the right for their nationals to engage in fishing on the high seas, subject (a) to their treaty obligations, (b) to the interests and rights of coastal States as provided for in this convention and (c) to the provisions contained in the following articles concerning conservation of the living resources of the high seas.
2. All States have the duty to adopt, or to co-operate with other States in adopting, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas.

Article 50

As employed in the present articles, the expression "conservation of the living resources of the high seas" means the aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products. Conservation programmes should be formulated with a view to securing in the first place a supply of food for human consumption.

Article 51

A State whose nationals are engaged in fishing any stock or stocks of fish or other living marine resources in any area of the high seas where the nationals of other States are not thus engaged shall adopt for its own nationals measures in that area when necessary for the purpose of the conservation of the living resources affected.

Article 52

1. If the nationals of two or more States are engaged in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement for their nationals the necessary measures for the conservation of the living resources affected.
2. If the States concerned do not reach agreement within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 53

1. If, subsequent to the adoption of the measures referred to in articles 51 and 52, nationals of other States engage in fishing the same stock or stocks of fish or other living marine resources in any area or areas of the high seas, the other States shall apply the measures, which shall not be discriminatory in form or in fact, to their own nationals not later than seven months after the date on which the measures shall have been notified to the Director-General of the Food and Agriculture Organization of the United Nations. The Director-General shall notify such measures to any State which so requests and in any case to any State specified by the State initiating the measure.
2. If these other States do not accept the measures so adopted and if no agreement can be reached within twelve months, any of the interested parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.

Article 54

1. A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas adjacent to its territorial sea.
2. A coastal State is entitled to take part on an equal footing in any system of research and regulation for conservation purposes in that area, even though its nationals do not carry on fishing there.
3. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall, at the request of that coastal State, enter into negotiations with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.
4. A State whose nationals are engaged in fishing in any area of the high seas adjacent to the territorial sea of a coastal State shall not enforce conservation measures in that area which are opposed to those which have been adopted by the coastal State but may enter into negotiations with the coastal State with a view to prescribing by agreement the measures necessary for the conservation of the living resources of the high seas in that area.
5. If the States concerned do not reach agreement, with respect to conservation measures, within twelve months, any of the parties may initiate the procedure contemplated by article 57.

Article 55

1. Having regard to the provisions of paragraph 1 of article 54, any coastal State may, with a view to the maintenance of the productivity of the living resources of the sea, 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 the other States concerned have not led to an agreement within six months.
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 there is a need for urgent application of conservation measures in the light of the existing knowledge of the fishery;
 - (b) That the measures adopted are based on appropriate scientific findings;
 - (c) That such measures do not discriminate in form or in fact against foreign fishermen.
3. These measures shall remain in force pending the settlement, in accordance with the pertinent provisions of this convention, of any disagreement as to their validity.
4. If the measures are not accepted by the other States concerned, any of the parties may initiate the procedure contemplated by article 57. Subject to paragraph 2 of article 58, the measures adopted shall remain obligatory pending the decision of the special commission.
5. The principles of geographical demarcation as defined in articles 12 and 14 shall be adopted when coasts of different States are involved.

Article 56

1. Any State which, even if its nationals are not engaged in fishing in an area of the high seas not adjacent to its coast, has a special interest in the conservation of the living resources in that area, may request the State or States whose nationals are engaged in fishing there to take the necessary measures of conservation under articles 51 and 52 respectively, at the same time mentioning the scientific reasons which in its opinion make such measures necessary, and indicating its special interest.
2. If no agreement is reached within twelve months, such State may initiate the procedure contemplated by article 57.

Article 57

1. Any disagreement arising between States under articles 52, 53, 54, 55 and 56 shall, at the request of any of the parties, be submitted for settlement to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations.
2. The members, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within three months of the request for settlement in accordance with the provisions of this article. Failing agreement they shall, upon the request of any State party, be named by the Secretary-General of the United Nations, within a further three-month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization, from amongst well-qualified persons being nationals of countries not involved in the dispute and 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 original appointment shall be filled in the same manner as provided for the initial selection.
3. Any State party to a proceeding under these articles shall have the right to name one of its nationals to the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.
4. The commission shall determine its own procedure, assuring each party to the proceeding a full opportunity to be heard and to present its case, and it shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on these questions.
5. The special commission shall render its decision within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend that time-limit not to exceed three months.
6. The special commission shall, in reaching its decisions, adhere to these articles and to any special agreements between the disputing sides regarding settlement of the dispute.
7. Decisions of the commission shall be by majority vote.

Article 58

1. The special commission shall, in disputes arising under article 55, apply the criteria listed in paragraph 2 of that article. In disputes under the remaining fishery articles the

commission shall apply the following criteria, according to the issues involved in the dispute :

- (a) Common to the determination of disputes arising under articles 52, 53 and 54 are the requirements :
 - (i) That scientific findings demonstrate the necessity of conservation measures ;
 - (ii) That the specific measures are based on scientific findings and are practicable ; and
 - (iii) That the measures do not discriminate against fishermen of other States.
- (b) Applicable to the determination of disputes arising under article 56 is the requirement that scientific findings demonstrate the necessity for conservation measures, or that the conservation programme is adequate, as the case may be.
2. The special commission may decide that pending its award the measures in dispute shall not be applied, provided that, in the case of disputes under article 55, the measures shall only be suspended when it is apparent to the commission on the basis of *prima facie* evidence that the need for the urgent application of such measures does not exist.

Article 59 A

1. If the factual basis of the arbitral award is altered by substantial changes in the conditions of the stock or stocks of fish or other living marine resources or in methods of fishing, any of the States concerned may request the other States to enter into negotiations with a view to prescribing by agreement the necessary modifications in the measures of conservation.
2. If no agreement is reached within a reasonable period of time, any of the States concerned may again resort to the arbitration procedure contemplated by article 57 provided that at least two years have elapsed from the original arbitral award.

Article 60

1. 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 except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals. Such regulations will not, however, affect the general status of the areas as high seas.
2. Fisheries conducted by means of equipment embedded in the floor of the sea in this article means those using gear with supporting members embedded in the sea floor, constructed on a site and left there to operate permanently, or if removed, restored each season on the same site.

Article 60 A

Where a people is overwhelmingly dependent upon its coastal fisheries for its livelihood or economic development and it becomes necessary to limit the total catch of a stock or stocks of fish in areas adjacent to the coastal fisheries zone, the coastal State shall have preferential rights under such limitations to the extent rendered necessary by its dependence on the fishery.

In the case of disagreement any interested State may initiate the procedure provided for in article 57.

II

**Text of draft resolutions adopted by the Third Committee
(A/CONF.13/L.21, annex)**

DRAFT RESOLUTION ON INTERNATIONAL FISHERY
CONSERVATION CONVENTIONS

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as expressed in paragraph 43 of its report, as to the efficacy of international conservation organizations in furthering the conservation of the living resources of the sea ;

Believing that such organizations are valuable instruments for the co-ordination of scientific effort upon the problem of the fisheries and for the making of agreements upon conservation measures,

Recommends :

(1) That States concerned should co-operate in establishing the necessary conservation régime through the medium of such organizations covering particular areas of the high seas or species of living marine resources and conforming in other respects with the recommendations contained in the report of the Rome Conference ;

(2) That these organizations should be used so far as practicable for the conduct of the negotiations between States envisaged under articles 52, 53, 54 and 55, for the resolution of any disagreements and for the implementation of agreed measures of conservation.

DRAFT RESOLUTION ON THE PROCEDURE OF ABSTENTION

The United Nations Conference on the Law of the Sea,

Mindful of the conclusion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in 1955, that : " Where opportunities exist for a country or countries to develop or restore the productivity of resources, and where such development or restoration by the harvesting State or States is necessary to maintain the productivity of resources, conditions should be made favourable for such action ",¹

Recognizing that in special situations, where an exceptional effort and substantial restraints on fishermen are required to bring about the development of the productivity of resources or the restoration of resources reduced by natural factors or by past depletion, a special incentive will be a determining factor in encouraging States to undertake such action,

Believing that the procedure known as abstention, as described by the delegations of Canada and the United States of America during the deliberations of this conference, would in special situations serve the general

¹ *Report of the International Technical Conference on the Conservation of the Living Resources of the Sea* (United Nations publication, Sales No. : 1955.II.B.2), para. 61.

interest of conservation by encouraging States to inaugurate and continue constructive conservation programmes through ensuring to such States the product of their efforts,

Recognizing, however, that because the abstention procedure is a relatively new concept and because the special situations in which it would be beneficial are at present relatively limited in number, there is some question that incorporation of the concept in the articles adopted by this conference is required, but

Believing that, as the science of fishery conservation advances and the harvesting of the living resources of the sea becomes more efficient, opportunities for application of abstention may become more numerous,

Decides to commend the abstention procedure to States for utilization where appropriate as an incentive to the development and restoration of the productivity of living resources of the sea.

DRAFT RESOLUTION ON CONSERVATION MEASURES
IN THE ADJACENT HIGH SEAS

The United Nations Conference on the Law of the Sea,

Taking note of the opinion of the International Technical Conference on the Conservation of the Living Resources of the Sea, held in Rome in April/May 1955, as reported in paragraphs 43 (a), 54 and others of the Report,² that any effective conservation management system must have the participation of all States engaged in substantial exploitation of the stock or stocks of living marine organisms which are the object of the conservation management system or having a special interest in the conservation of that stock or stocks,

Recommends to the coastal States that, in the cases where a stock or stocks of fish or other living marine resources inhabit both the fishing areas under their jurisdiction and areas of the adjacent high seas, they should co-operate with international conservation agencies as may be responsible for the development and application of conservation measures in the adjacent high seas, in the adoption and enforcement, as far as practicable, of the necessary conservation measures on fishing areas under their jurisdiction.

DRAFT RESOLUTION CONCERNING HUMANE KILLING OF MARINE LIFE

The United Nations Conference on the Law of the Sea

Requests States to prescribe, by all means available to them, those methods for the capture and killing of marine life, especially of whales and seals, which will spare them suffering to the greatest extent possible.

² *Ibid.*

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