

United Nations Conference on the Law of the Sea

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Documents:
A/CONF.13/C.3/L.67-89

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))*

DOCUMENT A/CONF.13/C.3/L.66/Rev.1

Burma, Chile, Costa Rica, Ecuador, Indonesia, Republic of Korea, Mexico, Nicaragua, Philippines, Republic of Viet-Nam and Yugoslavia:* revised proposal

[Original text : English]
[11 April 1958]

Article 55

PARAGRAPH 1

Replace the words " a reasonable period of time " by the words " six months ".

PARAGRAPH 2

Replace sub-paragraph (a) by the following :

"(a) That there is need for urgent application of conservation measures in the light of existing knowledge of the fishery."

PARAGRAPH 3

After paragraph 2 insert the following :

" 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."

ADDITIONAL PARAGRAPH

Add the following paragraph :

" 4. The principles of geographical demarcation as defined in articles 12 and 14 shall be adopted when coasts of different States are involved."

* At the 35th meeting, Denmark asked to be included as a co-sponsor.

DOCUMENT A/CONF.13/C.3/L.67

Greece and United States of America: proposal

[Original text : English]
[8 April 1958]

Article 57

Amend article 57 to read as follows :

" 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.

" 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 constituted unless it decides, in case of necessity, to extend that time limit.

" 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. The commission shall not render decisions *ex aequo et bono* without the express authorization of all the parties to the dispute.

" 7. Decisions of the commission shall be by majority vote."

Comments

In paragraph 1, the name of the commission has been changed to "special" commission to avoid confusion between the specialized functions of this commission and those of arbitration in the classical sense.

Revised paragraphs 1 and 2 would provide a simpler procedure for constituting a special commission which

would be suitable for handling disputes of both a two-sided and a multi-sided nature. A five-member body should adequately provide a suitable balance of the required expert skills.

The proposal in paragraph 3 for inclusion of a non-voting representative from each State party to the dispute would assure each such party of adequate presentation and consideration of the party's case in the proceedings. This

would be particularly desirable in situations where there are more than two parties to the dispute.

Paragraph 6 of the revised text would enable the parties to a dispute, by mutual consent, to restrict or expand the commission's terms of reference for the particular case, if they so desire, and in the absence of express authorization by the parties to the contrary, would limit the commission's decisions to the technical merits of the case according to specific criteria.

DOCUMENT A/CONF.13/C.3/L.68

Greece, Pakistan and the United States of America: proposal

[Original text : English]
[8 April 1958]

Article 58

Substitute the following language for 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 the States parties to the dispute are concerned with the same stock or stocks of fish of other living resources ;
- (ii) That scientific findings demonstrate the necessity of conservation measures ;
- (iii) That the specific measures are based on scientific findings and are practicable ; and
- (iv) 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."

Comments

Except for the criteria relating to article 55, article 58 does not include specific criteria for the fishery articles. This aspect of the matter seems to have been left by the International Law Commission to the "guiding principles" set forth in the commentary accompanying article 58. Specific criteria of a fixed character constitute a key element in the International Law Commission's fisheries conservation scheme. It is likely most States would be reluctant to commit themselves in advance to obligatory and binding procedure proposed by the International Law Commission without prior agreement on the special commission's terms of reference, thus circumscribing its authority in disputes under those articles.

The International Law Commission's "guiding principles" in the commentary to article 58 would, in large part, provide the substance of appropriate criteria for inclusion in the body of this article, serving the practical purpose of framing basic questions which might arise under the fishery articles. They are lacking in one important respect, however — i.e., they would not empower the special commission to determine whether the disputing parties are concerned with the same stock or stocks of fish in cases where this is made an issue.

This amendment proposes to incorporate the criteria in the articles themselves and to cover the situation regarding fishing the same stock or stocks of fish.

DOCUMENT A/CONF.13/C.3/L.69

Canada and United States of America: proposal

[Original text : English]
[8 April 1958]

Additional article and article 58

A. Insert the following additional article in the International Law Commission's articles on high seas fisheries conservation :

"1. Where the nationals of a coastal State, alone or with the nationals of one or more other States, are (a) fishing a stock of fish in an area of the high seas adjacent to the territorial sea of the coastal State with such intensity that an increase in fishing effort will not result in a substantial increase in the yield which can be maintained year after year, and (b) where the maintenance of the current yield,

or when possible, the further development of it is dependent upon a conservation programme carried out by those States, involving research and limitations upon the size or quantity of the fish which may be caught, then (c) States whose nationals are not fishing the stock regularly or which have not theretofore done so within a reasonable period of time, shall abstain from fishing such stock, provided however that this shall not apply to any coastal State with respect to fishing any stock in waters adjacent to its territorial sea.

"2. In the event of disagreement as to whether a particular stock of fish meets the qualifications for such abstention, any interested State may initiate the procedure contemplated

by articles 57 and 58. Subject to paragraph 2 of article 58, abstention shall be required pending the arbitral decision.

“3. The existence of conditions for application of the abstention procedure shall be notified by the regulating State or States to the Director-General of the Food and Agriculture Organization.”

B. Add the following language to article 58 at an appropriate place :

“Applicable to the determination of disputes arising under article [] are the following requirements :

- (i) That the stock is subject to adequate scientific investigation by the States fishing it regularly, designed to determine the measures required to make possible the maximum sustainable yield ;
- (ii) That the stock is under regulation including limitations upon the size or quantity of the fish which may be caught, by all the States fishing it regularly, required to make possible the maximum sustainable yield ;
- (iii) That the stock is under such exploitation that an increase in the amount of fishing will not be expected to result in a substantial increase in the sustainable yield ; and
- (iv) That the current yield is dependent upon the conservation programme.”

Comments

The “abstention” concept, as described above, relates to situations where coastal States have, through the expenditure of time, effort, and money on research

management, and through drastic restraint on their fishermen, increased or maintained the productivity or stocks of fish, which without such action would not exist or would exist at far below their most productive level. Under such conditions and when the stocks are being fully utilized, that is, under such exploitation that an increase in the amount of fishing would not result in any substantial increase in the sustainable yield, then States not participating, or which have not in recent years participated in exploitation of such stocks of fish, excepting the coastal States adjacent to the waters in which the stocks occur, should be required to abstain from participation in such fisheries.

The abstention procedure takes into account the fact that under the conditions stated above, the present, the continuing or the growing productivity of the stocks of fish is the result of and dependent on past and current action of the participating States, and that the participation of additional States would result in no increase in the amount of useful products. Rather than increasing production the advent of additional States is almost sure to stimulate the deterioration or stagnation of such conservation activities through removing the incentive for maintaining the conservation programmes.

In recognition of a “special interest” on the part of a coastal State, the adjacent coastal State should be excepted from the operation of the rule regarding abstention. Strict and precise criteria should be laid down in the qualifications of a fishery for the rule, and questions arising as to qualifications referred to the arbitral procedure contemplated by the International Law Commission's draft articles 57 to 59.

DOCUMENT A/CONF.13/C.3/L.70

Portugal: proposal

[Original text : English]
[9 April 1958]

Additional article

Add the following new article :

“In contiguous zones which previously were high seas, the coastal state shall, in conjunction with the competent international conservation agency concerned with the adjacent high seas, formulate conservation measures for the contiguous zones and shall adopt and enforce these measures.”

DOCUMENT A/CONF.13/C.3/L.71*

Belgium, France, Greece, Italy, Netherlands, Norway, Portugal, Spain and United Kingdom of Great Britain and Northern Ireland: proposal

[Original text : English]
[9 April 1958]

Article 55

Replace the text by the following :

“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 or stocks of fish or other living marine resources in any area of the high seas adjacent to its territorial sea, provided that :

- (a) Negotiations with the other States concerned have not led to an agreement on such measures of conservation ; and
- (b) The intended measures have been notified, twelve

* Incorporating A/CONF.13/C.3/L.71/Rev.1.

months before they are to be given effect, to the Director General of the Food and Agriculture Organization, who shall notify such measures to any State which so requests and in any case to any State specified by the State initiating the measures.

“2. The measures which the coastal State adopts under the previous paragraph shall be applied by other States to their nationals only if the following requirements are fulfilled :

- (a) That scientific evidence shows that there is a need for measures of conservation ;
- (b) That the measures adopted are based on appropriate scientific findings ;
- (c) That the measures do not discriminate in form or in fact against foreign fishermen ;
- (d) That the measures do not apply to the seas adjacent to the coasts of uninhabited territories.

“3. If these measures are not accepted by the other States concerned, any of the parties may initiate, within the prescribed period of twelve months, the procedure contemplated by article 57, the introduction of the measures being left in abeyance pending the arbitral decision.

“4. If the coastal State considers that the measures are urgently needed it may request, under the procedure of article 57, a provisional decision, which shall be given in the light of the existing state of knowledge of the fishery and of the requirements under paragraph 2 (c) and (d) above.”

Note.— This proposal replaces the proposals submitted to article 55 by France (A/CONF.13/C.3/L.3), Italy (A/CONF.13/C.3/L.26), Norway (A/CONF.13/C.3/L.46), Spain (A/CONF.13/C.3/L.37), and the United Kingdom of Great Britain and Northern Ireland (A/CONF.13/C.3/L.44).

DOCUMENT A/CONF.13/C.3/L.72

United Kingdom of Great Britain and Northern Ireland: proposal

[Original text : English]
[9 April 1958]

Article 49

Add the following paragraph :

“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.”

DOCUMENT A/CONF.13/C.3/L.73

Uruguay: proposal

[Original text : Spanish]
[9 April 1958]

Article 59

Reblace the first sentence of article 59 by the following :

“The decisions of the arbitral commission shall be binding on the States concerned and the provisions of paragraph 2 of Article 94 of the Charter of the United Nations shall be applicable to those decisions.”

DOCUMENT A/CONF.13/C.3/L.74

Ghana: proposal

[Original text : English]
[10 April 1958]

Article 60

1. At the end of the first sentence add the following : “except in areas where such fisheries have by long usage been exclusively enjoyed by such nationals”.

2. Add a paragraph 2 to read as follows :

“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.”

DOCUMENT A/CONF.13/C.3/L.75

Portugal: proposal

[Original text : English]
[10 April 1958]

Article 60

At the end of the article add the following :

“... and will not discriminate against foreign fishermen working with different kinds of sedentary fishing gear.”

DOCUMENT A/CONF.13/C.3/L.79/Rev.1*

Iceland: revised proposal

[Original text : English]
[14 April 1958]

Article 49

Add the following two paragraphs :

“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.”

Comments

During the general debates in the First, Third and Fourth Committees the Icelandic Delegation has drawn attention to the special case where a nation is dependent

* This proposal replaces proposal A/CONF.13/C.3/L.79, which read as follows :

“Add a new paragraph as follows :

“In exceptional circumstances, where a people is primarily dependent on its coastal fisheries for its livelihood and/or economic development, the State concerned has the right to exercise exclusive jurisdiction over the fisheries up to the necessary distance from the coast in view of relevant local considerations.”

upon the coastal fisheries for its subsistence. It was there shown that as far as Iceland is concerned the country is very barren. No minerals or forests exist there and most of the necessities of life have to be imported. These imports have to be financed through the exports, 97 per cent of which consist of fisheries products. In the First Committee, the Icelandic delegation stated that a zone of twelve miles from the baselines would go a long way in taking care of the Icelandic requirements. It would, however, be necessary to keep open the possibility for further action in Icelandic waters if experience should demonstrate the necessity thereof. In that respect the policy would be to satisfy the Icelandic requirements on a priority basis as far as fishing in the coastal areas is concerned.

If such an exceptional rule is limited to demonstrated need there should be no danger of abuse, and indeed, any differences of opinion would have to be settled through the usual channels. In the draft of the International Law Commission, expressions such as “where circumstances necessitate . . .”, “to any appreciable extent”, “sufficiently closely linked”, “reasonable measures”, “unjustifiable interference” and others were used. As Professor François, with justice, pointed out in his statement before the First Committee (A/CONF.13/C.1/L.10), such expressions all occur in national legislation and “... a codification of international law can no more do without these expressions than can national law”.

DOCUMENT A/CONF.13/C.3/L.81

Cuba: proposal

[Original text : Spanish]
[15 April 1958]

The following is the text of a preamble to precede the articles on the conservation of the living resources of the high seas, should it be decided to adopt those articles as a separate instrument. The text given below is that appearing as the preamble to the draft articles relating to the conservation of the living resources of the sea prepared by the International Law Commission at its seventh session (document A/2934, annex to chapter II, pp. 13 and 14).

...

“Considering that

“1. The development of modern techniques for the

exploitation of the living resources of the sea has exposed some of these resources to the danger of being wasted, harmed or exterminated,

“2. It is necessary that measures for the conservation of the living resources of the sea should be adopted when scientific evidence indicates that they are being or may be exposed to waste, harm or extermination,

“3. The primary objective of conservation of the living resources of the sea is to obtain the optimum sustainable yield so as to obtain a maximum supply of food and other marine products in a form useful to mankind,

“ 4. When formulating conservation programmes, account should be taken of the special interest of the coastal State in maintaining the productivity of the resources of the high seas contiguous to its coast,

“ 5. The nature and scope of the problems involved in the conservation of the living resources of the sea are such that there is a clear necessity that they should be solved

primarily on a basis of international co-operation through the concerted action of all States concerned, and the study of the experience of the last fifty years and recognition of the great variety of conditions under which conservation programmes have to be applied clearly indicate that these programmes can be more effectively carried out for separate species or on a regional basis, . . .”

DOCUMENT A/CONF.13/C.3/L.86

Republic of Korea, Philippines and Republic of Viet-Nam: proposal

[Original text : English]
[18 April 1958]

Additional article

Add the following new article :

“ The fishing interests of a coastal State shall receive special consideration, if any of the following conditions are met :

(a) The coastal State has imposed restrictions on its own fishermen to maintain the optimum sustainable yield from the fishery resources in its coastal waters ;

(b) The inhabitants of the coastal State derive their subsistence mainly from such fishing.”

DOCUMENT A/CONF.13/C.3/L.89

Ecuador: draft resolution

[Original text : Spanish]
[19 April 1958]

Special economic situations

“ *The United Nations Conference on the Law of the Sea,*

“ *Having considered* the situations described by countries whose subsistence or economic development primarily depends on or is closely bound up with their coastal fisheries,

“ *Having considered* also the situations described by countries whose coastal populations depend primarily on coastal fisheries for the animal protein of their diet and whose fishing methods are mainly limited to local fishing from small boats,

“ *Being aware* that a lack of concern for such situations would render the work of the Conference incomplete and would impair good international relations,

“ *Recognizing* that such situations call for exceptional measures befitting particular needs,

“ *Considering* that, because of the regional scope and exceptional nature of those situations, any measures adopted to meet them would be complementary to provisions incorporated in a universal system of international law,

“ *Recommends* that States should collaborate to secure just treatment of such situations by regional agreements, by the recognition of duly justified unilateral measures, or by other means of international co-operation.”
