

NOTES

INTERNATIONAL FISHERIES REGULATION

I. INTRODUCTION

The development of the fishing¹ industry of the world during the past two decades has been marked by an impressive and far reaching rate of growth and by a diversified array of technological advances. Among the most notable achievements since World War II is the skyrocketing climb of Peru from anonymity among the fishing nations to the position of the world's leading fish producer.² Also worthy of note are the strides taken by the Japanese fishing fleet in the development of a number of fisheries heretofore considered too distant to exploit. These fisheries range from salmon in the North Pacific to tuna in the South Atlantic.³ Perhaps the most extensive and diversified developments have taken place in the fishing fleets of the Soviet Union. Vessels flying the Soviet flag now ply the waters of every ocean, participating in every type of fishery.⁴

The above statements would lead one to believe that the fisheries of the world enjoy an unlimited future of further development and expansion. However, such is not the case. Future fish production is not likely to increase at the same rate as it has since World War II and a significant decrease is expected compared to the production of the 1960's.⁵ The number of overfished stocks of fish is clearly on the increase.⁶ As more technological advances are achieved the problems which surround the international fisheries, *i.e.*, overfished stocks and a growing incidence of international disputes, will continue to increase and new problems will undoubtedly develop.

The consequence of these conditions is that the fishing industries in many countries already are experiencing grave difficulties. Not only must fishermen contend with the deleterious effects of the overfishing of traditionally exploited resources, but they must also absorb the effects of rapid technological obsolescence of fishing gear, high debt burdens and interest charges, rising labor costs, and the lack of experienced masters for vessels.⁷

The fishing industry of the United States enjoys no immunity from the

¹"Fishing" usually denotes the taking from the sea and other bodies of water their living resources and includes the various related auxiliary operations of transferring and processing the catches and supplying fishing vessels at sea. A. VOLKOV, *MARITIME LAW* 9 (1969).

²Kasahara, *The United States Fishing Industry and Related International Activities*, in *THE FUTURE OF THE FISHING INDUSTRY OF THE UNITED STATES* 242 (De W. Gilbert ed. 1968). South America produces over 20 percent of the world's supply of fish whereas ten years ago its share was only 12 percent and in 1958 only 6 percent. Jackson, *Article, THE FISHBOAT*, March 1971, at 14. See 29 U.N. FAO, *YEARBOOK OF FISHERY STATISTICS* a-5 to a-16 (1970).

³Kasahara, *supra* note 2, at 242.

⁴*Id.*

⁵Jackson, *supra* note 2, at 14.

⁶*Id.* at 57.

⁷*Id.*

present conditions.⁸ The fishing fleets of ports located in the New England states are a prime example. The fishermen in this area must contend with the overfishing of stocks of fish in offshore waters by foreign fleets,⁹ thus placing severe pressures upon the marine resource traditionally fished by American fleets. As a result the number of men and vessels sailing from American ports has decreased over the last several years¹⁰ while the percentage of fish imported for domestic consumption has increased significantly.¹¹

The problem presented is not only one of domestic concern, but it is also a problem of momentous international importance. As the world population increases, the importance of the sea and its resources as a source of food also increases. In order to best utilize the potential resources available, it is essential that an efficient and equitable system of international regulation of fisheries be established. The present system is neither efficient nor equitable, and the need for corrective measures and reform of the international law of the sea respecting fisheries is patently evident.

The United States has long been a major maritime nation. As such, it has placed great importance upon the marine resources, both living and nonliving, which exist in its coastal waters. The United States could, therefore, reinforce not only the interests of the community of nations, but also its own vital national interests by assuming an affirmative and vigorous role in the formulation and institution of these reform measures.

There presently exist three broad alternative courses of action which may be followed in establishing an international fisheries regime. The first would be to extend national jurisdiction of coastal states over the area adjacent to their coasts which is presently considered as part of the high seas. A second alternative is to establish a number of regional commissions with the competence to administer and regulate the fisheries and fishery resources in their respective areas. Finally, there is the possibility of establishing an international United Nations type agency in which is placed the authority to regulate the harvesting and distribution of the wealth of the sea on a worldwide basis. This Note will examine each of these possibilities and seek to determine the effectiveness of

⁸For a general overview of the American fishing industry see *THE FUTURE OF THE FISHING INDUSTRY OF THE UNITED STATES* (De W. Gilbert ed. 1968).

⁹In 1960 the New England fleet landed 93 percent of the total amount of fish caught on the New England continental shelf. In 1965 the same fleet landed only 35 percent of the total fish caught while the Soviet Union landed more fish than all of the other nations fishing in that area combined. Dykstra & Holman, *Cost of Fishing and Competition . . . New England*, in *THE FUTURE OF THE FISHING INDUSTRY OF THE UNITED STATES* 105 (De W. Gilbert ed. 1968).

¹⁰The number of vessels of over five tons had increased from 721 to 885 in 1968 while the number of crewmen decreased from 5,554 to 4,058 during the same period. *Id.*

¹¹In 1961, 43 percent of the edible fish consumed in the United States was imported. In 1970 the percentage imported was 57 percent after reaching a peak of 60 percent in 1969. In 1970 fishery imports valued at \$962.5 million were brought into the United States, while the United States exported in the same year only \$94.2 million worth of fishery products. The \$868.3 million deficit represented a 17 percent increase over the 1969 deficit. Jackson, *supra* note 2, at 17.

each course of action in solving the problems which plague the international fisheries.

II. BACKGROUND

It may be well to begin with an examination of the fundamental principles and objectives upon which a viable system of international regulation of fisheries must be established. Myers McDougal has stated:

[T]he very function of the law of the sea is to protect and secure the common interests of the people of the world. Its entire purpose is to serve the common interests, both inclusive and exclusive, of the different communities and to reject all claims of special interest.¹²

This principle is evidenced by the Geneva Convention on the High Seas of 1958.¹³ Article 2 of the Convention includes the freedom of fishing as one of the primary constituents of freedom of the high seas. The Convention further requires that this freedom, as well as all others relating to the use of the high seas, must be exercised with "reasonable regard to the interests of other States. . . ."¹⁴ The Convention on Fishing and Conservation of the Living Resources of the High Seas,¹⁵ promulgated at the same time as the Convention on the High Seas, also affirms the right of nationals of all States to engage in fishing on the high seas.¹⁶ It places upon nations exercising this freedom the additional duty of respecting the interests of other states by adhering to obligations accepted by agreements with other states.¹⁷

The living resources of the sea are unique in nature. Because a majority of the species of marine life are highly migratory,¹⁸ they are readily accessible to those residing on or in close proximity to the coast. This makes it a relatively simple task for a large number of people to participate in the harvesting of the resource.¹⁹ For the same reason regulation is made more difficult because traditional territorial concepts of the exercise of jurisdiction are inapplicable to the resources of the sea.²⁰

The fundamental policy problem involved in establishing a system of fisher-

¹²McDougal, *International Law and the Law of the Sea*, in *THE LAW OF THE SEA* 1 (L. Alexander ed. 1967).

¹³*Done* April 29, 1958, [1962] 2 U.S.T. 2312, T.I.A.S. No. 5200, 450 U.N.T.S. 82 [hereinafter referred to as the High Seas Convention].

¹⁴*Id.*, art. 2.

¹⁵*Done* April 29, 1958, [1966] 1 U.S.T. 138, T.I.A.S. No. 5969, 559 U.N.T.S. 285 [hereinafter referred to as the Fishing Convention].

¹⁶*Id.*, art. 1.

¹⁷*Id.*

¹⁸*See* Chapman, *Fishery Resources in Offshore Waters*, in *THE LAW OF THE SEA* 95-97 (L. Alexander ed. 1967).

¹⁹The size of the effort expended in harvesting the resources of the sea is reflected in the fact that over 500,000 motorized vessels are engaged in fishing around the world. Jackson, *supra* note 2, at 60.

²⁰*See* note 71 *infra*.

ies regulation on an international basis is threefold.²¹ First, any system which is established must promote the utilization of ocean fisheries as a source of food for the world population. Second, the system must provide for the continued and sustained production from the resources for a substantial period of time.²² Third, the system must also encourage a rational allocation of effort to promote fishery exploration in search of avenues of expansion consistent with an overall plan. In meeting these considerations, several further matters must be taken into account such as the nature of limitations placed upon the use of the resource, the regulation of access to the resource, the composition and authority of the policymaking and administrative bodies involved in the system, and the method of the resolution of disputes.²³

In order to be effective, a system of regulation and conservation²⁴ must be founded upon sound scientific information concerning the areas and stocks of fish to be subject to regulation. Information on the population, movement, and ecological relationships of the stocks under consideration is a prerequisite to meaningful regulation and conservation.²⁵ The difficulty of such a task is compounded by its size and complexity as well as the lack (in many cases) of sufficient qualified personnel or sufficient capital to invest in the undertaking.²⁶ Such a situation readily lends itself to international cooperation.

Any research of this nature, whether undertaken by a single nation²⁷ or

²¹Burke, *Contemporary Legal Problems in Ocean Development*, in *TOWARDS A BETTER USE OF THE OCEAN* 64 (1969).

²²Every fish population has a natural resiliency. As the production of the fishery increases, there is a decrease in the total number of the fish in the population, and the total weight and average size of the fish decrease. This process continues until a certain point (maximum sustainable yield) beyond which the yield of the fishery also begins to decrease no matter how much effort is put into the fishery. The objective, therefore, is to maintain the production of the fishery at this point of maximum sustainable yield without overfishing the stock. Chapman, *supra* note 18, at 94. The concept of overfishing based upon the notion of a fish population in equilibrium with its environment has been reduced to a formula by McDougal and Burke:

C = Size of Catch in One Year

A = Gain from Reproduction

G = Growth in Stock

M = Natural Mortality

If $(C < A) + G - M$ = Stock Increased

If $(C > A) + G - M$ = Stock Decreased

If $(C = A) + G - M$ = No Change - "equilibrium catch"

M. MCDUGAL & W. BURKE, *THE PUBLIC ORDER OF THE OCEANS* 470 (1962).

²³Schaefer, *Some Recent Developments Concerning Fishing and the Conservation of the Living Resources of the High Seas*, 7 *SAN DIEGO L. REV.* 371, 374 (1970).

²⁴Article 2 of the Fishing Convention, *supra* note 15, defines conservation as "the aggregate of those measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply of food and other marine products."

²⁵M. MCDUGAL & W. BURKE, *supra* note 22, at 459-62.

²⁶*Id.* at 464, 465.

²⁷The primary agency in charge of fishery development in the United States is the National Marine Fisheries Service, a branch of the National Oceanic and Atmospheric Administration of the U.S. Department of Commerce. 16 U.S.C. §§ 760e - 760g (1970).

through international cooperation involves questions of science, law, and economics to determine what the resources are and where they are located, to whom they belong, and the extent of their value.²⁸ Results of such studies can show that careful regulation of fisheries resources may permit an increasing yield without endangering the specific species. Preliminary studies into fisheries problems emphasize the necessity of sustained research to insure that particular controls continue to be the best method adapted to a fishery and that *all* participants in the fishery are subject to these controls.²⁹

An effective international fisheries regime must also operate with a high degree of economic efficiency. This economic efficiency is in turn based upon a principle of flexibility in relation to changes in the pattern of demand and to the amount and kind of effort to be applied by the participants. Flexibility in changing the pattern of demand is necessary to counteract such effects on currently under utilized species³⁰ as well as the effects on the production of traditionally fished stocks. Flexibility in the areas of capital use and labor is necessitated by technological changes. Those developments which reduce the cost per unit of effort may make it economically feasible to increase the amount of effort. At the same time those changes which reduce the cost per unit of catch will call for reductions in the amount of effort.³¹

The nature of the participation of states in any form of international fishery regulation must also be taken into consideration. Such participation is in most cases completely self-serving, being determined by the interest which a state possesses in a particular region or stock as a function of the fishing activity of its nationals.³² The range of these interests is wide and varied. One end of the scale is occupied by nations such as Iceland, which is wholly dependent upon the yield from its fisheries and desires to exclude all foreign interests from the area of its continental shelf.³³ At the other end of the scale are those nations, such as Japan, who consider themselves critically dependent on the yield of

²⁸Fye, Maxwell, Emery, & Ketchum, *Ocean Science and Marine Resources*, in *USES OF THE SEAS* 31 (E. Gullion ed. 1968).

²⁹Bishop, *The International Law Commission Draft Articles on Fisheries*, 50 A.J.I.L. 627 (1956).

³⁰Christy, *The Distribution of the Sea's Wealth in Fisheries*, in *THE LAW OF THE SEA* 115 (L. Alexander ed. 1967).

³¹*Id.* at 116.

³²Burke, *supra* note 21, at 77.

[I]t is too premature to generalize any principle supporting the artificial allocation of fish resources for the benefit of some historically or geographically privileged States, or to discard the principle of free competition . . . Few will doubt that, until the time comes, when, as in municipal society, some super-authority can guarantee equitable sharing of different resources among the nations, the states will continue to argue for adoption of principles most favorable to their own interests in the field of high seas fishing.

Oda, *Japan and International Conventions Relating to North Pacific Industries*, 43 WASH. L. REV. 63, 73 (1967).

³³Chapman, *Concerning Fishing Jurisdiction and the Regime of the Deep Sea Bed*, in *TOWARDS A BETTER USE OF THE OCEANS* 162 (1969).

their fisheries, both nutritionally and economically, and want their vessels to be able to fish anywhere on the high areas.³⁴

An important, if not central, source of conflict over ocean fisheries and a major stumbling block in the path of the establishment of an effective international fisheries regime is the traditional law of the sea which places most fishery stocks beyond the jurisdiction of any single authority.³⁵ This principle resulted from a conflict between the concepts of *res nullius* and *res communis omnium*. Under the concept of *res nullius* the high seas were viewed as belonging to no one. As such they were subject to permanent appropriation and occupation. If such an area was appropriated it was no longer subject to the principles of freedom of the high seas and as appropriation increased the freedom of the seas became more restricted.³⁶ On the other hand, under the principle of *res communis omnium* the high seas are looked upon as being the property of the community of nations as a whole and thereby subject to appropriation by no one. It is this latter concept which is now the accepted view under the international law of the sea.³⁷

It must be remembered that the problem presented by the regulation of international fisheries is not one which will be resolved solely by the application of legal principles. The talents of governmental leaders and international statesmen will have to come into full play. National interests traditionally have asserted the responsibility for managing fishery resources to ensure that the maximum yield will be produced and that its fishing fleets have ready access to such resources.³⁸ On the international level, however, there must exist a responsibility to work toward the establishment of new systems of regulation and conservation which are efficient, equitable and acceptable to other nations involved. Unless an acceptable resolution of these interests is achieved, the entire system breaks down, allowing some nations to gain an unfair economic advantage.³⁹ Should this occur one of the probable alternative actions considered by the disadvantaged nation or nations would be the use of economic or military force.⁴⁰

³⁴*Id.*

³⁵Chapman, *supra* note 18, at 93.

³⁶Manner, *Comment*, in *TOWARDS A BETTER USE OF THE OCEAN* 185 (1969).

³⁷The principle of *res communis omnium* was recognized early in the United States. In *The Adventure*, 1 Fed. Cas. 202 (No. 93) (C.C.D. Va. 1812), *rev'd on other grounds*, 12 U.S. (8 Cranch) 221 (1814), Marshall, C.J., writing for the circuit court, held that the bringing of a ship acquired on the high seas as a gift into the United States did not constitute importation of foreign goods from a foreign place under the Embargo Act of March 1, 1809, 2 Stat. 528, since "the sea is the common property of all nations," and is not a foreign place subject to appropriation by any one nation. *Id.* at 204-05.

³⁸McKernan, *International Fishery Policy and the United States Fishing Industry*, in *THE FUTURE OF THE FISHING INDUSTRY OF THE UNITED STATES* 254 (De W. Gilbert ed. 1968).

³⁹Chapman, *United States Policy on High Seas Fisheries*, 20 DEP'T STATE BULL. 67, 69 (1949).

⁴⁰Schaefer, *supra* note 23, at 403. For examples of the use of military force see Oliver, *Wet War—North Pacific*, 8 SAN DIEGO L. REV. 621 (1971). An example of economic force was H.R. 10607,

III. EXTENSION OF EXCLUSIVE JURISDICTION

Three basic methods have been suggested by which a nation may extend its claims to exclusive use and control over fishing areas adjacent to its coast:⁴¹ changes in the means used in determining the area of the states' internal waters; extension of the states' territorial seas; and the creation of special contiguous zones within which the same rights apply as are exercised by the states within their territorial seas.⁴²

A. *Changes in the Method of Determining Internal Waters*

The internal waters of a state are those waters which are situated on the landward side of the baseline of the territorial sea.⁴³ The interests of the state in controlling the activities in these waters are quite similar to its interests in its territory on land. The state enjoys the right of exclusive control of these waters subject only to the customary limitations imposed by international law.⁴⁴

By definition the position of the baseline of the territorial sea is the controlling factor in determining the extent of the internal waters of the state. Therefore, any change in the manner in which these baselines are drawn directly affects the area of the internal waters. The normal position of the baseline is the low water line along the coast.⁴⁵ This method of positioning baselines results in internal waters of limited extent since the baseline follows the contour of the coastline. If, however, a straightline method is used in placing the baseline, a different result follows. The straightline method is usually employed in areas with severely erratic and indented coastlines and in bays and inlets of certain sizes.⁴⁶ Under this method the baseline is drawn from one salient point to the next rather than by following the contour of the coastline. As a result large areas are taken into the state's internal waters and become subject to its exclusive jurisdiction.

B. *Extension of the Territorial Sea*

The placement of baselines is also of importance in relation to the extent of a state's territorial sea. The extent of a nation's assertion of jurisdiction over

91st Cong., 1st Sess. (1969), introduced by Rep. Thomas M. Pelly of Washington. This bill would have placed prohibitions upon the importing of fish or fishing products from any nation that seized a tuna boat from the United States.

⁴¹Landlocked nations may also be involved in claims to offshore areas. Such nations have legitimate interests in the use of the seas and are often represented at international conferences on the law of the sea. Alexander, *Offshore Claims of the World*, in *THE LAW OF THE SEA* 72 (L. Alexander ed. 1967).

⁴²Burke, *supra* note 21, at 62.

⁴³Convention on the Territorial Sea and the Contiguous Zone, art. 5, *done* April 29, 1958, [1963] U.S.T. 1606, T.I.A.S. No. 5639, 516 U.N.T.S. 205 [hereinafter referred to as the Convention on the Territorial Sea].

⁴⁴McDougal, *supra* note 12, at 17.

⁴⁵Convention on the Territorial Sea, art. 3, *supra* note 43.

⁴⁶*Id.*, art. 4.

its territorial sea depends upon the breadth claimed and the position of the baselines.⁴⁷ The interests exercised by the state in its territorial sea are similar to those exercised in the internal waters. In the waters of the territorial sea, however, the interests of other nations become more definite in the form of rights such as the right of innocent passage.⁴⁸

Present claims by nations to territorial sea extend from a minimum of three miles to a maximum of 200 miles.⁴⁹ The number of nations claiming a three mile territorial limit has declined, but a number of major fishing nations such as the United Kingdom, Japan, and the United States continue to adhere to the three mile limit.⁵⁰ It now seems to be an accepted principle of customary international law that claims of territorial jurisdiction in excess of three miles are not unlawful and the three mile limit is no longer accepted as a binding restriction.⁵¹ It seems to be the consensus, however, that claims reaching out to 200 miles are a definite infringement upon the freedom of the seas.⁵²

An example of a claim between these two extremes can be found in action taken by the Government of Iceland. In June 1958, the Government of Iceland announced its intention to extend Iceland's fisheries limit to a distance of 12 miles. This limit was continued until July 1971, when Iceland issued a policy statement claiming an extension of this 12 mile limit to 50 nautical miles from the baselines, effective not later than September 1, 1972. This policy of claiming a 50 mile limit would greatly affect the fishing rights of Great Britain, the Federal Republic of Germany and other nations whose fishing fleets do a substantial amount of fishing within 50 miles of Iceland's coastline. Great Britain⁵³ and the Federal Republic of Germany⁵⁴ instituted proceedings before the International Court of Justice in June 1972 challenging the new 50 mile limit claimed by Iceland. The Court noted probable jurisdiction⁵⁵ and granted both Great Britain and the Federal Republic of Germany's requests for interim protection measures in August 1972.⁵⁶ Under the interim measures, the Court ordered all parties not to change the pre-September 1972 situation and to refrain from doing anything which would influence the course of the proceed-

⁴⁷Alexander, *supra* note 41, at 76.

⁴⁸Convention on the Territorial Sea, art. 14, *supra* note 43.

⁴⁹U.N. FAO, LIMITS AND STATUS OF THE TERRITORIAL SEA, EXCLUSIVE FISHING ZONES, FISHERY CONSERVATION ZONES AND THE CONTINENTAL SHELF (1969). For the history and background of the development of the three mile limit see Heinzen, *The Three Mile Limit: Preserving the Freedom of the Seas*, 11 STAN. L. REV. 597 (1959).

⁵⁰Alexander, *supra* note 41, at 78.

⁵¹Burke, *supra* note 21, at 74.

⁵²*Id.*

⁵³United Kingdom of Great Britain and N. Ireland v. Iceland, [1972] ____ I.C.J. ____ (application instituting proceedings, April 14, 1972).

⁵⁴Federal Republic of Germany v. Iceland, [1972] ____ I.C.J. ____ (application instituting proceedings, June 5, 1972).

⁵⁵[1972] ____ I.C.J. ____.

⁵⁶11 INT'L LEGAL MAT'LS 1069 (1972).

ings until the Court has had time to consider the two cases on their merits.⁵⁷

The traditional position of the United States has been to view the three mile limit as the maximum breadth of the territorial sea cognizable under international law with any greater extent held to be a violation of the freedom of the seas.⁵⁸ The United States is amenable, however, to the establishment of special fishery zones. The United States has taken such action itself,⁵⁹ but maintains that other attempts to extend jurisdictional claims over fisheries by other means in excess of twelve miles can only have the inimical effect of hampering the full utilization of fishery resources and may, also, lead to retaliatory actions by distant water fishing states with harmful results.⁶⁰

C. Contiguous Zones

A state may also extend its claims to exclusive use and control over fishing areas adjacent to its coast by the creation of special contiguous zones. Should a state regard itself as uniquely affected or threatened by specific activities on the high seas adjacent to its territorial waters, it may exercise its jurisdiction therein by the making and applying of laws aimed at the control of such activities, even if they are the activities of nationals and vessels of other states.⁶¹ This principle was asserted in the *Norwegian Fisheries Case*.⁶² Such claims must be justified, however, in the light of the geographical extent of the claim, the nature of the controls and limitations imposed by the claim, and the acceptability of the claim to other states.

The United States exercises its jurisdiction beyond its territorial waters for customs purposes through the use of special contiguous zones.⁶³ In 1966, the United States Congress created a fishery zone contiguous to the territorial sea and extending nine miles therefrom resulting in an area twelve miles wide in which the United States claims exclusive fisheries jurisdiction.⁶⁴ One of the bases of this claim was that, at the time of the passage of the act, more than

⁵⁷*Id.*

⁵⁸*Cunard S.S. Co. v. Mellon*, 262 U.S. 100, 122 (1923):

It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land area under its dominion and control, the ports, harbors, bays, and other enclosed arms of the sea along its coast and a marginal belt of sea extending from the coastline outward a marine league, or three geographic miles.

The United States did submit a compromise proposal for a six mile sea at the Geneva Conference on the Law of the Sea (1958). It failed to receive the 2/3 vote required for passage. 4 M. WHITEMAN, *INTERNATIONAL LAW* 97-102 (1965). See generally Dean, *The Law of the Sea*, 38 DEP'T STATE BULL. 574 (1958).

⁵⁹See Act to Establish Contiguous Fishery Zones Beyond the Territorial Sea of the United States, 16 U.S.C. § 1091 *et seq.* (1970).

⁶⁰Schaefer, *supra* note 23, at 392.

⁶¹See McDougal, *supra* note 12, at 18.

⁶²[1951] I.C.J. 116.

⁶³See Tariff Act of 1930, 19 U.S.C. § 1581 *et seq.* (1970); Anti-Smuggling Act of 1935, 19 U.S.C. § 1701 *et seq.* (1970).

⁶⁴See note 59 *supra*.

half of the world's coastal states asserted exclusive jurisdiction over zones twelve miles in width or more, either by claiming a twelve mile territorial sea or by the use of contiguous zones. It was further asserted that such a claim would help prevent the depletion or extinction of valuable species of fish and other marine life. Thus the United States would be in a better position to conserve and nurture certain massive fish resources in order to meet the future demands for fisheries and fish products and to help cope with the world's expanding hunger problem. In creating a contiguous fishery zone, Congress further maintained that the United States also had an interest in forestalling illicit reconnaissance activities along the coast of the United States by foreign fishing vessels.⁶⁵

Whether a state expands its exclusive jurisdiction by the extension of its internal waters, its territorial sea, or by the creation of contiguous zones, it may still choose to recognize the historic right of a state to fish in the waters over which jurisdiction is asserted. The extent of these acquired historical rights is measured by the duration, frequency, and nature of the fishing activity of the state in the particular area under consideration.⁶⁶ Although a system which recognizes historic rights should encourage the development of new fisheries, it could result in a wasteful and uneconomic race to stake out claims in areas and fisheries in a manner not suited to the overall best interests of the regime. Such a system would also result in the exclusion of nations from a number of fisheries. Nations such as Japan and the Soviet Union with wide-ranging distant water fleets would benefit greatly from such a plan while the United States would realize a gain in a limited number of areas,⁶⁷ such as the shrimp industry in the Gulf of Mexico or the tuna industry in the Pacific.

The late Dr. Wilbert M. Chapman was of the opinion, however, that even if a 200 mile fishery zone was established as an international norm, the chief beneficiary in the long run would be the United States and the chief losers would be the developing nations, the primary proponents of the 200 mile zone.⁶⁸ Dr. Chapman based his conclusion on the fact that the fishing fleets of the United States have access to the largest market in the world. They also have access to some of the most abundant underfished resources in the world. A 200

⁶⁵Christol, *Social Complex of World Fisheries: Law in Support of World Needs*, in *THE FUTURE OF THE FISHING INDUSTRY OF THE UNITED STATES* 306 (De W. Gilbert ed. 1968).

⁶⁶Comment, *At Sea with the 89th Congress: The United States Fisheries Zone*, 18 *HASTINGS L. J.* 937, 955 (1967). Acquired historical rights may arise from: (a) the enjoyment of a fishery by nationals of an overseas state at a time when the adjacent mainland was *terra nullius*; (b) a non-exclusive servitude acquired by prescription adverse to the coastal state, *i.e.*, a right to share in the fishery; (c) nonexclusive rights created by private fishermen who were not in any way asserting public international law claims. L. Goldie, *The Ocean's Resources and International Law—Possible Developments in Regional Fisheries Management*, 8 *COLUM. J. TRANSNAT'L L.* 1, 25-28 (1969).

⁶⁷Chapman, Christy, Baxter, Allen, and Pontecorvo, *A Symposium on International Interests in Coastal Waters*, in *THE LAW OF THE SEA* 128 (L. Alexander ed. 1967).

⁶⁸Chapman, *Article*, *THE FISHBOAT*, March 1971, at 47.

mile zone would give the United States fleets an extra advantage as regards these resources. The United States also has more foreign vessels fishing off its coasts within 200 miles than any other country.⁶⁹ A 200 mile limit combined with these factors would definitely enhance the growth of the American fishing industry.

On the other hand, Dr. Chapman continued, many of the developing nations have quite narrow avenues of access to the ocean and its resources. Further development of their industries would, therefore, be hampered by this limited access made even more limited by the imposition of the 200 mile zone.⁷⁰

Any beneficial effects which might be derived from a system of fisheries regulation based upon expanded claims of national jurisdiction are overshadowed by the inherent detrimental consequences of such a system. Exclusive fisheries zones have been shown to have disadvantageous effects on efficient production and unprofitable effects on economic yield.⁷¹ In fact, it is quite possible that a worldwide system of exclusive fishery zones would probably result in decreased total production by the world fisheries due to the fact that many coastal states would find the management of extended areas off their coasts a task beyond their ability to accomplish economically and efficiently. The increased costs and hindered production accruing from such a system would therefore offset any gains which might be realized.⁷²

Attempts to impose measures designed to promote the conservation of marine life within the area of exclusive jurisdiction would also prove ineffective. As pointed out above, the highly migratory nature of most species would, in many instances, place them beyond the authority of any single nation for significant periods of time, thereby subjecting the stocks to exploitation by vessels of other nations outside the exclusive fishery zone. Such a situation would require further international agreement if it were to be resolved.⁷³ A satisfactory allocation of resources would not result from such a regime. Those states claiming extended areas of exclusive jurisdiction would most likely severely limit, if not bar completely, access to the resources of the area by foreign fleets. The effect of such action would be the hindrance of production and development of international fisheries.

Claims of expanded jurisdiction would create conflict between the interests of inshore and distant water fleets and between national security interests and fisheries interests in the state involved.⁷⁴ For example, in the United States the fishing industries located in the waters off the Pacific Northwest, Alaska, Northeast Atlantic, and Central Atlantic coasts favor a wider zone of exclusive

⁶⁹*Id.*

⁷⁰*Id.*

⁷¹Comment, *Fisheries Jurisdiction Beyond the Territorial Sea—With Special Reference to the Policy of the United States*, 44 WASH. L. REV. 307, 328 (1968).

⁷²Burke, *supra* note 21, at 65-66.

⁷³*Id.*

⁷⁴See Schaefer, *supra* note 23, at 389.

jurisdiction due to the large foreign fleets operating in these areas. The American tuna fleets which work the waters off the Pacific coast of South America and the shrimp fleets which operate in the South Atlantic and the Gulf of Mexico are opposed to wider zones of exclusive jurisdiction.⁷⁵ These latter interests depend upon being allowed to fish in close proximity to foreign coasts and territorial waters for their continued existence.

The national security interests of many states require that its vessels be able to pass freely through as large an area of the high seas as is practicable. For this reason the military establishments in most states support narrow territorial seas and limited jurisdiction so that the freedom of navigation on the high seas may be maintained to the fullest extent possible.⁷⁶ On the other hand, the fishing industries demand that exclusive jurisdiction be expanded to its fullest extent in order to conserve and maintain the resources of the sea and to prevent encroachment by foreign fleets. These conflicts contribute to the circumstances which have made and continue to make it impossible to arrive at any international agreement as to a definite width for territorial seas and as to the proper extent of exclusive fisheries jurisdiction. An international determination on the extent of territorial seas is essential to the establishment of any rational international fisheries regime no matter what its basis.

An international regime premised upon national jurisdictional claims would also severely infringe upon the freedom of the high seas. It is readily apparent that as claims of national jurisdiction over areas once considered as the high seas are encouraged and increased, the area in which navigation, fishing, and other activities may be carried on free of the jurisdiction of a single state is proportionately decreased.⁷⁷

The above discussion seems to indicate that a jurisdictional approach is no longer adequate as a basis for the solution of the present world fisheries problems. This statement finds support in the developments which have taken place from the late nineteenth century to the present day and which have caused concern about the effectiveness of a decentralized, essentially *laissez-faire*, legal order in the settlement of fisheries disputes.⁷⁸ As technological developments increased, the desire of nations to participate in more distant fisheries increased. As sail gave way to steam and steam to the diesel engine, it became more profitable to engage in distant water fisheries and as the number of nations participating in such fisheries increased so did the possibility of international conflict and dispute. As techniques of catching, preserving, and transporting fish have become more effective, a situation has developed in which the maintenance and in some cases the survival of certain species has become endangered.

⁷⁵*Id.* at 392.

⁷⁶*Id.* at 389.

⁷⁷See note 36 *supra*, and accompanying text.

⁷⁸Falk, *Settling Ocean Fishing Conflicts: The Limits of "Law Reforms" in a Horizontal Legal Order*, in *THE FUTURE OF THE FISHING INDUSTRY IN THE UNITED STATES* 327-28 (De W. Gilbert ed. 1968).

Another major inadequacy of a jurisdictional approach to the regulation of international fisheries and the settlement of disputes is presented by the events which followed the promulgation by President Truman in 1945 of proclamations dealing with the continental shelf⁷⁹ and coastal fisheries.⁸⁰ A large number of nations used these proclamations to justify expanded claims to exclusive control at the expense of the freedom of the seas.⁸¹ Although the proclamation on the continental shelf did extend the jurisdiction of the United States over the seabed of the continental shelf and its resources, it is arguable that neither of the proclamations was sufficient to justify such action as that taken by Chile, Ecuador, and Peru in the Declaration of Santiago⁸² in establishing a 200 mile exclusive fishery zone.⁸³

The Fisheries Proclamation did not afford American fishermen any preference over other fishermen in relation to the resources in the area covered by it. The proclamation merely asserted the right of the United States to unilaterally establish conservation zones in areas where only its nationals were engaged in fishing activities and to establish such zones jointly by agreement in areas contiguous to American waters when other nations were fishing therein.⁸⁴ The proclamation further set forth that the intent and policy of the United States was to conserve the resources in areas contiguous to the United States but not to establish any new principles of jurisdiction over fisheries beyond the limits of the territorial sea.⁸⁵

These developments over the past one hundred years have not prevented, however, the emergence of an awareness of the importance of fishing as an economic foundation for developing states and as a source of food for the world's population. The extent of this awareness is indicated primarily by the

⁷⁹Proc. No. 2667, "Policy of the United States With Respect to the Natural Resources of the Subsoil and Sea Bed of the Continental Shelf," Sept. 28, 1945, 59 Stat. 884. See also 4 M. WHITEMAN, INTERNATIONAL LAW 740 - 931 (1965).

⁸⁰Proc. No. 2668, "Policy of the United States With Respect to Coastal Fisheries in Certain Areas of the High Seas," Sept. 28, 1945, 59 Stat. 885 [hereinafter referred to as the Fisheries Proclamation]. See also 4 M. WHITEMAN, INTERNATIONAL LAW 945-62 (1965).

⁸¹Continental shelf claims limited to the sea bed and subsoil were soon made by Australia, Bahrein, Brazil, Dominican Republic, Guatemala, Iran, Israel, Kuwait, Nicaragua, Pakistan, Philippines, Saudi Arabia, Trucial Sheikdoms, Venezuela and the United Kingdom (for Bahamas, British Honduras, Falkland Islands, and Jamaica but not for the homeland). Continental shelf claims including claims to sovereignty over waters above the continental shelf, or fisheries therein, have been made by Argentina, Chile, Costa Rica, Honduras, and Peru. Chile, Ecuador, Panama, Peru, and Salvador claim 200 miles off their coasts for fisheries purposes. W. BISHOP, INTERNATIONAL LAW 640 (2d ed. 1962).

⁸²*Done* August 18, 1952, 14 Revista Peruana de Derecho Internacional No. 45, 104 *et seq.*; U.S. NAVAL WAR COLLEGE, 51 INTERNATIONAL LAW SITUATION AND DOCUMENTS 1956, 265-67 (1957) (Secretariat of U.N. transl.).

⁸³U.S. NAVAL WAR COLLEGE, 51 INTERNATIONAL LAW SITUATION AND DOCUMENTS 1956, at 265 *et seq.* (1957).

⁸⁴Fisheries Proclamation, *supra* note 80, at 885.

⁸⁵*Id.*, at 885-86.

acknowledgement by many nations that the freedom to fish on the high seas may need in some instances to be subordinated to the objectives of sound conservation programs and harmonized by regulation with community goals to increase the food supply of the world.⁸⁶

IV. REGIONAL COMMISSIONS

It is apparent that international fisheries commissions have played an important role in fisheries regulation and will most likely continue to do so.⁸⁷ The importance of these commissions is based on their achieving the implementation of conservation methods, which are grounded upon reliable scientific information and which have as their objective the maintenance of the maximum yield of the fishery or fisheries on a continuing basis.⁸⁸ The more extensive use of regional commissions would allow for a close examination of problems and conditions and would afford a better range of solutions to these problems. Diverse methods in the use of fisheries which result in waste and inefficient production would be minimized by focusing on limited areas or specific stocks.⁸⁹ The disparities which have traditionally hindered agreement, such as differences in economic or governmental systems, degrees of dependence upon marine fisheries as a source of income, and types of fish sought and methods of catching them, would be more easily considered and resolved on a regional basis. The ultimate goal would be to bring into existence a system under which conservation by regulation and economic management would complement each other.⁹⁰

To be effective such a commission must exercise a considerable amount of autonomy to make decisions and enforce such decisions. Definite and clear agreement among the members as to the objectives of the organization is another requisite for effectiveness. In order for the management actions undertaken by the commission to be meaningful and effective, it must have access to the apparatus for the collection of competent scientific data upon which to base such actions. The internal organization and administration of the commission must be designed in a manner which allows for flexibility, but a flexibility which affords the necessary controls consonant with the objectives of the commission. Finally, provision must be made for a procedure for arbitration among the members of the commission, among members and non-members, and among the individual regional commissions themselves.

⁸⁶Falk, *supra* note 78, at 327.

⁸⁷The United States is presently a member of nine international fisheries commissions: Great Lakes Fishery Commission (1955); Inter-American Tropical Tuna Commission (1949); North Pacific Fur Seal Commission (1911); International North Pacific Fisheries Commission (1952); International Pacific Halibut Commission (1924); International Commission for Northwest Atlantic Fisheries (1949); International Whaling Commission (1948); International Atlantic Tuna Commission (1966). See Fye, *et al.*, *supra* note 28, at 67.

⁸⁸*Id.*

⁸⁹Comment, *supra* note 71, at 330.

⁹⁰Burke, *supra* note 21, at 72.

Authority for the formation of such commissions may be found in the Convention on Fishing and Conservation of the Living Resources of the High Seas.⁹¹ Article 4 states:

[i]f the nationals of two or more nations 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.

The Convention provides for the protection of the interests of all states affected by setting forth criteria under which the acceptability and propriety of the contemplated measures would be determined by a compulsory method.⁹²

One possible approach, utilizing the international commission concept, would be the establishment of a worldwide system of independent and autonomous regional commissions. Each commission would be given the responsibility of conservation regulation and economic management over a specific region and the stocks of fish within that region. Care must be taken to provide for cooperation both among the separate regional commissions and among the commissions and public international organizations which have related objectives such as the Food and Agricultural Organization of the United Nations and the International Council for the Exploration of the Sea. In this way, effective collaboration and coordination with respect to their work will be ensured and needless duplication of effort will be avoided.⁹³

The commission will have to be given authority to impose and enforce necessary regulations which have been derived from the findings of scientific study. Each commission should have the authority to formulate and apply measures dealing with such matters as the establishment of open and closed seasons, the closing to fishing of such areas as are found to be spawning areas or areas populated by small or immature fish, the establishment of size limits for any species, the proscription of certain types of fishing gear, and the establishment of an overall catch limit for any species.⁹⁴ Authority must also be given the commission to take action against nonmembers who may adversely affect the interests of the member states or the overall objectives of the commission.⁹⁵ The effect of such provisions would be to allocate to the commissions authority of a more substantive nature than exists under most of the present agreements establishing international fisheries commissions.⁹⁶

⁹¹Fishing Convention, *supra* note 15.

⁹²Fishing Convention, art. 9 - 12, *supra* note 15.

⁹³*Cf.* International Convention for the Northwest Atlantic Fisheries, art. X, *done* Feb. 8, 1949, [1950] 1 U.S.T. 477, T.I.A.S. No. 2089, 157 U.N.T.S. 157, [hereinafter referred to as N.W. Atlantic Convention]. *See also*, 4 M. WHITEMAN, INTERNATIONAL LAW 982 (1965).

⁹⁴*Cf.* N.W. Atlantic Convention, art. VIII, *supra* note 93.

⁹⁵*Cf.* International Convention for the High Seas Fisheries of the North Pacific Ocean, art. VI, *done* May 9, 1952, [1953] 4 U.S.T. 380, T.I.A.S. No. 2786, 205 U.N.T.S. 65, [hereinafter referred to as N. Pacific Convention]. *See also* 4 M. WHITEMAN, INTERNATIONAL LAW 997 (1965).

⁹⁶*E.g.*, N. Pacific Convention, *supra* note 95.

Agreement as to the objectives the commission expects to achieve is essential. If the objectives are stated clearly each member is aware of its duties and responsibilities and also of its rights and privileges.

As has been pointed out above, any regime of international fisheries regulation must be based upon sound scientific information.⁹⁷ The regional commission, therefore, must be responsible for obtaining and disseminating necessary information concerning the area under its control and the stocks of fish therein. Each commission should have the authority to undertake, either in collaboration with other bodies or independently, the investigation of factors such as the abundance, life history and ecology of the aquatic life within its region, the current conditions and trends of the fishery resources of the area, and methods of increasing stocks of fish.⁹⁸ It may prove useful to allow the commission to conduct exploratory fishing operations.⁹⁹

The efficacy of each commission will depend upon the effectiveness of its organization and administration. Membership in each commission could be voluntary but with the condition that only those states who are members of the commission may exploit the resources in the commission area.¹⁰⁰ Provision should be made to allow a state to be a member of more than one commission. In this way a state could become a member in as many fisheries as its own ability and initiative would allow, but the state would still have to operate within controlled systems instead of in the present wasteful system of almost unlimited competition. The criteria of membership could be arranged so that historic fishing rights¹⁰¹ would be recognized and an annual contribution would be collected. Those nations unable to assert such claims would be required to pay an additional tax or license fee for the privilege of fishing in the commission area as a member. Such a system would create a definite right to fish and would raise revenues for the operation of the commission. To alleviate any hardships resulting from the imposition of such a system, provision should be made for a transitional period of adjustment during which nations may withdraw from the fisheries of areas in which they do not wish to be commission members.¹⁰²

If a system of this nature is to be workable, it must provide an effective method of arbitration. Arbitration and the settlement of disputes arising between or among members of the same commission should be compulsory in order that the objectives of conservation regulation and economic management may be best achieved. The settlement of disputes could be handled either directly among the parties themselves in accordance with Article 33 of the United Nations Charter,¹⁰³ by a special arbitration panel of the commission,¹⁰⁴ or by submission of the question to the International Court of Justice.

⁹⁷See M. McDUGAL & W. Burke, *supra* note 22, at 459.

⁹⁸See N.W. Atlantic Convention, art. VI, *supra* note 93.

⁹⁹*Id.*

¹⁰⁰*Cf.* European Fisheries Convention, art. 3, *done* March 9, 1964, 581 U.N.T.S. 58.

¹⁰¹See note 66 *supra*.

¹⁰²See European Fisheries Convention, art. 9 *supra* note 100.

¹⁰³U.N. CHARTER art. 33, para. 1:

V. INTERNATIONAL AGENCY

As the world population increases and growing demands are placed upon the food supplies of the world, the resources of the sea should be among the first of the world's food sources to be the subject of extensive worldwide regulation. Support for international control of the right to fish on the high seas already exists among individuals and groups interested in the establishment of a world government and in the activities of the United Nations toward the establishment of an international regime for the peaceful use of the seabed.¹⁰⁵ International control of fisheries is apparently favored by most of the developing nations which have little capital to invest in the development of fisheries technology and little technical knowledge or ability with which to begin such a task.¹⁰⁶

One plan which has been proposed would have the United Nations assert a claim in the name of mankind for the permanent and exclusive right to the marine resources of the high seas lying seaward from the territorial waters of coastal states.¹⁰⁷ Under this plan each nation would be entitled to claim territorial waters only to a width chosen for uniform application by the community of nations as a whole.

Control of the world's fisheries would be delegated by the United Nations to a commission with worldwide authority. Its duties would be similar to those of regional commissions but on a much wider scale in that the international fisheries commission would identify fishing areas, establish quotas, select fishing seasons, prescribe methods of capture, determine the resources to be harvested, and carry on conservation and scientific research on a worldwide basis rather than in a limited region. The commission would also have the duty of managing the distribution of the economic proceeds of world fish production. One share would go to the United Nations with the remainder being divided among the nations participating in the fishery and those nonparticipants entitled to a share.¹⁰⁸

The international agency would also have the responsibility of controlling the entry of participants into the fisheries. In this way the agency could control the outlay of capital and labor in the various fisheries. A method of direct limitation on the amount of effort expended would be through the issuance of licen-

The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

¹⁰⁴See European Fisheries Convention, Annex II *supra* note 100.

¹⁰⁵Schaefer, *supra* note 23 at 386; see Peaceful Use of Sea Bed Comm., Report, 26 U.N. GAOR Supp. No. 21, U.N. Doc. A/8421 (1971) and 27 U.N. GAOR Supp. No. 21, U.N. Doc. A/8721 (1972). See generally S. ODA, *THE INTERNATIONAL LAW OF OCEAN DEVELOPMENT*, 73-227, 515-519 (1972).

¹⁰⁶Schaefer, *supra* note 23, at 388.

¹⁰⁷Christol, *supra* note 65, at 307.

¹⁰⁸*Id.*

ses. By this procedure licenses would be issued only to that number of producers which would yield the largest net revenue and at the same time maintain the maximum sustainable yield.¹⁰⁹ The economic benefits of such a controlled system would accrue directly to the license holders while the consumers of fisheries products would benefit from the sustained high yield.

Difficulties might arise here due to the varying wage and price structures of the nations of the world. These differences would lead to different conclusions by the parties as to the proper amount of effort or potential net revenue.¹¹⁰ A more difficult issue is raised by the fact that if licenses are limited to those nations with historic rights to fish in the area then other nations would be required to buy a license from a nation retiring from the fishery or be excluded altogether. This would result in a nation having to pay for what is now a free right.¹¹¹ A compromise could probably be reached by affording a preference in the issuance of licenses to those nations with historic rights rather than complete exclusion of prior nonparticipants.

Choosing an acceptable unit of effort to be licensed also might present difficulties. If licenses were issued to each vessel or to a fixed number of vessels per license the result would be a race to build larger and faster vessels. Such a situation would defeat the purpose of the plan.¹¹²

Since the license fee would add to the costs of the industry it would probably discourage excess producers and this benefit would accrue directly to the participants. These excess profits, or economic rent, could be appropriated by the international agency in the form of an additional tax on the yield of the fishery. In this manner society will benefit by having achieved a more rational allocation and application of capital and labor and by the acquisition of funds that were formerly dissipated in the wasteful race of free competition.¹¹³

The concept of world ownership, upon which this regime is based, involves two basic concepts: the right of exclusion and the right to a share in the production of the resource.¹¹⁴ The right of exclusion provides the justification for the regulation of entry into the exploitation of a resource. The right to a share in the production of the resource itself is a more extensive and beneficial right than the tenuous right of exploitation afforded by the present system. Out of these concepts a formula for equitable distribution of the wealth must be evolved. Such a formula could be based upon any number of criteria including the need of the particular nation, its population, or the length of its coastline if a coastal state.¹¹⁵

The legal basis for this international system may be found primarily in the

¹⁰⁹Christy, *supra* note 30, at 116.

¹¹⁰*Id.*

¹¹¹*Id.*

¹¹²*Id.*

¹¹³*Id.* at 117-18.

¹¹⁴*Id.* at 111.

¹¹⁵Baxter, *supra* note 67, at 129.

United Nations Charter.¹¹⁶ Chapter IX of the Charter imposes upon the organization a general responsibility to improve the economic and social status of men and nations. Although these provisions do not expressly authorize the formation of an international agency charged with the regulation of the fisheries of the world neither do they expressly prohibit such an undertaking. If the United Nations has the power to take action to prevent the pestilence of war it is arguable that it should also have the analogous power to prevent the pestilence of famine.

It is also argued that the United Nations possesses sufficient legal standing to assert the necessary claims to jurisdiction and control over the high seas.¹¹⁷ The United Nations as an institution possesses certain corporate powers different from those of the nations which make up its membership and also has status in international law as a claimant as well as a defendant for harms done in its legal capacity.¹¹⁸ A further analogy may be drawn between these proposed claims at sea and the claims already made by the United Nations in outer space.¹¹⁹ If the organization can do one, it should be able to do the other.

A distinction should also be made between the right of navigation and the right of fishing. Navigation can be free because it does not involve the consumption or depletion of a resource as does fishing. This suggests that it would be possible to separate the two issues making agreement easier to achieve and allowing the international agency to make claims of exclusive fishery jurisdiction even though it could not make the same claims regarding freedom of navigation.¹²⁰

Although it is possible that such an international fisheries regime would be self-enforcing, since an extremely high level of cooperation was necessary to bring it into existence to begin with, authority for the exercise of formal enforcement powers may be found in the United Nations Charter.¹²¹ Chapter VII allows the Security Council to take necessary actions when a threat to world peace exists. As before mentioned, fisheries disputes are capable of presenting such threats to world peace.¹²² Article 41¹²³ provides sanctions, short of the use of force, which could be applied to recalcitrant states along with the threat of

¹¹⁶Christol, *supra* note 65, at 308.

¹¹⁷*Id.*

¹¹⁸*See Reparations for Injuries Suffered in the Services of the United Nations*, [1949] I.C.J. 174 (advisory opinion); *Certain Expenses of the United Nations*, [1962] I.C.J. 151 (advisory opinion).

¹¹⁹*See Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies*, Jan. 27, 1967, [1967] 18 U.S.T. 2410, T.I.A.S. No. 6347.

¹²⁰Christol, *supra* note 65, at 308.

¹²¹*Id.*

¹²²*Supra* note 40.

¹²³The Security Council may decide what measures not involving the use of armed force are to be employed to give effect to its decisions, and it may call upon the Members of the United Nations to apply such measures. These may include complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio and other means of communication, and the severance of diplomatic relations. U.N. CHARTER art. 41, para. 1.

suspension or expulsion from the United Nations.¹²⁴ If necessary, the United Nations could also intervene with armed forces.

VI. CONCLUSION

As we approach the conclusion of the twentieth century, it becomes increasingly obvious that man must change his attitudes about the utilization and distribution of the world's resources or suffer dire consequences. This observation is particularly poignant when the limited resources and delicate ecological balance of the sea are considered. Unless a concerted effort is made to manage and conserve the resources of the sea in a rational manner, an important source of protein for the world's population may be grossly wasted or irretrievably lost.

The pros and cons of the possible regimes for the international regulation of fisheries have been discussed above. Certainly it can be said that a regime based on the expansion of claims of exclusive jurisdiction does little to resolve the problem and may create additional ones. The establishment of an agency with worldwide authority to regulate fishing may be a consummation devoutly to be desired but it is a concept which is far from implementation. It is hoped that the Third United Nations Law of the Sea Conference,¹²⁵ scheduled for November-December 1973 in New York and for April-May 1974 in Santiago, Chile will make significant strides forward in solving the many problems which confront the nations of the world in seeking to conserve and efficiently distribute the fish resources of the oceans of the world.

The institution of a system of regional fisheries commissions seems to afford the best alternative of the three proposals discussed herein. Past performance indicates that such commissions have been quite effective in attaining their goals.¹²⁶ This type of solution to the problem would also involve less drastic changes in the scheme of world order on the high seas.

A problem would arise with this solution as with any other in that it will probably be difficult for its proponents to muster sufficient support for its approval either in the United Nations General Assembly or at the Law of the Sea Conference. A major stumbling block would be the tendency of the developing nations and certain states in South America to support extensive claims

¹²⁴A Member of the United Nations against which preventive or enforcement action has been taken by the Security Council may be suspended from the exercise of the rights and privileges of membership by the General Assembly. The exercise of these rights and privileges may be restored by the Security Council. U.N. CHARTER art. 5. A Member of the United Nations which has persistently violated the Principles contained in the present Charter may be expelled from the Organization by the General Assembly upon the recommendation of the Security Council. U.N. CHARTER, art. 6.

¹²⁵The General Assembly voted on December 17, 1970 to convene the Conference by a vote of 104 to 1, with 16 abstentions. G.A. Res. 2750, 25 U.N. GAOR Supp. 28, at 25, U.N. Doc. A/8028 (1970).

¹²⁶See note 87 *supra*.

of national jurisdiction. The aversion of the Soviet Union to compulsory settlement of disputes may also present a problem.

From the annual reports made to the United Nations General Assembly by the Committee on the Peaceful Uses of the Seabed and the Ocean Floor Beyond the Limits of National Jurisdiction,¹²⁷ it is evident that all the proposals herein discussed (*i.e.* the extension of exclusive national jurisdictions, the establishment of contiguous zones, of regional commissions and of an international agency) are being discussed and considered in the preparation for the first meeting of the Law of the Sea Conference in November 1973. It is hoped that the Committee will find a workable proposal on the regulation of international fisheries which can be presented for consideration and approval by both the developed and developing nations and both the fishing and nonfishing nations in attendance at the Conference.

In both the 1958 and 1960 Law of the Sea Conferences, there were so many special issues which were introduced into the discussions that no resolution or proposal on fishing jurisdictions or territorial seas was passed.¹²⁸ The world community of nations should be able to set the machinery of reform into motion before the world experiences a major crisis of its ocean fish resources which would place the continued productive existence of the resources of the sea and the food supply of the world in grave peril. If such a crisis is permitted to occur by international inaction, it may then be too late to save the already threatened resources of our seas.

John P. Rivers

¹²⁷26 U.N. GAOR Supp. 21, U.N. Doc. A/8421 (1971); 27 U.N. GAOR Supp. 21, U.N. Doc. A/8721 (1972).

¹²⁸See "The United States Fish Industry and the 1958 and 1960 United Nations Conferences on the Law of the Sea" (Panel Discussion: The Geneva Convention—Ten Years Later) in PROCEEDINGS OF THE LAW OF THE SEA INSTITUTE 35 (June 1968).