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International instruments on fisheries and of relevance to fisheries

A selected overview

by

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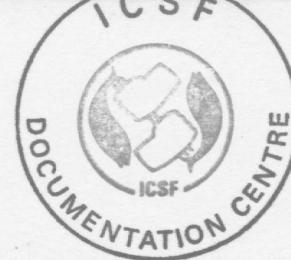
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1. Introduction^{1,2}

Recent decades have seen the dramatic increase in the conclusion of international conventions of binding nature, voluntary codes of conduct and guidelines and various programmes of action for implementation by states, inter-governmental organizations and private sector and non-governmental organizations. Three primary reasons may be listed for this development:

- the need to manage so-called 'global commons', i.e. natural resources which are used in common by many or all countries, (e.g. fisheries resources; climate; seas; outer space);
- the increasing economic relationships between countries requiring agreements on tariffs (e.g. import and export duties) and non-tariff measures (e.g. technical and sanitary standards of products) in international trade;
- the emergence of an international civil society demanding the protection of human rights and standards of behaviour by states, organizations, firms and individuals with respect to important areas (e.g. human rights and labour standards; safety standards on board of fishing vessels; etc).

International conventions and other instruments are usually negotiated between governments, often under the aegis of the United Nations and its various specialized agencies. This has also applied to those relevant to fisheries and fish harvesters and fishworkers addressed in this paper. Only selected provisions can be discussed in this paper because of their comprehensive and voluminous nature.

The paper is largely chronologically structured starting with the origins and negotiation process of the most important international fisheries agreement, the 1982 United Nations Convention on the Law of the Sea (1982 Convention) which formally entered into force not until 16 November 1994, i.e. one year after the minimum number of sixty states had deposited their instruments of ratification or accession. The 1982 Convention was innovative in several aspects (e.g. the introduction of an international dispute settlement mechanism), and set important precedents for the negotiation procedures of complex international agreements in other areas.

Even prior to its entry into force, certain aspects of the 1982 Convention were subject to a new negotiation process in the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks (in the following referred to as UN Fish Stocks Conference) that commenced in April 1993 and led to an agreement in August 1995.

The UN Fish Stocks Conference is one of several international activities with relevance to fisheries pursuant to the 1992 United Nations Conference on Environment and Development (UNCED or Rio Conference) and its two principal outcomes: (1) Rio Declaration and (2) Agenda 21. Others include the 1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA) adopted in Washington in 1995 and the 1995 Jakarta Mandate on Marine and Coastal Biological Diversity. The latter is the outcome of the second Conference of the Parties to the Convention

¹ The views expressed in this paper are those of the author. They do not necessarily represent the views of the Food and Agriculture Organization of the United Nations (FAO), nor any of its Members.

² Nothing in this paper implies the expression of any opinion whatsoever on the part of the FAO concerning the legal status of any country, territory, city, or area or of its authorities, or concerning its frontiers or boundaries.

on Biological Diversity (CBD). CBD was opened for signature at the Rio Conference and entered into force in 1993.

In a parallel process to the UN Fish Stocks Conference, countries negotiated a Code of Conduct for Responsible Fisheries (in the following referred to as Code) under the aegis of FAO. The Code was adopted by the Conference of FAO at its twenty-eight session in November 1995. It is voluntary in nature and much wider in scope than either the 1982 Convention or the Fish Stocks Agreement encompassing provisions not only on marine fisheries but also on aquaculture, fishing operations, fish trade, the integration of fisheries into coastal area management and fisheries research.

A feature of all recent international negotiation processes including the UN Fish Stocks Conference and the Code negotiations is the broad interest of non-governmental organisations (NGOs) in fisheries and marine issues, their high technical competence and their influence on the drafting of provisions important for their constituencies.

In terms of duration of the negotiation process, was closely followed by the marathon Uruguay Round of Multilateral Trade Negotiations which opened in Punta del Este in 1986 and concluded in December 1993. The outcome of the Uruguay Round is recorded and annexed to the 1994 Marrakech Protocol of the General Agreement on Tariffs and Trade (GATT). It provides for reduced trade barriers thereby increasing market access. Some of its implications for trade in fisheries are discussed in this paper.

The principal mandate of the International Labour Office (ILO), a UN specialized agency, is to assist governments of member States and their employers' and workers' organizations to develop and codify in conventions and recommendations international labour standards and human rights. These refer to all work-related matters such as the abolition of forced labour, freedom of association, equality of treatment and opportunity, social security, conditions of work, maternity protection, minimum age for entering the labour market, protection of migrants and specific categories of workers such as seafarers including fishworkers, and others.

Various international conventions have been negotiated under the aegis of the International Maritime Organization (IMO) on maritime safety including safety on board of fishing vessels and on marine pollution prevention. This paper will briefly discuss some provisions of these conventions which are of particular interest to fishworkers and their organizations.

2. The 1982 United Nations Convention on the Law of the Sea (1982 Convention)

The United Nations Convention on the Law of the Sea was opened for signature on 10 December 1982 in Montego Bay, Jamaica. This marked the culmination of more than 14 years of negotiations and work involving participation by more than 150 countries representing all regions of the world, all legal and political systems and the spectrum of socio-economic development. The 1982 Convention embodies and enshrines the notion that all problems of ocean space and ocean resources are closely interrelated and need to be addressed as a whole.³ An overview of the 1982 Convention is given in Annex 1 as prepared by the Division for

³ UN, 1983; see also the Internet site <http://www.un.org/Depts/los/losconv1.htm>.

Ocean Affairs and the Law of the Sea, United Nations Office of Legal Affairs
(UN/DOALOS).

This section presents the 'fisheries aspects' of important provisions of the 1982 Convention relating to the territorial sea, the exclusive economic zone (EEZ); and high seas. 'Fisheries aspects' are here defined as those provisions which address the rights and obligations of States concerning the use and conservation of marine living resources. An understanding of the origin and meaning of these provisions is possibly best obtained through a recourse to history. A fine historical analysis has been made by Satya Nandan of Fiji, the former Under-Secretary General, Special Representative of the Secretary-General for the Law of the Sea and the Chairman of the UN Fish Stocks Conference, from which much of the following has been taken (Nandan, 1987: 171-188).

In hindsight one can safely say that one of the key mechanisms for the success of the Law of the Sea negotiations was the concept of a 'package deal' which implied that no issue was adopted until all issues were settled and the Convention could be agreed upon *in toto*. This mechanism allowed for the reconciliation of varied interests across different smaller parcels of the entire package. Concessions made by a country or group of countries in one area of the 1982 Convention could therefore be rewarded in other areas. Part V of the 1982 Convention on the EEZ (articles 55 to 75) is one of the most interesting parcels and the most important one for fisheries.

The 1982 Convention definition of the EEZ and of states' duties and rights therein is the outcome of a compromise between a 'territorialist' perspective of some coastal countries asking for full sovereignty, as applicable to the territorial sea, and the 'patrimonial sea concept' advanced by other countries placing emphasis on economic jurisdiction over renewable and non-renewable resources but not sovereignty over the sea as such (Nandan, 1987:178).

The basic idea of 'territoriality' is the extension of all sovereign powers of the State from its land area to a sea belt adjacent to its coast whose maximum width is specified in Article 3 as 12 nautical miles from the baseline. Historically, the practical width of the territorial seas was not unrelated to the States' capability to enforce sovereignty by military force, if needed.⁴

The sovereignty of the State in the territorial sea is absolute with the exception of the *right of innocent passage* by ships of all States as elaborated in Articles 17 to 32. Article 19 defines innocent passage which explicitly excludes any fishing activities. The right of innocent passage was a key requirement for states to accept the extension of the territorial sea from the traditional 3 to 12 miles.

In a zone contiguous to the territorial seas, i.e. the Contiguous Zone, and up to a maximum width of 24 nautical miles from the baseline, the State can exercise the control necessary to prevent infringement of its custom, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea (1982 Convention, Article 33).

Until the 1982 Convention, the sea area beyond the territorial sea was considered the high seas where no privileged rights of coastal states prevailed over the use of the living and

⁴ The range of a shot from a land-based cannon is said to have given the rationale for the historical limit of the territorial sea of 3 miles.

non-living resources. This condition still applies in those seas where coastal states have not yet declared EEZs such as in the Mediterranean.

Nandan notes that while the first important assertion of exclusive jurisdiction over marine resources beyond the territorial sea was made by the USA in the Truman Proclamation of 1945, the true parents of the EEZ concept were certain Latin American states. In 1947 Chile and Peru established through presidential declaration and decree respectively maritime zones of 200 miles to "*reserve, protect, maintain, and utilize natural resources and wealth*".⁵ The source of the 'mystical' 200-mile limit was traced back to a map in a magazine article discussing the Panama Declaration of 1939 in which the UK and the USA agreed to establish a zone of security and neutrality around the American continents in order to prevent the resupplying of Axis ships in South American ports. Off the coast of Chile, the map indicated a width of 200 miles of this neutrality zone (Nandan 1987).

Concurrently to the Truman Proclamation, the US Government issued a proclamation on the US policy with respect to coastal fisheries in certain areas of the high seas which was remarkable because of its explicit rationale for extended jurisdiction over fisheries resources: "*In view of the pressing need for conservation and protection of fishery resources, the Government of the United States regards it as proper to establish conservation zones in [...] areas of the high seas contiguous to the coasts of the United States in which fishing activities shall be subject to the regulation and control of the United States.*" (quoted in Nandan, 1987:175).

While clearly the impetus for establishing EEZs was governed by the wish of coastal countries to secure a larger share of the marine resources adjacent to their coasts, an important contributing consideration has been that the amount of wealth which can be derived from the marine resources *within* territorial waters is not independent of the exploitation activities which take place in the adjacent high seas. This evidently applies to many fish stocks whose range is far wider than 12 miles and which thus can be subjected to exploitation both within and beyond the territorial sea. It is, however, not only living resources which might straddle beyond 12 nm but also certain mineral resources, in particular oil and gas deposits. This explains why within a two-month period in 1949, ten Arab States and emirates issued unilateral declarations proclaiming sovereignty particularly over the petroleum resources on the continental shelf (Nandan, 1987).

The first international instrument to proclaim extended jurisdiction up to a 200 mile limit was the 1952 Santiago Declaration signed by Chile, Ecuador and Peru. However, at the first and second UN Conferences on the Law of the Sea held in Geneva in 1958 and 1960, the principles embodied in the Santiago Declaration did not find much support among other states and left the three countries in isolated positions (Nandan, 1987). Nevertheless, over the decade of the 1960s, several more Latin American countries declared EEZs which contributed to the decision of the UN General Assembly (Resolution 2750) in 1970 to mandate the Committee on the Peaceful Uses of the Sea-Bed and the Ocean Floor beyond the Limits of National Jurisdiction to act as the preparatory body for the Third United Nations Conference on the Law of the Sea which ultimately resulted in the 1982 Convention (Nandan, 1987).

In spite of the precedence set by the Truman Proclamation, the impetus for extended jurisdiction can clearly be traced to the well-founded concern of many developing countries

⁵ Presidential Declaration Concerning Continental Shelf of 23 June 1947 quoted in Nandan, 1987:175.

that the technologically advanced fishing fleets of industrialised countries are the principal beneficiaries of the then prevailing regime of the freedom of the seas.

The principle of the freedom of the seas goes back at least to Hugo Grotius who in his treatise, *Mare Liberum* (1608), argued that fishery resources were so abundant that no one would benefit from having exclusive rights over them and there was no possibility of their being over-exploited. He also asserted that exclusive rights could not be effectively maintained because of the extensive range of fishery resources (FAO, 1981).

He was not quite right on the former point because already in the early 1600s fishermen from western European, finding the herring in short supply in the North Sea, moved across the Atlantic to catch them on the Grand Banks off Newfoundland. Once fishing got poorer there, fishermen moved further south to the banks off New England (FAO, 1981).

This pattern of fishing has prevailed for more than 300 years: with catches per unit of effort declining on traditional grounds, fishing fleets move on to more lucrative fishing areas, develop more powerful fishing techniques and increase the range of the vessels to exploit more distant waters. While, until the 2nd World War, the distant-water fishing fleets came principally from western Europe and Japan, thereafter several East European countries, especially the Soviet Union, as well as a few developing countries including Cuba, Thailand and Ghana, developed their distant-water fleets (FAO, 1981).

The interest of countries having important long-distant fleets (the so-called distant water fishing nations (DWFN)) found expression in proposals to concede 'preferential fishing rights' to coastal countries in areas beyond territorial waters rather than 'exclusive rights' or 'sovereignty'. While early on in the negotiation process few, if any state, questioned the need to abolish the principle of the freedom of the high seas in a zone of a certain width beyond the territorial seas, there were substantial differences in the positions of countries on the kind of duties coastal countries should be required to accept in exchange for obtaining extended jurisdiction.

As becomes clear from the final text on the EEZ (Articles 55 to 75), to achieve a global consensus, coastal countries were required to accommodate two major concerns from two distinct groups of countries: a) countries having long-distance fleets needed to be assured that their fishermen continued to obtain access to their 'traditional' fishing grounds; and b) land-locked and geographically disadvantaged developing countries needed to be given some special considerations as otherwise they would have little to gain from a new Law of the Sea. Then there are, in addition, several special concerns of specific countries which weighed heavily in the final text, such as those of, for example, the United States in respect to highly migratory species, essentially various tuna species; marine mammals; and anadromous stocks, essentially salmon species.

The two key 'fisheries' articles of the 1982 Convention are *Article 61 Conservation of the living resources* and *Article 62 Utilization of the living resources* which are reproduced in Annex 2. There are several principles contained in them including for coastal countries to ensure the conservation of the living resources and to promote their optimum utilization. The conservation objective is expressed by the requirements i) to determine the total allowable catch (TAC) in the EEZ, ii) guided by the best available scientific evidence to avoid over-exploitation of target species and of associated or dependent species, iii) maintain or restore harvested populations at levels which can produce the maximum sustainable yield, and iii) to

exchange relevant scientific information with all states and organizations interested in the resources.

The principal idea in promoting the objective of optimum utilization of the living resources is that those states which do not have the required fishing capacities should make available surplus fishery resources to other states, in particular to land-locked and geographically disadvantaged developing states of the same region⁶, and to those states whose nationals have habitually fished these resources. In practice, articles 69 and 70 specifying the respective rights of land-locked and geographically disadvantaged states vis-à-vis such surplus, were hardly ever applied.

The interpretation of what in fact amounts to 'surplus' remains contentious until today because of the ambiguity of the text and the real practical difficulties of measuring the abundance of fishery resources and the size of fishing capacities. The ambiguity of the text results from two specific formulations: a) in Article 61(3) the desirable stock level is given as the one producing the maximum sustainable yield but with the suffice "*as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States,*"; and b) Article 62 (3) with reference to allocating a part of the total allowable catch to other states: *In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests*"

Not unexpectedly, it has proven impractical for most coastal states, especially in the tropics and sub-tropics, to determine the TAC by species and assess for each of them that part which is in surplus of the state's own harvesting capacity. Furthermore, even if the difference could be determined between the TACs and domestic harvesting capacity, the exploitation of the surplus by a foreign fleet would usually affect the economic performance of the local fleet. This results from the fact that for most fish stocks the catch per unit of fishing effort declines as total aggregate fishing effort increases. Therefore, even though the domestic fleet may still be able to take the same amount of catch, its profitability would be reduced by the harvesting activities of a foreign fleet and, wherever a sharing system prevails, the income of crew members would also decline.⁷

At the time when the Convention was signed in December 1982, the reference in it to a target stock size which can produce the maximum sustainable yield (MSY) was subject to critique by not only fisheries economists but also fisheries biologists. From an economic point of view, at the stock size producing MSY, a fishery may already show serious signs of economic over-fishing. From a biological point of view, fishing at the MSY level not only increases the instability of the ecosystem but also neglects species interactions (Garcia et al. 1986; 1996). In addition, given the inherent uncertainties in estimating stock abundance, a precautionary approach to resource conservation may require to target at stock sizes higher than those producing MSY.⁸ The idea of precaution was subsequently incorporated into the UN Fish Stocks Agreement discussed further below.

⁶ Note that this does not apply to land-locked and geographically disadvantaged developed states

⁷ On this point and other aspects of surplus assessment see the 1986 article in Marine Policy of the following three eminent fisheries scientists: S. M. Garcia, late J.A. Gulland and E. Miles.

⁸ See FAO, 1996, for details on the precautionary approach to fisheries.

Article 61 (3), however, taken by itself, may be interpreted more literally in that a state can allow harvesting activities which reduce stock size below the MSY level for economic and socio-economic reasons such as to provide employment and income to fishing communities. Such an interpretation, apart from its short term outlook, could hardly be taken to justify the allocation of surplus resources to foreign fishing vessels. It may also be seen to run counter to the coastal state's basic obligation expressed in paragraph (2) of the same Article not to endanger by over-exploitation the maintenance of the living resources in the EEZ. Today, the prevailing view of fisheries biologists is that any form of biological over-fishing entails a risk to the maintenance of the concerned fish stock.

Article 62 (4) provides certain elaborations on the conditions which may be placed upon foreign fishing vessels harvesting the surplus resources in a coastal country's EEZ. These may include licensing for fees and other forms of remuneration; determining the species and fixing quotas; regulating harvesting seasons, areas and methods; requiring the conduct of research and training and the placement of observers on board of fishing vessels; laying down the terms and conditions for joint-ventures and requiring the catch to be landed in domestic ports; and specifying the information to be submitted. While most fisheries agreements between coastal and foreign fishing states contain some or most of these provisions, in practice it has often been difficult to ensure compliance by foreign fishing fleets with the laws and regulations of the coastal country as prescribed in Article 62 (4). The difficulties of enforcement of laws and regulations, however, one may add are rarely specific to foreign fishing but apply equally to domestic fleets.

Article 73 discusses specifically the enforcement of fisheries laws and regulations of the coastal State in its EEZ. It is of particular significance in view of the human hardship which has been created by the seizure of vessels and crew which were found to fish illegally in countries' EEZs. While law enforcement requires deterrence, Article 73 (2) and (3) require states to promptly release arrested vessels and their crews upon the posting of reasonable bond or other security and that penalties for violations of fisheries laws and regulations in the EEZ may not include imprisonment and, in the absence of agreements to the contrary, no form of corporal punishment. In practice, the arrests of foreign fishermen for extended periods of time, analogous to imprisonment, have been observed.

Part VII (Articles 86-120) and Part XII (Articles 192-237) of the 1982 Convention deal with high seas and the protection and conservation of the marine environment respectively. Article 87 specifies the meaning of the *freedom of the high seas* and Articles 116 to 120 address the conservation and management of the living resources of the high seas. The implementation of these articles by countries and regional fisheries organizations will be facilitated and strengthened by the UN Fish Stocks Agreement (see below).

The provisions of Part XII on the protection of the marine environment are of a general nature but have over the years been complemented by more specific legal instruments, including conventions negotiated under the aegis of the International Maritime Organization (IMO) and guidelines such as the 1985 Montreal Guidelines for the Protection of the Marine Environment from Land-Based Sources of Pollution (see below).

In summary, the 1982 Convention has been a milestone in human history by setting a precedent for the creation of complex international rules, including dispute settlement mechanisms and the assignment of rights over resources which formerly were 'global commons' through a peaceful negotiation process. The latter has itself created highly

valuable insights on the conditions needed for successful bargaining, which has had a direct bearing on many subsequent international and regional negotiations in various areas including trade and peace.

3. Rio Declaration and Agenda 21

The 1992 United Nations Conference on Environment and Development (UNCED), also called the Earth Summit or the Rio Conference, has probably been the largest international conference ever organized in human history. Except for the Convention on Biological Diversity (CBD), the Rio Conference has not resulted in any binding international agreement. The Rio Declaration on Environment and Development proclaims 27 principles addressed to states, individuals, groups and the international community in general. A summary of the main contents of each principle is given in Annex 3.

The second main outcome of UNCED is Agenda 21, a blueprint for action for global sustainable development into the 21st century. It comprises four main sections addressing the (1) social and economic dimensions (international cooperation, combating poverty, changing consumption patterns, demographic sustainability, human health and settlement; integration of environment and development in decision-making); (2) conservation and management of resources for development (i.e. atmosphere, land resources, combating deforestation and desertification, managing fragile ecosystems, sustainable agriculture and rural development, conservation of biodiversity, sound management of biotechnology, protection of oceans, seas, coasts and their living resources; (3) strengthening the role of major groups (i.e. women, children and youth, indigenous people, NGOs, local authorities, workers and their trade unions, business and industry, scientific and technological community, farmers); and (4) means of implementation (financial resources, technology and know-how transfer, science and education, awareness creation, capacity-building, international legal instruments and arrangements, information for decision-making).

The full title of Chapter 17, section 2, reads: Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas and coastal areas and the protection, rational use and development of their living resources. It comprises seven programme areas dealing with (A) integrated coastal and marine management, (B) marine environmental protection, (C) sustainable use and conservation of marine living resources of the high seas, (D) sustainable use and conservation of marine living resources under national jurisdiction, (E) critical uncertainties for the management of the marine environment and climate change, (F) strengthening international, including regional, cooperation and coordination and (G) sustainable development of small islands. The emphasis of programme area (A) is on strengthening integrated planning and coordinating mechanisms for the sound management of multiple use resources and for conflict resolution and prevention.

Area (B) addresses the three principal sources of marine pollution: (i) land-based activities which are responsible for about 70 percent of pollution, and (ii) maritime transport and (iii) dumping at sea which each contribute about 10 percent. The 1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA) adopted in Washington in 1995 is a direct follow-up to this part of Agenda 21 and based on the 1985 Montreal Guidelines for the Protection of the Marine Environment from Land-Based Sources of Pollution. A summary of the specific objectives and targets of GPA are given in

Annex 4. The International Maritime Organization (IMO) addresses pollution from maritime transport and dumping as discussed further below.

The most important recommendation in programme area (C) is the convening of an intergovernmental conference under the auspices of the United Nations on the management of straddling fish stocks and highly migratory fish stocks and drawing in its work on the scientific and technical studies of FAO. The outcome of this conference is discussed in the next section below.

Programme area (D) lists some of the important problems faced in the management of living resources under national jurisdiction including overfishing, unauthorized fishing by foreign vessels, ecosystem degradation, overcapitalization and excessive fleet sizes, non-selective fishing gear, increasing competition between artisanal and large-scale fishing and between fishing and other types of activities. There has been considerable influence by non-governmental organizations including those representing the interests of fishworkers on the objectives and the management-related activities listed in this programme area. States are called on to take into account traditional knowledge and interests of local communities, small-scale artisanal fisheries and indigenous people in development and management programmes. They should ensure the sustainability of small-scale artisanal fisheries by integrating their concerns into development planning and, where appropriate, encourage representation of fishermen, small-scale fishworkers, women and local communities and indigenous people. The rights of small-scale fishworkers and the special situation of indigenous people and local communities are specifically acknowledged, including their rights to utilization and protection of their habitats on a sustainable basis.

Programme area (E) addresses research needs on the impact of atmospheric and climatic changes on the marine environment and living resources while programme area (F) spells out the special problems and needs of small island states and how they should be addressed. The main international follow-up to the latter was the United Nations Small Island Conference held in Barbados in 1994.

Chapter 15 of Agenda 21 is entitled "Conservation of biological diversity" and its primary objective is to support the implementation of the Convention on Biological Diversity (CBD). As the earth's oceans, seas and coasts are major repositories of biodiversity, the 2nd Conference of the Parties to CBD held in 1995 in Jakarta, Indonesia, dealt specifically with marine and coastal biodiversity. The main outcome of this Conference, the Jakarta Mandate, calls on governments to introduced integrated coastal area management, establish marine and coastal protected areas, ensure that coastal and marine resources are used within sustainable limits and mariculture practices are sustainable, and prevent the introduction and support the eradication of alien species which threaten ecosystems, habitats or native species.

4. The 1995 Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement)

The impetus for the need to strengthen the implementation of the 1982 Convention provisions with respect to fishing on the high seas arose because of serious concern in the late 1980s over driftnet fishing on the high seas, initially in the South Pacific region where from 1988 a driftnet fishery by Japanese, Taiwanese (province of China) and South Korean vessels

expanded rapidly for principally albacore tuna.⁹ This resulted in the expression of grave concern by South Pacific countries and territories about (a) its impact on the albacore stock given the fact that driftnets target mostly on younger and juvenile fish, (b) the incidental harvest of marine mammals and birds in nets stretching up to 50 km in length, (c) the 'ghost fishing' of nets lost or abandoned at sea, and (d) the navigational hazard created by nets of such exceeding length. South Pacific countries called for a ban of driftnet fishing in the region which found expression in the Tarawa declaration of South Pacific Heads of States and in the Wellington Convention of 1989 (Wright and Doulman, 1991).

The issue was also discussed in the UN General Assembly which adopted Resolution 44/225 on *Large pelagic driftnet fishing and its impact on the living marine resources of the world's oceans and seas* which called for (1) immediate action to reduce driftnet fishing in the South Pacific and its cessation by no later than 1 July 1991 as an interim measure; (2) moratoria be placed on all large-scale pelagic driftnet fishing on the high seas by 30 June 1992, unless effective management and conservation measures were taken based on statistically sound analysis; and (3) there be an immediate cessation of the expansion of the large-scale pelagic driftnet fleet fishing on the high seas in the North Pacific. FAO was directed in the resolution to convene an expert consultation on the matter. In it and in subsequent inter-governmental consultations at the 1990 FAO Conference, the 1991 FAO Committee on Fisheries and the 1992 Cancún Conference on Responsible Fishing, the wider issues of the management of high seas fisheries came to the fore which then found expression in the specific recommendation on this matter in Chapter 17 of Agenda 21.

Pursuant to this recommendation, the General Assembly of the United Nations (UNGA) convened in 1992 the UN Fish Stocks Conference with the following terms of reference: (1) identify and assess existing problems related to the conservation and management of straddling fish stocks and highly migratory fish stocks; (2) consider means of improving fisheries cooperation among States and (3) formulate appropriate recommendations.¹⁰ The Conference held five substantive and one organisational session between April 1993 and August 1995. Remarkable was the large attendance of non-governmental organizations representing environmental, fishworkers, industry and other related interests.

Hayashi (1996) has categorized the contribution of the UN Fish Stocks Agreement to the 1982 Convention into three aspects: (1) facilitation of implementation of the Convention; (2) strengthening of the Convention regime and (3) development of general or framework rules set out in the Convention. Regarding the first point, the Agreement provides in, for example, Article 5, a number of specific ways how states may fulfil their obligations under the 1982 Convention to conserve and manage highly migratory and straddling fish stocks. These include some innovations to the 1982 Convention such as the application of the precautionary approach, the requirement of states to take measures to prevent or eliminate not only overfishing but also excess fishing capacity and the duties to protect biodiversity and take into account the interests of artisanal and subsistence fishers.

⁹ On the history of driftnet fishing in the South Pacific and regional and international reactions to it, see Wright and Doulman (1991)

¹⁰ Detailed reviews of the structure, process and outcome of the Conference can be found in Doulman (1995) and Hayashi (1995), on whose writings this section is largely based.

The Agreement strengthens the 1982 Convention provisions on the collection and sharing of information and expands its dispute settlement provisions to all states whether or not they are parties to the Convention (Hayashi 1996:55-56).

The most significant contribution of the UN Fish Stocks Agreement is in those areas where it further develops the 1982 Convention rules and principles. The precautionary approach was unknown in fisheries at the time the Convention was signed in 1982. Since about the mid-1980s it has become increasingly adopted in national and regional legal instruments addressing primarily environmental aspects (Hayashi 1996) but its origin goes back to human health protection from pharmaceutical and chemical compounds. It found international recognition in Principle 15 of the Rio Declaration. Applied to fisheries, the approach calls in Article 6, *inter alia*, for taking explicitly into account uncertainties related to the size of fish stocks and the impact of fishing on them and the laying down of precautionary reference points.

Among the most notable innovations introduced by the UN Fish Stocks Agreement is the notion of *compatibility of conservation and management measures* adopted in EEZs and on the high seas as detailed in Article 7. The scientific basis of compatibility is the biological unity of fish stocks and, thus the need to apply coherent management measures throughout their geographic range of exploitation. Article 7 requires coastal and long-distance water fishing nations to "*agree upon the measures necessary for the conservation of these stocks*" and pending reaching such agreement, to enter into provisional arrangements of a practical nature. If no agreement can be reached within a reasonable period of time, any of the concerned States may invoke the dispute settlement procedures provided through the 1982 Convention (Hayashi, 1996).

Another innovation of the UN Fish Stocks Agreement is that it obliges states whose fleets exploit highly migratory and straddling fish stocks to either join existing regional fisheries organizations or to adopt the conservation and management measures instituted by them. Where no such regional organization or arrangement exists, States are required to establish new ones. Hayashi (1996:58) notes that "[T]he combined effect of these provisions is to exclude those States which are not members of the existing regional organization or do not agree to apply its measures from conducting fishing operations for the straddling stocks and highly migratory stocks in the area concerned, thus denying their freedom to fish on the high seas."

The Agreement lays down more stringent flag state duties than contained in the 1982 Convention. In principle, no State is authorized to permit vessels flying its flag to fish on the high seas if it is not able to exercise effective control over them. This includes ensuring the compliance of its fleets with management measures agreed upon by regional fisheries organizations and the investigation and sanctioning of violations.

In respect to enforcement, the UN Fish Stocks Agreement goes even further by permitting any member state of a regional fisheries organization to board and inspect any fishing vessel in order to ensure compliance with adopted conservation and management measures. It also introduced the new concept of 'port state enforcement' which gives the port State the right to inspect catch, fishing gear, log books etc., of a foreign fishing vessel which uses voluntarily its ports or offshore terminals.

The special requirements of developing States are acknowledged in Article 24 which mentions, in particular, in paragraph 2(a) "...., *the nutritional requirements of their populations or parts thereof*;" and in paragraph 2 (b): "*the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States*;".

In conclusion, the UN Fish Stocks Agreement strengthens and facilitates the implementation of the management and conservation provisions of the 1982 Convention applicable to straddling and highly migratory fish stocks. Its historic and revolutionary dimensions result from innovations in several important areas, including the concept of compatibility, obligations towards regional fisheries organizations and, the monitoring and enforcement powers by non-flag and port states (Hayashi, 1996).

5. The Code of Conduct for Responsible Fisheries ¹¹

The Code of Conduct for Responsible Fisheries (Code) was adopted by the FAO Conference at its twenty-eight session in 1995. It was negotiated over a period of two years in five formal sessions with the active participation of many of FAO's member states and important national and international fisheries NGOs representing environmental, industry and small-scale fisheries and fishworkers interests.

The initial impetus for the concept of responsible fishing can also be traced back to the large-scale pelagic driftnet fishing issue and the discussion of it at the 1991 FAO Committee on Fisheries. However, it was the Declaration of Cancún which pushed forward the idea of a Code and called on FAO to initiate the process of its elaboration. This declaration emanated from a meeting at Cancún on responsible fishing hosted by the Government of Mexico in May 1992.

The Code, thus, was negotiated in parallel to the UN Fish Stocks Agreement and in fact certain formulations of the Code reflect the outcome of the negotiations at the UN Fish Stocks Conference. The Code, however, is far more encompassing than the Agreement. Its voluntary nature has enabled it to cover much more than could have possibly been included in a legal binding instrument such as the Agreement.

Articles 1 to 6 describe the Code's nature and scope, its objectives and relationship with other international instruments, directions for its implementation, monitoring and updating, the special requirements of developing countries, and general principles. The substantive technical part comprises Articles 7 to 12: Fisheries Management, Fishing Operations, Aquaculture Development, Integration of Fisheries into Coastal Area Management, Post-Harvest Practices and Trade, and Fisheries Research.

The Code is global in scope and directed toward all states and fishing entities, subregional, regional and global organizations, whether governmental or non-governmental, and all persons concerned with the conservation of fishery resources and the management and development of fisheries. Its objectives are very far-reaching and ambitious, including the establishment of general principles and standards of conduct for responsible fisheries and, *inter alia*, the establishment of specific principles and criteria for the elaboration of national

¹¹ See Edeson (1996) for a brief review of the Code.

policies. It specifies policy objectives such as the contribution of fisheries to food security and food quality, giving priority to the nutritional needs of local communities.

Article 6 encapsulates the "philosophy" of the Code in a set of general principles. The most significant contents of a few selected paragraphs are summarized in the following.

Paragraph 6.1 establishes that the right to fish carries with it the obligation to do so in a responsible manner. With regard to the objectives of fisheries management, responsible fisheries is understood to include the maintenance of the quality, diversity and availability of fishery resources in sufficient quantities for present and future generations in the context of food security, poverty alleviation and sustainable development (see 6.2). It also includes the protection from destruction, degradation, pollution and other significant human impacts of all critical fisheries habitats in marine and fresh water ecosystems, such as wetlands, mangroves, reefs, lagoons, nursery and spawning areas (6.8).

Paragraph 6.13 calls on states to facilitate consultation and the effective participation of industry, fishworkers, environmental and other interested organizations in decision making with respect to the development of laws and policies related to fisheries management, development, international lending and aid.

Paragraph 6.18 recognizes the important contributions of artisanal and small-scale fisheries and requests states to protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries. Where appropriate, states should give them preferential access to traditional fishing grounds and resources in the waters under their national jurisdiction.

The substantive contribution of NGOs and INGOs to the Code negotiation process can be gauged from the fact that first drafts of some of the above summarized provisions were originally submitted by representatives of these organizations.¹²

Many of the paragraphs of Article 7 "Fisheries Management" and Article 8 "Fishing Operations" reflect the text of the UN Fish Stocks Agreement but extends their application to areas of national jurisdiction including implicitly to inland fisheries.

While adhering to the general principles of sustainability enshrined in UNCED's Agenda 21, the Code's Article 9 "Aquaculture Development" is an innovation in an international instrument. It provides comprehensive guidance for the development planning, management and operation of aquaculture in a sustainable and responsible manner.

Article 10 "Integration of Fisheries into Coastal Area Management" is also innovative by emphasising the protection of fisheries interests and the adequate representation and participation of such interests in the decision-making processes for integrated coastal management.

Article 11 "Post-Harvest Practices and Trade" establishes the needed link between the conservation and management of fisheries resources and their utilization and trade. While its main tenor is to promote the further liberalization of trade in fish and fishery products, it

¹² The contribution of NGOs and INGOs to both the Code negotiations and the UN Fish Conference has been well analysed in a special issue of DEEP (Development Education Exchange Papers) published by FAO and produced by the International Collective in Support of Fishworkers (ICSF).

contains several important provisos such as that trade *"should not compromise the sustainable development of fisheries"* (11.2.2) and that *States, aid agencies, multilateral development banks and other relevant international organizations should ensure that their policies and practices related to the promotion of international fish trade and export production do not result in environmental degradation or adversely impact the nutritional rights and needs of people for whom fish is critical to their health and well being and for whom other comparable sources of food are not readily available or affordable"* (Paragraph 11.2.15).

Article 12 "Fisheries Research", in addition to underlining in general terms the relevance of a sound scientific basis for the conservation, management and utilization of fishery resources, also lists certain specific areas where research may produce desirable results. These include studies on the selectivity of fishing gear, the environmental impact assessment of new types of gear prior to their introduction, and investigation and documentation of traditional fisheries knowledge and technologies, in particular those applied to small-scale fisheries.

The FAO Fisheries Department is actively promoting the widespread application of the Code. For this purpose it has developed a comprehensive mid-term strategy in support of the implementation of the Code. This is in line with the mandate received from the Conference at the time when the Code was adopted in 1995 requesting the Organization to make provision in its Programme of Work and Budget to:

- provide advice to developing countries in implementing the Code;
- elaborate an inter-regional programme for external assistance to support the implementation of the Code;
- elaborate technical guidelines in support of the implementation of the Code, and
- monitor and report on the Code's implementation.

The Conference also urged FAO to strengthen regional fishery bodies so that they might deal more effectively with fisheries conservation and management, the Code's primary objective.

The technical guidelines in support of the implementation of the Code so far published by the FAO Fisheries Department focus on fishing operations, the precautionary approach to capture fisheries and species introductions, integration of fisheries into coastal area management, fisheries management, and aquaculture development. Other technical guidelines are under preparation.

Extra-budgetary resources are being mobilized in support of the implementation of the Code by developing countries through an Inter-regional Programme. Indicative commitments have been received from some countries to support the Programme financially, including one Sub-programme entitled Umbrella Support to NGOs which has been elaborated jointly by the FAO Fisheries Department and several INGOs which had been closely involved in the Code negotiation process. This and three other Sub-programmes are expected to become operational in early 1998.

6. The Uruguay Round of Multilateral Trade Negotiations

There are few areas of international bargaining which are as complex as those dealing with trade. The reason is the large variety of goods and services subject to exchange, the diversity of interests of countries differing in their natural, human, cultural and capital endowments and the difficulty of predicting and anticipating the repercussions of changes in trading rules on various social and economic population strata within any one country.

The general trend in international economic relationships has been to reduce tariff (e.g. import and export duties) and non-tariff (e.g. quantitative quotas; unilateral product standards, etc.) impediments to trade including barriers to the flow of capital. This trend is evident from the fact that the growth rate of international trade of goods and services has been significantly higher than the growth rate of GDP in most regions of the world in recent decades. This process of trade liberalization is one of the principal elements of 'globalization', the other being the dramatic fall in the costs and the dramatic increase in the amount of international communication.

Similar to agricultural products, fish and fishery products are treated differently from other products in the General Agreement on Tariffs and Trade (GATT) and continue to face higher average tariff rates in economically advanced countries than most industrial goods. While tariffs on unprocessed fish and shell fish are generally low, tariffs tend to rise steeply with the degree of product processing. This is a clear reflection of the interest of these countries, given their limited and often over-exploited fishery resources, to ensure an adequate fish supply for their populations but at the same time protect the interests of their fish processing and retailing industries.

An area of additional complexity in the case of food items for human consumption such as fishery products are health and sanitary concerns as well as technical trade barriers in the form of, for example, product standards. Two separate agreements were concluded within the Uruguay Round dealing with these aspects which proscribe certain requirements geared towards non-discriminatory behaviour such as the application of the same sanitary and health standards to domestic and imported products. One of them is entitled Agreement on Sanitary and Phytosanitary (SPS) Measures which, in reference to harmonised international standards on, for example, residues of pesticides, veterinary drugs etc. in food items including in fish and fisher products will take as a basis the so-called Codex Alimentarius which is produced and updated by a special commission and various specific committees under the secretariatship of FAO and the World Health Organization (WHO). Where no international standard exists, the SPS Agreement prescribes in the next instance the use of the equivalence principle whereby the importing country accepts that SPS measures in the exporting country achieve an appropriate level of health protection, even though they differ from the measures used in the importing country. In case a country wishes to rely on its own domestic standards only, it is required to provide either scientific evidence or appropriate risk assessment (Filhol, 1995).

Similar to the SPS, the Agreement on Technical Barriers to Trade (TBT) creates the presumption in favour of harmonised international standards and technical regulations. Further, it establishes a code of good practice for the preparation, adoption, notification and application of voluntary standards as well as how information on standards can be accessed. Of particular relevance for fish and fisheries products, is the fact that the Agreement covers

too production processes and methods related to the characteristics of the product itself. This is an amendment which has been made pursuant to the dolphin-tuna dispute (Filhol, 1995)

The international organization addressing trade and trade-related issues is the newly founded World Trade Organization (WTO) under whose secretariatship trade negotiations take place and which has the important function of dispute settlement. Areas of increasing dispute are trade restrictions based on environmental and social standards as, for example, observed with the requirement by the US Government that exporting countries supplying the US market with shrimp must require their fishing industry to use turtle excluder devices in shrimp trawls¹³.

7. International labour standards and human rights¹⁴

International labour standards are central to the activities of the International Labour Organization (ILO). Over the years, the governments of ILO member States and their employers' and workers' organizations have built up a system of international standards in all work-related matters, such as the abolition of forced labour, freedom of association, equality of treatment and opportunity, employment promotion and vocational training, social security, conditions of work, maternity protection, minimum age for entering the labour market, and protection of migrants and categories of workers such as seafarers. These standards are subject to supervision by ILO.

Employers' and workers' organizations can lodge representations with the ILO on a member State's non-compliance with a Convention it has ratified. Further, any member country can lodge a complaint with the ILO against another member country which, in its opinion, has not ensured in a satisfactory manner the implementation of a Convention which both of them have ratified.

International labour standards play an important role in the elaboration of national legislation, even in those countries which have not ratified a given convention. Governments of member countries often refer to the ILO conventions in questions concerning the adoption of labour laws or modifying existing legislation.

The **ILO's Declaration of Philadelphia (1944)** states that:

- labour is not a commodity;
- freedom of expression and association are essential to sustained progress;
- all human beings have the right to pursue their material and spiritual development in conditions of freedom, dignity, economic security and equal opportunity.

These principles, to which all member States commit themselves, have influenced the evolution of human rights action globally. Several of the freedoms contained in the Universal Declaration of Human Rights were included at the request of the ILO, which is responsible within the UN system for their protection. More than 75 ILO conventions are relevant to the achievement of the UN's International Covenant on Economic, Social and Cultural Rights.

¹³ Several governments have recently called on WTO to rule on this matter.

¹⁴ This section is largely based on various texts downloaded from the web site of the International Labour Office in Geneva, Switzerland (see: <http://www.ilo.org/public/english/50normes/index.htm>)

The ILO's fundamental human rights conventions are:

- Freedom of Association and Protection of the Right to Organize Convention, 1948 (No. 87)
Establishes the right of all workers and employers to form and join organizations of their own choosing without prior authorization, and lays down a series of guarantees for the free functioning of organizations without interference by the public authorities.
- Right to Organize and Collective Bargaining Convention, 1949 (No. 98)
Provides for protection against anti-union discrimination, for protection of workers' and employers' organizations against acts of interference by each other, and for measures to promote collective bargaining.
- Forced Labour Convention, 1930 (No. 29)
Requires the suppression of forced or compulsory labour in all its forms. Certain exceptions are permitted, such as military service, convict labour properly supervised, emergencies such as wars, fires, earthquakes, etc.
- Abolition of Forced Labour Convention, 1957 (No. 105)
Prohibits the use of any form of forced or compulsory labour as a means of political coercion or education, punishment for the expression of political or ideological views, workforce mobilization, labour discipline, punishment for participation in strikes, or discrimination.
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
Calls for a national policy to eliminate discrimination in access to employment, training and working conditions, on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and to promote equality of opportunity and treatment.
- Equal Remuneration Convention, 1951 (No. 100)
Calls for equal pay for men and women for work of equal value.
- Minimum Age Convention, 1973 (No. 138)
Aims at the abolition of child labour, stipulating that the minimum age for admission to employment shall not be less than the age of completion of compulsory schooling.

There are several conventions directed specifically to seafarers which may apply also to fishermen and commercial maritime fishing provided the competent national authority decides accordingly in consultation with associations of fishermen and employers. These conventions, however, explicitly exclude seafarers including fishermen on wooden vessels of traditional build such as dhows and junks. Seafarers conventions relate to Hours of Work and the Manning of Ships (1996), Recruitment and Placement of Seafarers (1996), Labour Inspection (Seafarers) (1996), Health Protection and Medical Care (Seafarers) (Rev.1987), Repatriation of Seafarers (1987), Social Security (Seafarers) (1987), and Seafarers' Welfare Convention (1987). As part of its work programme for 1998-1999, ILO plans to convene a meeting on the safety and health of fishermen. ILO is also elaborating a report on the application of international labour standards to the sector.

The Rural Workers' Organisations Convention of 1975 aims at encouraging the establishment of free and viable organizations capable of protecting and furthering the interests of their members. One area specifically mentioned where such organizations should cooperate and actively participate is in land reform which is considered an essential factor in

the improvement of the conditions of work and life of rural workers. No explicit mention is made in the Convention of fishermen and fishworkers but the term 'rural workers' is defined as any person engaged in agriculture, handicrafts or a related occupation in a rural areas, whether as a self-employed person such as a tenant, sharecropper or small owner-occupier.

8. International agreements on maritime safety and marine pollution¹⁵

The International Maritime Organization (IMO) is the United Nations specialized agency responsible for improving maritime safety and preventing pollution from ships.

The Torremolinos International Convention for the Safety of Fishing Vessels (1977) is the first ever international convention on the safety of fishing vessels, and was adopted at a conference held in Torremolinos, Spain. The safety of fishing vessels has been a matter of concern to IMO since it came into existence, but the great differences in design and operation between fishing vessels and other types of ships had always proved a major obstacle to their inclusion in the Conventions on Safety of Life at Sea and Load Lines applicable to maritime trade in general.

The 1993 Torremolinos Protocol was prepared because it had become clear for some time that the parent Convention is unlikely to enter into force, largely because of technical reasons. As a result, it was decided to prepare a replacement in the form of a Protocol which updates the parent Convention and takes account of technological evolution in the recent years and the need to take a pragmatic approach towards the early ratification of an instrument which is needed to regulate the safety of fishing vessels and those who sail in them. Safety provisions addressed by the Protocol include improved life-saving appliances, immersion suits and thermal protective aids, satellite communication systems and other components of the global maritime distress and safety system. One of the innovations of this Protocol is that regional agreements can be adopted.

The International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (1995) has been specifically drawn up because of the special nature of the fishing industry to which the regulations developed for maritime vessels are not entirely appropriate. Once it comes into force, the Convention will apply to crews of seagoing fishing vessels generally of 24 metres in length and above.

Neither the Torremolinos Convention nor the Code of Safety for Fishermen and Fishing Vessels (B) apply to fishing vessels of less than 24 metres in length and as the development of safety standards for those vessels is desirable, the Torremolinos Conference recommended that IMO continue to develop safety standards for construction and equipment of small fishing vessels with a view to promoting the safety of these vessels and their crews. Voluntary guidelines for the design, construction and equipment of small fishing vessels have been drafted by FAO with the help of ILO and IMO and adopted by the governing bodies.

¹⁵ This section is based on various texts downloaded from the web site of the International Maritime Organization in London, UK (see: <http://www.imo.org/>)

Several IMO conventions address marine pollution prevention. The International Convention for the Prevention of Pollution from Ships, 1973 and the 1978 Protocol relating thereto (MARPOL 73/78) applies, *inter alia*, also to fishing vessels. Other conventions deal with the Prevention of Marine Pollution by Dumping of Wastes and Other Matter (London Dumping Convention) (1972), and the International Convention for the Prevention of Pollution of the Sea by Oil (OILPOL) (1954).

9. Conclusion

Significant progress has been made during the last half century in binding international legal instruments and voluntary codes and guidelines to protect people's basic human rights and their living and working conditions and conserve the environment. As with all legal instruments and codes, domestic or international, their ultimate effect depends on their enforcement by the state and voluntary adherence by individuals and public and private organisations. Both enforcement by the state and voluntary adherence will be furthered by people becoming aware of the contents of these agreements and acting on it individually and in associations.

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ANNEX 1

Convention on the Law of the Sea - Overview¹⁷

The United Nations Convention on the Law of the Sea (full text) comprises 320 articles and nine annexes, governing all aspects of ocean space, such as delimitation, environmental control, marine scientific research, economic and commercial activities, transfer of technology and the settlement of disputes relating to ocean matters.

The Convention entered into force in accordance with its article 308 on 16 November 1994, 12 months after the date of deposit of the sixtieth instrument of ratification or accession.

Some of the key features of the Convention are the following:

- * Coastal States exercise sovereignty over their territorial sea which they have the right to establish its breadth up to a limit not to exceed 12 nautical miles; foreign vessels are allowed "innocent passage" through those waters;
- * Ships and aircraft of all countries are allowed "transit passage" through straits used for international navigation; States bordering the straits can regulate navigational and other aspects of passage;
- * Archipelagic States, made up of a group or groups of closely related islands and interconnecting waters, have sovereignty over a sea area enclosed by straight lines drawn between the outermost points of the islands; all other States enjoy the right of archipelagic passage through such designated sea lanes;
- * Coastal States have sovereign rights in a 200-nautical mile exclusive economic zone (EEZ) with respect to natural resources and certain economic activities, and exercise jurisdiction over marine science research and environmental protection;
- * All other States have freedom of navigation and overflight in the EEZ, as well as freedom to lay submarine cables and pipelines;
- * Land-locked and geographically disadvantaged States have the right to participate on an equitable basis in exploitation of an appropriate part of the surplus of the living resources of the EEZ's of coastal States of the same region or sub-region; highly migratory species of fish and marine mammals are accorded special protection;
- * Coastal States have sovereign rights over the continental shelf (the national area of the seabed) for exploring and exploiting it; the shelf can extend at least 200 nautical miles from the shore, and more under specified circumstances;
- * Coastal States share with the international community part of the revenue derived from exploiting resources from any part of their shelf beyond 200 miles;

¹⁷ This overview is taken verbatim from the following Internet site: <http://www.un.org/Depts/los/losconv2.htm>

* The Commission on the Limits of the Continental Shelf shall make recommendations to States on the shelf's outer boundaries when it extends beyond 200 miles;

* All States enjoy the traditional freedoms of navigation, overflight, scientific research and fishing on the high seas; they are obliged to adopt, or cooperate with other States in adopting, measures to manage and conserve living resources;

* The limits of the territorial sea, the exclusive economic zone and continental shelf of islands are determined in accordance with rules applicable to land territory, but rocks which could not sustain human habitation or economic life of their own would have no economic zone or continental shelf;

* States bordering enclosed or semi-enclosed seas are expected to cooperate in managing living resources, environmental and research policies and activities;

* Land-locked States have the right of access to and from the sea and enjoy freedom of transit through the territory of transit States;

* States are bound to prevent and control marine pollution and are liable for damage caused by violation of their international obligations to combat such pollution;

* All marine scientific research in the EEZ and on the continental shelf is subject to the consent of the coastal State, but in most cases they are obliged to grant consent to other States when the research is to be conducted for peaceful purposes and fulfils specified criteria;

* States are bound to promote the development and transfer of marine technology "on fair and reasonable terms and conditions", with proper regard for all legitimate interests;

* States Parties are obliged to settle by peaceful means their disputes concerning the interpretation or application of the Convention;

* Disputes can be submitted to the International Tribunal for the Law of the Sea established under the Convention, to the International Court of Justice, or to arbitration. Conciliation is also available and, in certain circumstances, submission to it would be compulsory. The Tribunal has exclusive jurisdiction over deep seabed mining disputes.

Annex 2

Text of selected Articles of the 1982 United Nations Convention on the Law of the Sea

Article 61

Conservation of the living resources

1. The coastal State shall determine the allowable catch of the living resources in its exclusive economic zone.
2. The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall co-operate to this end.
3. Such measures shall also be designed to maintain or restore populations of harvested species at levels which can produce the maximum sustainable yield, as qualified by relevant environmental and economic factors, including the economic needs of coastal fishing communities and the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global.
4. In taking such measures the coastal State shall take into consideration the effects on species associated with or dependent upon harvested species with a view to maintaining or restoring populations of such associated or dependent species above levels at which their reproduction may become seriously threatened.
5. Available scientific information, catch and fishing effort statistics, and other data relevant to the conservation of fish stocks shall be contributed and exchanged on a regular basis through competent international organizations, whether subregional, regional or global, where appropriate and with participation by all States concerned, including States whose nationals are allowed to fish in the exclusive economic zone.

Article 62

Utilization of the living resources

1. The coastal State shall promote the objective of optimum utilization of the living resources in the exclusive economic zone without prejudice to article 61.
2. The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch, having particular regard to the provisions of articles 69 and 70, especially in relation to the developing States mentioned therein.
3. In giving access to other States to its exclusive economic zone under this article, the coastal State shall take into account all relevant factors, including, inter alia, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, the provisions of articles 69 and 70, the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic

dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

4. Nationals of other States fishing in the exclusive economic zone shall comply with the conservation measures and with the other terms and conditions established in the laws and regulations of the coastal State. These laws and regulations shall be consistent with this Convention and may relate, inter alia, to the following:

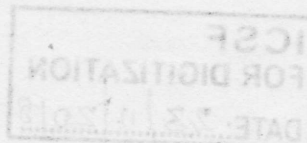
- (a) licensing of fishermen, fishing vessels and equipment, including payment of fees and other forms of remuneration, which, in the case of developing coastal States, may consist of adequate compensation in the field of financing, equipment and technology relating to the fishing industry;
- (b) determining the species which may be caught, and fixing quotas of catch, whether in relation to particular stocks or groups of stocks or catch per vessel over a period of time or to the catch by nationals of any State during a specified period;
- (c) regulating seasons and areas of fishing, the types, sizes and amount of gear, and the types, sizes and number of fishing vessels that may be used;
- (d) fixing the age and size of fish and other species that may be caught;
- (e) specifying information required of fishing vessels, including catch and effort statistics and vessel position reports;
- (f) requiring, under the authorization and control of the coastal State, the conduct of specified fisheries research programmes and regulating the conduct of such research, including the sampling of catches, disposition of samples and reporting of associated scientific data;
- (g) the placing of observers or trainees on board such vessels by the coastal State;
- (h) the landing of all or any part of the catch by such vessels in the ports of the coastal State;
- (i) terms and conditions relating to joint ventures or other co-operative arrangements;
- (j) requirements for the training of personnel and the transfer of fisheries technology, including enhancement of the coastal State's capability of undertaking fisheries research;
- (k) enforcement procedures.

5. Coastal States shall give due notice of conservation and management laws and regulations.

Annex 3

Summary of the main contents of the 27 principles of the Rio Declaration on Environment and Development

Principle (P) 1 places human beings at the centre of concerns for sustainable development. P 2 asserts the sovereignty of states to exploit their own resources according to their policy objectives but places on them the obligation to cause no damage to the environment of other states beyond the limits of national jurisdiction. P 3 states the right to development and P 4 demands that environment protection forms an integral part of development. P 5 calls on states and all people to collaborate in the eradication of poverty and P 6 demands that special priority be given to developing countries, particularly the least developed and most environmentally vulnerable. P 7 calls on states to cooperate in environment conservation and acknowledges the special responsibility born by developed countries because of their burden on the global environment and the technological and financial resources they command. P 8 asks states to reduce and eliminate unsustainable patterns of production, consumption and to promote appropriate demographic policies. P 9 promotes international cooperation in capacity-building and knowledge and technology transfer. P 10 promotes broad-based participation in decision-making, the free flow of information and access to the judicial and administrative proceedings. P 11 calls on states to enact effective environmental legislation. P 12 asks states to promote a supportive and open international economic system and refrain from using environmental measures as arbitrary barriers to trade. P 13 requires states to develop national law and to cooperate in the development of international law regarding liability and compensation of victims of pollution and environmental harm. P 14 calls on states to discourage the transfer to other states of substances that cause serious harm. P 15 requires states to widely apply the precautionary approach, i.e. the lack of full scientific certainty shall not be used to postpone cost-effective measures to prevent serious or irreversible environmental damage. P 16 calls on national authorities to promote the internalisation of environmental costs, i.e. the polluter should bear the cost of pollution. P 17 requests the undertaking of environmental impact assessments for proposed activities that are likely to have significant environmental impacts. P 18 and P 19 commit states to give early notification of emergencies, disasters, etc. and of other activities resulting in transboundary environmental impacts and call on the international community to help states afflicted by disasters and emergencies. P 20 urges the full participation by women in environmental management and development. P 21 asks that youth be mobilized to forge a global partnership. P 22 requires states to recognize and duly support the identity, culture and interests of indigenous people and enable their effective participation in achieving sustainable development. P 23 requires the protection of the environment and natural resources of people under oppression, domination and occupation. P 24 calls on states to protect the environment in times of armed conflicts. P 25 recognizes the interdependence and indivisibility of peace, development and environmental protection. P 26 commits states to resolve all environmental disputes peacefully and P 27 requires all states and people to cooperate in good faith and in a spirit of partnership in the fulfilment of the principles of this declaration.



Annex 4

Summary of the main provisions of the 1995 Global Programme of Action for the Protection of the Marine Environment from Land-Based Activities (GPA)

GPA identifies nine source categories and sets specific objectives and targets to be met by States within given time frames. With regards to **sewage**, States are expected to establish by the year 2000 waste treatment and disposal quality criteria, objectives and standards based on the nature and assimilative capacity of the receiving environment. By the year 2025, all sewage, waste waters and solid wastes should be disposed of in conformity with national and international environmental quality guidelines.

Emissions and discharges of **persistent organic pollutants** should be reduced or eliminated, giving immediate attention to the identification and introduction of substitutes for such substances. Cleaner production processes are to be introduced to reduce or eliminate hazardous by-products and wastes associated with production, incineration and combustion, e.g. dioxins, furans, hexachlorobenzene and polycyclic aromatic hydrocarbons. Further, best environmental practice for pest control in agriculture and aquaculture should be promoted.

A further objective is to reduce or eliminate emissions and discharges of **radioactive substances**, of **heavy metals**, and of **oil (hydrocarbons)**, in order to prevent, reduce and eliminate pollution of the marine and coastal environment.

Another source category are **nutrients**. The objective of the Action Programme is to identify marine areas where nutrient inputs are causing or are likely to cause pollution, to reduce nutrient inputs into the areas identified and to reduce the number of marine areas where eutrophication is evident. This is an area of particular interest since agricultural practices are a source of nutrient enrichment of coastal waters. Agricultural activities and deforestation contribute also to another category affecting the marine environment: **sediment mobilization**.

Litter threatens marine life through entanglement, suffocation and ingestion and is widely recognized to degrade the visual amenities of marine and coastal areas. The target is that by the year 2025 States should provide all urban areas with adequate waste collection, disposal and treatment services.

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