

UNITED NATIONS

GENERAL
ASSEMBLY



Distr.
LIMITED

A/AC.138/SC.II/L.11
11 August 1972

ORIGINAL: ENGLISH



COMMITTEE ON THE PEACEFUL USES OF THE
SEA-BED AND THE OCEAN FLOOR BEYOND
THE LIMITS OF NATIONAL JURISDICTION

Sub-Committee II

Working Paper by the
Delegations of Australia and New Zealand

PRINCIPLES
FOR A
FISHERIES REGIME

This working paper is submitted by the Delegation of Australia and the Delegation of New Zealand for consideration, along with papers submitted by other delegations dealing with or referring to questions of jurisdiction over, and utilization of, the living resources of the sea.

The paper does not necessarily represent the definitive views of the Australian Government or of the New Zealand Government. However, in the view of the cosponsoring Delegations, it would be useful to set down principles that could form the basis of a new régime for living marine resources.

The overall objective of any régime should be to establish conditions that will allow the rational utilization of each particular stock of fish. It is also necessary to bear in mind the special characteristics of fishery resources in that they are capable of regeneration, but extremely susceptible to depletion by over-exploitation. These characteristics provide one of the bases for the special interest of the coastal State in fishery resources adjacent to its shores, already recognized in a limited way in the 1958 Convention on Fishing and Conservation of the Living Resources of the High Seas. This interest involves two areas of responsibility to ensure -

- (a) the rational utilization of the resources involving management to maintain the stocks; and
- (b) the maximum possible production of food from the available resources.

Another preliminary observation is that a coastal fishery resources zone as proposed below could be readily incorporated in, for example, an economic zone concept covering all resources, non-living as well as living.

Reference will be made below to terms differentiating between different groups of species of fish. For this purpose, four main groups may be distinguished, namely (a) sedentary species, (b) coastal species, (c) anadromous species, and (d) wide-ranging species. On this point reference should be made to pp.2-3 of the Canadian Working Paper on "Management of the Living Resources of the Sea" (document A/AC.138/SC.III/L.8).

Concerning sedentary species, the present position is that these resources come under the sea-bed jurisdiction of the coastal State recognized in the 1958 Geneva Convention on the Continental Shelf. No change from coastal State jurisdiction in this regard is contemplated. Also, in the area outside that jurisdiction, it would be appropriate that any sedentary living resources should be regulated by the proposed International Sea-Bed Authority or other international body. The following principles have therefore, at this stage, proceeded on the assumption that the latter sedentary species are, or may be, dealt with elsewhere.

I. The coastal State shall have exclusive jurisdiction, in accordance with the Principles elaborated herein, over the living resources of the sea in an adequately wide zone of the high seas adjacent to its territorial sea.

(Comment: It will be necessary to recognize a specific limit to the fishery zone in which the coastal State has jurisdiction. The basic concept would be to establish coastal State responsibility and control over the coastal species. These are the non-sedentary, free-swimming species that inhabit nutrient bearing areas adjacent to the coast).

II. It shall be the responsibility of the coastal State to provide proper management and utilization of the living resources within its zone of exclusive jurisdiction, including -

- (a) maintenance of the level of stocks which will provide the maximum sustainable yield;
- (b) rational utilization of the resources and the promotion of economic stability coupled with the highest possible food production; and
- (c) where the resource is required for direct human consumption in the coastal state, the highest possible priority to be given to the production of fish for direct human consumption.

(Comment: In carrying out these responsibilities a State would make use of measures as referred to in Principle III below).

III. Measures that the coastal State may take include:-

- (a) requiring licensing by it of fishing vessels and equipment to operate in the zone;
- (b) limiting the number of vessels and the number of units of gear that may be used;
- (c) specifying the gear permitted to be used;
- (d) fixing the period during which fish or fish of a species or class may be taken;
- (e) fixing the size of fish that may be taken;
- (f) specifying the method of fishing that may be used in a specified area or for taking a specified species or class of fish and prohibiting any other methods.

IV. Pursuant to its exclusive jurisdiction, it would be for the coastal State to determine the allowable catch of any particular species, and to allocate to itself that portion of the allowable catch, up to 100 per cent, that it can harvest.

(Comment: Exclusive jurisdiction means that it would be the coastal State that makes the preliminary and final decisions on any resource issues that arise. Exclusive jurisdiction would not, however, be inconsistent with the existence of advisory or consultative procedures to deal with basic issues in respect of the administration by the coastal State of its resource jurisdiction where other interested States raise those issues).

V. Where the coastal State is unable to take 100 per cent of the allowable catch of a species as determined under the Principles, it shall allow the entry of foreign fishing vessels with a view to maintaining the maximum possible food supply.

Such access shall be granted up to the level of allowable catch on an equitable basis without the imposition of unreasonable conditions and without discrimination between nationals of other States, except as may be provided for under phasing-out arrangements made in accordance with these Principles.

(Comment: The question of licence fees is one that requires consideration. Whilst, having regard to taxes and other charges imposed on the local fishermen and the cost of providing facilities and surveillance services, the coastal State might wish to impose higher licence fees on foreign vessels, such fees should not be unreasonable).

VI. Measures adopted by the coastal State shall take account of traditional subsistence fishing carried out in any part of the fisheries zone.

(Comment: A definition of "traditional subsistence fishing" may be required in order clearly to identify the limited range of fishing in mind under this Principle. In practice the problem could perhaps be best dealt with by regional arrangements among the countries concerned).

VII. When the coastal State intends to allocate to itself the whole of the allowable catch of a species, in accordance with these Principles, it shall enter into consultations with any other State which requests such consultations and which is able to demonstrate that its vessels have carried on fishing in the fishery resources zone on a substantial scale for a period of not less than [ten] years with a view to:-

- (a) analysing the catch and effort statistics of the other state in order to establish the level of fishing operations carried out in the zone by the other state;
- (b) negotiating special arrangements with the other state under which the latter's vessels would be "phased out" of the fishery having regard to the developing fishing capacity of the coastal State; and
- (c) in the event of agreement not being reached through consultation there shall be a "phasing out" period of [five] years.

VIII. The coastal State, as an exercise of its jurisdiction over the resources of the zone, shall have powers of boarding, arrest and detention of fishing vessels. Breaches of a condition of a licence or of a law or regulation applying in the zone in accordance with these Principles shall be triable in the Courts of the coastal State concerned.

IX. In respect of "wide-ranging" species of fish that are exploited within the zone, the coastal State shall participate in the formulation and implementation of international arrangements for the management of the species.

(Comment: In this connexion consideration should be given to any special coastal State interests in these species).

X. The coastal State has responsibility to conduct research on the resources within the zone to enable it to fulfil its responsibility to provide proper management and rational utilization of those resources. It shall publish the results of that research within a reasonable period. Other States operating within the zone shall assist in the research programmes and shall provide comprehensive catch, effort and biological data at reasonable intervals as required.

XI. It is recognized that the anadromous species is a species in respect of which the coastal State concerned exercises onerous and unique responsibilities. On this basis that coastal State should have the sole right to manage the stocks of anadromous species bred in its home waters.

(Comment: On anadromous species, reference is made to the Working Paper submitted by the Delegation of Canada).

XII. Where a State alleges that --

- (a) the living resources of the zone are being substantially underexploited; or
- (b) generally agreed conservation principles are being substantially departed from by the coastal State concerned,

it may request the coastal State to review the measures taken by it. The State making the allegation may require it to be referred to an advisory expert body that would be empowered to convey its findings to the States concerned and, if that body considers it desirable, to make recommendations with a view to resolving the issue.

(Comment: Provision should be made for the appointment of the advisory expert body, either by agreement of the States concerned or, in default of agreement, by other means. Use could be made of international organizations, including regional organizations, which might agree to provide facilities in this regard. While the exercise of jurisdiction by the coastal State would be open to scrutiny on the issues referred to, the role of the expert body would be advisory only. Responsibility for resource management must carry with it the final authority necessary to fulfill that responsibility).

XIII. International arrangements, including where appropriate international fisheries commissions, shall be established for the management of the "wide-ranging" species and as appropriate the "bathypelagic" species and other species that inhabit the waters beyond the limits of national fisheries resource jurisdiction. All States shall have an equal right to participate in such organizations.

(Comment: On "wide-ranging" species, see also Principle IX above).

XIV. [The role of international bodies.]

(Comment: As indicated in the Canadian Working Paper, the concept of coastal State responsibility does not preclude a role for international fishery commissions. These commissions might be global or they might be regional in nature. Such commissions could have an important advisory role vis-à-vis the coastal State in its discharge of its responsibilities).

XV. It shall be the responsibility of the coastal State to ensure that fishing operations in the fishery zone shall be conducted with reasonable regard for other activities in the marine environment.

Other activities shall be conducted with reasonable regard for fishing operations carried out within the zone.

(Comment: In particular, damage to fishing gear should be avoided. It would be desirable that any disputes concerning the accommodation of competing uses within the zone be settled by compulsory settlement procedures, unless some form of settlement is agreed upon by the parties within a reasonable period).