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

Proposals for a Régime of Fisheries
on the High Seas

Submitted by Japan

Summary of the proposals

This paper, which contains, inter alia, a set of proposals on preferential rights of coastal States in fishing on the high seas, attempts to formulate a broad and equitable accommodation of interests of States in the exploitation and use of the living resources of the high seas, taking into account the dependence on fishing of both coastal and other States. While according a preferential right of catch to developing coastal States corresponding to their harvesting capacities and a differentiated preferential right to developed coastal States, the proposals also take into consideration the legitimate interests of other States. Thus, they seek to ensure that a gradual accommodation of interests can be brought about in the expanding exploitation and use of fishery resources of the high seas, without causing any abrupt change in the present order in fishing which might result in disturbing the economic and social structures of States. The proposals may be summarized as follows:

- (i) The proposed general rules concerning preferential rights of coastal States are intended to ensure sufficient protection for coastal fisheries of States, particularly of developing coastal States, in relation to the activities of distant water fisheries of other States, in areas of the sea adjacent to their 12-mile limit;
- (ii) Preferential rights shall entitle a developing coastal State annually to an allocation of resources that corresponds to its harvesting capacity; the rate of growth of the fishing capacity of that developing

coastal State shall be duly taken into account to the extent that it is able to catch a major portion of the allowable catch. They shall entitle a developed coastal State to an allocation of resources necessary for the maintenance of its locally conducted small-scale coastal fishery; the interests of traditionally established fisheries of other States shall be duly taken into account in determining the part of the allowable catch thus reserved.

- (iii) Since situations vary greatly according to areas of the sea, the general rules for protection of coastal States interests shall be flexible enough, as regards the methods to be employed to safeguard such interests, to allow the parties to adopt any measures which are effective and suited to the individual cases. The substance of protection, i.e. concrete applicable measures implementing preferential rights of coastal States, shall be the subject of negotiation between the coastal and other States concerned and shall be finalized in agreement;
- (iv) If negotiation fails, the case in dispute shall be referred to a body of experts for a binding decision unless settled by any other means to be agreed upon between the parties concerned. During the period of dispute, distant water fishing States shall assume obligations to restrain their fishing efforts according to specific plans provided for in interim measures (6.1 of the proposal).
- (v) In concluding agreement on the preferential right of a developing coastal State, international co-operation shall be carried out in the field of fisheries and other related industries between the developing coastal State and other fishing States concerned with a view to improving the effectiveness of protection of the interests of that developing coastal State;
- (vi) No special status in respect of conservation and no preferential rights of catch shall be recognized to coastal States with regard to the harvesting of highly migratory, including anadromous stocks of fish. The conservation and regulation of these stocks shall be made pursuant to international or

regional consultations or agreements, or should such be already the case, through the existing regional fishery commissions.*/

- (vii) Enforcement jurisdiction under the rules shall be retained by flag States though the right of coastal States to inspect foreign vessels to identify violation, and to arrest vessels in violation for prompt delivery to the flag States, shall be recognized.

*/ The problem of conservation and regulation of anadromous stocks (e.g. salmon) is a limited one affecting a few countries in certain regions and, as such, it is already dealt with by the existing fishery bodies such as: Japan-USSR Fisheries Commission for the Northwest Pacific; International North Pacific Fisheries Commission (INPFC); International Commission for the Northwest Atlantic Fisheries (ICNAF); North-East Atlantic Fisheries Commission (NEAFC); US-Canada International Pacific Salmon Fisheries Commission.

GENERAL PROVISIONS

- 1.1 The proposed régime applies to fisheries on the high seas in the areas adjacent to the limit of 12 miles from the coast of a State, measured in accordance with the relevant rules of international law (such areas hereinafter shall be referred to as "adjacent waters").
- 1.2 All States have the right for their nationals to engage in fishing on the high seas, subject to the present régime and to their existing treaty obligations.
- 1.3 The proposed régime shall not affect the rights and obligations of States under existing international agreements relating to specific fisheries on the high seas.

CONSERVATION OF FISHERY RESOURCES

2.1 Objective of Conservation measures

The objective of conservation measures is to achieve the maximum sustainable yields of fishery resources and thereby to secure and maintain a maximum supply of food and other marine products.

2.2 Obligations to adopt conservation measures

- (1) In cases where nationals of one State are exclusively engaged in fishing a particular stock of fish, that State shall adopt, when necessary, appropriate conservation measures.

In cases where nationals of two or more States are engaged in fishing a particular stock of fish, these States shall, at the request of any of them, negotiate and conclude arrangements which will provide for appropriate conservation measures.

These conservation measures shall be consistent with the objective of conservation referred to in para. 2.1 above and shall be adopted having regard to the principles referred to in para. 2.3 below.

- (2) In cases where conservation measures have already been adopted by States with respect to a particular stock of fish which is exploited by their nationals, a new-comer State shall adopt its own conservation measures which should be as restrictive as the existing measures until new arrangements are concluded among all the States concerned. If the existing conservation measures include a catch limitation or some other regulations not permitting nationals of the new-comer State to engage in fishing the stock of fish concerned, the States applying the existing conservation measures shall immediately enter into negotiation with the new-comer State for the purpose of concluding new arrangements. Pending such arrangements, nationals of the new-comer State shall not engage in fishing the stock concerned.

(3) States shall make use of the international or regional fishery organizations, as far as possible, to adopt appropriate conservation measures.

2.3 Basic principles relating to conservation measures

(1) Conservation measures must be adopted on the basis of the best scientific evidence available. If the States concerned cannot reach agreement on the assessment of the conditions of the stock to which conservation measures are to be applied, they shall request an appropriate international body or other impartial third party to undertake the assessment. In order to obtain the fairest possible assessment of the stock conditions, the States concerned shall co-operate in the establishment of regional institutions for surveying and research into fishery resources.

(2) No conservation measure shall discriminate in form or fact between fishermen of one State from those of other States.

(3) Conservation measures shall be determined, to the extent possible, on the basis of the allowable catch estimated with respect to the individual stocks of fish. The foregoing principle however shall not preclude conservation measures from being determined on some other bases in cases where, due to lack of sufficient data, an estimate of the allowable catch is not possible with any reasonable degree of accuracy.

(4) No State can be exempted from the obligation to adopt conservation measures on the ground that sufficient scientific findings are lacking.

(5) The conservation measures adopted shall be designed so as to minimize interference with fishing activities relating to stocks of fish, if any, which are not the object of such measures.

(6) Conservation measures and the data on the basis of which such measures are adopted shall be subject to review at appropriate intervals.

2.4 Special status of coastal States in conservation of resources

A coastal State shall be recognized as having special status with respect to the conservation of fishery resources in its adjacent waters. Thus, the coastal State will have the right of participating, on an equal footing, in any survey on fishery resources conducted in its adjacent waters for conservation purposes, whether or not nationals of that coastal State are actually engaged in fishing the particular stocks concerned. Non-coastal States conducting the survey shall, at the request of the coastal State, make available to the coastal State the findings of their surveys and researches concerning such stocks.

Also, except for interim measures (6.1 below), no conservation measure may be adopted with respect to any stock of fish, without the consent of the coastal State whose nationals are engaged in fishing the particular stock concerned (or the majority of the coastal States in cases where there are three or more such coastal States).

A coastal State shall at the same time have the obligation to take, in co-operation with other States, necessary measures with a view to maintaining the productivity of fishery resources in its adjacent waters at a level that will enable an effective and rational utilization of such resources.

PREFERENTIAL RIGHTS OF COASTAL STATES

3.1 Preferential rights

To the extent consistent with the objective of conservation, a coastal State shall have a preferential right to ensure adequate protection to its coastal fisheries conducted in its adjacent waters.

(i) In the case of a developing coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish it can harvest on the basis of the fishing capacity of its coastal fisheries. In determining the part of the allowable catch to be reserved for the developing coastal State, the rate of growth of the fishing capacity of that State shall be duly taken into account until it has developed that capacity to the extent of being able to fish for a major portion^{*/} of the allowable catch of the stock of fish.

(ii) In the case of a developed coastal State:

The coastal State is entitled annually to reserve for its flag vessels that portion of the allowable catch of a stock of fish which is necessary to maintain its locally conducted small-scale coastal fisheries. The interests of traditionally established fisheries of other States shall be duly taken into account in determining the catch to be reserved for such small-scale coastal fisheries.

^{*/} e.g. Approximately 50 per cent.

3.2 Implementation of preferential rights

- (1) Measures to implement the preferential rights shall be determined by agreement among the coastal and non-coastal States concerned on the basis of the proposals made by the coastal State. For the purpose of such proposals, the coastal State may seek technical assistance from the Food and Agriculture Organization of the United Nations or such other appropriate organs.
- (2) The size of the preferential right of a coastal State shall be fixed within the limit of the allowable catch of the stock of fish subject to allocation, if the allowable catch for that stock is already estimated for conservation purposes. In cases where the estimate of the allowable catch is not available, the coastal and non-coastal States concerned shall agree on necessary measures in a manner which will best enable the coastal State to benefit fully from its preferential right.
- (3) The regulatory measures adopted to implement the preferential right of a coastal State may include catch allocation (quota by country) and/or such other supplementary measures that will be made applicable to vessels of non-coastal States engaged in fishing in the adjacent waters of the coastal State, including:
 - (a) the establishment of open and closed seasons during which fish may or may not be harvested,
 - (b) the closing of specific areas to fishing,
 - (c) the regulation of gear or equipment that may be used,
 - (d) the limitation of catch of a particular stock of fish that may be harvested.
- (4) The regulatory measures adopted shall be so designed as to minimize interference with the fishing of non-coastal States directed to stocks of fish, if any, which are not covered by such measures.
- (5) Non-coastal States shall co-operate with coastal States in the exchange of available scientific information, catch and effort statistics and other relevant data.
- (6) In cases where nationals of two or more coastal States which are entitled to preferential rights are engaged in fishing a common stock of fish, no coastal States may invoke their preferential right with respect to such stock without the consent of the other coastal State or States concerned. In such a case, those coastal States shall enter into regional consultations with the other States concerned with a view to implementing their preferential rights.

(7) The measures adopted under this paragraph shall be subject to review at such intervals as may be agreed upon by the States concerned.

3.3 International Co-operation

In order to assist in the development of the fishing capacity of a developing coastal State and thereby to facilitate the full enjoyment of its preferential right, international co-operation shall be carried out in the field of fisheries and related industries between the developing coastal State and other fishing States in concluding agreement on the preferential right of that developing coastal State.

REGULATION OF HIGHLY MIGRATORY STOCKS

4.1 No special status in the conservation of resources (2.4) and no preferential rights (3.1) shall be recognized to a coastal State in respect of highly migratory, including anadromous, stocks of fish. The conservation and regulation of such stocks shall be carried out pursuant to international consultations or agreements in which all interested States shall participate, or through the existing international or regional fishery organizations should such be the case.

ENFORCEMENT

5.1 Right of control by coastal States

With respect to regulatory measures adopted pursuant to the present régime, those coastal States which are entitled to preferential rights, and/or special status with respect to conservation, have the right to control the fishing activities in their respective adjacent waters. In the exercise of such right, the coastal States may inspect vessels of other States and arrest those vessels violating the regulatory measures adopted. The arrested vessels shall however be promptly delivered to the flag States concerned. The coastal States may not refuse the participation of other States in controlling the operation, including boarding officials of the other States on the coastal States patrol vessels at the request of the latter States. Details of control measures shall be agreed upon among the parties concerned.

5.2 Jurisdiction

- (a) Each State shall make it an offence for its nationals to violate any regulatory measures adopted pursuant to the present régime.
- (b) Nationals on board a vessel violating the regulatory measures in force shall be duly prosecuted by the flag State concerned.

- (c) Reports prepared by the officials of a coastal State on the offence committed by a vessel of a non-coastal State shall be fully respected by that non-coastal State, which shall notify the coastal State of the disposition of the case as soon as possible.

INTERIM MEASURES AND DISPUTES SETTLEMENT

6.1 Interim measures

If the States concerned fail to reach agreement within six months of negotiations on measures concerning preferential rights under para. 3.1 and/or on arrangements concerning conservation measures under para. 2.2, any of the States may initiate the procedure for the settlement of disputes. Pending the settlement of disputes, the States concerned shall adopt interim measures. Such interim measures shall in no way prejudice the respective positions of any States concerned with respect to the dispute in question.

- (a) In cases where the limitation of catch is disputed, each State in dispute shall take necessary measures to ensure that its catch of the stock concerned will not exceed on an annual basis its average annual catch of the preceding [five] year period.
- (b) In cases where some other factors are in dispute, e.g. fishing grounds, fishing gear or fishing seasons, in connexion with measures to implement the preferential right of a coastal State, or with arrangements concerning conservation measures, the other States concerned shall adopt the latest proposals of the coastal State with respect to the matter in dispute. However, the other States shall be exempted from such obligation if the adoption of the proposal of the coastal State would seriously affect either its catch permitted under sub-para. (a) above, or its catch of some other stock not related to the preferential right of a coastal State which it is substantially exploiting. In such a case, those other States shall take all possible measures which they consider appropriate for the protection of the coastal fisheries concerned.
- (c) Any of the parties to the dispute may request the special Commission to decide on provisional measures regarding the matter in dispute.

- (d) Each State shall inform the special Commission established in accordance with para. 6.2 as well as all other States concerned of the specific interim measures it has taken in accordance with any of the preceding provisions.

6.2 Procedure for disputes settlement (special Commission)

Any dispute which may arise between States under the present régime shall be referred by any of the States concerned to a special Commission of five members in accordance with the following procedure, unless the parties concerned agree to settle the dispute by some other method provided for in Article 33 of the Charter of the United Nations.

- (a) Not more than two members may be named from among nationals of the parties, one each from among nationals of the coastal and the non-coastal State respectively.
- (b) Decisions of the special Commission shall be by majority vote and shall be binding upon the parties.
- (c) The special Commission shall render its decision within a period of six months from the time it is constituted.
- (d) Notwithstanding the interim measures taken by the parties under para. 6.1, the special Commission may, at the request of any of the parties or at its own initiative, decide on provisional measures to be applied if the Commission deems it necessary. The Commission shall render its final decision within a further period of six months from its decision on such provisional measures.

OTHER PROVISIONS

7.1 Co-operation with developing States

For the purpose of promoting the development of fishing industries and the domestic consumption and exports of fishery products of developing States, including land-locked States, developed non-coastal States shall co-operate with developing States with every possible means in such fields as survey of fishery resources, expansion of fishing capacity, construction of storage and processing facilities and improvements in marketing systems.

7.2 Co-operation within regional fishery commissions

Co-operation between coastal and non-coastal States under the present régime shall be carried out, as far as possible, through regional fishery commissions. For this purpose, the States concerned shall endeavour to strengthen the existing commissions and shall co-operate in establishing new commissions whenever desirable and feasible.