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

Sub-Committee II

Draft Articles on the Breadth of the
Territorial Sea, Straits, and Fisheries
Submitted by the United States

ARTICLE I

1. Each State shall have the right, subject to the provisions of Article II, to establish the breadth of its territorial sea within limits of no more than 12 nautical miles, measured in accordance with the provisions of the 1958 Geneva Convention on the Territorial Sea and Contiguous Zone.

2. In instances where the breadth of the territorial sea of a State is less than 12 nautical miles, such State may establish a fisheries zone contiguous to its territorial sea provided, however, that the total breadth of the territorial sea and fisheries zone shall not exceed 12 nautical miles. Such State may exercise within such a zone the same rights in respect to fisheries as it has in its territorial sea.

ARTICLE II

1. In straits used for international navigation between one part of the high seas and another part of the high seas or the territorial sea of a foreign State, all ships and aircraft in transit shall enjoy the same freedom of navigation and overflight, for the purpose of transit through and over such straits, as they have on the high seas. Coastal States may designate corridors suitable for transit by all ships and aircraft through and over such straits. In the case of straits where particular channels of navigation are customarily employed by ships in transit, the corridors, so far as ships are concerned, shall include such channels.

2. The provisions of this Article shall not affect conventions or other international agreements already in force specifically relating to particular straits.

ARTICLE III

1. The fisheries and other living resources of the high seas shall be regulated by appropriate international (including regional) fisheries organizations established or to be established for this purpose in which the coastal State and any other State whose nationals or vessels exploit or desire to exploit a regulated species have an equal right to participate without discrimination. No State Party whose nationals or vessels exploit a regulated species may refuse to cooperate with such organizations. Regulations of such organizations pursuant to the principles set forth in paragraph 2 of this Article shall apply to all vessels fishing the regulated species regardless of their nationality.

2. In order to assure the conservation and equitable allocation of the fisheries and other living resources of the high seas, the following principles shall be applied by the organizations referred to in paragraph 1:

A. Conservation measures shall be adopted that do not discriminate in form or in fact against any fishermen. For this purpose, the allowable catch shall be determined, on the basis of the best evidence available, at a level which is designed to maintain the maximum sustainable yield or restore it as soon as practicable, taking into account relevant environmental and economic factors.

B. Scientific information, catch and effort statistics, and other relevant data shall be contributed and exchanged on a regular basis.

C. The percentage of the allowable catch of a stock in any area of the high seas adjacent to a coastal State that can be harvested by that State shall be allocated annually to it. The provisions of this sub-paragraph shall not apply to a highly migratory oceanic stock identified in Appendix A. ^{1/}

D. The percentage of the allowable catch of an anadromous stock that can be harvested by the State in whose fresh waters it spawns shall be allocated annually to that State.

^{1/} Appendix A is not attached.

E. With respect to sub-paragraphs C and D above:

- (1) 1/ The percentage of the allowable catch of a stock traditionally taken by the fishermen of other States shall not be allocated to the coastal State. This provision does not apply to any new fishing or expansion of existing fishing by other States that occurs after this Convention enters into force for the coastal State.⁷ 1/
- (2) The allocation to the coastal State shall not be implemented in a manner that discriminates in form or in fact between the fishermen of other States.
- (3) When more than one coastal State qualifies for an allocation of a percentage of a stock, the total amount which may be allocated shall be equitably divided in accordance with principles of this Article.

F. All States including the coastal State may fish on the high seas for that percentage of the allowable catch not allocated in accordance with this Article.

3. The provisions of paragraph 1 shall not apply in the event that States directly concerned, including the coastal State, are unable or deem it unnecessary to establish an international or regional organization in accordance with that paragraph for the time being. In that event:

- A. In the case of a highly migratory oceanic stock identified in Appendix A, ^{2/} such stock shall be regulated pursuant to agreement or consultation among the States concerned with the conservation and harvesting of the stock.
- B. In the case of any other stock, a coastal State may implement the principles of paragraph 2 provided:

1/ It is the view of the United States Government that an appropriate text with respect to traditional fishing should be negotiated between coastal and distant water fishing states.

2/ Appendix A is not attached.

- (1) The coastal State has submitted to all affected States its proposal for the establishment pursuant to paragraph 1 of an international or regional fisheries organization applying the principles of paragraph 2;
- (2) Negotiations with other States affected have failed to produce, within four months, agreement on measures to be taken either with respect to the establishment of an organization or with respect to the fisheries problems involved;
- (3) The coastal State has submitted to all affected States the available data supporting its measures and the reasons for its actions.

The implementing regulations of the coastal State may apply in any area of the high seas adjacent to its coast or, with respect to an anadromous stock that spawns in its fresh waters, throughout its migratory range.

4. Enforcement of the fisheries regulations adopted pursuant to this Article shall be effected as follows:

- A. Each State Party shall make it an offense for its nationals and vessels to violate the fishery regulations adopted pursuant to this Article.
- B. Officials of the appropriate fisheries organization, or of any State so authorized by the organization, may enforce the fishery regulations adopted pursuant to this Article with respect to any vessel fishing a regulated stock. In the event an organization has not been established in accordance with this Article, properly authorized officials of the coastal State may so enforce these regulations. Actions under this sub-paragraph shall be limited to inspection and arrest of vessels and shall be taken in such a way as to minimize interference with fishing activities and other activities in the marine environment.
- C. An arrested vessel shall be delivered promptly to the duly authorized officials of the State of nationality. Only the State of nationality of the offending vessel shall have jurisdiction to try any case or impose any penalties regarding the violation of fishery regulations adopted pursuant to this Article. Such State has the responsibility of notifying the enforcing organization or State within a period of six months of the disposition of the case.

5. The international or regional fisheries organizations referred to in this Article shall, inter alia, promote:

- A. Cooperation with the United Nations, its specialized agencies and other international organizations concerned with the marine environment;
- B. Scientific research regarding fisheries and other living resources of the high seas;
- C. Development of coastal and distant water fishing industries in developing countries.

6. Exploitation of the living resources of the high seas shall be conducted with reasonable regard for other activities in the marine environment.

7. Any dispute which may arise between States under this Article shall, at the request of any of the parties, be submitted to a special commission of five members, unless the parties agree to seek a solution by another method of peaceful settlement, as provided for in Article 33 of the Charter of the United Nations. The commission shall proceed in accordance with the following provisions:

A. The members of the commission, one of whom shall be designated as chairman, shall be named by agreement between the States in dispute within two months of the request for settlement in accordance with the provisions of this Article. Failing agreement they shall, upon the request of any State Party, be named by the Secretary-General of the United Nations, within a further two month period, in consultation with the States in dispute and with the President of the International Court of Justice and the Director-General of the Food and Agriculture Organization of the United Nations, from amongst well-qualified persons being nationals of States not involved in the dispute and specializing in legal, administrative or scientific questions relating to fisheries, depending upon the nature of the dispute to be settled. Any vacancy arising after the original appointment shall be filled in the same manner as provided for the initial selection.

B. Any State Party to proceedings under these Articles shall have the right to name one of its nationals to sit with the special commission, with the right to participate fully in the proceedings on the same footing as a member of the commission but without the right to vote or to take part in the writing of the commission's decision.

C. The commission shall determine its own procedure, assuring each party to the proceedings a full opportunity to be heard and to present its case. It shall also determine how the costs and expenses shall be divided between the parties to the dispute, failing agreement by the parties on this matter.

D. The special commission may decide that pending its award, the measures in dispute shall not be applied.

E. The special commission shall render its decision, which shall be binding upon the parties, within a period of five months from the time it is appointed unless it decides, in case of necessity, to extend the time limit for a period not exceeding two months.

F. The special commission shall, in reaching its decisions, adhere to this Article and to any agreements between the disputing parties implementing this Article.

G. Decisions of the commission shall be by majority vote.

8. The provisions of this Article shall not affect conventions or other international agreements already in force specifically relating to particular fisheries.