

Informal Comments as to Prognosis for a Fisheries Regime

BURDICK H. BRITTIN
U.S. Department of State
Washington, D.C. 20520

“The seas are ancient, yet they are new; their regimes are immutable, yet they are fragile; they are catalysts for progress, yet platforms for discord.”

If I am to speak in terms of making a prognosis on an emerging fisheries regime growing out of the Law of the Sea conference, I am mindful that I am stepping on dangerous grounds. It is somewhat akin to my pronouncing at this time that the Washington Redskins and the Miami Dolphins will play in the Super Bowl and that the Redskins will win by seven points. Obviously one of the problems with that kind of a statement is that it represents a blend of a factual possibility plus a personal desire. Pragmatism at its best eliminates personal feelings – I doubt if anyone can do that but I will try to give my estimates based on as much fact as possible.

Permit me to read a few quotations.

“All peoples have the right of navigating in the interests of commerce. Navigation ought also to be free for fishing. States in this respect have no right or privilege for their own fishermen to the detriment of foreign fishermen.” [Bluntschli, 1895]

“The open sea is not capable of being possessed as private property. The free use of the ocean for navigation and fishing is common to all mankind, and the public jurists generally and explicitly deny that the main ocean can ever be appropriated. The subjects of all nations meet there, in time of peace, on a footing of entire equality and independence. No nation has any right of jurisdiction at sea, except it be over the persons of its own subjects.” [Kent, 1896]

“The various uses to which the sea near the coasts can be put render it a natural object of ownership. Fish . . . may be obtained from it. Now . . . the resources of coast seas are not inexhaustible, so that the nation to which the shore belongs may claim for itself an advantage thus within its reach and may make use of it, just as it has taken possession of the lands which its people inhabit. If a nation has specially profitable fisheries along its coasts, of which it can take possession, are we not to allow it to appropriate that gift of nature as being connected with the territory it occupies, and to keep to itself the great commercial advantages which it may enjoy, should there be fish enough to supply neighboring nations?” [Vattel, 1758 (about)]

These quotations identify the fisheries issue before us today as well as any long dissertation on the subject. In essence, they represent the two basic polar views: one, that there should be complete freedom of fishing on the high seas and the other that the coastal state should have a title in or jurisdiction over the fish off its coast. What I find to be of particular interest in the quotations is the fact that they are from the writings of world-known international law publicists,

all of whom made their contributions to international law in the 18th and 19th centuries.

Thus our present-day debate in search for a new international regime for fisheries is not new. It has, however, been colored and refined by advanced technological change and by the increasing clamour for protein from the sea. Innumerable disputes in the last 50 years have helped to hone the issue to a sharp razor's edge. Increased scientific knowledge about the biology and life cycles of fish has not only served to help us conserve the fish but has served to better understand the fisheries issue.

Let me turn then to the debate between nations as evidenced in the forum of the Law of the Sea Preparatory Committee created for that debate.

Over the past 2 years there have been well over 100 interventions on fisheries made by various members of the 91-country Committee. In this debate you can well imagine that there has been a wide spectrum of offerings ranging from the view that there should be no substantive change in the legal framework for fishing on the high seas to the proposal that the coastal state should have exclusive control over all fisheries within a zone of 200 miles or more off its coast. It is clear that some of the initial proposals were made without full knowledge of the fishery question or indeed, in some cases, without knowledge of the particular interests of the spokesman's own country.

My reporting would be grossly incomplete if I did not say that the dialogue is influenced, in varying degrees, by political considerations — indeed, in some cases, political factors dominated the factual fishery situation. It is also manifest that there is a clear interrelationship between fisheries and other major issues in the law of the sea forum; thus several statements were based on those interrelationships. It is the factor of the political coloration, plus a very human desire for economic gain, that prompts one to have the fisheries issue looked upon as a confrontation between developed and developing countries. Indeed the theme of developing versus developed countries is present in a large number of interventions and statements made by developing countries in the law of the sea forum, but when one goes behind that generality it becomes clear that from a purely scientific, technical and pragmatic base, developing versus developed is not the true situation.

There are some developing countries, just as there are some developed countries, whose primary interest in fisheries is distant water in character and their energy has been put into expanding the distant water effort. There are countries, both developed and developing, that have been blessed with large stocks of fish off their coast just as there are other developing and developed countries that are faced with but meager living resources off their coasts. There are some developing countries which have a high degree of skill in harvesting living resources — the same is true of certain developed countries; conversely there are several, both developed and developing, countries that have not developed the basic skills. There are developed and developing countries that are landlocked or have but limited coastlines — included in this list would be Zaire, Austria, Nepal and Kuwait. Geography operates to their detriment, but by the same token the geography of access to the sea for developed and developing countries such as

the United States, India, Argentina and Canada makes their situation different from other countries.

Obviously, it is these kind of differences and not whether a country is labeled developing or developed which should dictate the flow of negotiations on the fisheries issue. It is my impression that we are moving toward that recognition of the different national interests of countries regardless of their economic status. Ideally the best method of procedure would be to have the fishery issue completely depoliticized, for solution would then be easier and the likelihood of an equitable regime enhanced. But reality dictates that the political factors, plus the interrelationships with other issues, are a basic ingredient in the law of the sea forum and must be dealt with along with the specifics of the fisheries question itself.

You are all familiar with the proposal made by the United States in the person of Ambassador Donald McKernan at this last summer's session of the Law of the Sea Preparatory Committee. Essentially our approach, which has been rightly labeled "the species approach," would grant to the coastal state a preferential allocation of the catch of coastal and anadromous stocks limited only by that state's fishing capacity or perhaps, to some degree, by traditional foreign fisheries. The remaining portion of the allowable catch, if any, would be available to foreign fishermen, subject to coastal state regulations and licensing. Highly migratory oceanic species such as tuna — because of their broad range and the transitory nature of their distribution — would be managed by international organizations and would not be subject to any preferential allocation to the coastal state.

Where does the world community stand today? My opinion dictates that some countries are generally dedicated to the thought that the less change there is in the present international fisheries regime the greater their benefit. This is precisely what they are advocating. On the other hand, a large number of countries — so many that in fact it can be called a trend — are looking toward an explicit or less than explicit zonal approach for the management of fisheries. The United States position, along with a few others, is pretty much in the middle.

I have stated that the debate over fisheries has been going on for a period of 2 years. I believe that during that period all participating countries have had a significant opportunity to express their views and at the same time a great educational effort has been accomplished. By that I mean delegations now know more about fisheries than they ever have before and have a better sense or understanding of the problems faced by other nations. To me this was a necessary period and, although one fraught with a good bit of sidetracking and increasing frustrations, it has brought us to the point where negotiations rather than debate can begin. I say "can begin" because at this stage no one can say that the negotiations will begin when the Preparatory Committee holds its next session in March 1973. But in my view many of the impediments to getting to the negotiating table have been dissipated and from private comments by a large number of delegations I know that they want negotiations to begin.

You can label me as an optimist when I state that I believe they will begin negotiations at the next session. But here again, when I state that they will begin

it is my expectation that the major elements of basic decisions on a fisheries regime will be reserved for the Conference itself.

What will the emerging fisheries regime be like? In my estimation, it will not be an exclusive fisheries zone nor will it be a system of *laissez faire*, but the resolution will lie somewhere between these two polar views. I base this on the premise that there is enough realization on the part of all participants that a regime brought forward that is not acceptable to the most powerful fishing states in the world will not succeed, nor will a regime that is too favorable to the most powerful fishing states in the world be acceptable to those countries with but a developing interest in fisheries. The regime must provide for accommodations from both polar groups if the vast majority of countries are to accept it. With the acceptance a new era in international fisheries will emerge. The position of the United States is such that I believe the two polar groups will have to move towards it or something similar to it in making the necessary accommodations.

There is much work to be done, but should we be able to reach our twin goals of producing a sea of tranquillity and one that permits our own fisheries to thrive, then the work before us is well worth it.