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High Seas Fishery Management

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A PRINCIPAL DIFFICULTY in speaking about the management of fisheries lying in the High Seas is that the high seas have to be defined first. The reason for this is that the body of law under which management is to take place is different on the high seas than it is in the territorial sea and the management must fit the body of law under which it is devised.

For the past ten years there has been a considerable amount of controversy as to what are the high seas and what is the territorial sea. The international actions on this issue have had a considerable effect on the thinking about the management of sea fisheries generally, because, although the diplomats and international lawyers are unable to agree as to where the territorial sea ends and the high seas begin, the fish are even more disagreeable. They move back and forth across political boundaries in the sea with impunity, the fishery follows the fish, and the management problem follows the fishery.

All of this has proven to be confusing to the diplomats and international lawyers, but they are hacking away at the problems involved —and one might even say with might and main. Some progress is being made. This has been particularly true in the past twelve months and will be true to an even greater extent in the next twelve months.

In 1947 Argentina proclaimed its sovereignty to the continental shelf and the epicontinental sea above it, together with islands rising from the shelf and the resources in the shelf and sea. So far as is known no foreign flag vessels fish off Argentina to any noticeable extent and, as a matter of fact, the quite rich fishery resources off Argentina are only lightly worked by Argentinians who, up until the last few years, have been primarily beef eaters. Thus the claim had little or no fishery problem involved in it and was concerned chiefly with the perfection of Argentinian claims to the Falkland Islands, which are possessed by the British.

But this action pretended to extend the territorial sea of Argentina as much as 500 miles out to sea in certain places, because the shelf is broad off Argentina. What Argentina can do unilaterally any other country can do also by the same means, and the next to move was Chile. Chile could not use the same rational as Argentina did because along much of the Chilean coast the continental shelf hardly reaches out to the three mile limit. So Chile proclaimed sovereignty out to a distance 200 miles from its coast.

No foreign flag fishing vessels fished off Chile then or now, except for whalers, and none of those were American. Accordingly the United States

had no fishery problem vis-à-vis Chile or Argentina as a result of these proclamations. As near as can be estimated the practical cause behind Chile's proclamation was that the budding whaling industry of Chile, which is based on shore stations, found the conservation regulations of the International Whaling Commission onerous and had some vague fears of competition from the pelagic whalers of Norway and others. The only good way to escape from the regulations of the International Whaling Commission was to extend the territorial sea of Chile out far enough to cover the area where the Chileans whale. This would also serve to exclude the pelagic whalers and prevent their competing with the Chilean whalers if it could be made to stick. So it was done.

What is sauce for the goose is sauce for the gander. Peru has not got much of a continental shelf either, but whatever basis Chile had for claiming 200 miles of territorial sea, Peru also had, so in 1949 Peru published a similar proclamation. In 1949 no American flag vessels were fishing off Peru and the regulations of the International Whaling Commission were not bothersome, for the budding Peruvian whaling industry was largely ignoring them, as it has to date.

But in 1950 the tuna fishing vessels of California extended the range of their fishery down off the coast of Peru and they have been fishing there steadily ever since. Most of the fishery is out of sight of land and the Peruvians had not been using the resource, but most of the fishing is done within 200 miles of the Peruvian coast. Accordingly the American flag vessels were breaking Peruvian law by fishing without permission of Peru. They have continued to do so because the United States Government has continued to tell them they have the right to do so under international law and that the United States Government would protect the United States flag on the high seas, which it considered to start at a point three marine miles from land.

Here, then, was the seed for a first rate international imbroglio between the United States and one of its best friends on the South American continent. This was not a theoretical passing of proclamations and protests back and forth; it was a practical problem involving a good many million dollars worth of floating equipment owned by American citizens.

It should be kept firmly in mind, in what is said here, that the Peruvian government and people have acted in a thoroughly responsible, and even friendly, manner during the intervening six years. There have been no seizures of American tuna vessels on the high seas by Peru, and the Peruvian Navy has for the most part been thoroughly courteous and friendly in its relations with the tuna fleet. But the vexing problem of conflicting claims of sovereignty has lain like a smoldering fuse under the otherwise harmonious relations between Peru and the United States. If it were not for the tuna fishery, the argument could go on for generations without conflict, as many such sovereignty claims have done in the past few generations. But the tuna fishery operating day in and day out the year around in the disputed area can give rise on a moment's notice to incidents most damaging to the relations between the two countries.

So the two countries, as civilized nations, have moved their controversy into the United Nations in an attempt to solve it by peaceful methods. To the present date this has not been too successful, because there it has become entangled with a number of other fishery disputes between a number of other nations. Iceland is quarreling with the British and other European nations about the fisheries off Iceland. Yugoslavia and Italy are quarreling over the

fisheries of the Adriatic. Russia, Korea, Communist China, Nationalist China, Indonesia, Australia and India have a variety of fishery quarrels going on with Japan over a variety of fisheries ranging geographically from the Arctic to the Antarctic, and in both the Pacific and Indian oceans. Norway is a little fearful of Danish action in the Greenland fisheries. The Israeli and Egyptians are hassling over the fisheries of the eastern Mediterranean as they are over most things. Mexico and the United States have been arguing over the breadth of the territorial sea in the Gulf of Mexico since the Civil War.

Thus when the problem got moved into the United Nations level of action it got mixed up with other problems and, in order for a solution to be brought to it, a general solution had to be had under which the other outstanding conflicts over international fisheries could also be resolved. This is a Herculean task and it may not be possible of accomplishment in our generation; but a fair amount of progress has been made on it this past year, none the less. And in the international discussions which have taken place, certain general concepts have emerged which will act as guideposts to those industries utilizing the resources of the high seas.

The problem first was sent to the International Law Commission, which is a permanent body of independent experts on international law established by the United Nations to advise the Juridical Committee of the General Assembly on matters dealing with the codification of international law and its progressive development. At its first session in 1949 the International Law Commission began to handle this problem. It has been so engaged ever since. Its seventh session, in 1955, was almost wholly given over to the twin subjects of the regime of the high seas and the regime of the territorial sea. Its eighth session, in 1956, will be similarly so engaged.

In its fifth session in 1953 the I.L.C. quite frankly admitted that the fisheries part of this high seas problem covered a great deal more than international law. Conservation, a complicated technical subject in itself, was involved. The members of the International Law Commission were experts in international law and not in conservation. Therefore they put forward their recommendations on fisheries in a tentative way and noted that they would benefit from having the advice of conservation experts in this field. Their recommendations on fisheries drew little support from any of the nations on any side of the several fishery quarrels in the world. The General Assembly of the United Nations in 1954, therefore, took two actions:

1. It referred the whole problem of the regime of the high seas, the territorial sea, fisheries, and the continental shelf back to the International Law Commission with instructions for the Commission to have a full final report on the whole subject ready for the General Assembly in 1956, and
2. It resolved to have a world wide meeting of nations in April of 1955 on the subject of the "Conservation of the Living Resources of the Sea" which would have the purpose of advising the General Assembly and the International Law Commission on the technical aspects of fishery conservation and its implications on international law.

The world wide meeting on conservation took place on schedule in Rome this year. Forty-five nations were represented by voting delegations. Another six nations sent observers. A report was adopted which can be had by purchase from the United Nations in New York.

While this meeting was called for the purpose of defining what the objectives

of conservation were and how such objectives could best be reached in international fisheries, the meeting at all times was on the verge of breaking up in a fight over what nations should share in the benefits of the conservation work. The conference finally decided, by a narrow majority, that it was not competent to express any opinion as to the appropriate extent of the territorial sea, the extent of the jurisdiction of the coastal State over fisheries, or of the legal status of the superjacent waters on the continental shelf.

With this problem out of the way the conference then decided by a large majority (actually no one disputed it) that the immediate aim of conservation is to conduct fishing activities so as to increase, or at least to maintain, the average sustainable yield of products in desirable form, and that the principal objective of conservation is to obtain the optimum sustainable yield so as to secure a maximum supply of food and other marine products.

It then set forth the types of scientific information required for a fishery conservation program, types of conservation measures applicable in a conservation program, a review of international fishery conservation problems now being handled by international means, a list of those not yet being so handled, and some general conclusions that could be drawn from these international experiences.

Working on the basis of this final report of the Rome conference the International Law Commission, at its meeting in Geneva immediately after the Rome meeting, completely reorganized its articles on fisheries in the light of the recommendations from Rome. It put forward instead a new set of ten articles which it proposed as a complete mechanism for handling by peaceful means conservation problems that arose between nations in an international fishery.

This set of articles is by no means perfect and it is quite certain that they will be amended and perfected by the Commission next year in the light of comments received by the Commission from member nations. Nevertheless the framework here established and the principles set forth will undoubtedly be substantially retained in the final recommendations of the Commission. Accordingly everyone who fishes on the high seas should give these articles close study, for his operations will be affected by them sooner or later.

Essentially these things are provided:

1. Any nation can regulate its own nationals on the high seas.
2. When two or more nations are fishing together on the high seas and conservation regulations are needed they should get together and provide them.
3. In an emergency, a coastal nation can establish conservation regulations on the high seas applying to other nationals other than its own.
4. Any country, whether fishing or not, has an interest in high seas resources being properly conserved and can demand conservation measures being put into effect upon a showing that they are needed.
5. Conservation regulations so established should be binding upon all fishermen.

But all of these things are set forth within this framework of principle:

1. All nations have the right to fish on the high seas, not excepting those parts of the high seas lying over the continental shelf.
2. Regulations are necessary in order to provide the maximum sustainable yield of food or other marine products from the resource in question, and must be designed for this purpose and no other.

3. Regulations shall not be discriminatory against foreign fishermen.
4. Regulations have to be based on appropriate scientific findings.
5. If imposed by a coastal country there has to be a showing that the need for measures of conservation is imperative and urgent.

If any country whose nationals are affected by such regulations feels that these conditions have not been met, then it can request and obtain an arbitration of the question by an impartial arbitral board of experts chosen by the parties in dispute or, if they cannot agree, by the Secretary General of the United Nations. The findings of such an arbitral board will be binding upon the parties in dispute.

Such recommendations are far reaching. Something along these lines will be adopted by the United Nations in the course of time that will provide:

1. Nobody will be impeded in fishing on the high seas so long as he is not wasting a resource by over fishing or wasteful means of harvesting.
2. Over fishing and wasteful means of harvesting of marine resources will be prevented.
3. The food needs (but not necessarily the economic desires) of a coastal population will be given some degree of priority.
4. Very likely those fishermen who have been properly husbanding a resource on the high seas will gain a priority of use over new fishermen subject only to the prior sustenance requirements of a coastal population.
5. Adequate safeguards will be provided to prevent coastal countries from damaging the economic welfare of fisheries, and to prevent fisheries from damaging the productive potentials of the resources which they harvest.

All of this, of course, depends upon what are the high seas, and this was recognized by the International Law Commission. They did not completely solve this problem in this year's set of articles, but they dealt with it in a firm manner.

With respect to this vital question the Commission said:

1. The high seas is everything seaward of the territorial sea.
2. International *practice* is not uniform as regards the traditional limitation of the territorial sea to three miles.
3. International *law* does not justify an extension of the territorial sea beyond twelve miles.

On these three things the Commission was unanimous. But on what was the proper limits of the territorial sea *between three and twelve miles* the Commission could not decide. As a matter of fact the Commission doubted that it would ever be able to make that decision in a way which would be agreeable to a majority of the members of the General Assembly of the United Nations. It thought that probably a diplomatic conference on the subject would, in the end, be necessary. But in the meantime the Commission, by a narrow majority, adopted the following statement:

"The Commission, without taking any decision as to the breadth of the territorial sea within that limit, (twelve miles), considers that international law does not require States to recognize a breadth beyond three miles."

By adopting this statement the Commission sought to preserve the *status quo,* although somewhat uncertain as to just what the *status quo* was at the present time.

While these international meetings, under the auspices of the United Nations, were taking place, the United States was carrying on a colloquy with Ecuador, Chile, and Peru in another arena. Ecuador this spring had seized a northern

California and a Washington vessel well beyond three miles from her coast and in the course of the seizure an American fisherman was seriously wounded. The Congress took a deep and quick interest in the matter. The upshot of the controversy was that the United States asked Ecuador to take the case to the International Court of Justice, enter into a conservation treaty with the United States which would safeguard the productivity of the tuna resources in the Eastern Pacific against over fishing, and in the meantime stop seizing boats until the case was adjudicated. It told Chile and Peru that it would be pleased to have them join in the case—since all three have identical two hundred mile claims.

The three countries refused to take the case to the World Court. They do not have to take the compulsory jurisdiction of that court unless they want to. But their refusal to do so puts them in a bad light internationally, because it looks as if they thought they would lose.

They did agree, however, to negotiate with the United States toward a conservation treaty which would prevent overfishing in the Eastern Pacific quite apart from these juridical matters. To this end the United States, Chile, Ecuador, and Peru began negotiations in Santiago, Chile, on September 14 of this year. The delegations met steadily for a little more than a month. There was good will on both sides and a sincere effort was made by all of the delegations to find a common meeting ground upon which they could agree. But this turned out to be quite impossible at the present time.

The reason for this was the conflict in claims over the width of the territorial sea. At the outset it was decided that the conference would conduct its deliberations quite apart from this conflict and concern itself with conservation instead and solely. But this was easier to say than to do. The conflict of claim arose at every point and could not be put aside. At last the conferees came down to this point: If a conservation commission was established under treaty among the four countries, and if it adopted conservation regulations, and a foreign flag vessel were seized off the coast of one of these countries, in whose court should the defendant be tried?

If the United States agreed under treaty that its citizens could be tried in a foreign court for an offense committed twenty miles from shore it would be admitting that that area was not high seas, for an American citizen has a constitutional right to trial in American court unless within the jurisdiction of a foreign sovereign. If, on the other hand, the other countries agreed that such an offender could be tried in any other court than that of the country off whose coast he was seized, they would be admitting that the sea out to a distance of 200 miles was not, in fact, their sovereign territory.

On this note the negotiations were adjourned, but in a friendly spirit. It was not that anyone was mad or was going to start seizing boats right away. It was only that the countries would not agree on the breadth of territorial sea, and until they did their delegations could not frame an adequate and mutually satisfactory conservation agreement.

A contributing factor was that there was, actually, no international conservation problem in the area. The fish stocks which are exploited by more than one country in the whole Southeast Pacific are bonito, anchovy and tuna. There is general consensus that the bonito and anchovy fisheries of the area are underdeveloped—not overfished. They are not fished by Americans except for a miniscule amount of anchovy caught for bait.

With respect to tuna the United States, Costa Rica and Panama are joined

under treaty in forming the Inter-American Tropical Tuna Commission which since 1950 has been studying the tuna fishery of the whole eastern tropical Pacific from California to Central Peru. It is now in a position to make adequately substantiated statements about the state of the resources. With respect to tuna bait it has affirmed that no over fishing is taking place on any species being fished. With respect to skipjack tuna it has shown that the resource is underfished. With respect to yellowfin tuna the Commission feels that the fishery in 1951 had probably reached the maximum productivity that could be had from the area on a sustainable basis. But for the past four years the intensity of fishing for yellowfin had been decreasing steadily because of economic causes and no overfishing could be anticipated without a sharp reversal of the economic trend, which was not in immediate prospect.

The meetings held this year, and referred to above, have been important. There will be held during the coming year four additional meetings of equal, or perhaps even greater, importance: (1) The Inter-American Council of Jurists at Mexico City, (2) The specialized conference on the conservation of Marine Resources to held under the auspices of the Organization of American States in Ciudad Trujillo, (3) The eighth session of the International Law Commission to be held in Geneva, and (4) The eleventh session of the General Assembly of the United Nations to be held in New York.

It is not likely that full agreement among nations will be reached on these subjects even at the end of this coming year's series of meetings. But there are these straws in the wind that the participants in high seas commercial fisheries of the world can profitably take heed of:

1. They had better get an adequate program of scientific research going in their fishery so that when someone challenges them on overfishing they can either prove to an unbiased court or arbitral board that they are not over fishing the resource in question, or that the regulations under which they are fishing are adequate and appropriate to prevent overfishing.
2. If they fish off the coast of other countries and the coastal villages need the product of their coastal resources for their sustenance, the foreign fisherman had better be prepared to give way before that humanitarian plea.
3. If a group of fishermen are fully utilizing a resource and are keeping it at a stage of maximum sustainable productivity by curtailing their effort under conservation regulation, then the new fisherman coming from another shore had better be prepared to go elsewhere for his fishing because the careful husbanders of the resource will in the end win their plea before the sounding board of world public opinion too.

With these limitations, however, it looks as if the fisheries of the sea will be permitted to develop with a minimum amount of political interference.

Resolving Controversy Between Sport and Commercial Fishermen

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ABSTRACT

Ignorance is clearly the basis of the disputes that often arise concerning