Modifying the 1982 Law of the Sea Convention: New Initiatives on Governance of High Seas Fisheries Resources: the Straddling Stocks Negotiations*

Jon M. Van Dyke
William S. Richardson School of Law, University of Hawaii at Manoa

Introduction

Dramatic changes are occurring in the legal regimes that govern the resources of the high seas. The 1982 LOS Convention came into force on 16 November 1994. But the legal regime it created to govern the non-living resources of the high seas has already been modified and so many new details and obligations are being added to the regime governing the high-seas living resources that these changes also appear to amount to the establishment of a new regime. This paper provides a description and analysis of these changes.

The Living Resources of the High Seas

The 1982 LOS Convention maintains the principle inherited from early conventions and customary international law that recognizes the "freedom of fishing" on the "high seas", i.e., those areas beyond the 200 nautical mile EEZ.  

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But in the 1982 Convention these “freedoms” are not unlimited, and are subject to duties on the part of all fishing nations to reach agreements regarding the conservation and proper management of the living resources of these regions. Because of increasing demands and the rapid development of new technologies to harvest fish, many fish stocks are depleting dramatically in numbers.

The negotiations on straddling and highly migratory stocks

The regulation of “straddling stocks” and “highly migratory species”—those fish stocks that are found both within and outside an EEZ—has presented a particularly challenging management issue in recent years. Many coastal fishers, who operate subject to national regulations, complain that fishing vessels from other nations sit in the areas just beyond the 200 nautical mile line and fish indiscriminately without any regulation, thus depleting the stocks available within the 200-mile zone. To address these issues, the United Nations has held several negotiating sessions in 1993 and 1994 of the “Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks”. After the March 1994 session, the Chair of the Conference (Satya Nandan of Fiji) issued a “Revised Negotiating Text”. And then after the August 1994 session, he issued a “Draft Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks”, which will be considered further at negotiating sessions scheduled for 27 March to 12 April and 17–28 July 1995, in New York.

The Revised Negotiating Text focused in detail on the duty of all fishing nations to reach agreement on “conservation and management measures to promote optimum utilization and ensure long-term sustainability of the fish stock(s) concerned”, and authorized the establishment of quotas and other methods to limit fish takes. It also required that all fishing nations apply the “precautionary approach”, which involves obtaining as much data as possible, recognizing “uncertainties”, considering “associated ecosystems”, and being “more cautious when information is poor”. It encouraged nations to use the dispute resolution procedures established in the 1982 LOS Convention in order to settle disputes by peaceful means. And, in order to give this requirement to reach agreement some teeth, the Negotiating Text gave a “slight jurisdictional