Current Legal Developments

Food and Agriculture Organization of the UN

The Code of Conduct for Responsible Fisheries: An Introduction

Background

The Code of Conduct for Responsible Fisheries was adopted by the Conference of FAO at its twenty-eighth session in 1995. It was the culmination of two years negotiation and the result of five formal meetings, principally in the form of technical consultations. Much of the pressure for the formulation of a Code came from the concerns that had been building up concerning high seas fishing, a problem that had been highlighted in the media by the widespread use of drift-nets on the high seas, and which had led itself to the preparation of a resolution dealing with large-scale drift-nets on the high seas.

However, it was the Declaration of Cancun which more than any other instrument pushed forward the idea of a Code of Conduct on Responsible Fisheries. This Declaration emanated from a meeting hosted by the Mexican Government which was held in Cancun from 6 to 8 May 1992, and which called on FAO to prepare an International Code of Conduct.

The Declaration of Cancun was followed by the Rio Conference meeting on Environment and Development, which in Agenda 21 of Chapter 17, made a call for the formulation of an intergovernmental conference with a view to promoting the effective implementation of the provisions of the United Nations Convention on the Law of the Sea on straddling fish stocks and highly migratory fish stocks.

Against this background, the international community moved into what can be described as a twin-track approach on the subject of high seas fishing: the negotiation of an international agreement to deal specifically with straddling fish stocks and highly migratory fish stocks, while on the other track there was developed a Code of Conduct which was intended to be voluntary in nature, and which was also intended to cover much more than high seas fishing. The voluntary character of the Code has enabled it to cover much more than could possibly be covered in a document intended to be a binding international

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1 The views expressed here are personal. Nothing in this note implies the expression of any opinion whatsoever on the part of the FAO concerning the legal status of any country, territory, city, or area or of its authorities, or concerning its frontiers or boundaries.

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agreement such as the New York "Straddling Stocks" Agreement. In fact, this aspect of the Code is one of its hidden strengths, for it has enabled the international community to focus on the one hand those matters urgently needing attention in an international agreement which principally concerned high seas fishing, while in the voluntary Code, it has been possible to pursue and to set out in a more broadly based manner a future path for achieving responsible fisheries. Such an approach would have been difficult or impossible to achieve in a binding agreement.

One other development must also be mentioned here. While these issues were being resolved, the FAO had been working on the FAO Compliance Agreement (its full name being The Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas). This agreement which was intended to reduce fishing on the high seas contrary to internationally agreed conservation and management measures, was adopted by the FAO Conference in November 1993, and is open for acceptance. This agreement constitutes an integral part of the Code of Conduct. It is important in the present context for that reason alone, but it is important to appreciate that the Compliance Agreement, along with the Code, and the New York "Straddling Stocks" Agreement, all of which are underpinned by the UN Convention on the Law of the Sea, 1982, will constitute the basis for future directions in the area of fisheries.

The scope of the Code

To turn to the Code itself, it is important to note that it has a very wide scope indeed. In Article 1 (The Nature and Scope of the Code), it is stated that it is "global in scope, and is directed toward members and non-members of FAO, fishing entities, subregional, regional and global organizations, whether governmental or nongovernmental, and all persons concerned with the conservation of the fishery resources and management and development of fisheries, such as fishers, those engaged in processing and marketing of fish and fishery products and other users of the aquatic environment in relation to fisheries". The same Article makes it clear that it applies to "all fisheries", indeed it continues to add: "It also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management". These terms indicate the breadth of the Code, and this is borne out by subsequent chapters, one of which deals exclusively with aquaculture, while others embrace, as appropriate, inland fisheries. Also, while recreational fisheries is not specifically mentioned in this particular clause, it is clearly intended to be embraced as the introduction refers to the role of fisheries in "recreation". Significantly, by applying to all fisheries, the Code embraces fisheries within the EEZ and the territorial sea as much as those on the high seas, as well as, of course, inland fisheries even when they are in shared waters.

The application of the Code to the European Community and its members is