The Management of Transboundary Fish Stocks under the LOS Convention

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Introduction

Many commercially important stocks of fish straddle or move across maritime boundaries. Such boundaries may be those dividing an exclusive economic zone (EEZ) from the high seas, those between two EEZs or those between two territorial seas. The stocks that straddle or move across the boundary between an EEZ and the high seas are generally called straddling stocks. Those which straddle two or more EEZs are normally referred to as "shared stocks", "joint stocks" or "transboundary stocks". This paper uses the term "transboundary stocks" to refer to these stocks, following the usage of notably the International Law Association (ILA). This is the terminology also normally applied by the Food and Agriculture Organization of the United Nations (FAO), which uses the expression "shared stocks" to denote those stocks shared by two or more States, whether they occur within or outside EEZs, thus including straddling stocks.2

The question of straddling stocks has been discussed extensively in recent years by scholars and experts.3 It was also taken up, together with the question of highly

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1 "EEZ" throughout this paper includes the exclusive fishery zone, unless otherwise specified.
2 See e.g. J. A. Gulland, Some Problems of the Management of Shared Stocks (FAO Fisheries Technical Paper No. 206, 1980); Report of FAO/SEAFDEC Workshop on Shared Stocks in Southeast Asia (FAO Fisheries Report No. 337, 1985), p. 2. Gulland, however, uses the term "transboundary stocks" in a narrow sense, referring to only one type of stocks which occur within two or more EEZs, i.e., those which have no clear migratory pattern. Ibid., 6.
migratory stocks, at the United Nations Conference on Environment and Development (UNCED), held at Rio de Janeiro in June 1992, which recommended that a United Nations conference be held to discuss those questions. Acting on that recommendation, the General Assembly decided to convene the conference in 1993.

On the other hand, little attention has been paid to the legal regime of conservation and management of transboundary stocks. Among a few exceptions are the study undertaken by the ILA’s International Committee on the EEZ and a monograph by Ellen Hey. Problems concerning transboundary stocks, however, deserve much wider attention, particularly in this era of rapidly dwindling fish resources in many parts of the world and in the light of a series of recommendations made by UNCED for sustainable development of marine living resources within EEZs.

It is recalled that some ten years ago an FAO expert pointed out that, with the vast expansion of their jurisdiction over the living resources, coastal states were finding or would find out that “a significant proportion of the fishery resources they now believe were proprietary to their economic zones” were in fact shared with other coastal states, i.e., transboundary stocks. It appears that, from the point of view of overall optimum utilization of a given stock, a considerable amount of resources are being wasted by fishermen who harvest transboundary stocks without co-ordinating their efforts, or otherwise co-operating, with their counterparts across the boundary. In many cases this is being done unconsciously due to unavailability of scientific information or lack of co-operation with the neighbouring state concerned. Such unilateral fishing activities, if intensified by competition, could eventually deplete the stock entirely.

cont.


4 See Agenda 21, Chapter 17, para. 17.49 (e). UN Doc. A/CONF.151/26 (Vol. II), p. 145.
6 ILA Cairo Conference (1992), International Committee on the EEZ. Report of the Committee by Prof. Rainer Lagoni on “Principles applicable to living resources occurring both within and without the exclusive economic zone or in zones of overlapping claims”.
7 E. Hey, The Regime for the Exploitation of Transboundary Marine Fisheries Resources: The United Nations Law of the Sea Convention, Cooperation between States (Dordrecht. 1989). She uses the term “transboundary” resources to refer to those stocks which straddle two EEZs as well as an EEZ and the high seas.
8 See Agenda 21, Chapter 17, Programme Area D. UN Doc. A/CONF.151/26 (Vol II), p. 149.