

the Area in the substantive provisions of the Convention and consequently, the PREPCOM could not promote any activity that was inconsistent with those to be undertaken by a pioneer investor under Resolution II. It was further stated that in terms of Resolutions I and II the definition of resources was restrictive and therefore PREPCOM could not deal with a pioneer investor in matters which fell outside the scope of its powers in relation to pioneer activities which were limited to polymetallic nodules.

Another view was that the Special Commission 3 which was dealing with the elaboration of the deep sea bed mining code would be in a crucial position to influence countries which hesitated to participate in the development of exploration and exploitation activities under the system envisaged by the Convention. On the question of Pioneer Investment Protection System (PIP) created by Resolution II, it was stated that, in a way, the resolution has created a "Mini-system" for the interim administration of the use of deep sea-bed mineral resources during the time before the Convention entered into force.

One delegate stressed that the Enterprise should be helped in obtaining expertise, technology and finances. In his view, states should participate in the organisation of the training programmes for the Enterprise and should not leave it to any private entity. Furthermore, there should be financial stability for the Enterprise and for that the international community as a whole should make a commitment in that regard.

Another delegate pointed out that the conclusion of an agreement regarding deep sea areas by a group of advanced countries was directed to undermine equitable, mutually beneficial international co-operation in developing the Oceans and it was regrettable that some States signatories to the Convention had also become parties to that separate agreement.

At the Arusha Session, after introductory remarks by the Assistant Secretary General, Dr. Mostafa Ranjbaran, on the progress of the work of the PREPCOM, including its Declaration adopted on 30 August 1985, general comments were made by some delegations.

The Representative of the UN office of the Law of the Sea elaborating the details of the Declaration stated that it emphasized two major points: (i) the only regime for exploration and exploitation of the Area and its resources was that established by the UN Convention on the Law of the Sea and related resolutions adopted by UNCLOS-III; and (ii) any claim, agreement or action regarding the Area and its

resources undertaken outside the PREPCOM was incompatible with the Convention and its related resolutions and regarded such activities as wholly illegal.

One delegate regretted that some States in spite of the universal acceptance of the Convention were trying to undermine it and to introduce a parallel illegal regime for the activities in the Area. Another delegate also voicing his concern said that such subversive activity with respect to the Convention and the PREPCOM was being conducted in spite of the repeated appeals of the UN General Assembly and the Declaration adopted by the PREPCOM proclaiming such activity as totally illegal.

As regards the work of PREPCOM, one view was that the first task towards the implementation of the regime concerning the sea-bed resources established by the Convention would be the earliest registration of the rules, regulations and procedures for the sea-bed Authority and Tribunal. It was stressed that the newly created bodies should be economically viable and should not become an unjustifiable burden on member states.

Another delegate touched upon the ongoing efforts to develop the procedure for conflict resolution concerning the overlapping claims of the four pioneer investors, namely, France, India, Japan, and the USSR.

(ii) Delimitation of the exclusive economic zone and the continental shelf

Pursuant to a decision taken at the Tokyo Session, the AALCC Secretariat initiated preparation of a study on the question of delimitation of the Exclusive Economic Zone and the Continental Shelf between States with opposite or adjacent coasts in order to assist member governments in their negotiations on the question of delimitation in the context of Articles 74 and 83 of the United Nations Convention on the Law of the Sea, 1982. It was observed that the text adopted in those two Articles, which were identical, could give rise to complexities by lending themselves to differing interpretations. It was, however, recognised that the provisions of those Articles were flexible enough within the framework of which more concrete norms could be developed in the light of State Practice that could provide some guide in regard to the practical methods to be applied in the matter of delimitation. It was felt that a study undertaken by the Secretariat would also have the utility of placing before member governments some

possible options that could be adopted for delimitation within the broad framework of Article 74 in relation to exclusive economic zone and Article 83 in relation to continental shelf.

As a first step towards the preparation of a preliminary study on this subject, a Seminar was held at the Committee's Secretariat in February 1984. The Seminar was addressed by Mr. Gilbert Guillaume, Counsellor of State and Legal Adviser to the Ministry of External Relations, Republic of France, on various practical aspects of the problem.

The discussion at the Seminar centred around such questions as the objectives to be achieved through conclusion of agreements on delimitation, the applicable rules, techniques of delimitation and the practical difficulties that are experienced in the course of negotiations of delimitation agreements. Views were expressed that conclusion of agreements on delimitation of maritime boundaries involved a long and arduous process and was always a delicate task due to preponderance of national interests which were at issue. It was felt that the matter was likely to be further complicated in regard to the delimitation of the continental shelf under the new Convention, especially, as the task of locating precisely the external edge of the continental margin, as defined in Article 76, would involve a complicated process. This was in view of the fact that it would depend a great deal on the state of progress made in regard to the knowledge of the geological structure of the sea-bed and the completion of the procedures provided for in Annex II of the Convention.

In the light of the discussion at the Seminar, a preliminary study on the delimitation of the maritime zones was prepared by the AALCC Secretariat and was presented at its Kathmandu Session.

During the course of the discussion in the Plenary, some delegations regretted that the Law of the Sea Convention failed to provide specific criteria on the question of delimitation of the continental shelf and the exclusive economic zone. In addition, state practice varied from region to region and the jurisprudence of the International Court of Justice offered no clear guidelines.

A view was expressed that since the majority of States had followed the median equidistance line principle which indicated that this criteria was more popular in state practice especially in Asian region and should therefore be accorded priority. Another view was that distinction should be made between adjacent and opposite States while dealing with the question of delimitation. It was felt that the three basic issues of immediate concern were:

(i) whether delimitation should be effected in accordance with the median line principle or the equitable principle in light of special circumstances; (ii) what, pending a final solution or agreement, ought to be the provisional arrangements; and (iii) what ought to be the mechanism or mode of dispute settlement in the event of a dispute. It was suggested that the principle of equidistance or median line should be primarily applied but at the same time it should not exclude consideration of special circumstances. It was the totality of circumstances in a given case that would be relevant to judge as to what would be the equitable solution contemplated as the end result of delimitation. Further, it was pointed out that the circumstances enumerated in the Secretariat study were not necessarily exhaustive; and instead of strictly conceptualising the methods they should be explored in order to seek peaceful solutions.

The matter was further discussed in an open-ended Working Group on the Law of the Sea which recommended to the Committee to request the Secretariat of the AALCC to monitor the developments in the light of State practice and judicial decisions and to provide information to member governments.

The Committee, at its Arusha Session (1985), had before it a Working Paper^{*} on "Delimitation of the Exclusive Economic Zone and the Continental Shelf" prepared by the Secretariat which *inter alia* focussed on the relevance of concept of "special circumstances". When the matter came up in the Plenary, there were a few specific comments. A view was expressed that the Secretariat should not deviate from the mandate given for the preparation of studies on this topic. It was felt that any attempt by the Secretariat to analyse the delimitation instruments and practice would inevitably lead to controversy in the Committee on account of the contentious nature of the subject and the complexity. It was suggested that in view of the conflicting opinions, it would be difficult to tighten the governing law in this area in the near future.

The matter was further discussed in the Sub-Committee on the Law of the Sea which was constituted during the Session. On the basis of the recommendations of the Sub-Committee, it was decided that the

* The Secretariat before preparing the above Working paper sought the co-operation of Member States to furnish it with the relevant material, especially in regard to: (a) any bilateral/regional agreements signed since 1958 for delimiting the exclusive economic zone and continental shelf; and (b) any other relevant material showing the State practice regarding the principles applied in regard to delimitation. A few States had responded to the letter and provided the Secretariat with the relevant documents.

Secretariat should continue its work on monitoring the developments in the field of delimitation of the exclusive economic zone and the continental shelf by examining general principle of international law, State practice and judicial decisions relating to the delimitation of the EEZ and the continental shelf taking into consideration the application of the relevant or special circumstances in each case.

(iii) Determination of the allowable catch of the living resources in the Exclusive Economic Zone in relation to the landlocked States.

This subject was taken up by the AALCC upon a reference made by His Majesty's Government of Nepal. A preliminary study which was prepared in accordance with the Committee's usual practice, was considered at the Kathmandu Session.

During the brief discussion, a view was expressed that due to lack of knowledge many developing coastal states were not able to determine the Total Allowable Catch (TAC) or to plan the measures for management and conservation of the fishery resources. Moreover, the calculation of Maximum Sustainable Yield (MSY) and TAC was further complicated by the multispecies composition of the stock of fish in tropical countries and the consequent pathological and biological interactions within the fishery.

Another view was that landlocked States should not be deprived of the rich natural resources of the oceans. It was suggested that the Secretariat should prepare a detailed study on the question of modalities, to be developed in association with the coastal States, landlocked states and international institutions, to secure resources by the landlocked States in relation to determination of the total allowable catch, technological know-how and allied factors in that area.

Another delegate *inter alia* pointed out that the accommodation of landlocked State's interests in respect of the living resources of the EEZ was a task which must be viewed not merely in the particular context of bilateral negotiations and arrangement, but also in the wider context of the relevant regional and sub-regional context.

The topic came up for discussion at the Arusha Session both in the Plenary and in the meeting of the Sub-Committee on the Law of the Sea. In the course of discussions in the plenary, it was stated that although there were certain lacunae in the Law of the Sea Convention in regard to this matter, a compromise should be found between the interests of different countries of the same region or sub-region and, to evolve

practical solutions in order to implement the provisions of the Convention in its true spirit.

Another delegate stressed that although the coastal State has the right and duty to determine the total allowable catch (TAC) in its own zone, the problem for the developing countries was how to achieve that particular objective. In his view, lack of sufficient knowledge concerning the stocks of fish or the breeding grounds and the migratory habits of fish found within the zone make it extremely difficult for the developing coastal States to determine the TAC. In addition, the delegate stated that if the determination of the allowable catch was arbitrarily established, it would be detrimental to the "full utilization principle" under which the optimum use of fish stocks was to be encouraged.

The Representative of the UNIDROIT pointed out the practical difficulties involved in the determination of the allowable catch of the living resources of the EEZ which, according to him, were primarily due to the vagueness of the rules governing the access of third State users to the EEZ and the wide discretion granted to the coastal State in fixing the Total Allowable Catch (TAC) and the surplus. He pointed out that because of the vagueness of the Convention rules and the wide discretion granted to the coastal State, many disputes would arise in the future, but these disputes did not fall within the ambit of the provisions of Part XV of the Convention relating to conciliation procedure. And since the conciliation commission could not substitute its discretion for that of the coastal State, the Representative felt that it reconfirmed the full discretion of the coastal State.

Another Observer referring to the provisions of Articles 61 and 62 of the Law of the Sea Convention said that while they did not indicate any positive obligation on the part of the coastal State to determine the allowable catch and its own harvesting capacity, at least from the treaties in force, each coastal State party to such treaties, would have to make such determination in good faith. He was of the view that the lack of an enforcement mechanism in respect of Articles 61 and 62 and the clear discretion given to the coastal State in making determination did not detract from the fundamental requirement of good faith.

Another delegate observed that the Exclusive Economic Zone was a new concept and there were no precedents on the question of determination of the allowable catch and on the question of permitting the landlocked States of the region to harvest the surplus of the allowable catch. Moreover, he added, the very question of the

determination of the allowable catch was a technical matter which should be dealt with by the coastal State with the assistance of a specialized body like the FAO.

A view was, however, expressed that since the rights of the landlocked States were not adequately reflected in the Law of the Sea Convention because the Convention was the result of a compromise, interpretation of the relevant provisions of the Convention should also be in that context bearing in mind the spirit of the Convention and provisions of other parts of the Convention especially of Part XI.

The subject was further discussed in the Sub-Committee on the Law of the Sea which recommended:

- i) a further study of the subject by the Secretariat with a view to formulating guidelines for coastal and landlocked States in respect of the terms and modalities for bilateral, sub-regional or regional arrangements taking into consideration the appropriate provisions of the UN Convention on the Law of the Sea;
- ii) that Member land-locked States may enter into negotiations with neighbouring coastal States with a view to entering into agreements for participation in the exploitation of the living resources of the Exclusive Economic Zone of the coastal States within the framework of the UN Convention on the Law of the Sea and that such States may, if they deem necessary, seek assistance of the AALCC Secretariat in the conduct of such negotiations;
- iii) That within the framework of UN Convention on the Law of the Sea, States or their nationals may apply for licences to exploit the living resources of the exclusive economic zones of other States which have already adopted domestic legislation permitting exploitation of such resources by foreign States.

(iv) Right of Access of landlocked States to and from the Sea and Transit through coastal states

This topic was first included in the agenda of the Kathmandu Session on the basis of a reference made by His Majesty's Government of Nepal.

It was however not a new subject for the AALCC. At the New Delhi

Session in 1973, the Committee had Constituted a Study Group on Land-Locked States to examine the question of rights and interests of landlocked states in relation to the Law of the Sea. The Study Group after several meetings had, *inter alia*, presented some formulations which have found place in the UN Convention on the Law of the Sea without much modifications.

At the Kathmandu Session held in 1985 after a brief discussion, an open-ended Working Group was formed to discuss the subject. The Working Group recommended to the Committee to request the Secretariat to prepare additional documentary information on bilateral, regional and sub-regional arrangements on the right of access of landlocked States to and from the Sea and freedom of transit through coastal States. The recommendations of the Working Group were subsequently approved in the plenary.

At the Arusha Session held in 1986, a view was expressed that the right to access of landlocked States to and from the sea had been established under State practice and international law. It was suggested that the Committee should concentrate its work on regional modalities to be developed and followed in the Asian-African region. Further the Secretariat should be asked to prepare a study on the unrestricted navigational rights and facilities to and from the Sea of the landlocked States.

There was further discussion in the Sub-Committee on the Law of the Sea which recommended that:-

"The Secretariat be requested to examine bilateral, sub-regional or regional agreements concerning the exercise of freedom of transit in the region, if any, and to prepare an appropriate working paper in due time."

This recommendation of the Sub-Committee was subsequently approved in the plenary.

OPTIMUM UTILISATION OF THE RESOURCES OF THE EXCLUSIVE ECONOMIC ZONE

Introduction

One of the major developments of far reaching importance in the negotiations at the Third United Nations Conference on the Law of the Sea has been the emergence of the concept of Exclusive Economic Zone which is now embodied in Part V of the United Nations Convention on the Law of the Sea, 1982 (Articles 55 to 75). Notwithstanding the controversies at the initial stages of the negotiations, the concept of exclusive economic zone had found wide acceptance in the practice of States even before the adoption of the Convention and may now well be regarded as part of general International Law. A large number of States, almost over a hundred, have already taken legislative or administrative measures to claim jurisdiction and competence over the resources of their exclusive economic zones.

In the light of the developments that had been taking place in the practice of States in regard to the claims for extended fisheries jurisdiction, the Secretariat of the AALCC at the request of some of its member governments, had presented a study on "Exclusive Economic Zone - Optimum Utilisation of its Fishery Resources - Regional and Sub-regional Co-operation" for consideration at the Committee's Seoul Session held in February 1979.

The Secretariat study, while recognising the positive trend towards general acceptability of the concept of Exclusive Economic Zone, made a number of suggestions both in regard to possible national efforts and AALCC's programme of assistance to meet the objectives of optimum utilisation of the resources of the EEZ.

The Secretariat study was examined in depth in the Plenary as well as in a Working Group.

As a follow up an Expert Group was convened in December 1979 to discuss the scope of the work to be undertaken by the Secretariat. The Committee decided that to begin with the AALCC's own programme of work should be related to the optimum utilization of the fishery

resources. This was in view of the fact that the prevailing State practice at that time had revealed that most of the claims for extended jurisdiction related to fisheries. The Committee also decided that its work programme should be aimed at assisting member governments in practical terms through preparation of the legal framework for various measures which needed to be taken to achieve the desired objective of optimum utilization of the fishery resources. The programme accordingly included.

- a) Preparation of guidelines for national legislation;
- b) Preparation of drafts of model agreements for exploitation of the living resources including joint ventures; and
- c) Promotion of regional and sub-regional co-operation.

The three-day Expert Group Meeting was chaired by Mr. Tosio Isogai (Japan) and attended by participants from twenty member governments. The discussions at the meeting were so channelised as to provide the practical inputs for the studies to be undertaken by the Secretariat. In that context, the participants outlined the prevailing position in their respective countries regarding the fisheries policies, institutional framework as also the legislations in force for the development of fishery resources in their national waters. Indications were also given about the measures that were planned or undertaken for establishing an adequate machinery for the optimum utilisation of the fishery resources in the extended zones of national jurisdiction and about the requirements in the matter of data collection and research surveys to ascertain the resource potential.

At the twenty-first Session held in Jakarta in April-May 1980, the Secretariat placed before the Committee the tentative draft guidelines for a legislation on fisheries, the tentative draft of a model bilateral agreement on access to foreign fishing as also a detailed note concerning the various types of joint venture arrangement that could be contemplated. The matter was taken up in the Plenary and after general exchange of views the Committee directed that another Expert Group should be convened as early as possible to examine the drafts.

Pursuant to the decision of the Jakarta Session, an Expert Group meeting composed of legal and fisheries experts was held at the Committee's Secretariat in February 1981 under the Chairmanship of the Secretary-General. The Expert Group finalised the model draft of the bilateral agreement concerning fishing activities by foreign

nationals but was not in a position to take up other matters due to the time factor.

At the Colombo Session held in May 1981, the Secretariat, had placed before the Committee the draft of the model agreement on foreign fishing as finalised by the Expert Group, two tentative drafts for possible joint venture arrangements and a comprehensive note on regional and sub-regional co-operation. In addition to general discussions in the Plenary, an Expert Group under the Chairmanship of Mr. A. Fernando (Sri Lanka) gave detailed consideration to the Secretariat draft on joint venture arrangements. The Committee decided in favour of convening another Expert Group meeting for detailed consideration of the drafts on the joint venture arrangements as also to discuss the question of regional and sub-regional co-operation for optimum utilisation of the fishery resources.

An Expert Group Meeting was accordingly convened which met at the Secretariat from the 2nd to the 4th of August, 1982 under the Chairmanship of Mr. Glenn Knight (Singapore) and attended by participants from 23 Governments and the Food and Agriculture Organisation (F.A.O.). The Expert Group finalised the texts for the model drafts for two possible types of joint venture arrangements. It also discussed generally various modalities for regional or sub-regional co-operation.

At the Tokyo Session held in 1983, delegations of Republic of Korea, Japan, Iraq, India and Malaysia made brief comments on certain provisions of the drafts. The Committee decided that the draft guidelines for legislation on fisheries as also the model agreement on fishing by foreign nationals and the models of joint venture arrangements should be submitted to governments for their consideration and subsequently examined by an Expert Group. Further, the Secretariat was asked to prepare some alternative models for joint venture arrangements, and to examine the question of promoting regional or sub-regional co-operation taking into account the interests of landlocked and geographically disadvantaged states.

A. Draft Guidelines for Legislation on Fisheries

Explanatory Note

Even though State practice now recognizes that a Coastal State has certain exclusive rights and jurisdictions in its Exclusive Economic Zone it is clear that a State which wishes to exercise those rights or jurisdiction would have to do so by appropriate legislative measures.

In regard to the control, regulation and management of fishery resources such legislative measure may conceivably take three alternative forms or a combination of them, namely:-

- a) Enactment of a comprehensive legislation together with rules and regulations promulgated under the Act;
- b) Promulgation of regulations under an existing legislation; and
- c) Insertion of new sections in the existing law by way of amendment.

Having regard to the complexity of the matter and the vast areas of the sea which would come under the Exclusive Economic Zone of a State which had hitherto been considered as high seas for all purposes, it would seem to be preferable to undertake a comprehensive legislation regarding the conservation, management and exploitation of the fishery resources of the Zone. This may be necessary all the more in view of the fact that the existing fisheries law was enacted in many countries during the colonial rule and is outmoded in several respects, and it may be difficult and cumbersome to rectify the same through amendments.

The main objective to be achieved through a legislation on fisheries, in regard to the Exclusive Economic Zone, is the optimum utilization of the fishery resources and development of national fishing efforts through appropriate means, so that the available stock can progressively be harvested through national efforts. This is particularly necessary to meet the needs of food of the population, to provide new areas of employment and also to have a source of foreign exchange earning for the nation.

The first and foremost requirement is therefore for each government to formulate its policy through which these objectives could be achieved and to give effect to such policies and programmes through appropriate legislative means. It may not be difficult to enunciate the government's policy in broad general terms, but to concretize the programme for national action and initiatives, it would be necessary to undertake collection of a good deal of data and formulation of a plan which could be reviewed periodically. The plan necessarily would depend to a large extent on the available data concerning the resources and technical expertise in order to assess the national development potential which could be reached in stages. The collection of data in the initial stages about the fishery resources may present some problem since fishing in the areas now falling within

the Exclusive Economic Zone has mostly been done by foreign fishermen. Apart from collection of data, the government would have to determine the conservation measures necessary for protection of the stock against harmful acts and over exploitation. Furthermore, in the formulation of policy, a matter of special importance would be the extent to which foreign fishermen would be permitted to fish in the water consistent with the needs of national fishing industry and the terms and conditions on which foreign fishing will be permitted.

Section 2 in Part I contains certain definitions which are by and large based on provisions in recent legislations in various countries.

In part II of the draft guidelines, provision has been made for the government to formulate and declare the policy of the State (Section 4). This is essentially a governmental function and must rest with the highest authority. Furthermore, one relevant consideration for the developing countries may be the extent of the assistance which it may require from foreign fishing enterprises in regard to identification of the resources, the development of its own national fishing industry and requirement of fish for the local population which could not be provided through fishing activities of national fishermen.

In part III of the guidelines for legislation the suggested administrative set up has been indicated taking into consideration that the functions to be performed would relate to three broad areas:

- a) Identification of stocks, survey, ear-marking of zones and conservation measures including seasonal closure;
- b) Licensing of local and foreign fishermen, surveillance and enforcement; and
- c) Development of local fishing industry including joint ventures, marketing, processing and storage.

It is envisaged that the functions enumerated in (b) would be performed through a governmental machinery to be headed by a Director-General. The functions enumerated in (a) would also be performed by the Director-General but perhaps on the basis of guidelines indicated in the plan and the advice of an Advisory Council. The functions indicated in (c) could be appropriately entrusted to a Fisheries Development Authority having regard to the technical nature of the functions. The enormous resource potential as well as the varied activities connected with the development of the national fisheries industry to undertake the exploitation of these resources on its own at

the quickest possible time would need the attention of bodies acting directly under the Authority of the Minister which could be entrusted specifically with this task. The suggestion for establishment of a fisheries Development Authority may be one of the ways of meeting this requirement. As a matter of fact it has been envisaged that in matters pertaining to technical fields, the government may need the advice of a body which could be expected to give detailed consideration to the various aspects of the matter. The governmental policy might stipulate the national fisheries development programme through local efforts either solely or in association with foreign entities in the shape of joint ventures; broad guidelines relating to foreign fishing activities; reservation of certain fishery areas or zones exclusively for local fishermen and the priority to be given to fishery development in the context of national development programmes.

Section 5 of the draft envisages preparation of a plan so that the policy guidelines on a long term basis could lead to conservation of the stock and their optimum utilization as also progressive development of national efforts. If a plan is prepared, which necessarily would have to be reviewed from time to time, the governmental action particularly in regard to licensing and permissible limits of foreign fishing, declaration of zones or fishing areas would be greatly facilitated. In the preparation of the plan, the long term, medium term and short term interests of the country could be adequately considered. The formulation of the plan would necessarily vest in the government which may, if it considers fit, appoint a special planning body for the purpose but the manner in which the plan should be prepared would necessarily be for each government to decide.

Section 6 of the Draft as also the whole of the Chapter VII are on foreign fishing. The extent to which foreign fishing is to be permitted and the terms and conditions on which this is to be allowed is one of the most crucial issues which a government would have to consider. The foremost consideration of course in this matter is the stock and the needs of national fishing industry. However, any regional or sub-regional arrangements or international treaties and conventions in force would have to be taken into practice of several governments to set up development authorities of this kind when it has undertaken a new venture of vast magnitude and potential such as the development of the steel industry or shipbuilding.

Part IV deals with development, conservation and management of fishery resources; Part V contains provisions on the development of national fishing industry; Part VI is on Licensing; Part VII contains detailed provisions on Foreign Fishing; Part VIII enumerates the

prohibited acts; Part IX, X and XI deal with Enforcement, Criminal and Civil Liability. Part XII contains provisions on Processing and marketing and Part XIII has certain general provisions.

The governments will no doubt consider whether matters concerning development of National fishing industry (Part V) as also those relating to Processing and Marketing (Chapter XII) should find place in a legislation on fisheries or whether they should be incorporated in other legislations.

Statement of Objects and Reasons

In several countries the legislative text in the form of Bill for introduction in Parliament or the Legislature is usually accompanied by a Statement of Objects and Reasons. This document generally sets out the objectives of the legislation and the methods through which the same is sought to be achieved. Where such practice is followed, it might be appropriate to state in the Statement of Objects and Reasons that international law and State practice now recognises that a coastal State has sovereign rights for the purposes of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the sea-bed and sub-soil and the superjacent waters, and jurisdiction *inter alia* in regard to marine environment in an area beyond and adjacent to the Territorial Sea which may extend upto 200 nautical miles from the baselines from which the breadth of the Territorial Sea is measured to be known as the Exclusive Economic Zone. It may then be stated that the intended legislation seeks to deal with the exercise of the sovereign rights and jurisdiction in the Exclusive Economic Zone in regard to conservation, management, exploration and exploitation of the fishery resources. Where the legislation seeks to manage and regulate fishery activities within its territorial sea and internal waters it might be so stated. Mention might also be made of some of the principal objectives of the legislation which may include the need to intensify and develop the national fishing efforts; to regulate the fishery activities of foreign entities and foreign fishermen in an appropriate manner and the development of national fishing industry with a view to enable the exploitation of the living resource to the maximum extent through the national effort.

Some suggestions in respect of National Fisheries Legislation

Long title:

A law to regulate fishing and other related activities in the Exclusive

Economic Zone and matters pertaining thereto.

Preamble:

A brief summary of the objectives of the Legislation as set out in the Statement of Objects and Reasons might be incorporated in a preamble where it is considered appropriate.

**PART I
PRELIMINARY**

Section 1- Short title and commencement

- (1) This act may be cited as the (Exclusive Economic Zone) Fisheries Act of _____.
- (2) It shall come into force on such date as the Government (Ministry) may appoint by notification in the official gazette.

Section 2 - Definitions

In this Act, unless the context otherwise requires:-

- a) *authorised officer*- means any fisheries officer; any police officer not below the rank of _____, any customs officer, any commissioned officer of the armed forces or any other officer authorised by the Director-General to perform any duties or functions under the provisions of this Act or any regulations made thereunder, and for the purpose only of enforcing the provisions of this Act or any regulations made thereunder, any health inspector appointed under the Public Health Act;
- b) *closed season* - refers to the period during which fishing is prohibited in a specified area or areas in the fisheries waters, or to the period during which the catching of specified species of fish or the use of specified fishing gears to catch fish is prohibited;
- c) *Director-General* - means the officer appointed by the Government/Minister under Section _____ of the Act and shall include a Deputy Director General.

- d) *Exclusive Economic Zone*-means the exclusive economic zone of _____ as declared in Act, No. _____ Proclamation/Notification dated _____
- e) *fish*-means fish or shell fish of any description found in marine or fresh waters and their young or fry or eggs or spawn and includes crustaceans, aquatic molluscs, holothurians, sea weed, coral and other aquatic life, but does not include marine mammals and birds.
- f) *fishery*- (i) means one or more stocks of fish that can be treated as a unit for the purposes of conservation and management; (ii) and any fishing for such stocks;
- g) *fishing*- (i) means fishing for catching, taking or harvesting of fish; (ii) engaging in any activity relating to the taking of any fish, including (interalia) any activity involving the preparation, supply, storage, refrigeration, transportation or processing any fish;
- h) *fishing vessel*-means any vessel, boat, ship or any other craft which is used for, equipped to be used for, or of a type which is normally used for (i) fishing; or (ii) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including but not limited to, preparation, supply, storage, refrigeration, transportation or processing, but does not include any vessel used for the transportation of fish or fish products as part of a general cargo;
- i) *fisheries waters*- means the area of the sea extending upto 200 nautical miles measured from the appropriate baselines;
- j) *foreign fishing vessel*- means any fishing vessel other than a vessel registered in _____;
- k) *licensing authority*-means the officer authorised under this Act to issue licences or permits;
- l) *master*-in relation to a fishing vessel, means the person for the time being having command or charge of the vessel;
- m) *Minister*-means the Minister for the time being responsible for the administration of this Act;
- n) *owner*- in relation to a fishing vessel, includes any body of

persons, whether incorporated or not, by whom the vessel is owned and any charterer, sub-charterer, lessee or sub-lessee of the vessel;

- o) *processing*- in relation to fish, includes cleaning, filleting, icing, freezing, canning, salting, smoking, cooking, picking, drying or otherwise preserving or preparing fish by any method;
- p) *processing establishment*- means any premises or vessel on or in which any fish are processed or stored, but shall not include any hotel, restaurant or eating house, or any premises where fish are prepared or stored for sale by retail to the public;
- q) *take*- in relation to fish, includes:
 - i) to take, catch, kill, attract or pursue by any means or device for trading or manufacturing purposes; and
 - ii) to attempt to do any act specified in sub-paragraph (i) of this definition;
- r) *territorial waters*- means the territorial waters of _____ as defined in Act _____ or in Proclamation/Notification dated _____.

Section 3 - Territorial application

This act applies to the territories of _____ and the areas of the sea extending upto 200 nautical miles from the baselines from which the territorial seas are measured as more fully set out in Schedule I and hereinafter referred to as "Fisheries waters".

PART II FISHERIES POLICY AND PLANNING

Section 4- Declaration of fisheries policy

The Government (Minister) may from time to time formulate and declare the policy of the State concerning fishing and other related activities in the fisheries waters including the extent of such activities by foreign vessels and fishermen with a view to ensure the conservation, rational management and optimum utilization of the fishery resources and to promote and accelerate the integrated development of a national fishing industry.

Section 5- Preparation of a plan

The Government (Minister) may authorize the preparation of a plan for the purpose of development, conservation and management of the fishery resources which, *inter alia*, may provide for:-

- a) Identification of the resources and preparation of an estimate, in so far as practicable, of the potential average annual yields and an estimate of the total annual catch that may be permitted for each species of fish.
- b) Identification of the areas and zones in which fishing activities may be permitted including areas or zones reserved exclusively for local fishermen.
- c) Specification of the conservation and management measures to be taken for the protection of fishery resources against harmful acts and over exploitation.
- d) Specification of measures to promote utilization of the fishery resources to conform to national development policies and programmes.
- e) Assessment of the existing and future potential of the local fishing activities and specification of measures to be taken to promote the accelerated growth and development of a national fishery industry with a view to enable optimum utilization of the fishery resources through national efforts.
- f) Formulation of a scheme or schemes to provide for fiscal and other incentives for the development of the national fishing industry.
- g) Measures for development of infra-structure, processing and marketing of fish and fish products.

Section 6- Foreign Fishing

The Government (Minister) may from time to time determine the extent to which foreign fishing activities would be permitted in the fisheries waters taking into account, as far as practicable, the fishery resources, the needs of local fishermen and national fishing industries, regional or sub-regional arrangement, international treaties and Conventions in force and other relevant factors including assistance

rendered or to be rendered by foreign fishing enterprises in the development of national fishing industry.

Section 7- Regional or Sub-Regional Co-operation

The Government (Minister) may with a view to ensuring the closest practicable harmonization or co-ordination of their respective fisheries management and development programme enter into consultations with the Governments of neighbouring States of the region, especially the States which share the same or inter-related stocks. Such consultations may include exchange of data or carrying on of joint surveys and other activities for assessment of stocks and their protection.

Section 8 - International Agreements

The Government (Minister) may promote the negotiation and conclusion of bilateral or multilateral agreements relating to fishing rights and development of fisheries and related other matters.

PART III ADMINISTRATION

Section 9 - Appointment of Officers

- (1) The Government (Minister) may appoint a Director General for fisheries and such other officers as may be deemed necessary for carrying out the purposes of this Act.
- (2) The Director General shall be responsible to the Minister for supervision, management and development of fisheries and the implementation of this Act.
- (3) The Director General may with the approval of the Minister assign to officers appointed in pursuance of this section such specific powers and duties exercisable under this Act as may be determined from time to time.

Section 10- Fisheries Development Authority

The Government (Minister) may, if deemed fit, establish a Fisheries Development Authority for the purposes *inter alia* of implementing the State policy or programme in regard to development of national fisheries industry.

Section 11- National Fisheries Development and Co-ordination Council

- (1) The Government (Minister) may by notification constitute a National Fisheries Development and Co-ordination Council composed of _____ members, at least _____ of whom shall be drawn from fisherman's organizations and the commercial fisheries sector.
- (2) The Council may invite such other person as it may think fit to attend its meetings in a technical advisory capacity or to take part in its deliberations on any particular item of business under consideration.
- (3) The functions of the Council shall be to advise the Government (Minister) on all matters relating to the development, conservation and management of fisheries and in particular on the co-ordination of activities of governmental agencies and other bodies.

PART IV DEVELOPMENT CONSERVATION AND MANAGEMENT OF FISHERY RESOURCES

Section 12- Measures for Development, Conservation and Management of Fisheries

- (1) The Director General shall in consultation with the National Fishery Development and Co-ordination Council and such other authorities as may be deemed appropriate, promote the development, conservation and rational management of the resources of the fisheries waters.
- (2) The management, conservation and development measures shall conform as far as practicable to the national standards of fishery conservation and management as may be laid down from time to time and the criteria that may be prescribed in the plan prepared under Section 5, taking into account the basic principles set out hereinafter, namely:-
 - a) Conservation and management measures shall be so taken as to achieve the optimum yield from each fishery and to prevent over exploitation of the resources.
 - b) To the extent practicable an individual stock of fish shall be

managed as a unit throughout its range and inter-related stocks of fish shall be managed as a unit or in close co-ordination.

- c) Conservation of stock through prevention of harmful acts.

Section 13- Research and Dissemination of Information

With a view to facilitate effective measures for development, management and conservation of the fishery resources, the Director General shall encourage:-

- a) The conduct or co-ordination of research and survey activities in the fisheries waters and in relation to the stocks.
- b) Dissemination of information concerning stocks, migratory habits of fish, fishing methods and other related matters.

Section 14

The Director General shall cause to be maintained appropriate registers and catch statistics which shall be furnished by all persons licensed to fish within the fisheries waters. Such statistics shall include particulars about species, size, weight and age of fish caught as also the quantity of catch and the time spent during each fishing operation. The Director General shall also have custody of all records pertaining to resource activities carried on in the fisheries waters.

Section 14A- Development and Aqua-culture

The Director General shall promote the development of aqua-culture through appropriate means.

PART V DEVELOPMENT OF NATIONAL FISHING INDUSTRY

Section 15-

- (1) The Government (Minister) shall in consultation with the Fisheries Development Authority, the National Fisheries Development and Co-ordination Council and such other Government Departments, bodies or institutions, as may be considered appropriate, promulgate measures for development of a national fisheries industry and other

related industries including vessel construction and repair, manufacture of fishing gear, processing, storage, transport and marketing.

- (2) The measures taken under the preceding sub-section may include:-
 - a) Provision of financial and other incentives to local fishermen including credit facilities;
 - b) Provision of technical assistance including maintenance of experimental and demonstration centres and fish breeding stations;
 - c) Ensuring availability of vessels, fishing gear and other necessary implements of trade;
 - d) Dissemination of information and training to local fishermen;
 - e) Provision of adequate infrastructure including port and landing facilities, storage, collection centres and transportation;
 - f) Promotion of co-operative societies and joint stock companies for undertaking fisheries activities including deep sea fishing;
 - g) Promotion of schemes for guarantees and insurance;
 - h) Development of markets for fish and fish products; and
 - i) Development of fish meal and fertiliser industries.

Section 16-Fisheries Loan and Development Fund

- (1) The Government (Minister) may establish a Fisheries Loan and Development Fund with a view to assist the growth and development of the national fishing industry.
- (2) The Government (Minister) shall promulgate regulations concerning administration of such fund including the criteria on which assistance from the fund may be made available.

Section 17-Joint Ventures

The Government (Minister) may authorize entering into joint venture

arrangements where appropriate with a view to speedy development of the local fisheries industry and such other arrangements providing for joint participation in fishing to facilitate effective transfer of technology and training of local personnel.

PART VI GRANT OF LICENCES

Section 18-Application of this part

The provisions of this part shall apply to all fishing licences and vessel permits other than those to which the provisions of Part VII apply.

Section 19-Fishing Licences and Vessel Permits

- (1) No person other than those falling within the exempted categories shall engage in fishing or other related activities except under a valid fishing licence and vessel permit and in accordance with the terms and conditions thereof.
- (2) The Government (Minister) may from time to time by regulations or rules made under this Act, prescribe the guidelines concerning grant, renewal, suspension, cancellation and transferability of fishing licences and vessel permits including the terms and conditions subject to which such licences or permits may be issued and the class or classes of cases where exemption from the requirement of obtaining licences or permits may be granted.

Section 20-Application for Licences and Permits

Application for fishing licences and vessel permits shall be made in the prescribed form to the licensing authority designated in respect of the area or zone in which the fishing operations are sought to be carried out.

Section 21-Power to grant or renew Licences or Permits

- (1) The licensing authority shall in determining the question of grant or renewal of the fishing licences conform to the provisions of this Act, the regulations or rules made thereunder and the Fisheries Management and Conservation Plan, if any:

- (2) The Licensing Authority shall in exercising his powers under the preceding sub-section give due preference to local fishermen who have been habitually fishing in the area or the zone and co-operative societies of local fishermen.

Section 22-Terms and Conditions of Licences and Permits

Any fishing licence or vessel permit shall be subject to such terms and conditions as may be prescribed in this Act, the regulations or rules made thereunder and such other terms and conditions which may be endorsed upon such licence or permit by the licensing authority.

Section 23-Variations of the Terms and Conditions of Licence

The licensing authority shall have power to vary the terms and conditions of the licence or the permit where he is satisfied that it is necessary or expedient so to do for the proper regulation of fishing within the area or the zone.

Provided that due notice of such variations shall be given to the holder of the licence or permit.

Section 24-Power of Suspension and Cancellation

The licensing authority shall have power to suspend or cancel the licence or permit for breach of the provisions of this Act or the rules and regulations made thereunder or the terms and conditions of the licence or permit.

Provided however that before an order is made under this section an opportunity of being heard be given.

Section 25-Appeals

Any person aggrieved by an order made by the licensing authority under this part may prefer an appeal to the Director General within a period of thirty days and the decision of the Director General thereon shall be final.

Section 25A- _____

Any person acting in contravention of Section 19 of this Act shall be liable to a fine not exceeding _____

PART VII FOREIGN FISHING

Section 26-Entry of Foreign Vessels into Fisheries Waters

- (1) No foreign fishing vessel shall enter the fisheries waters unless so authorized under a permit issued pursuant to the provisions contained in this part and in accordance with the terms and conditions thereof.
- (2) The provisions of the preceding sub-section shall not apply to a vessel entering the fishery waters for the sole purpose of innocent passage or by reason of force majeure or distress or for the purpose of rendering assistance to persons, ships or aircraft in danger or distress or for any other purpose directly connected with the safety of navigation.

Provided however that the vessel entering the fisheries waters for such a purpose shall carry its fishing gear in stowed position and conform to such regulations as may be made under this Act relating thereto.

Section 27-Fishing by Foreign Fishing Vessels in Fisheries Waters

No foreign fishing vessel shall take fish or attempt to or prepare to take fish, or transfer fish to or receive fish from any vessel within the fisheries waters, except under a permit issued under the provisions of this part and in accordance with the terms and conditions thereof.

Section 28-Issue of Permits

The Director General may open the written application made for the purpose in the prescribed form issue a permit in respect of any foreign fishing vessel authorizing it to enter the fisheries water or a specified area or zone thereof and to engage in one or more of the following activities:-

- a) fishing activities within the waters;
- b) loading, unloading or transshipment of fish and supplies;
- c) processing fish and fish products;

- d) utilizing port facilities;
- e) research and resource survey; and
- f) any other activity which the Director General may deem fit to allow.

Section 29-Exercise of Power by the Director General

The Director General shall in considering the application for a permit by a foreign fishing vessel take into account the policy guidelines laid down by the Government (Minister), the conservation and management plans, if any, and such other matters as may be deemed relevant including the following:-

- a) the total allowable catch in the fishery zone or area and the portion allocated thereof for foreign fishing;
- b) the previous fishing activities which the applicant had carried on in the fishery waters;
- c) the contribution of the applicant or the State of his nationality in fisheries research, identification of fish stocks and in the conservation, management and development of fishery research, fishery resources within the zone;
- d) the assistance provided by the applicant or the State of his nationality in the training of local personnel and the transfer of technology to the local fishing industry; and
- e) the terms and relevant bilateral or multilateral agreements in force.

Section 30-Conditions of Permit

- (1) Any permit issued under the preceding section shall be valid for such period or time as may be specified therein and shall be subject to the provisions of this Act, the rules and regulations made thereunder and the terms and conditions endorsed on the permit.
- (2) The terms and conditions subject to which the permit is issued may include *inter alia* the following:-

- a) the fees, royalties, charges or any other payments;
- b) specification of areas in which fishing is authorized;
- c) the seasons, times and particular voyages during which fishing is permitted;
- d) the species, size, age and quantities of fish that may be taken;
- e) the methods by which fish may be caught;
- f) the types and size of fishing gear that may be used or carried and the modes of storage of gear when not in use;
- g) the use, transfer, transshipment, landing and processing of fish taken;
- h) statistical and other information required to be given by the fishing vessel to the Director General, including statistics relating to catch and reports relating to the positions of the vessel;
- i) the conduct by the fishing vessel of specified programmes of fisheries research;
- j) the display on board the vessel of the licence issued in respect of it;
- k) the marking of the vessel and other means for its identification;
- l) entry of the vessel to ports, whether for the inspection of its catch or for other purposes;
- m) compliance with the directions, instructions or other requirements given or made by warships, Government ships or aircraft;
- n) the placing of observers on the vessel and the reimbursement of the costs thereof;
- o) the installation and maintenance in working order of a transponder or other equipment for the fixing of the vessel's positions or its identification and of adequate navigational equipment to enable it to fix its positions itself;

- p) the carriage on board the vessel of specified nautical charts; and
- q) the compensation payable to citizens or to the Government in the event of any loss or damage caused by the vessel to other fishing vessels or their gear or catch or to fish stocks.

Section 31-Training of Local Personnel

The Director General may require foreign fishing vessels to undertake training of local personnel in the method of fishing, processing and other related activities.

Section 32-Security and Appointment of Local Agents

The Director General may require a foreign fishing vessel in respect of which a permit has been issued to provide adequate security for due performance of its obligations and to appoint a local agent.

Section 32A

Notwithstanding anything contained in the provisions of this part, vessel permits or licences to be issued in pursuance of a bilateral treaty of agreement with a foreign state shall be in conformity with provisions of such treaty or agreement in regard to the procedures to be followed for the issue of permit or licence as also the terms and conditions on which such permit or licence is issued.

PART VIII PROHIBITED ACTS

Section 33- Fishing with Explosives, Poisons or other Prohibited Methods

(1) No person shall:-

- a) use or attempt to use any explosive, poison or any other noxious substance for the purpose of killing, stunning, disabling or catching fish or use any method which may endanger the stock or render such fish more easily caught; or
- b) use or attempt to use any apparatus utilizing an electric current, generated by any means whatsoever to catch, stun or kill fish.