

assign a preset frequency to a qualified applicant for the installation and operation of radio transceivers on board fishing vessels and home-based stations subject to the rules and regulations prescribed by said office and consistent with the requirements of national security. Provided, further, that _____ Coast Guard shall be informed by the Radio Control Office of the preset radio frequencies assigned to fishing vessel operators.

B. Model Draft of an Agreement Relating to Foreign Fishing in the Exclusive Economic Zone/Fisheries Waters of a Coastal State and Co-operation in the Conservation and Management of the Fishery Resources Therein

Explanatory Note

The Model of a Draft Umbrella Agreement concerning the fishing activities by foreign nationals in the fisheries waters and/or exclusive economic zones of a Coastal State has been prepared with a view to assist member governments in their negotiations concerning fishery activities in their exclusive economic zones by foreign fishermen. An attempt has been made to put together in this Draft certain suggestions which could form an appropriate basis for such negotiations.

The background on the basis of which the present Draft has been prepared is that at present many developing countries have not been able to develop an adequate fishing capacity in order to harvest the optimum catch from the fisheries resources of their Exclusive Economic Zones. In the circumstances they might consider it beneficial to draw on the assistance and co-operation from other States in regard to identification of resources and their exploitation as also in taking of conservation measures. It has been observed in the course of discussions in the Committee that there are certain states which had been fishing in the waters now falling within the Exclusive Economic in this regard. Furthermore, foreign fishing in the Exclusive Economic Zones would be carried out in an orderly manner if the terms and conditions on which such fishing would be permitted could be regulated through bilateral agreements. Such agreements would pave the way for mutually beneficial co-operation between the Coastal State and those states with well developed fishing industries.

In the preparation of this Model of a Draft Agreement, the rights of the Landlocked and Geographically Disadvantaged States in respect of the living resources of the Exclusive Economic Zones of coastal states of the region or sub-region have not been considered. As such this Draft Agreement is not meant to be an Agreement between the Coastal and neighbouring Landlocked and Geographically Disadvantaged Sta-

tes. It is envisaged that the Coastal, Landlocked and Geographically Disadvantaged States would enter into bilateral, sub-regional or regional agreements whereby the special rights of the Landlocked and Geographically Disadvantaged States would be taken into account.

Model Draft of an Agreement Relating to Foreign Fishing in the Exclusive Economic Zone/Fisheries Waters of a Coastal State and Co-operation in the Conservation and Management of the Fishery Resources Therein*

The Government of _____ (hereinafter referred to as the Coastal State) and the Government of _____ (referred to as the other State party).

HAVING REGARD to the negotiations that have taken place between the two governments relating to the fishing activities of the nationals of the other State party in the waters specified herein and in the matter of co-operation between the two States for conservation and management of fishery resources therein, as also the development of the fishing industry of the Coastal State;

REAFFIRMING their desire to develop and maintain co-operation in the field of fisheries for their mutual benefit and thereby to strengthen the close and friendly relations that exist between them and their peoples;

DESIROUS of establishing the terms and conditions under which fishing vessels of the other State party may be allowed access to the fisheries in such waters and matters relating to co-operation between the two governments including the development of the fisheries sector of the Coastal State;

* This draft is not intended to be a model of an agreement between Coastal and neighbouring Landlocked and Geographically Disadvantaged States (see Explanatory Note).

HAVE agreed as follows:-

ARTICLE 1*

The Coastal State will, pursuant to the provisions of this agreement, allow fishing activities within its fisheries waters/exclusive economic zone by fishing vessels and nationals of the other state party subject to its laws and regulations and/or terms and conditions as may be established on the basis of the understanding/agreement reached between the two parties in the matter of assistance to be rendered to the Coastal State by the other State Party and its nationals in the development of the Coastal States fishing industry and co-operation in the conservation and rational utilization of the fishery resources.

ARTICLE 2

The competent authorities of the States parties shall consult among themselves with a view to determining the number of vessels and their specifications (tonnage and size) permitted to operate during each year, the allocation of catch (by species if desirable), the fishing areas and other regulatory measures.

ARTICLE 3

The designated agency of the other State Party shall transmit applications to the Government of the Coastal State for a permit for each fishing vessel that intends to engage in fishing in the fishery waters of the Coastal State pursuant to this agreement. Such applications shall conform to the requirements set out in the laws and regulations of the Coastal State.*

* It is envisaged that there would be a memorandum which would be annexed to this agreement or a separate agreement which would incorporate the terms and conditions agreed upon between the parties in the matter of assistance to be rendered to the Coastal State by the other State and/or its nationals. Such arrangement might include provision of service of experts and periodic consultations between the appropriate government departments of the two parties in order to assist the Coastal State in building up of its fishing industry. It might be possible to include within such arrangements construction and setting up of storage and refrigeration plants, a canning industry or a processing plant for the benefit of the Coastal State fishing industry by the other State or its nationals including associations of process or bodies corporate who are permitted to fish in the fisheries waters. The assistance could also be in the matter of marketing facilities for the fishing industry of the Coastal State. Arrangements in regard to transfer of technology in processing, storage and

* Explanatory Note to Article 3

The particulars which are normally required to be given in applications for permits by foreign fishing entities are the following:-

- a) the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and

ARTICLE 4

1. The Coastal State upon being satisfied about the technical feasibility of the fishing activities proposed to be carried on and the suitability of the vessel for the purpose shall issue a permit specifying the terms and conditions upon which the permit is issued.*

(2. The Coastal State shall communicate to the other state party the reasons in the event of an application being refused.)

ARTICLE 5

Subject to the availability of facilities the Coastal State shall allow the fishing vessels which have been granted permits to enter designated ports in accordance with its laws, regulations and administrative instructions for the purpose of purchasing bait, supplies or outfits or effecting repairs or such other purpose directly connected with the fishing activities of the vessel as may be determined by the Government of the Coastal State.

ARTICLE 6

The nationals and fishing vessels of the other State party permitted to fish by virtue of this agreement shall not be entitled to catch or take any of the species specified in Schedule I.**

- b) address of the owner and operator thereof;
- b) the tonnage, capacity, horse power, processing equipment, type of fishing gear and such other information relating to the fishing characteristics of the vessel as may be requested;
- c) a specification of target, specie and fishing ground in which the vessel wishes to fish;
- d) the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;
- e) the ocean areas in which and the season or period during which, such fishing would be conducted;
- f) such information as may be required under the laws and regulations of the Coastal State; and
- g) such other relevant information as may be requested, including desired transshipping areas.

* Explanatory Note to paragraph 1 of Article 4

The terms and conditions on which a permit in respect of foreign fishing is issued may inter alia include the following:-

- a) payment of royalties, charges and fees;
 - b) supply of fish for consumption in the Coastal State;
 - c) transfer of information and data regarding fisheries; and
 - d) measures for conservation of fishery resources.
- If only a particular kind of fish is contemplated under an agreement then the following formulation might be used:
- "This Agreement shall apply to the Fishery (say) of shrimp or tuna (to be followed in each case by the names of the various species covered by the Agreement)."

ARTICLE 7 *

In exercise of its sovereign rights the Government of the Coastal State shall determine annually, subject to adjustment when necessary to meet unforeseen circumstances:

- (a) the total allowable catch for individual stocks or complexes of stocks, taking into account the conservation requirements, the harvesting capacity of the Coastal State and the need to develop its fishing industry;
- (b) the maximum permissible catch allocated to nationals and fishing vessels of the other State party.

ARTICLE 8

The Government of the other state party shall ensure that in the conduct of the fisheries under this Agreement:

- (a) the authorizing permit for each vessel is prominently displayed in the wheelhouse of such vessel;
- (b) appropriate position-fixing and identification equipment, is installed and maintained in working order on each such vessel;
- (c) designated Coastal State observers are permitted to board any such vessel, who shall be accorded the equivalent rank of ship's officer while aboard such vessel. The Government of the Coastal State shall be reimbursed by the owner or operator of such vessel for the costs incurred in the utilization of Observers;
- (d) the Master and crew of each vessel shall co-operate fully in such enforcement action as may be undertaken pursuant to the laws and regulations of the Coastal State;
- (e) agents are appointed and maintained within the Coastal State possessing the authority to receive and respond to any legal process issued in the coastal state arising out of fishing activities under this Agreement;
- (f) all necessary measures are taken to ensure the prompt and

* Some participants were of the view that this provision was not necessary as it was covered by Article 2.

adequate compensation of Coastal State citizens for any loss of or damage to their fishing vessels, fishing gear or catch that is caused by any fishing vessel of the other State party as determined under the applicable laws of the Coastal State;

- (g) all data referred to in Schedule II which constitutes an integral part of this Agreement shall be reported to the designated representative of the Coastal State in accordance with the time frame referred to therein;
- (h) each vessel upon entry into exclusive economic zone/fisheries waters of _____ shall communicate its location to the designated officer of the Coastal State each day by a method to be agreed upon by consultation between the two parties, until such vessel leaves the said zone;
- (i) the owners or operators of vessel shall make available to the Government of the Coastal State the general description of the equipment and methods to be used in fisheries in the area as well as other relevant information about the technology to be used for the detection, pursuit and catch of fish in the area; and
- (j) fishing vessels shall stow their fishing gear in such position as to conform to the laws and regulations of the Coastal State in the waters where they are not authorized to conduct fishing activities.

ARTICLE 9

Each vessel permitted to fish by virtue of this Agreement shall carry an agreed number of trainees to be trained on board the vessel and their salaries and other emoluments be paid by the owners or operators of the vessel.

ARTICLE 10

The fishing vessels operating in the area pursuant to permits issued under this agreement shall comply with the laws and regulations of the Coastal State as specified in Annex III relating *inter alia* to the size of fish which may be fished for or retained on board, the size of the vessel, the mesh size and types of nets and gears that may be used for any fishing activity in the area as well as any matter relating to or connected with the conservation of the living resources in the area including regulations for closed areas and closed seasons.

ARTICLE 11

1. Where the fishing vessels or the owners or operators violate the terms and conditions of any permit issued hereunder or the provisions of any laws or regulations of the Coastal State, the Coastal State may impose appropriate penalty in accordance with its laws, regulations and procedures including forfeiture of vessels, gear and catch; and order suspension or cancellation of permit.
2. In case of seizure and arrest of a vessel or its crew by a competent authority of the Coastal State, notification shall be given promptly through diplomatic channels informing the Government of the other State party of the action taken and of any penalties subsequently imposed.
3. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or security as may be determined by the competent authority of the Coastal State.

ARTICLE 12

The Government of the other State party shall co-operate with the Government of the Coastal State in order to ensure, by appropriate measures, that its nationals and fishing vessels refrain from fishing activities in the fisheries waters/exclusive economic zone of the Coastal State except in conformity with the laws and regulations of the Coastal State and in particular that its nationals and fishing vessels authorized to carry on fishing activities in pursuance of this agreement comply with the provisions of the permits issued by the Coastal State.

ARTICLE 13

The Government of the Coastal State and the Government of the other State party undertake to co-operate in the collection, compilation and exchange of scientific data and information required for the purpose of management and conservation of the living resources off the coasts of the Coastal State. The modalities for such co-operation shall be settled by agreement between the parties.

ARTICLE 14

1. The Government of the Coastal State and the Government of the other State party shall carry out periodical bilateral consultations regarding the implementation of this Agreement and the

development of further co-operation in the field of fisheries of mutual concern.

2. This Agreement shall be approved by each State in accordance with its constitutional procedures. It shall enter into force through an exchange of notes on a date to be mutually agreed upon thereafter between the Government of the Coastal State and the Government of the other party and shall remain in force until _____ unless terminated sooner by either Government after giving notification of such termination _____ months in advance.
3. This Agreement shall be subject to review by the two Governments two years after its entry into force and thereafter every two years unless the parties otherwise agree.
4. This Agreement will be subject to the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea.*

In witness whereof, the undersigned, being duly authorized by their respective Governments have signed this Agreement.

Done at _____ on the _____ 19____, in duplicate in the English and _____ languages, both equally authentic.
For the Government of _____ For the Government of _____

* One of the participants considered the inclusion of this provision to be appropriate.

C. DRAFT GUIDELINES FOR AN EQUITY JOINT VENTURE ARRANGEMENT BETWEEN AN ENTITY IN THE COASTAL STATE (GOVERNMENT UNDERTAKING, CORPORATION, COMPANY OR INDIVIDUAL) AND A FOREIGN ENTERPRISE OR ENTITY

Explanatory note

Equity joint ventures contemplate the incorporation of a company which would undertake the main activities provided for in the agreement. The company would be a national company of the Coastal State and will be incorporated under its laws. The agreement would basically follow the pattern of an agreement between the promoters of a company but would have additional provisions concerning certain assistance to be rendered by the foreign party in regard to technical assistance, training programmes etc.

It would depend upon the administrative structure in the Coastal State and its policies as to whether the development of fishing and fishery industries should be in the public or private sector. The entity in the coastal state which should be a party to the joint venture agreement, whether state entity, government undertaking, corporation, company or individual would depend upon the governmental policy. It is unlikely that the Government as such would be a party to a joint venture agreement, and in cases where the government itself is concerned directly with fishing and fishery activities, such functions should be carried out through a government corporation or a state agency. It is contemplated that the foreign party with which joint venture arrangements might be entered into would be one which has either some past experience in fishing in the waters now encompassed within the economic zone or a party which has in its possession the necessary data and/or technical know-how and is ready and willing to assist in the fishing activities and/or in the establishment of industries connected with fishing, e.g. storage, refrigeration and processing plants, as also in the marketing of fish and fish products even when a state agency or a government undertaking is a party to a joint venture agreement, it would be desirable to keep in perspective the distinction between the regulatory and policy making functions of the government on the one hand and the contractual functions of a government agency on the other.

It may be stated that the essential feature of an equity joint venture from the point of view of the host country is the employment of foreign capital and technology in its project whilst the interest of the foreign party is basically to obtain an adequate return on its capital investment and payment for employment of its technology.

C. Draft Guidelines for a Equity Joint Venture Arrangement between an Entity in the Coastal State (Government Undertaking, Corporation, Company or Individual) and a Foreign Enterprise or Entity

DRAFT MODEL TEXT

This Agreement entered into on _____
between _____
(Coastal State enterprise)
hereinafter referred to as the 'first party' and _____ hereinafter
(foreign entity)
referred to as the 'second party', Witnesseth as follows:-

RECITALS

Whereas the Government of _____ (hereinafter referred to as the 'Government') has declared its intention to encourage the development of its national fishery industry with the object of optimum utilization of the fishery resources of its exclusive economic zone in progressive stages (and in building up of plants for the purpose of storage, preservation and processing of fish) through co-operation with and assistance of nationals or entities in other states;

Whereas the Government has through its laws, regulations or administrative orders specified areas where fishing activities can be undertaken by its nationals and foreign fishermen and has also notified the terms and conditions subject to which fishing activities would be permitted;

Whereas the Government has offered various incentives in its laws, regulations and policy declarations for foreign collaboration in the fisheries sector in the shape of tax relief, exemption from customs duties, repatriation of profits and other relevant matters;

Whereas a sample survey conducted by _____ in _____ of the exclusive economic zones of _____ (specify areas) has identified the existence of stocks suitable for commercial exploitation which has been followed by undertaking if a feasibility study and environmental impact assessment;

Whereas the second party has expressed its desire to collaborate in the establishment of a fishing and other allied industries in _____ in association with the first party and has agreed to provide technical assistance on terms and conditions set out herein;

And Whereas the Government has given its approval and consent to the execution of this agreement (and has also given its assurance in regard to the grant of facilities and assistance in the fulfilment of the objectives of this agreement;)

PART I

1. The parties shall take steps to promote and bring into being a body corporate to be known as _____ which shall be incorporated under the laws of _____.
2. The objectives of the company to be established shall include:-
 - a) Organization and undertaking of fishing activities within the waters of the exclusive economic zone of _____ in areas as specified by the Government;
 - b) To acquire technology, vessels, equipment and gear for the purpose of fishing activities, employment of technicians, experts and other personnel;
 - c) To undertake research activities in regard to fisheries related to the commercial operations of the company and to arrange training programmes;
 - d) To erect, construct, maintain or arrange for shore facilities as may be necessary for the commercial operations of the company;
 - e) To undertake directly or through its subsidiaries the erection, construction and establishment of storage, refrigeration and processing plants for fish and manufacture of fishery products;
 - f) To undertake or arrange for marketing of fish and fish products for local consumption and export.
3. The authorized capital of the company shall be _____ and its initial subscribed capital shall be _____ to be divided between _____ ordinary shares and _____ preference shares.
4. The first party hereby agrees to subscribe _____ ordinary shares in the company and the second party shall subscribe _____ ordinary shares. (The remaining shares

shall be offered for public subscription.)

- *5. Each of the parties shall nominate two persons on the Board of Directors. The Managing Director shall be appointed by agreement of parties and be subject to approval of the Government.
6. The general policy to be adopted by the Company in regard to declaration of dividends and distribution of profits shall be that _____. The debt equity ratio shall be _____.

The draft memorandum and articles of association of the company to be formed are annexed to this Agreement which shall be filed with the Registrar of Companies at (place) within a period of _____ days from the execution of this Agreement.

Notes to Clauses 1 to 7

- (i) The essential element in an equity joint venture is the formation of a company and the agreement accordingly provides for promotion of a company. The incorporation of the company would take place in accordance with the provisions of the local laws of the country where it is to be incorporated, namely, the coastal state.
- (ii) The objectives of the company would be set out in the memorandum of association; nevertheless it would be desirable to specify the basic elements in the agreement between the promoters.
- (iii) It would be desirable for the promoters to agree upon the authorized capital of the proposed company and its initial subscribed capital as also its distribution. It is envisaged that the promoters would subscribe to the entire share capital of the company in agreed proportions. However, it is possible to contemplate a position where a certain proportion of the shares would be offered for public subscription. It may be mentioned that the laws of many developing states place a limit in regard to equity participation by foreign nationals and the number of shares to be acquired by the second party (the foreign entity) would have to conform to such laws and regulations.

* This provision is based on the shareholding in the proposed company being on an equal footing. In cases where the shareholding is not equal, the number of Directors to be nominated by each party may be based on the ratio of share capital contributed. In some countries appointment of the Directors requires the approval of the Government.

- (iv) It is the normal practice for the promoters of a company to have their nominees on the Board of Directors. In the case where the company's activities relate to a sector of vital importance to national economy, it is desirable that the appointment of managing Director should receive the approval of the Government. In some countries appointment of all Directors may require Government approval.
- (v) The distribution of profits by way of dividends will be governed by company law and the provisions of articles of association. Nevertheless it would be desirable to incorporate a provision in the agreement setting forth the general policy to be adopted by the company in regard to declaration of dividends and distribution of profits. The principles concerning the debt equity ratio shall also be set out.
- (vi) It is the normal practice in agreements between promoters to have the draft of the memorandum and articles of association to be annexed to the agreement and the same pattern is followed here.
- (vii) The operational activities by the company for fulfilment of its objectives would naturally be in accordance with the local laws and regulations but it is considered unnecessary to make a specific provision in respect of the same in the joint venture agreement.

PART II

8. The second party undertakes to render all necessary assistance to the company in the acquisition of vessels and supportive equipment under hire or purchase for the commercial operations to be undertaken by the company in accordance with the schedule annexed to this agreement.

Where any vessel or equipment are taken on hire or purchase from any party to this agreement or from a company or firm affiliated to any party, such hire or purchase shall be effected at competitive world market prices and on best prevailing terms. Any second hand vessel or equipment purchased by the company shall be subject to evaluation by an independent valuer.

9. The second party shall render assistance to the company in arranging loans and advances for acquisition of vessels and equipment and shall arrange for suitable guarantees for the purpose on terms and conditions to be agreed upon by the parties.
10. The second party shall make available to the company all relevant

data in its possession or which may come into its possession during the currency of this agreement concerning the stock in the areas where fishing activities are contemplated. It shall also make its best endeavour to obtain such data from the fishery agencies in the state of its nationality and where possible from other relevant sources.

11. The second party shall make available to the company the technical and managerial personnel required for operation of the company's fishing fleet and other activities contemplated under this agreement in the categories and on the terms and conditions to be agreed upon between the parties taking into account the programme for progressive introduction of local personnel at all levels.
12. The second party shall arrange at its cost, suitable training programmes _____ for the technical personnel of the company
Number _____
not exceeding number per year in the second party's establishment or in such other establishment as may be mutually agreed upon with the company. It shall also assist the company in the establishment of an appropriate training programme for the company's personnel.
13. The second party undertakes to render assistance to the company or its subsidiaries in the establishment of storage and refrigeration plants as also in regard to plants for processing of fish and manufacture of fishery products. Where any contract for the establishment of such plants is entered into by the company with any party to this agreement or with any company or firm affiliated to a party to this agreement, such contract shall be entered into on the best prevailing terms and conditions in the world market and at competitive market prices. Any second-hand equipment purchased under any such contract shall be subject to evaluation by an independent valuer.
14. The marketing of fish and fish products intended for export shall be undertaken by the second party in accordance with the marketing agreement as annexed to this agreement. The second party shall assist the company in the development of its own marketing expertise.

Notes to Clauses 8 to 14

- (i) Whilst Part I of the Draft Agreement deals with promotion of a national company, Part II includes certain related matters where the foreign party's collaboration is deemed essential for fulfilment