

of the objectives of the proposed company. This relates mainly to acquisition of vessels and equipment on purchase or hire, arrangements for loans through which vessels and equipment may be acquired, provision of data and technical expertise and training programmes. The obligations of the foreign party are set out in this part which would constitute the main consideration for a coastal state in allowing a foreign entity to participate in an equity joint venture in the fisheries sector.

- (ii) It is sometimes the case that the party from the developed country in a joint venture agreement itself makes available the vessels and equipment needed for fishing on hire with an option for purchase. It is necessary to ensure that when vessels or equipment are purchased or taken on hire from the foreign party or its affiliates that transaction is made on competitive prices and on best available terms.
- (iii) Since it might be difficult for a company incorporated in a developing country to arrange for loans or advances for acquisition of vessels and equipment, it would be desirable to place an obligation on the foreign party to render assistance in the matter.
- (iv) One of the objectives for entering into joint venture arrangements may well be acquisition of data concerning the fishery resources without which fishing activities on an appreciable scale would be difficult. The foreign fishermen who had been previously fishing in the waters now encompassed within the exclusive economic zone in many cases are in possession of such data and if joint venture arrangements are entered into with such a party, it may be possible to acquire the necessary data. A provision in respect thereof is accordingly made in this agreement.
- (v) A difficulty experienced by developing states is in regard to technical and managerial personnel. It is therefore necessary to provide that the foreign party should arrange for the services of such personnel to the extent necessary and upon such terms and conditions as may be agreed upon. However, progressive employment of local personnel in all categories shall clearly be kept in perspective.
- (vi) One of the important considerations that may promote developing countries to enter into joint venture agreements in the fisheries sector is the need for establishment of allied industries such as in regard to storage and processing of fish. It might be difficult to find a foreign party with expertise in fishing which may have directly in its possession the technical knowhow for preservation or processing of fish. Nevertheless foreign entities which are engaged in fishing have close connections or collaboration with the companies which undertake such activities. It would therefore be

reasonable to provide that the foreign party to this agreement should render suitable assistance for obtaining collaboration in this field. The foreign party would itself have a vested interest in arranging for such collaboration since it would be a substantial shareholder in the local company which would undertake these activities either directly or through its subsidiaries.

- (vii) The training programme constitutes one of the main elements in joint venture arrangements. Such training programme would be facilitated if a certain number of trainees are taken by the foreign party in its own establishments or establishments maintained by its collaborators in other countries.
- (viii) Marketing of fish and fish products constitutes another important element. It would be reasonable to provide that the foreign party should render assistance in this field.

### PART III

#### Applicable Law

15. This agreement shall be governed by the laws of \_\_\_\_\_  
(coastal state)

#### Duration and termination

16. (i) The first part of this agreement shall be deemed to have been performed upon the incorporation of the company and acquisition of the shares by the respective parties. If within a period of 12 months the performance of Part I of the agreement has not been completed, the entire agreement shall be terminated unless the parties by mutual consent have agreed upon the extension of the period of time for the performance of Part I of this Agreement.
- (ii) Subject to the provisions of Clause 1, Part II of this agreement shall remain in force for a period of \_\_\_\_\_ years and shall not be terminated by either party except for breach of contract or upon dissolution or winding up of one of the parties. The duration of this part may be extended by a period of \_\_\_\_\_ years by agreement of the parties.

#### Force Majeure

17. Any failure by any of the parties to carry out any of its obligations under this agreement shall not be deemed as a breach of contract or default if such failure is caused by force majeure.

#### Settlement of Disputes

- \*18. Any dispute between the parties arising out of or in relation to this agreement shall be settled by arbitration in accordance with the provisions of the UNCITRAL Rules, 1976.

It was suggested that the arbitration may be held under the laws of the coastal state since the performance of the contract will primarily be in that state.



**D. DRAFT GUIDELINES FOR A CONTRACTUAL JOINT VENTURE ARRANGEMENT BETWEEN AN ENTITY OF THE COASTAL STATE (GOVERNMENT UNDERTAKING, CORPORATION OR COMPANY) AND A FOREIGN ENTERPRISE OR ENTITY**

**Explanatory note**

The Draft Guidelines for a Contractual Joint Venture Arrangement between an entity in the coastal state and a foreign enterprise or entity have been formulated on the premise that a developing coastal state desirous of achieving the objective of optimum utilization of the fishery resources in its exclusive economic zone would wish to encourage its own national companies or enterprises in the public or private sector to obtain assistance through joint venture arrangements with foreign parties. There may be several variants in such contractual joint venture arrangements both in regard to the scheme and sharing of profits. This would depend upon what the parties may agree. The draft guidelines have been prepared on broad general terms in regard to one possible pattern of joint venture arrangements.

**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 first party is desirous of obtaining certain assistance and technical collaboration which the second party has agreed to provide within the framework of a joint venture arrangement;

\*Whereas a sample survey conducted by ----- in -  
----- of the exclusive economic zone of -----  
(specify areas)  
----- had identified the existence of stocks suitable for commercial exploitation which has been followed by understanding of a feasibility study and an environmental impact assessment;

Whereas the Government has declared its intention to encourage

- \* This provision would be appropriate where a resource survey and a feasibility study has been undertaken prior to the conclusion of a joint venture agreement.

the development of its fishery industry through collaboration with nationals or entities, public or private, in other states and has in its laws, regulations and administrative orders offered incentives for this purpose;

And Whereas the Government has given its approval and consent to the execution of this agreement.

**Notes on the Recitals**

In most developing countries collaboration with foreign parties is permitted only upon the approval of the Government and to the extent they conform to the Government policy. Foreign parties are usually attracted to enter into joint venture arrangements mainly on the basis of adequate resources being available. However, incentives in the shape of tax relief, facilities for repatriation of capital are important elements as also any assurance on the part of the Government that they would render assistance in the execution of the project with a view to avoidance of administrative delays.

1. The parties hereby agree to undertake in collaboration with each other fishing and other related activities in accordance with the terms and conditions provided for under this agreement.

2. The fishing operations under this agreement shall be undertaken in the areas specified in the Schedule to this agreement within the waters in the exclusive economic zone of ----- in accordance with the laws and regulations of the coastal state and the plan of work agreed up on between the parties which is annexed to this agreement.

3. The second party shall employ ----- vessels of -----  
(size and tonnage)  
the particulars in respect whereof are described in the Schedule to this agreement certified to be seaworthy by a recognized surveyor agreed upon by the parties.

4. The first party shall have the option at the expiry of a period of ----- years to purchase one or more of the vessels provided by the second party and employed in fishing operations under this agreement at the written down value of the vessel/at the value to be determined by a recognised valuer agreed upon by the parties.

5. The first party shall have the option to acquire on purchase or hire, vessels other than those provided by the second party not exceed-



ing ----- of the size and tonnage for addition to the operational (number).  
fleet.

#### Notes to Clauses 3,4 and 5

In a contractual joint venture arrangement, it would be reasonable to provide that some of the vessels to be utilized in fishing operations and research activities should be provided by the foreign party. This practice has been followed in several contractual joint venture arrangements between parties in the United States and those in Latin America. This would relieve the coastal state of a major burden of large capital employment in purchase of vessels. Even if the vessels were to be taken on hire, operational expenses will be heavy.

It is, however, possible that a coastal state may desire that vessels should be purchased or taken on hire by its own entity or the national company in order to progressively build up a fishing fleet and that the operational activities of such vessels should be undertaken by the foreign party. Since this will require a large capital outlay, it is conceivable the coastal state might like to contemplate purchase of vessels within or outside the framework of the joint venture agreement in progressive stages.

6. The vessels employed by the second party shall fly the flag of the state where it is registered/be registered in the coastal state and fly its flag.

#### Note to clause 6

It may be desirable to register the vessels provided by the foreign party in the coastal state. This will depend upon the laws and regulations of the state concerned. However, experience has shown that it is extremely difficult to change the registration of vessels in view of the fact that vessels are often purchased under hire-purchase agreements or mortgaged to banks and lending institutions who have given loans or advances for the purchase of the vessels.

7. The second party shall be responsible for ensuring that the operations are carried out in accordance with the laws and regulations of the coastal state and the approved plan of work. The day-to-day operation of the vessels employed in the fishing activities shall be subject to the direction and control of the second party and the master of the vessel shall be deemed to be its agent.

8. The second party undertakes that ----- of the crew

members of the vessels employed in fishing including officers shall be nationals of the coastal state whose terms of employment shall be agreed upon by the parties.

#### Note to clause 8

It is necessary to provide that part of the crew members should be nationals of the coastal state since this would not only offer employment opportunities but facilitate transfer of technology.

9. The second party also undertakes to employ not less than -----vessels for the purpose of carrying out survey operations /training within the fisheries waters on the basis of a programme included in the agreed plan of work approved by the coastal state. The second party shall accept on board such vessels and provide facilities for persons from the coastal state to be nominated by the first party to be associated in survey operations/training programmes which number shall not be less than ----- to be progressively increased to -----.

#### Note to clause 9

Undertaking of research and training facilities constitutes one of the major objectives of joint venture arrangements. This provision has accordingly been included in these guidelines.

10. The first party shall be responsible for obtaining licences and permits that may be necessary for carrying out the fishing activities by the vessels employed in the operations.

#### Note to clause 10

It would be reasonable to provide that the licences which are to be obtained from the coastal state for undertaking fishing operation should be responsibility of the local party.

11. The second party undertakes that a Register containing data of catch shall be maintained by each vessel in the appropriate form and manner prescribed by the coastal state and that such data shall be made available to the first party. The second party further assures that full information and particulars in regard to survey operations including the results of such operation shall be furnished forthwith to the first party.

#### Note to clause 11

Obtaining of data concerning the stock and results of research



programme carried out would seem to constitute one of the important considerations for entering into joint venture arrangements. The data of catch would give an indication about the breeding grounds, habits of fish and the species to be found in each area where fishing activities are undertaken under such arrangements.

12. The entire catch shall be landed at the designated port or ports of the coastal state as may be agreed upon between the parties from time to time.

#### Alternative

----- percent of the catch shall be landed at the designated port or ports of the coastal state and the remaining portion shall be trans-shipped to the vessels provided by the second party under the joint supervision of both the parties.

#### Note to clause 12

It is conceivable to provide that the entire catch should be landed at the designated port or ports of the coastal state. On the other hand it has been the practice in some cases that a portion of the catch should be landed in the coastal state and the remaining portion should be allowed to be taken by the foreign party for its own purposes. Whatever arrangements is to be made would depend on the one hand upon the needs of the coastal state as food for its own populations as also the storage and processing facilities in the coastal state, and on the other hand the interest of the foreign party in entering into the arrangements. It may be stated that in some cases the main consideration of a foreign party for entering into contractual joint ventures has been the possibility of its being allowed to retain a part of the catch for consumption and marketing in its own country.

13. The parties shall consult from time to time about the amount of fish which should be sold in the local market, the quantity that should be earmarked for processing and the amount that is to be exported in conformity with the laws and regulations of the coastal state. The first party shall make the necessary arrangements for marketing of that portion of the fish and fish products that is earmarked for the local market. The second party shall make suitable marketing arrangements in regard to the fish and fish products which are to be exported.

#### Note to clause 13

This clause is closely linked with the provisions of clause 12. It

would depend upon the arrangements that are made in regard to the amount of the catch that should be landed and quantum, if any, which the foreign party should be allowed to take for its own purpose.

14. The second party shall undertake to construct shore facilities appropriate for use of the vessels employed under this agreement and also for landing of the catch.

#### Note to clause 14

In some cases provisions are made for the foreign party to construct shore facilities but it is not invariably the case. This is a matter for consideration by each coastal state whether it would itself undertake construction of shore facilities or whether assistance of the foreign party should be sought in the matter.

15. The parties shall enter into arrangements for construction of storage and refrigeration plants for preservation of the fish at a place not more than ----- kilometers in distance from the designated ports where the catch is to be landed. The capital required for construction of such plants shall be provided by the parties in the proportion of - ----- for the first party and ----- for the second party. The second party shall arrange for and/or provide the technology and the technical personnel necessary for the purpose on terms and conditions which are annexed to this agreement.

#### Note to clause 15

It would be useful to provide in a joint venture arrangement a stipulation concerning construction of storage and refrigeration plants because it is in this area that the facilities in most of the developing coastal states are lacking. The construction of such plants is essential in order to regulate supplies to ensure adequate price for fish and to prevent loss or deterioration which inevitably must occur if the fish could not be stored under proper conditions. The most appropriate method in regard to construction of such plants could well be for the local and the foreign party to share in the capital expenditure in agreed proportions together with an undertaking on the part of the foreign party to provide or arrange for the technology upon terms and conditions which may be incorporated in an annex to the agreement.

16. The operational costs of the vessels provided by the second party including survey operations/training programme costs shall be borne wholly by the said party. The operational costs of vessels purchased or taken on hire by the first party shall similarly be borne by that party.



17. The sale proceeds of the quantity of catch allowed to be exported by the second party shall be retained by that party.

#### Alternative

The sale proceeds of the fish, which shall take place in the open market and at competitive prices, shall be deposited by the party or parties undertaking marketing arrangements in an account in a recognized bank or banks to be opened in the joint names of both the parties which would be shared in such proportions as have been agreed upon in the schedule of financial arrangements annexed to this agreement. A bank guarantee or a letter of credit shall be furnished/ opened by the party exporting the fish for the approximate value of such export.

#### Notes to clause 16 and 17

The Expert Group considered that there could be possibilities of working out several types of financial arrangements, for example, the parties could agree that the profits after deducting the entire costs of the operation should be shared between the parties in certain proportions. Another alternative method was that the foreign party shall meet the entire costs of the operation and give to the local party a certain percentage of profits. In this connection it was mentioned by way of example that in one joint venture arrangement, the foreign party provided the vessel, equipment and gear and it was allowed to take away the entire catch subject to its remitting 15% of the sale proceeds calculated at prevailing market rates and furnishing a bank guarantee for that amount before the fish was exported. Under this arrangement the first party obtained the required licences, paid the licence fees, arranged for the bank guarantee and met the wages of local personnel. Another form of financial arrangement where both the parties provided vessels for the operation was discussed. The Expert Group was of the view that financial arrangements may depend at times upon the policy of the coastal state such as whether its objective was to get the fish or to earn foreign exchange. The Expert Group considered that the financial arrangements would be such which ought not to give rise to possible disputes between the parties regarding the accounting of expenditure or computation of profits and in this context clauses 16 and 17 were incorporated as being one possible example of appropriate financial arrangements.

18. This arrangement shall be governed by the laws of -

19. This arrangement shall enter into force on ----- and shall remain effective for a period of ----- years there from and shall be subjected to extension for a period of ----- years by agreement of parties.

20. This agreement shall terminate on the dissolution or winding up of either of the parties. The agreement may also be terminated by either party upon giving of a notice which shall not be less than ----- prior to the date of the proposed termination.

21. This agreement has been entered into on the basis of mutual trust and confidence between the parties and the rights and obligations hereunder shall not be transferable by any party except with the consent of the other party.

22. Any failure by any of the parties to carry out any of its obligations under this agreement shall not be deemed as a breach of contract or default if such failure is caused by force majeure.

23. Any dispute between the parties arising out of or in relation to this agreement shall be settled by arbitration in accordance with the provisions of the UNCITRAL Rules, 1976\*.

\* It was suggested that the arbitration may be held under the laws of the coastal state since the performance of the contract will primarily be in that state.



## ENVIRONMENTAL PROTECTION

### Introduction

The topic "Environmental Protection" has been under consideration of the Committee since its Tokyo Session held in 1974. After conclusion of the basic preparatory work of a preliminary nature and general exchange of views at the Committee's Sessions held in Tehran (1975), Kuala Lumpur (1976), Baghdad (1977) and Doha (1978), an Expert Group Meeting was convened in December 1978 in order to identify areas and issues where efforts were most needed for protection of the environment in the context of the situation and the needs of the developing countries in the Asian-African region. A programme of work, which could be usefully undertaken by the AALCC to assist its member government's was drawn up by the Expert Group and later approved at the Committee's Seoul Session held in early 1979. It was, however, decided that having regard to the vastness of the subject to be covered, the work should be undertaken in stages.

Another Expert Group which met in December 1979 recommended that priority should be given to the question of protection of the marine environment. These recommendations were subsequently endorsed at the Committee's Jakarta Session held in 1980. Views were also expressed that the Committee's work should be so organised as to complement the activities of other major international organisations engaged in this field with a view to avoid duplication and also to harmonise the activities of the major agencies for the greater benefit of the countries of the region. At the Colombo Session, held in 1981, it was suggested that the Committee should accord priority to matters concerning:

- i) Promotion of ratification of or accession to some of the major conventions in the field of marine environment, and
- ii) Regional Seas Programmes co-ordinated by the UNEP which were relatable to the Asian-African region.

As a follow-up of the Colombo Session, the Committee's Secretariat prepared a Study which, inter alia, set out a brief review of the major



IMO Conventions on prevention and control of marine pollution with a view to promote their wider acceptance by the States in the Asian-African region.

Another Expert Group Meeting was convened in New Delhi in July 1982. In that Meeting, besides a general review of the relevant IMO Conventions in the field of protection of the marine environment, attention was focussed on the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC, 1969) and the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (Fund, 1971) since some major revision to both these Conventions were already under contemplation.

The Meeting also discussed in considerable detail the question of accession to and ratification of the CLC (1969) and the Fund (1971) Conventions by the States in the Asian-African region and the advantages that were likely to accrue to the States by becoming parties to these Conventions.

The Expert Group recognised that there were several Conventions which directly or indirectly had a bearing on question relating to oil pollution, it was suggested that among the Conventions in question there were three which were particularly crucial in this respect; namely the International Convention for the Safety of Life at Sea, 1974, the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and the International Convention on the Prevention of Pollution from Ships 1973, as amended by the Protocol of 1978 thereto.

In respect of the first two of these Conventions, it was suggested that, while they did not directly deal with marine pollution, they were nevertheless essential in any effort aimed at avoiding pollution: the first dealt in essence with the fundamentals of ship design, ship equipment and navigation, and the second set out minimum requirements in respect of training, certification and watchkeeping. Both were, therefore, directly concerned with ensuring the safety of operation of ships.

It was suggested that the AALCC Secretariat might perhaps prepare background documents in respect of the IMO Conventions so as to help dispel the concerns which still existed in the competent ministries of many countries over the implications of participation in these Conventions.

The Meeting further took note of the fact that in recent years pollutants from landbased sources have constituted one of the major factors in marine pollution and that the UNEP had accordingly attached priority to combating this source of marine pollution. It recognized that in the progressive stages of implementation of the regional seas programmes in the Asian-African region suitable arrangements would have to be worked out between the States concerned for prevention and control of pollution from landbased sources and it would be necessary also for the governments to undertake supportive legislations for regulatory and enforcement measures within their territories for effective implementation of any regional or sub-regional arrangements.

The Meeting was of the view that whilst the relevant protocols for establishing co-operation in emergency situations were being negotiated, it would be desirable if pilot studies could be undertaken to ensure speedy progress towards implementation of plans and programmes for combating emergency situations. By way of illustration, it was mentioned that such pilot studies could include identification of risks in relation to tanker routing, sensitivity of particular areas of the coastlines, adequacy of existing organizational arrangements, availability of equipment, and the use of aircraft for surveillance of oil and control of operations.

At the Tokyo Session held in 1983, the Secretary-General introduced the Report of the Expert Group Meeting of 1982 and invited attention to the recommendations made therein. The delegate of Bangladesh expressed concern over the increasing threat of marine pollution in the Indian Ocean region. While the delegate of Iraq recognised the role of Kuwait Convention in the protection of the marine environment, the delegate of Iran regretted that it had not yet met with success. The delegate of Indonesia urged to conduct further studies concerning implementation of Part XII of the Law of the Sea Convention on the Protection and Preservation of the Marine Environment. The Committee took note of the Report of the Expert Group and decided to convene another meeting of the Expert Group to consider matters concerning the revision of the Civil Liability Convention of 1969 and the Fund Convention 1971 prior to the IMO Diplomatic Conference scheduled to meet in April-May 1984. It was also agreed that the AALCC Secretariat would work in collaboration with the Government of Indonesia in the future study of matters relating to marine pollution.

As a starting point the Government of Indonesia in collaboration with the AALCC convened the Expert Group Meeting in Jakarta from 5th to 7th March 1984. The Jakarta Meeting held extensive discussions on



the various proposals put forward in the IMO and other fora in the context of the revision of the CLC (1969) and the Fund Convention (1971).

Environmental Protection was not included in the agenda of the Kathmandu Session as the ESCAP had convened a Ministerial Meeting on Environmental Protection around the same time.

At the Arusha Session, the Committee discussed the agenda item Environmental Protection in conjunction with the item on Nuclear Free Zone in Africa. The Secretariat had submitted separate studies on those two items. As regards Environmental Protection, the Secretariat study besides identifying the environmental problems in the African continent in general, drew attention to the marine pollution in the East African region in particular.

The study on "Nuclear Free Zone in Africa" reviewed the developments since the adoption of the Organisation of African Unity (OAU) Declaration on Denuclearisation in 1964. While suggesting a framework for an international convention on denuclearisation of Africa, it examined the relevance of the Treaty for the Prohibition of Nuclear Weapons in Latin America, 1967 and the South Pacific Nuclear Free Zone Treaty 1985. Finally, it referred to the special situation arising out of the attitude of South Africa in that context.

During the general debate some delegations welcomed the idea of establishment of a nuclear free zone in Africa. One delegation called for the liquidation of bases from the Mediterranean region as a first step towards the creation of zone of peace in that area. Another delegate while advocating creation of nuclear free zone in the Korean Peninsula, urged the AALCC to evolve a suitable legal framework governing rights and obligations of states in respect of nuclear free zones. The observer for Australia elaborated the salient features of the South Pacific Nuclear Free Zone Treaty. Another delegate referred to the International Convention for the Prevention of Pollution from ships 1973 as modified by the protocol of 1978 (MARPOL 73/78) especially its provisions concerning "specified areas". He felt that since the Indian Ocean provided the main route for most of the shipping relating to oil, it should have been given better protection. He asked the Secretariat to examine the possibility of suggesting a total prohibition of oil dumping by ships. He also called for a ban or prohibition of nuclear waste as part of the garbage that might come into Ocean. While endorsing the Secretariat suggestion for the preparation of a study relating to establishment of reception facility for the Eastern African region, he said that the Secretariat should undertake a feasibility study concerning the

economic and engineering viability of the project so that the Committee could make the necessary recommendations to the countries in the region for the establishment of the reception facility.

At the conclusion of the general debate, it was decided that the Committee would continue consideration of these topics and the Secretariat was accordingly asked to prepare studies for submission at the next Session.