

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 Utilization 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 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 finalized 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 11 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 nonliving, 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.