

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;

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 infrastructure, 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 Coordination 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 organisations 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 coordination.
 - 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 or 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, H 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 vessels;
 - 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.
- (2) No person shall carry or have in his possession or control any explosives, poison or other noxious substance or apparatus fitted for or capable of utilizing current, with the intention of using such explosive, poison or other noxious substance or apparatus for carrying out any of the prohibited acts referred to in the preceding sub-section.
- (3) Any explosive, poison or other noxious substance or apparatus found on board any vessel shall be presumed, unless the contrary is proved, to be intended for such use.
- (4) Any person who acts in contravention of provisions of this section shall be punishable (with imprisonment which may extend upto one year) or a fine upto a maximum of _____ or both.

Section 34- Possession of Prohibited Gear. etc.

Any person who uses for fishing or possess or has on board any Fishing vessel: -

- a) any fishing net, the mesh size of which is less than the minimum mesh size for the type of net prescribed in any regulation made under this Act; or
- b) any other net fishing gear or fishing appliance prohibited under any regulations made under this Act; shall be punishable with a fine upto a maximum of _____

Section 35- _____

Any person who lands, sells, receives or is found in possession of any fish, knowing or having reasonable cause to believe them to have been taken in contravention of the provisions of the preceding section shall be liable to a fine not exceeding _____.

Section 36-

Prohibition of Importation or Exportation of Fish or Fishery/Aquatic Products.

No person shall import or export any fish or fishery/aquatic product, whether adult or young, fry or fish eggs, for propagation or for any other purpose, without a permit obtained for the purpose and payment of inspection and other fees.

PART IX ENFORCEMENT

Section 37- Powers of Authorized Officers to stop, board and inspect, etc.

For the purpose of ensuring compliance with the provisions of this Act, any authorized officer may:-

- a) stop and board any fishing vessel within the fisheries waters, other than a foreign fishing vessel outside such waters and make any examination and enquiry concerning that vessel, its equipment, fishing gear, crew or fish carried on board that vessel;
- b) stop and inspect within the fisheries waters any vessel or vehicle transporting fish;
- c) require to be produced and examine any fishing gear or fishing appliance whether at sea or on land;
- d) examine any fishing stakes;
- e) require to be produced, examine and take copies of any licence, permit, certificate or other document required under this Act or any regulations made thereunder.

Section 38-Powers of Hot Pursuit, Entry, Seizure and Arrest

- (1) Any authorized officer, where he has reasonable ground to believe that an offence has been committed against the provisions of this Act or any regulation made thereunder, may: -
 - a) Stop, board and search any foreign fishing vessel outside the fisheries waters, where he has reason to believe that the offence was committed by such vessel and pursuit to the vessel was commenced, within the fisheries waters and bring such vessel and its crew within those waters;
Provided that:
 - i) where the vessel is pursued into waters falling within the Territorial sea (or Exclusive Economic zone) of another State, the pursuit and exercise of enforcement powers is permitted by the terms of any treaty in force, regional or sub-regional arrangements.
 - b) enter any premises not used exclusively as a dwelling house, in which he has reason to believe that an offence has been committed, or fish taken in contravention of such provision are being stored and search such premises;
 - c) take samples of any fish found in any vessel or vehicle inspected or any premises searched under the provisions of this Act;
 - d) arrest any person whom he has reason to believe has committed such offence;
 - e) seize any vessel (including its fishing gear, furniture, appurtenances, stores and cargo), vehicle, fishing gear or fishing appliance which he has reason to believe has been used in the commission of such offence, or in relation to which the offence has been committed;
 - f) seize any fish which he has reason to believe have been caught in the commission of such offence or are possessed in contravention of Section 35;
 - g) seize any explosive, poison or other noxious substance or apparatus which he has reason to believe have been used or possessed in contravention of Section 33.

- (2) A written receipt shall be given for any article or thing seized under sub-section (1) and the grounds for such seizure shall be stated in such receipt.
- (3) Any person arrested under the provision of this section shall be produced before a Court within twenty-four hours of the arrest if made on land or within twenty-four hours of the arrested person being brought ashore where the arrest has been made at sea.
- (4) Any vessel seized under sub-section (1) and the crew thereof shall be taken to the nearest or most convenient port and dealt with in accordance with the provisions of this Act.

Section 39-Fish and other perishable Articles seized may be sold

Any fish or other articles of a perishable nature seized under the provisions of Section 38 may, with the approval of the Director General be sold, and the proceeds of sale shall be held and dealt with in accordance with the provisions of this Act.

Section 40-Obstruction of Authorized Officers

Any person who:

- a) wilfully obstructs any authorized officer in the exercise of any of the powers conferred on him by this Act; or
- b) fails to comply with any lawful order or request made by any authorized officer for information connected with any investigation or enquiry under this Act; shall be punishable in accordance with the provision of this Act.

Section 41-identification of Authorized Officers

- (1) An authorized officer whilst exercising any of his powers or duties under this Act, shall, on demand, produce to any person who may be directly concerned, such identification papers or written authorisation as may be reasonably sufficient to establish his identity.
- (2) It shall not be an offence for any person to refuse to comply with any request, demand or order made by any authorized officer, if such officer refuses or fails on demand being made by such person to produce the requisite identification papers or written authorisation.

Section 42-Non-Ilability of Authorized Officers

No action shall be brought against any authorized officer in respect of anything done or omitted to be done by him in good faith in the execution of his powers and duties under this Act.

PART X

OFFENCES, PENALTIES AND LEGAL PROCEEDINGS

Section 43-Offences against the Act or Regulations

- (1) Any person who fails to comply with the provisions of this Act or any regulations or rules made thereunder or acts in contravention thereof shall be liable to be punished under this Act.
- (2) If no specific penalty has been provided for the particular offence, the person convicted of such offence shall be liable to a fine not exceeding _____ [or to a term of imprisonment which may extend upto a period of _____ or to both.]

Section 44-Wilful Damage to Fishing Vessels, etc

Any person who causes damage to any fishing vessel, fishing stakes, fishing gear, net or other fishing appliance in the ownership or possession of another person, either wilfully or through gross negligence,

shall be liable to a fine not exceeding _____ (or to imprisonment for a term not exceeding a period of _____ or to both.)

Section 45-Destroying Incriminating Evidence

Any person who destroys or abandons any fish, fishing gear, net or other fishing appliance, explosive, poison or other noxious substance or any other object or thing with intent to avoid their seizure or the detection of an offence against this Act or any regulations made thereunder, shall be liable to a fine not exceeding _____ [or to imprisonment for a term which may extend upto _____ or to both.]

Section 46-Master liable for Offence committed on his Vessel

When an offence against this Act or any regulations made thereunder has been committed by any person on board a fishing vessel, the master of such vessel shall also be liable for such offence.

Section 47-Companies and partnerships

Where any offence against this Act or any regulations made thereunder has been committed by a company or by any member of a partnership, firm or business, every Director or Principal Officer of that Company directly connected with the activity or any other member of the partnership on the person concerned with the management of such firm or business shall be liable for such offence unless he proves to the satisfaction of the Court:

- a) that he used the diligence to secure compliance with this Act; or
- b) that such offence was committed without his knowledge, consent or connivance.

Section 48-Compounding of offences

The Director General may, at any stage of the proceeding, compound any offence against this Act or any regulations made thereunder for a sum of money not less than one-fourth of the maximum fine provided for such offence.

Section 49-Forefeiture of Vessels. etc.

- (1) Any vessel, fishing gear, net or other fishing appliance, fish or the proceeds of sale of fish, explosive, poison or other noxious substance or other article or thing seized under the provisions of this Act shall be held pending the outcome of the prosecution in a Court of law.

Provided, however, that the Court may order the release of any fishing vessel, fishing gear, net or other fishing appliance so seized upon furnishing of a bond or other security to the satisfaction of the Court by any person claiming such property.

- (2) If the owner of the property cannot be found and by reason thereof a prosecution cannot be launched, the property seized shall be held for a period of one month at the end of which it shall be deemed forfeited unless a claim is received to such property within the aforesaid period.
- (3) Upon receipt of such claim the Director General shall refer the matter to the competent Court for adjudication and the property shall be held pending the conclusion of such proceeding.

Provided however that the Court shall have power to order the release of the property upon furnishing a bond or other security by the person claiming such property.

Section 50-Power of Court to Order Forfeiture

Where any person is convicted of an offence against this Act or any regulations made thereunder, or where the Court, on 'referral of any claim under Section 49, finds that such an offence has been committed, the Court, in addition to any other penalty that may be imposed:-

- a) may order that any fishing vessel (including its' fishing gear, furniture, appurtenances, stores and all cargo), fishing gear, net, or other fishing appliance used in the commission of such offence be forfeited and that any licence or permit issued under this Act or any regulations made thereunder be suspended for such period of time as the Court may think fit, or be cancelled; and
- b) shall order that any fish caught in the commission of such offence or the proceeds of sale of any such fish, any explosive, poison or other noxious substance used in the commission of such offence, any fishing net or other fishing gear or fishing appliance possessed or carried on board any fishing vessel in contravention of Section 33 be forfeited; and
- c) shall order, in the case of any offence against Section 34 that any fishing gear, net or other fishing appliance carried on board the offending vessel, be forfeited.

Section 51-Second or Subsequent Offence

In the case of any second or subsequent offence against this Act or any regulation made thereunder:-

- i) the maximum penalty to be imposed may extend upto twice the limit of the fine [or imprisonment] as prescribed for that offence under the Act; and
- ii) where the offence relates to a violation of Sections 33 and 34 of the Act, the Court shall order, the forfeiture of the offending vessel (including its fishing gear, furniture, appurtenances, stores and all cargo) unless it considers that circumstances do not so justify.

Section 52-Disposal of things declared Forfeited

Any vessel (including its fishing gear, furniture, appurtenances, stores and all cargo), fishing gear, net or other fishing appliance, explosive, poison or other noxious substance, and any fish or the proceeds of sale of fish deemed or ordered forfeited under 49, 50 or 51 shall be disposed of in such manner as the Director General may think fit.

Section 53-Return of seized Vessel, etc. if no Forfeiture Ordered

Where the proceedings in respect of an offence have resulted in an acquittal or where the seized fishing vessel or goods or any proceeds realized from a sale thereof are not ordered to be forfeited, the vessel or the goods shall be returned and the proceeds shall be paid to the owner or to the person from whom the fishing vessel or goods were taken; Provided that in the c--se of conviction where a fine has been imposed the vessel or the goods may be detained until the fine is paid, or be sold in satisfaction of or towards realisation of the fine.

Section 54-Presumption and Proof of Cause of death, etc. of Fish

- (1) All fish found on board any fishing vessel which has been used in the commission of an offence against this Act or any regulations made thereunder shall, unless the contrary is proved, be presumed to have been caught in the commission of such offence.
- (2) In any prosecution where the cause of death, stunning, disabling or other injury to any fish is in question, a certificate signed by the Director General or such other officer authorized on his behalf shall be prima facie evidence in any Court as to the cause of such death, stunning, disabling or other injury.

Section 55-Jurisdiction of the Courts

Any offence against the provisions of this Act or the regulations made thereunder committed within the fisheries waters by any person, or any such offence committed outside such waters by any citizen of or person ordinarily resident in _____ or by any person on board any local fishing vessel, shall be triable in a Court having territorial jurisdiction at the place where the person accused of the offence is apprehended or the place where he is brought ashore if the arrest has been made at sea.

PART XI CIVIL LIABILITY

Section 56-_____

- (1) Where by reason of any Act or omission prohibited under this law, damage is caused to any person or property or the natural resources within the fisheries waters or the territory of _____, the owner or the operator of the vessel, device or any other structure causing such damage shall be liable, except as otherwise provided under this Act.
- (2) Without prejudice to the generality of the provision of subsection (1) such liability shall cause: -
 - a) for any damage caused to a person, vessel, gear, facility or other structure used in any activities connected with the exercise of the rights of _____ in the fisheries waters, including fishing and related activities, policing and surveillance, environmental protection and shipping;
 - b) for any damage caused in the fisheries waters or in the territory of _____ by contamination resulting from such act of omission and the consequent expenditure incurred on measures taken for clearing the environment of the contaminant and the effects of the contamination.

Section 57-_____

No action to enforce -a claim in respect of a liability incurred under section 56 shall be entertained by any court in _____ unless action is commenced not later than one year after the claim arose.

Section 58-Special Defences

A person against whom an action is brought for damages under section 56 shall not incur any liability under that section if he proves that the damage caused: -

- a) was due wholly to an act or omission of another person, not being the servant or agent of the owner; or
- b) was due wholly to the negligence or wrongful act of a government or other authority in exercising its function of maintaining lights or other navigational aids for the maintenance of which it was responsible.

Section 59-Jurisdiction

Any action under the provisions of Section 56 shall be maintainable in a Court having territorial jurisdiction at the place where the defendant or its agent is ordinarily resident or at the place where the offender or the offending vessel is brought to port.

PART XII PROCESSING AND MARKENNG

Section, 60-Marketing Regulation Schemes

- (1) The Minister may, by regulation formulate schemes for marketing of fish and establishment of fish markets in a specified area or areas with a view to maintenance of supply and distribution of fish in an equitable and orderly manner.
- (2) Such schemes may include provisions for regulating the landing of fish in the notified area, the auctioning or other sale of fish and registration of dealers.

Section 61-Processing Establishments

- (1) The Director General may upon application being made in the prescribed form issue to any person a Licence to operate a fish processing establishment.
- (2) The owner or operator who operates or causes to operate any such establishment otherwise than under and in accordance with the conditions of a valid licence shall be punishable under this Act.
- (3) The provisions of this section unless otherwise specified by notification by the Government (Minister) shall not apply to any fish processing establishment where fish is preserved solely by means of smoking or drying by traditional means.

Section 62-Control and Regulation of Fish Processing Establishments

The Minister, in consultation with the appropriate bodies or authorities responsible for public health may issue directions concerning the location, construction and operation of fish processing establishments and may require the inspection of the establishment and fish products. Any such directions may relate also to establishing quality standard methods of analysis and testing for fish and fish products.

Section 63-Processor's Carrier Permit

The Director General may upon application made for the purpose issue a transport permit in respect of a vessel owned or operated by any person engaged in the Processing of fish and used exclusively to transport fish to the shore processing facility specified in the permit.

PART XIII GENERAL PROVISION

Section 64-Power to make Regulations

- (1) The Government (Minister) may make regulations for the carrying out of or giving effect to the purposes and provisions of this Act.
- (2) Every regulation made under this Act shall be published in the Gazette and shall come into operation on the date of such publication or on such later date as may be specified in the notification.
- (3) Every such regulation shall be laid before the Parliament/ Legislature.

Section 65-Power to frame Rules

The Government (Minister) may make rules for the administration of the provision of the Act and the regulations made thereunder.

Such rules shall be published in the official Gazette.

Section 66-Licence and Permit Registers

Registers showing particulars of the licences and permits issued under the Act Shall be maintained and kept at such place or places as the Director General shall specify.

Section 67-Environment Protection

Where, under the laws governing environmental protection for the time being in force, any application is made for a licence to emit, discharge or deposit wastes into any fish bearing waters, the Director General shall be consulted as to the possible effect of such emission, discharge or deposit on fish and other aquatic living resources before any such licence is granted.

Section 68-Fishing for Research, Experimental, Scientific and Sporting purposes

The Director General may, by order, exempt any person or vessel from all or any of the provisions of this Act or any regulations made thereunder for the purposes of fisheries research, experimentation, scientific investigations for the proper management and development of fisheries resources or sport, within the fisheries waters, subject to such conditions as the Minister, may think fit to impose.

Section 69-Protection of Fishermen

- (1) No dery, flat or other boat whatever shall set out from any vessel engaged in deep-sea or bank fishing or be launched with hooks and lines, trawls of other similar appliances, or with intent that the same shall be used in so fishing, or with intent that the same shall be used in so fishing, or for the purpose of examining trawls, set lines or other similar appliances for fishing, unless there is placed in such boat, to be retained therein during absence from such vessel, a mariner's compass, nor unless there is placed in such boat at least two quarts of drinking water and two pounds of solid food for each man of the crew of such boat.
- (2) The owner of such vessel shall supply the vessel at the commencement of its voyage with as many serviceable mariner's compasses as it carries boats, in addition to the vessel's compass and also with the necessary utensils for holding water and with a serviceable fog-horn or trumpet.
- (3) The Coast Guard shall not grant a clearance to such vessel or allow it to go to sea unless the master thereof has a certificate from an officer authorized by the Minister to give such certificates that the vessel is properly equipped with a mariner's compass and suitable utensils for holding water for such boat carried by the vessel and with a serviceable foghorn or trumpet.

Section 70-Offences by Authorized Officers

Any officer employed in connection with the enforcement of this Act or any regulation made thereunder who aids, abets or connives at any violation of this Act or of any regulations made thereunder, is liable upon summary conviction to imprisonment which may extend upto a period of six months or to a fine upto a maximum of _____ or both.

Section 71-Operation of Radio Communication facilities on Board Fishing Vessels

The Radio Control Office shall, upon application, issue a permit and 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 States.

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 I*

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 port6 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 1. **

- 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 States;
- 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 designate 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

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 ENTER-PRISE 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 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 fulfillment 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 fulfillment 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 affected at competitive world market prices and on best prevailing terms. Any second hand vessels 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 11 includes certain related matters where the foreign party's collaboration is deemed essential for fulfillment of the objectives to 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 county 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 know how 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 11 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 exceeding----- 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 crewmembers 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 assure. 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.

MUTUAL ASSISTANCE FOR THE SERVICE OF PROCESS, ISSUE OF LETTERS ROGATORY AND THE TAKING OF EVIDENCE BOTH IN CIVIL AND CRIMINAL MATTERS

Introduction

The topic concerning mutual assistance for the service of process, taking of evidence or obtaining of information both in civil and criminal matters had been undertaken by the Committee's Secretariat with a view to preparation of the Draft for a regional or sub-regional Convention on the model of the Inter-American Convention on Letters Rogatory (1975) in pursuance of the Committee's - decision taken at its Seventeenth Session held in Kuala Lumpur in June 1976.

This was in the context of the need felt to promote judicial cooperation as between the countries of the region in view of their wider involvement in trade, commerce and industrial development in recent years. Extensive investments had been made in the developing countries of the region in projects of national importance by countries both within and outside the region which have led to employment of technicians and other personnel from the investing countries in addition to vast movement of labour to the Middle East from overpopulated areas. These increasing contacts made it incumbent that proper judicial process should be available to facilitate protection of rights and enforcement of obligations of the parties involved which could not be achieved without adequate cooperation between the countries concerned. It was felt that a beginning in this direction could be made with the assistance being rendered in the service of process and taking of evidence abroad as these were considered to be areas where it might be relatively easy to achieve concrete results within a reasonable time frame.

The Committee's Secretariat had accordingly prepared the draft for a proposed multilateral Convention and this was placed before the Twentieth Session of the AALCC held in Seoul in February 1979. The Draft of the Convention dealing with civil and criminal matters was further considered at the Committee's Jakarta (1980) and Colombo (1981) Sessions. At the Colombo Session views were expressed by a number of delegations that it would be preferable to have separate drafts, one to deal with civil or commercial matters and the other relating to assistance in criminal proceedings. The Committee also decided that the two drafts when prepared, should be considered by an Expert Group during the inter-sessional period.

The Expert Group which met at the Committee's Secretariat in New Delhi in August 1982 expressed the view that it would be preferable initially to contemplate bilateral arrangements for mutual assistance in judicial matters in order to promote contacts between the States of the region which could eventually provide a solid basis for a multilateral Convention on the pattern which had found acceptance in other regions. The Expert Group accordingly prepared the drafts of two model arrangements for judicial assistance on bilateral basis-one related to or commercial matters and the other on letters rogatory relating to criminal proceedings. The draft models were placed before the Tokyo Session of the AALCC in May 1983 where the matter was extensively discussed.

The Plenary endorsed the approach of the Expert Group that it would be more productive at this stage to contemplate judicial assistance on bilateral basis and comments were accordingly invited from member governments on the two draft model arrangements. The- modality of bilateral arrangements appeared to be generally acceptable to member governments and the comments received from governments on the drafts were either of a drafting nature or related to technical details. -

At the Kathmandu Session, it was decided that the draft model for bilateral arrangements on mutual assistance for the service of process and the taking of evidence abroad in civil or commercial matters should be finalised by an Expert Group in the light of the comments received and that thereafter it be submitted to governments as the final recommendations of the Committee on the subject. There however, appeared to be some difference in views about the scope of the model arrangements on letters rogatory relating to criminal proceedings.

A Working Group with the participation of the Hague Conference on Private International law, the Commonwealth Secretariat, the League of Arab States together with the representatives of ten governments met at the Hague from the 24th to 26th June 1985 and finalised the draft of the model bilateral arrangements for mutual assistance relating to civil and commercial matters.

The model text was thereafter examined and approved with some changes at the Arusha Session. The model text as finally approved has been sent to member governments. It is felt that the member governments might find the model useful in assisting them to negotiate bilateral arrangements with interested governments. It may be mentioned that a country which is a party to a multilateral or regional convention is not precluded in any manner from entering into bilateral arrangements with countries which are not parties to such convention. Indeed there is nothing in the AALCC draft model bilateral arrangement which is inconsistent with the Hague Conventions or the Regional Conventions in force.