Suggestons for Avoiding or Settling Conflicts Among States Caused by Social, Economic and/or Technical Reasons with Respect to High Seas Fisheries

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社会的，経済的又は技術的理由に起因する公海漁業の国際紛争を防止し又は解決するための示唆.

今　田　清　二

Introduction: Separateness and Relationship between the Rules for Fisheries Regulation based on Biological Needs and Those based on Social, Economic and/or Technical Needs.

All conflicts among states with respect to high seas fisheries arise, fundamentally, from the reason that the living resources of the sea do not exist inexhaustibly. The conservation of living resources of the sea is, therefore, essential for avoiding and settling all conflicts regarding fisheries. After World War II, the principle of maximum sustained catch has been established as the basic rule of a number of agreements among states for the conservation of meny kinds of living resources all over the seas.

But not all conflicts regarding fisheries can be avoided or settled by the rules based only on biological reasons. Some conflicts arise, because of their immediate relations, not with the biological, but with the social, ecomocic and/or technical causes. For example, a conflict regarding who utilizes the specific living resources of an area of the high seas. In order to avoid or settle such a conflict, some rules of social, economic and/or technical nature should be applied besides those of biological nature.

The rules for fishery regulation based on social, economic and/or technical needs involve the allocation to states of specific catch quotas, specific fishing grounds, specific number of fishing boats, as well as the restriction of the fisherman's nationality, etc. The rules based on biological needs, on the other hand, involve the limitation of total catch during a season, the size limits for each species, the limitation for fishing season, for fishing area, for fishing gear and fishing method, etc.

The essential difference or separateness between the rules based on social, economic and/or technical needs and those based on biological needs is evident. No matter how the allocation to states of the catch quotas, the quotas for fishing ground, etc., may be, or what the nationality of the fishermen is, the living resources of the sea can be conserved so far as the limitation of total catch, size limit, etc., are reasonablly observed.

It is also evident that the rules based on social, economic and/or technical needs premises the observation of the rules based on biological needs. Without the observation of the rules for the conservation of resources of the sea, it is meaningless to allocate to states any catch quotas or any quotas of fishing boats, etc.

It is the present need of the international community to establish rules for fisheries regulation based on social, economic and/or technical needs. More and more conflicts are arising caused by the immediate reasons of severe competition among states so that the maintaining of rules for conservation of resources of the sea is threattened.

The separateness and relationship between the rules for fishery regulations, as mentioned above, must be clearly recognized to meet the present need for establishing rules based on social, economic and/or technical needs.

Premises: Equal Footing of all States with respect to Conservation of Living Resources of the High Seas.

It is the premise of what I point out for avoiding or settling conflicts regarding fisheries that all states should take part on an equal footing in any system of conservation of living resources in the high seas. Conflicts among states regarding fisheries can be avoided or settled, not by extending the limits of territorial seas or affording special rights to coastal states in the adjacent areas outside their territorial seas, but by agreement among states on equal footing for the conservation of living resources in the high seas. The evidences are shown in the development of such agreement since the Fur Seal Arbitration, 1893, and the Halibut Fishery Convention, 1923.

The Convention of Fishing and Conservation of the Living Resources of the High Seas, adopted by the U. N. Conference on the law of the sea, 1958, provides special rights for a coastal state with respect to high seas fisheries.

According to the Convention, a coastal state is entitled to take part on an equal footing in any system of research and regulation for purposes of conservation of the living resources of the high seas adjacent to its territorial sea, even though its nationals do not carry on fishing there (Art. 6, 2).

On the other hand, a state which has a special interest in the conservation of the living resources of the high seas not adjacent to its coast, even if its nationals are not engaged in fishing in that area, may request the state whose nationals are engaged in fishing there to take the necessary measures of conservation (Art. 8).

Thus, a non-coastal state or state which has a special interest in the conservation of the resources in the high seas not adjacent to its coast is not entitled to the same right as that of a coastal state. This seems to be an unreasonable discrimination between coastal and noncoastal states because of the reasons below.

It is provided in the Convention that if, subsequent to the adoption by a state or states of necessary measures for the conservation of living resources in the high seas, nationals of other states engage in fishing the same living resources, the other states shall apply the measures to their own nationals (Art. 5).

A coastal state, however, being entitled to take part on an equal footing in any measures for conservation of resources in the high seas even though its nationals do not carry on fishing there, may not apply to their own nationals the conservation measures which had been adopted by the non-coastal states. There seems to be no reason for justifying such discrimination.

Conservation of living resources of the sea benefits all. In adopting and applying the conservation measures benefiting all, there is no reason to discriminate coastal and non-coastal states. Even a state which has an interest in fishing in an area of the high seas not adjacent to its coast should be permitted to take part on an equal footing with the coastal state in any system for conservation of living resources of the sea. Such an argument seems to be consistent with the reason which can not be denied by any majority of international conference.

Basing on the premises above mentioned, I would point out some principles for avoiding or settling fishery conflicts among states caused by the immediate relations with social, economic and/or technical reasons.

FIRST SUGGESTION: A Principle regarding Internationally Closed Areas in the High Seas for Specific Fisheries.

The first to be pointed out is the principle that the regulation of fisheries in the high seas should be limited to what is necessary but minimum. The necessary but, at the same time, the minimum regulation shall not be construed to be a restriction or partial denial of the freedom of fishing in the high seas. Instead, ensuring freedom for all, such regulations of minimum scope help evolve the freedom of the sea.

Conflicts among states regarding fisheries arising from social, ecomomic and/or technical reasons can be avoided or settled by setting up internationally closed areas for specific fisheries under agreement among the states. In order to limit the fisheries regulation to their minimum extent, and to safeguard the freedom of the sea, territorial seas should not be extended for the purposes which can be acheived by such agreement for setting up closed areas in the high seas.

An example of a closed area for avoiding conflicts which may arise from technical reasons is provided in the Russo-Japanese Fisheries Convention, 1956. In the high seas within the provisional line of 40 miles from the coast, the operation of drift net fishery for salmon is prohibited by the Convention. This closed area is not only for the protection of the salmon proceeding to the mouth of rivers for going upstream and spawning, but also to remove the technical cause of conflicts. If salmon drifters operate too near the coast, a lot of fish inadequate for packing that had once been caught in and escaped from the Japanese drift nets in the high seas may be re-taken mixed in the catches of Russian trap nets along the coast, thus stiring conflicts between the states.

Korea, drawing the so called "peace line" far around the Korean Peninsula, seizes every Japanese fishing boat which crosses over the line. The area of the high seas limited by the "peace line" is obviously and essentially different from the internationally closed area of fisheries.

On the other hand, it seems necessary to set up a closed area for trawl fisheries in the high seas around Korea. Before Korea's independence, such a closed area was maintained under Japanese law to conserve the living resources of the sea as well as to avoid conflicts caused by social, economic and/or technical reasons. If trawlers operated too near the coast, the small scale fisheries carried on by the residents of the coast were cirtainly obstructed. Even Korea's independence, can not have changed this conditions.

It is desirable, therefore, that a closed area for trawl fisheries be established in the high seas around Korea under an agreement between Japan and Korea on an equal footing, so that the nationals of both states will be prohibited from operating trawl fisheries there, but be allowed to operate other kinds of fisheries in that area.

As a corollary to the above principle of internationally closed areas, it may be suggested to set up by an international agreement an area in the high seas where certain technical restrictions are applied to certain fishing. For instance, the Japanese government once proposed to the Korean government in order to settle the problem of the "peace line" to set up a technically restricted area for purse seine fishery in the high seas adjacent to the Korean coast, together with above clased area for trawl fishery. The operation of Japanese purse seiners using a strong powered electric light for attracting mackerels, sardines, etc., may obstruct the small scale fisheries operated by the residents of Korean coast.

The purpese of the above mentioned proposal of the Japanese government was construed to remove the technical cause of probable conflicts between the states.

SECOND SUGGESTION: A Principle regarding Allocation of Quotas to States

Among the measures for avoiding or settling conflicts arising from competition, that is, from the reasons of social, economic and/or technical nature, is the allocation of quotas to states for catch limits, for the limits of fishing area in the high seas, and for the muximum number of fishing boat, etc.

There is no need for such allocation of quotas if there is surplus of stock of fish. The fundamental reason for allocation of quotas to states is such condition of stock of fish that more intensive exploitation of which will not provide a substantial increase in yield which can be sustained year after year. However, the immediate reason necessitaiting the allocation of quotas is not the condition of stock of fish, but the severe competition among states. If the competition is not severe, no conflict will occur, even though the condition of stock of fish is such as above mentioned. But if the competition which is social, economic and/or technical in its nature becomes severe, conflicts occur accordingly.

Quotas for catch limits, etc., shall be allocated to states in accordance with each state's activity regarding specific fisheries in specific areas in the high seas. It is a rule of the economic system of free competition to allocate quotas in accordance with activities achieved in the past so far as no extreme evils attend.

In 1955 when the non-governmental fisheries agreement was under negotiation, the leader of the Communist China' s group proposed a plan for abolishing competition of fishing by means of deviding the entire areas of the high seas of the East China Sea and the Yellow sea into the Chinese area, the Japanese area and the common area which lies between above two areas. According to the proposal, number and tonnage of fishing vessels of respective states are to be allocated to the above respective areas so that the areas shall not be monopolized by a state posessing superior fishing fleet. However, the proposed abolition of competition was limited by the agreement to the minimum extent, that is, the allocation of quotas for the number of fishing vessel was confineded only within the six fishing areas established in the high seas along the continental coast during certain periods of the season.

The Convention between Canada and the U. S. regarding salmon fisheries of the Fsaser River system provides to allow each party an equal portion of fish (Art. 7). This does not mean, of cause, that the amounts of catch limits, etc., allocated to respective states should be always equal, though any special right be permited to any state.

In 1959, the Russo-Japanese Fiheries Commission decided, in accordance with its authority unber the Fisheries Convention, to allocate fishing area for crab in the high seas off Kamchatka for a specific term of the season. Until 1958, Japanese and Russian fishing boats operated intermingled in the whole fishing area. But the fishing areas having been newly allocated, it is expected that conflicts between the two states arising from the technical reasons of crab fishery can be avoided.

Recently, some states are reported to have withdrawn from the Whaling Convention on account of the failure of the attempt for allocation quotas of the Antarctic catches among the states. From the biological view point, there is no reason for such

withdrawl from the Convention, because, as provided in the Convention itself, the measures for the conservation of whales do not involve restrictions on the number or nationality of factory ship, nor the allocation of quotas to any factory ship or any groups of factory ships (Art 5–2). Under the Convention, the conservation of whales can be undertaken most reasonably. What has driven the states to the withdrawal from he Convention seems to be nothing but the severe competition for catching or for the profit. The current problem of Antarctic whaling, having arisen from such an economic reason, may be settled only when the states concerned agree to the allocation of quotas of some kinds. As already explained, allocation of quotas does not contradict the freedom of the sea.

THIRD SUGGESTION : The Principle of Abstention of Fishing Activities

As a corollary of the principle of allocation quotas to states, no quota for catch limits shall be allocated to a state whose nationals have never engaged in fishing for a stock of fish in an area of the high seas. Such a state shall have to abstain its fishing activity. It is matter of cause that the abstention of fishing activity shall be recommended only with regard to a stock of fish which has been exploited to the limit of its maximum sustained catch. There is no need for abstention if there remains surplus of the stock.

The Tripartite Fisheries Convention, 1952, adopted this principle of abstention. According to the Convention : (1) a state whose nationals have never engaged in certain fishing in an area of the high seas have to abstain from fishing in the area for a kind of fish the more intensive exploitation of which will not provide a substantial increase in yield sustainable year after year, and (2) a state whose nationals have enged in fishing of that kind of fish in that area of the high seas continues activities for fishing and conservation of such kind of fish.

Japan agreed to abstain from halibut fishing, for instance, in the high seas off the North West coast of America. Canada and the U. S. agreed to continue to carry on the fishery and necessary conservation measures. This is not for the reason that the area of north west coast of America is adjacent to Canada and the U. S., but the nationals of Japan have never engaged in substantial fishing of halibut there. Under the provisions of the Convention, even a coastal state may be recommended to abstain carring on a fishery in the high seas adjacent to its coast if its nationals have never engaged in the fishery there, and even a noncoastal state may not be recommended abstention with regard to a fishery in which its nationals have once engaged. So far as the principle is concerned, all contracting parties are taking part on an equal footing in the system of fishing and conservation of halibut resources in the high seas.

The principle of abstention of fishing activity in the high seas does not necessarily contradict the freedom of the sea, because a state is discriminated against only under the condition that the nationals of the state have not excercised the freedom of carying on fisheries which they could have exercised, and never discriminated against so far as the nationals of the state have exercised their own freedom. Whether a state comes under such condition or not depends on the opportunity of the state. The discrimination is made on a basis of opportunity which a state may or may not have, and not on a basis of destiny such as whether a state is coastal or non-coastal. As a

matter of principle, no specific state is deprived of its right to take part on an equal footing in the fishing and conservation of resources in the high seas by adopting the principle of abstention.

Some problems are involved in the Tripartite Fisheries Convention with regard to salmon fishery. Nationals of any contracting parties have never engaged in substantial fishing of salmon in any area of the high seas off the north west caost of America. Strictly speaking, the reason why Canada and Japan abstained salmon fishery in the high seas off Bristol Bay, for instance, is not based on the principle of abstention as above mentioned. It is based on another principle that a coastal state is entitled to take part on an equal footing in any system of regulation for purpose of conservation of the living resources of the high seas adjacent to its territorial sea, even though its nationals do not carry on fishing there. But here such principle other than abstention is out of question. The point to be mentioned here is that the principle of abstention of fishing activities is reasonable so far as it is limited to the minimum needed for securing freedom of fishing in the high seas. But if the abstention of fishing activities in the high seas is recommended exceeding the minimum which is needed, it is to restrict the freedom of fishing in the sea, and it should be unreasonable.

FOURTH SUGGESTION: On the Breadth of the Territorial Seas and Adjacent Seas.

The regime of the territorial seas and adjacent seas may be construed, in its certain aspect, to be a system of regulation applied to the freedom of fisheries in the sea. Such regulation for the freedom of fisheries is needed in order to prevent or settle conflicts among states with respect to fisheries arising from social, economic and/or technical causes. But it is important, as mentioned at the beginning of the First Suggestion, to limit such regulation for freedom to the minimum extent.

It is so dificult to solve the problem of the breadth of territorial seas that the United Nations Conference on the law of the sea, 1958, faild to fix it. Even the basic and more difficult problem regarding whether the sea is free or not could not be solved by the Conference. However, so far as the opinion of the International Law Commission of the U. N. that "freedom of the sea is of paramount importance to the international community" is correct, then, as the U. S. government commented to the International Law Commission, "the breadth of the territorial sea should remain fixed at three miles."

If the 3-mile limit is not to be agreed on at any rate, a 6-mile limit may be unavoidable. The common proposal of Canada and the U. S. at the 1958 Conference of the law of the sea might be the most provable in the future. It is to admit an adjacent sea of six miles beyond the 6-mile limit of the territorial sea, or 12 miles from the base line, for the purpose of fisheries regulation (which has never been the practice of states).

It seems practical and desirable not to concede that any special right for fisheries be granted to a coastal state in an area of the high seas beyond 12 miles from its coast. It seems most reasonable that beyond three miles from the coasts, states shall take part on an equal footing in every system for conservation of living resources as well as in every effort for avoiding and settling conflicts regarding fisheries arising from social, economic and/or technical causes.

概　要

国際社会には，公海において漁業資源を保護するために行う生物学的原則――持続的最大漁獲の原則が確立している．諸国はこの原則に基づいて多くの条約を結んでいる．然し生物学的原則が合理的に守られるだけでは，社会的，経済的又は技術的理由に起因する公海漁業の紛争を防止し又は解決することはできない．公海の特定の漁業資源を，何れの国民が漁獲するかの競争に起因する紛争については，生物学的原則の確立と並んで社会的，経済的又は技術的性質の原則が確立されなければならない．

私は社会的，経済的又は技術的理由に基づく公海の漁業紛争の防止又は解決に資するため，いくつかの示唆を試みる．ただし総ての国が平等の立場で資源保護に関する公海の制度に参加することを前提とする．

示唆その１．公海の漁業に関し社会的，経済的又は技術的理由から起る紛争を防止し又は解決するため，国際合意によつて採られる規制の措置は，必要かつ最少限のものでなければならない．必要かつ最少限の規制は，公海における漁業の自由に対する部分的制限ではなく，漁業の自由を総てのものに保障して，その自由を進化させるものである．

その２．社会的，経済的又は技術的理由から起る紛争を防止し又は解決するため，国際合意により，公海漁業について漁獲量，漁場，漁船数などを割当する場合には，そのような割当の基準として，国々が当該漁業について有する過去の実績を尊重しなければならない．曽て日中漁業交渉に際し，中国側は初め全面的に，過去の実績を認めることに反対したが，その不合理なことが判明した．

その３．実績を基準として公海における漁獲量の割当を行えば，実績を有しない国は，その割当を受けることができない．日本が日米加漁業条約によりアメリカ系の特定魚種を漁獲することができないのは，そのような漁獲抑止の原則によつている．漁獲抑止の原則は，公海における漁業の自由に対する必要かつ最少限の規制である限り合理的である．然し必要かつ最少限の範囲をこえるときは，漁業の自由を過度に制限するもので，不合理だといわなければならない．

その４．領海の巾に関する制度は，一面において海洋における漁業の自由に対する規制であり，漁業に関する紛争を防止し又は解決するため必要である．そのような規制が最少限の範囲内で定められなければならないことは，示唆その１で述べたところである．

国際社会の現状においては，領海の基線から 12 浬 まで，種々の権利を沿岸国に認めなければならないかも知れない．然し３浬外の海域には，沿岸国に何の権利も認めず，総ての国が平等の立場で協力することにより，社会的，経済的又は技術的理由に起因する公海漁業の紛争を防止し又は解決することは合理的であり，また可能であると考える．

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