



MARINE FISHERIES AND THE LAW OF THE SEA: A DECADE OF CHANGE

I. Introduction

Ten years ago, the United Nations Convention on the Law of the Sea was signed, marking the end of an era of freedom of the seas. For fisheries, however, the era of freedom had ended de facto during the 1970s when a majority of coastal states claimed jurisdiction over the resources within Exclusive Economic Zones (EEZs), i.e. waters within 200 nautical miles from their shores. The formal passing of the freedom of the seas provided the basis for the special chapter, Marine fisheries in the new era of national jurisdiction, in *The State of Food and Agriculture 1980*. As noted in that chapter: "The opportunity exists, as never before, for the rational exploitation of marine fisheries. Realization of the opportunity, however, will require major adjustments to the redistribution of benefits from the seas' wealth and improvements in the competence of the coastal states to exercise their newly acquired authority. The 1980s provide the threshold for a new era in the enjoyment of the oceans' wealth in fisheries."

Twelve years have passed since this was written and ten since the signing of the UN convention. It is an appropriate time to take stock of the changes that have occurred in marine fisheries and examine the adjustments that have been made and the challenges that have been met. This chapter attempts to do just that.

In general, the redistribution of the seas' wealth has proceeded as anticipated, with a few coastal states gaining large benefits and a few distant-water fishing states incurring large losses. Several developments were not foreseen, however. Most notable are the continued investment in large-scale fishing vessels capable of fishing great distances from port, and the significant growth in fishing effort on the high seas beyond the 200-mile limits.

With regard to improvements in the competence of nations to exercise their newly gained authority, developments in the 1980s

have proceeded more slowly than anticipated. Coastal states with resources of interest to foreign countries have generally made considerable gains in managing their resources and extracting benefits from the foreign users. But improved management of domestic fisheries still has a long way to go. The task is difficult and many states are reluctant to take the necessary steps to assign and allocate exclusive use rights among their own fishermen.

In addition, environmental issues have become increasingly significant during the decade, posing difficult challenges. The major problems lie in the coastal zones where disparate uses from diverse sources are in conflict and where fisheries receive the brunt of the damage. The problems are particularly urgent for small-scale fishing communities in developing countries.

In general, the 1980s might be considered a period of adjustment to the dramatic changes that occurred in the law of the sea during the 1970s as well as a period of transition to the eventual achievement of substantial benefits from the oceans' fisheries. Many tasks have to be completed before those benefits can be fully realized, but the size of the rewards justifies a significant increase in the world community's concern for the problems of fisheries management.



BOX 10 From freedom of the seas to national jurisdiction

The era of freedom of the seas was initiated in the sixteenth and seventeenth centuries when the struggles to dominate the oceans and profitable trade routes were resolved by a mutual accommodation of interests. Fisheries provided one of the important arguments used to advance the principle of the freedom of the seas. Hugo Grotius, in his treatise *Mare Liberum* (1608), made two points: first, that fishery resources were so abundant that no benefits would accrue to exclusive jurisdiction; and second, that the resources were so extensive that national jurisdiction could not be effectively defended. Although the first point was somewhat specious, Grotius' arguments ultimately prevailed and the freedom of fishing became a major element in the freedom of the seas.

Under this principle, the fishermen of all countries had free and open access to the resources beyond the relatively narrow limits of coastal state jurisdiction; generally within three to twelve nautical miles from shore. The fishermen of Western Europe were the initial beneficiaries. When the herring stocks of the North Sea declined, fishermen moved to the Grand Banks off Newfoundland. As these stocks came under pressure, they moved south to the banks off New England, following the advice of Captain John Smith who, in 1610, reported that the Grand Banks are "so overlaid with fishers as the fishing decayeth and many are constrained to return with a small freight".

And so the pattern was set. With declining catches per vessel in the traditional grounds, the fishermen either moved to new areas or adopted more intensive techniques. All that was required was the capital to invest in larger and more sophisticated vessels and gear. In more recent years, the pace of

exploration and exploitation was expedited by the development of automotive power, synthetic fibre nets and refrigeration.

Until the Second World War, the distant-water fishing fleets came mostly from Western Europe and Japan. They were followed by the fleets of the former USSR, countries of Eastern Europe and a few developing countries, most notably Cuba, Ghana, the Republic of Korea and Taiwan, Province of China. United States fishermen extended their activities into the Antarctic for whales during the 1800s and, more recently, into the South Pacific for tuna.

During this era, the seas' wealth in fisheries was essentially appropriated by a few states, mostly the developed maritime countries which had the capital and the technology to take advantage of the opportunities offered by open access to the natural resources. Developing countries generally gained little and, in some cases, were harmed by foreign fleets decimating the fish stocks off their coasts. Even where there was no damage, the growing presence of large foreign fishing vessels off their coasts made them increasingly aware of the inequitable distribution of the wealth of the seas.

The end of the era was presaged in 1947 when Chile and Peru announced claims of extended jurisdiction up to 200 miles from their coasts. They were joined by Ecuador in 1952. The claims, partially a response to the appearance of United States tuna fleets off their coasts, remained largely a local matter between these states and the United States until 1958, when the issue of extent of jurisdiction was raised at the first UN Conference on the Law of the Sea. However, neither this conference nor the second one in 1960 resolved the issue, although a majority of states at that time



favoured narrow limits of control.

During the 1960s and 1970s, positions changed dramatically. It became much more evident that the supplies of fish stocks were limited and that depletion was becoming more prevalent. Attempts to manage resources through international bodies were proving to be largely ineffective. Many coastal states, developed and developing, felt increasingly threatened by the large fleets of the distant-water states off their coasts. Simultaneously, the issue of control over the mineral resources in the deep ocean beds raised the demands of developing states for a more equitable distribution of ocean wealth.

In 1967, the UN General Assembly established a Committee on the Peaceful Uses of the Sea-bed and the Ocean Floor beyond the Limits of National Jurisdiction. The mandate of the Committee expanded rapidly to cover all uses and resources of the sea, including fisheries. Interest in the work of the committee led to a rapid increase in membership and, eventually, to the convening of the third UN Conference on the Law of the Sea in 1973.

Concurrently, more and more states unilaterally extended their jurisdiction over fishery resources so that, by the mid-1970s, a majority of coastal states had asserted claims out to 200 nautical miles. The choice of 200 nautical miles as a limit for fisheries jurisdiction has no relevance to the habits of fish. Some species (e.g. oysters and clams) are sedentary while others (e.g. tuna and salmon) swim vast distances and are found both inside and outside 200-mile limits. There is also no direct connection between the size of fisheries zones and the wealth of their resources. The sea is not a vast bouillabaisse containing uniformly distributed treats, but an ocean of disparity with areas as barren as the

Sahara and others as fertile as a rain forest. Among the latter are the continental shelves which are rich in demersal stocks (groundfish, such as cod and haddock) and the upwelling currents, inhabited by pelagic species (those feeding on the surface, such as sardines and anchoveta). Temperate zone waters tend to contain large populations of relatively few individual species while tropical waters have small populations of a large number of species. On the open ocean, the stocks are diffused. Some high sea species have schooling habits but require high search costs for their location. Others seldom aggregate and can only be caught using gear that filters great quantities of water.

The establishment of 200-mile Exclusive Economic Zones (EEZs) constitutes an accident of geography and has only limited relevance to the achievement of a more equitable distribution of wealth. Its most important function has been to provide coastal states with the authority to manage the resources within these zones.