

Plenary Lead Speaker – Theme C – Fisheries Management Through Regional Fisheries Organisations

Some Challenges For Fisheries Management Through Regional Fisheries Organizations

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The nations of the world are now facing decisions of momentous importance to man's use of the oceans for decades ahead. At issue is whether the oceans will be used rationally and equitably and for the benefit of mankind or whether they will become an area of unrestrained exploitation and conflicting jurisdictional claims in which even the most advantaged states will be losers.¹

... we can now foresee the time when there will no longer be any area of the world's seas and oceans where no effective management system for fisheries is in place.²

I am delighted to be in Wellington for IIFET2002 and it is a great honour to have been invited to give this keynote address on one of the major themes of the Conference; the challenges facing regional fisheries management organizations. In deciding how to approach this topic, bearing in mind that I have only 20 minutes or so in which to make this presentation – and that the attention span of most audiences is only 10 minutes or so – I had to decide whether to try to present a rather academic account of the development of fisheries management through regional organizations, or whether to try to be somewhat controversial and attempt to highlight what I see as the major challenges facing regional fisheries management organizations today in the hope of stimulating some discussion of the topic. Given that this is primarily a gathering of fisheries economists, who are known sceptics, and mindful that we are in New Zealand, which has a long history of innovation in the field of fisheries, it was very easy for me to come to the conclusion that I should try to be controversial.

INTRODUCTION

One of the most significant and important trends in international fisheries management in recent years has been the increased emphasis on the role of regional fishery bodies in promoting sustainable management of fisheries, especially in the case of shared fish stocks and straddling and highly migratory fish stocks. Indeed, in the case of the latter categories, the 1995 United Nations Fish Stocks Agreement firmly establishes the regional fishery body as the paradigm for conservation and management of fisheries resources.³

In my presentation today, I shall begin with a brief review of the reasons for the trend towards international fisheries management and then examine in more detail the important changes made by the UN Fish Stocks Agreement and related instruments to the management of transboundary fish stocks. However, while the UN Fish Stocks Agreement has important and far-reaching implications, it does not address all the challenges that regional fisheries bodies have to face. In the third section of my presentation, I shall therefore try to highlight what I perceive to be the key challenges and issues for regional cooperation in fisheries, specifically with reference to international management of tuna fisheries.

HISTORICAL BACKGROUND: FAILURE OF THE EEZ REGIME

International efforts to regulate ocean fisheries have a long history. Indeed, disputes over access to fisheries resources and the allocation of rights to fish in particularly crowded fishing grounds lay behind some of the first attempts to regulate the use of the oceans.⁴ The first efforts to codify the international law of the sea and create a uniform system of ocean governance began in the 1950s, with the First and Second United Nations Conferences on the Law of the Sea. UNCLOS I made some progress in relation to the issue of fisheries conservation and management by adopting in 1958 the

Geneva Convention on Fishing and the Conservation of the Living Resources of the High Seas.⁵ The 1958 Convention contained implicit recognition of the fact that the fish resources of the oceans were not in inexhaustible supply and that some measures had to be taken for their conservation and management. Nevertheless, although there was a general exhortation for cooperation among all those who fish on the high seas, it was largely left to flag States to determine and enforce any measures for conservation and management of the stocks. In general, until the mid 1970s, ocean fisheries remained an open-access common property resource, open to all.

The establishment of 200 nautical mile exclusive economic zones in the mid 1970s as a result of discussions at the Third United Nations Conference on the Law of the Sea led to a fundamental shift in the normative framework within which international fisheries operated.

The objective of the exclusive economic zone regime was primarily to create the potential for effective fisheries management by coastal States, taking into account the fact that the majority of commercially valuable fish stocks are found within the 200 nautical mile zone.⁶ It was expected that the extension of coastal State jurisdiction would result in better management of fisheries but, in general terms, based on a number of examples around the world, this has not happened. Despite almost universal acceptance of the 200 nautical mile jurisdiction of coastal States,⁷ all the statistical and anecdotal evidence points to a crisis in world fisheries. What has happened in most cases is that the nationalization of the most productive areas of the ocean spurred increased exploitation of fish stocks.

Governments have not proved to be effective stewards of the world's fish resources. They have proved to be more influenced by short term political and economic objectives which have taken precedence over long-term conservation objectives. Many governments encouraged their nationals to fish and subsidized the development of national fishing industries. In many parts of the world indiscriminate licensing of distant water fishing vessels has taken place without regard to the sustainability of the stocks. Many governments have worked on the premise that the supplies of fish under their jurisdiction would remain limitless, or have failed to acknowledge conservation problems and failed to take timely measures against impending stock depletion. On the part of distant water fishing nations, the response to reduced access to national areas has been to intensify fishing effort in areas beyond national jurisdiction.

I recount this background because, while the need to improve the measures taken to conserve and manage the living resources of the high seas has attracted considerable international attention over recent years, far less attention has been focused on the question of whether the exclusive economic zone concept offers the best potential for effectively conserving and managing fisheries.

As we all know, fisheries management is an extremely imprecise science at the best of times. Some of the problems which face the fisheries manager include lack of complete understanding of the oceanic phenomena and the marine environment, difficulties in acquiring and analyzing data on fish stocks and their associated and dependent species, problems of new, more efficient techniques employed by fishermen for locating and capturing fish, and overcapitalization in many fishing industries throughout the world. The greatest challenge, however, is dealing with the inescapable fact that fish tend to move across boundaries. Fish have no respect for the arbitrary boundaries which mankind has attempted to draw in the water. Most fisheries, especially if associated and dependent species are included, lie astride either a boundary between the zones of neighbouring coastal States (transboundary stocks), the outer limit of a 200 nautical mile zone and the high seas (straddling stocks), or a combination of the two (highly migratory stocks).

To be truly effective, it is clear that fisheries management requires regulatory authority over the entire geographic area or migratory range occupied by the stocks. This is not easily accommodated within the exclusive economic zone concept. Indeed, judging from the state of fisheries today, one can fairly conclude that neither the freedom of the high seas, nor the nationalization of large areas of the ocean by means of exclusive economic or fisheries zones, have succeeded in ensuring good conservation and management of the fish resources of the seas and oceans.⁸ In short, for most oceanic fisheries, effective management requires international agreement.

There is nothing new in that statement. Indeed, the first regional fisheries management organizations (RFMOs) were established over 40 years ago as a response by governments to problems of overfishing⁹ and the essential role of RFMOs was implicitly recognized in the 1982 UN Convention on

the Law of the Sea (LOSC), with its frequent references to cooperation through ‘competent’ or ‘appropriate’ international organizations.¹⁰ In the case of highly migratory species, the oldest RFMO in existence today is the Inter-American Tropical Tuna Commission (IATTC), an organization that was created in 1949,¹¹ long before there were any international instruments dealing with the unique needs of tuna management and the requirements for international cooperation. The International Commission for the Conservation of Atlantic Tunas (ICCAT) was created in 1969,¹² the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) in 1995¹³ and the Indian Ocean Tuna Commission (IOTC) in 1998.¹⁴

1990-2000: THE CRISIS IN INTERNATIONAL MANAGEMENT RECOGNIZED

By the early 1990s it was recognized that the regime established by the LOSC was inadequate to prevent depletion of the world’s fish stocks. In particular, it became apparent that the ambiguity in the provisions in the LOSC relating to the conservation and management of straddling and highly migratory fish stocks and high seas fishing needed to be addressed if over-exploitation was to be avoided.¹⁵ Existing international agreements relating to fisheries had in general failed to resolve disagreements over allocations among fishing states; the respective rights, duties, and interests of coastal states vis-à-vis those fishing on the high seas; and the rights and obligations of new entrants in a fishery.

As a result, the international community made strenuous efforts throughout the 1990s to address the problems of fisheries management through a range of ‘hard’ and ‘soft’ law instruments. These take the form of, on the one hand, legally-binding treaties of a global nature, the most notable of which is the UN Fish Stocks Agreement and, on the other hand, non-binding declarations and resolutions issued by various global and regional bodies, including the UN General Assembly and the FAO. Perhaps the most comprehensive non-binding instrument that has been adopted during this period is the FAO Code of Conduct for Responsible Fisheries,¹⁶ which is itself made up of a number of separate, but linked, documents, and which is continuing to evolve through the formulation of international plans of action on issues of immediate concern.¹⁷

One of the key problems that the international community sought to address during the development of the UN Fish Stocks Agreement was how to ensure effective international management of fisheries. Perhaps the most important contribution of the Agreement, therefore, was to establish the RFMO as the primary mechanism through which States should fulfil their duty to cooperate pursuant to the LOSC and to establish detailed guidelines as to the nature and functions of such organizations. It is this aspect of the Agreement that I wish to focus on today.

REGIONAL FISHERIES MANAGEMENT ORGANIZATIONS (RFMOS): A NEW PARADIGM

Articles 9 and 10 of the UN Fish Stocks Agreement set out the functions of RFMOs. Article 10 provides that:

[I]n fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

(d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;

(e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;

(f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;

- (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
- (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
- (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
- (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
- (k) promote the peaceful settlement of disputes in accordance with Part VIII;
- (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
- (m) give due publicity to the conservation and management measures established by the organization or arrangement.

In addition, the Agreement envisages that compliance and enforcement will be carried out through regional organizations and arrangements. Article 21, for example, imposes an obligation on States to establish, through RFMOs, procedures for boarding and inspection.

The guidelines and criteria set out in the UN Fish Stocks Agreement do not apply only to new RFMOs. They apply to any organization or arrangement which has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks beyond areas under national jurisdiction. Unfortunately, when tested against the provisions of the UN Fish Stocks Agreement, many of the existing RFMOs around the world fail to meet the requirements of the Agreement in terms of their capacity to agree upon and apply conservation and management measures to fisheries for straddling fish stocks and highly migratory fish stocks.

Essential characteristics for effective international management

To overcome the weaknesses inherent in existing organizations, I suggest that five characteristics are essential, and these are implicit in the terms of article 10 of the Agreement:

- The area of competence of the RFMO should cover the entire geographical range of the stocks.
- The RFMO must have the ability to make binding rules regulating fishing activity within its area of competence. The authority to make such rules should not be fettered by opting-out or objection procedures.
- Enforcement jurisdiction is essential. In this regard, articles 21 and 22 of the UN Fish Stocks Agreement represent a major step forward.¹⁸
- The RFMO must have authority to exclude or conditionally allow new entrants to the fishery.
- There must be compulsory and binding procedures for the settlement of disputes.

One of the key factors which has paralyzed decision-making in most RFMOs to date is insistence on decision-making mechanisms which either require full consensus of the parties or allow some kind of opting-out mechanism or objection procedure. If conservation and management measures are not to be undermined, it is important that effective decision-making procedures are adopted. Indeed, the UN Fish Stocks Agreement stresses that, in order to manage fisheries effectively, RFMOs must have the capacity to make and enforce fisheries conservation and management measures and apply them to all participants in the regime. Article 10 (j), for example, requires RFMOs to agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner. It should be obvious that no regional organization can effectively promote proper management if decision-making methods are such as to frustrate the conservation and management goals of that organization.

It is encouraging to see that, in recent years, members of RFMOs in nearly all regions, as well as global bodies such as FAO, have begun to study the adjustments which will have to be made to bring the

structures and activities of these RFMOs into line with the Agreement.¹⁹ Thus the IATTC is currently engaged in a renegotiation of its Convention in order to bring it into line with the provisions of the LOSC and the UN Fish Stocks Agreement. In addition, FAO has established a regular biennial meeting of regional fishery bodies and is providing considerable technical assistance to these bodies in revision of their constituent instruments.²⁰

In regions where previously no RFMO existed, for example, the South East Atlantic²¹ and the Western Central Pacific, governments have agreed to establish new organizations based upon the principles found in the 1995 UN Fish Stocks Agreement. As I have been very much involved in one such process – the Western Central Pacific – I thought it would be instructive to examine briefly how these principles have been implemented in that region.

The Western Central Pacific

The Western Central Pacific supports one of the most important tuna fisheries in the world, with an annual catch of the four main commercial species in excess of 1.8 million tonnes.²² While much of this fishery takes place in the exclusive economic zones of the Pacific Island countries and in the adjacent high seas areas, the tuna stocks are, for the most part, harvested by the fleets of distant water fishing nations. This might seem a clear case for international cooperation for conservation and management of the stocks, yet, until the adoption of the UN Fish Stocks Agreement, the Pacific Island countries had staunchly resisted all efforts to establish arrangements for international management as envisaged.²³ Thus, until recently, the Western Central Pacific was one of the few remaining areas where no international organization existed for the management of highly migratory fish stocks.

In September 2000, after four years of negotiation between coastal States and States fishing in the region, the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (the Honolulu Convention) was adopted. This important new Convention contains a number of ground-breaking provisions. Some of the most important features of the Convention are as follows:

First, it covers a very large geographical area encompassing virtually the entire migratory range of the stocks in the region. The western and northern boundaries of the Convention Area, which extend into the waters of the Philippines and Indonesia to the west and as far as Japan in the north, are defined by reference to the migratory range of the stocks, leaving it for the proposed Commission to define the area of applicability of specific conservation and management measures. In the south, the Convention Area abuts the CCAMLR area at 60° South. In the east, south of the equator, the line is drawn at 130° West, so as to include French Polynesia and part of the Pitcairn Islands' exclusive economic zone, and north of the equator, at 150° West.²⁴

Second, it contains innovative procedures for decision-making that avoid the possibility of deadlock on important and urgent conservation and management issues and prevent parties from opting-out. The general rule, as stated in article 20, is that decision-making shall be by consensus. The Convention identifies a number of key issues upon which consensus is required. These include the adoption of rules of procedure, decisions on allocation of total allowable catch or levels of fishing effort, adoption of financial regulations, adoption of the budget and the formula for assessment of contributions to the budget, admission of new members and adoption of amendments to the Convention. If all efforts to reach a decision by consensus have been exhausted, decisions by voting on matters of substance, other than those for which consensus is required, shall be by a three-fourths majority in each of two chambers.

To further safeguard minority interests, in the event of deadlock within the Commission on an issue requiring consensus, there is a procedure for conciliation in order to achieve consensus within a reasonable time. Further, in the event that a member of the Commission objects to a decision, the Convention provides a system for independent review of that decision, with the possibility for the Commission to modify, amend or revoke its decision in the light of the findings and recommendations of the review panel.

Third, to implement the objectives of the Convention, a new institution is created, called the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. The draft sets out in detail the powers and functions of the Commission

and these are based largely upon the provisions of articles 10 and 11 of the 1995 Agreement. The Commission would have two subsidiary bodies; a Scientific Committee and a Compliance Committee, which would provide scientific and technical advice respectively.

Fourth, the Convention also provides that the provisions relating to the settlement of disputes set out in Part VIII of the UN Fish Stocks Agreement shall apply to any dispute between members of the Commission concerning the interpretation and application of the Convention, whether or not they are also parties to the Agreement.

Fifth, like the UN Fish Stocks Agreement, the Honolulu Convention contains very strong provisions on compliance and enforcement. These include provisions relating to flag State duties which substantially reproduce the provisions of the FAO Compliance Agreement²⁵ as well as procedures for enforcement which mirror those contained in article 4 of the multilateral fisheries treaty between the United States and the members of the Forum Fisheries Agency.

Finally, one of the most important achievements of the Honolulu Convention is that it contains a formula which enable the participation of both China and Taiwan in the Commission. Taiwan is, of course, a major fishing country and its absence from existing RFMOs has been a serious impediment to the effectiveness of existing regimes for conservation and management.

CURRENT CHALLENGES

To summarize, we have seen that some of the reasons for the lack of success of RFMOs to date include:

- inadequate information for decision-making;
- failure of parties to fulfil their commitments for data provision and research;
- the different capabilities of the parties to collect and analyze data leading to domination by one or two parties in scientific discussion;
- the inability of members to agree on conservation measures recommended by scientists as essential;
- the absence of key fishers from the regime;
- the divergent interests of coastal States and fishing States;
- the dominance of developed countries over developing countries;
- poor enforcement of agreed management measures;
- the failure to adapt the institutional frameworks to the geographic and economic circumstance of each region; and
- lack of commitment by members to precautionary approaches to management.

At least some of these problems have been addressed in the UN Fish Stocks Agreement and, at the regional level, are being addressed through the new arrangements that are being established. It is, however, still too early to say how successful these arrangements will be and I would hazard a guess that many of the existing problems will continue to present major challenges to RFMOs in the future.

At this point, I would like to concentrate for a few minutes on what I see as some of the most important challenges for international fisheries management in the future, particularly in relation to highly migratory species.

Application of precautionary approach

One of the major achievements of the UN Fish Stocks Agreement was to promote for the first time in an international instrument the practical application of a precautionary approach to fisheries management. It does this by setting out in an annex the criteria for the application of reference points. This is certainly an improvement upon the LOSC provisions which simply call for the use of the 'best scientific evidence available,' but it is clear that much more work needs to be done to fully

operationalize the precautionary approach. This is especially so when one takes into account the many exhortations contained in the other provisions of the Agreement, as well as in the FAO Code of Conduct, to preserve the health and well-being of ecosystems. How is this to be done in a manner consistent with the precautionary approach? Annex II of the Agreement essentially contains a collection of single species targets. How relevant are ecosystem considerations to the status of tuna stocks? Is it even within the reach of tuna managers to find an operational definition of a healthy ecosystem in terms of tuna management?

Overcapitalization and allocation issues

It is broadly accepted that excess fishing capacity is affecting the sustainability of many fisheries, undermining management efforts and leading to economic waste. For example, between 1970 and 1990, world fishing capacity grew at a rate eight times greater than the growth in landings.²⁶ While it is in the interest of the users of the resource and the resource itself to maintain capacity at a level commensurate with the long term productivity of the stocks, this rarely happens. The situation in most regulated open access tuna fisheries is that governments and RFMOs are rarely able to exert effective control over participation in the fishery, even where they are able to control the global overall harvest.

Two specific aspects of this problem are (a) technology dumping, where one participant sells its older vessels to new participants in order to upgrade its own fleets and (b) shifts in effort between regions. In the first case, which is often manifested in the form of transfer of older vessels to locally-based operations in developing countries, or transfer to flags of convenience, the net result is that the total capacity of the fleet operating in the region increases, without any increase in efficiency. In the case of developing countries, various provisions of both the UN Fish Stocks Agreement and the Code of Conduct call for them to be given special consideration and it therefore becomes even more difficult for RFMOs to effectively control participation in the fishery.²⁷ The second problem is potentially even more significant, particularly in the Western Central Pacific tuna fishery. As fisheries in other regions of the world have reached the stage of full exploitation or over-exploitation, it is very obvious that new entrants to the fishery are moving into the region. This presents a real dilemma which is not satisfactorily dealt with in the UN Fish Stocks Agreement. During the negotiation of that Agreement, one of the key principles which the South Pacific States sought to preserve was the principle that an RFMO should have the authority to exclude new entrants from the region where necessary, either because these new entrants had no 'real interest' in the fishery or because their track record made them undesirable participants. The basic principle is that only those who play by the rules may fish, but this is clearly very difficult to reconcile with the basic principle of freedom of fishing on the high seas.

Article 10(b) states that members of RFMOs shall 'agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort,' while article 10(i) states that they shall also 'agree on the means by which the fishing interests of new members of, or participants in, the organization or arrangement shall be accommodated'. Some guidance on the criteria by which new entrants will be considered is provided in article 11 of the Agreement, which lists a number of factors that must be taken into account in determining the nature and extent of participatory rights for new entrants. How these provisions are to be implemented in practice seems to be incredibly difficult. The equitable negotiation of allocations between fleets and nations is already one of the most difficult problems faced by RFMOs and it seems to become intractable when an undefined number of potential new entrants must be taken into account.

Flag State control

One of the most serious problems facing all RFMOs is that of ensuring that all participants in the fishery play by the rules. A major problem in fisheries today is illegal, unregulated and unreported fishing. Although the UN Fish Stocks Agreement and the FAO Compliance Agreement considerably strengthened the system of compliance and enforcement, the basic reliance on flag State responsibility still exists.

Unfortunately, the fact is that in many cases flag States are not in a position to control and prevent IUU fishing, particularly if they are flags of convenience. It is well known that flags of convenience are invariably used as a device by the owners of fishing vessels to avoid compliance with conservation and management measures.²⁸ In this modern day of free movement of labour and capital, it is no longer sufficient in the case of fishing vessels to rely on flag State control alone. The reality is that the primary

culprits are the owners of vessels and the masters of such vessels who are not always the nationals of the flag State. The problem of IUU fishing cannot be tackled simply by concentrating on the definition of “genuine link” because that concept has wider implications and concerns all types of vessels and it is therefore not surprising that any attempt to tinker with the idea of defining the “genuine link” invariably meets with formidable roadblocks. Another solution to this difficult problem is to make owners and masters equally responsible for the activities of the fishing vessels under their ownership, direction and control.

CONCLUSION: A NEW APPROACH

Once the Honolulu Convention enters into force, nearly all the areas in the world in which tunas are found will be covered by five RFMOs.²⁹ Each of these RFMOs has responsibility for most of the tuna and billfish species that occur in its geographical area of competence. All of them have basically the same objective, which is to offer management advice to the member governments regarding the species under their jurisdiction and, where necessary, to agree on conservation and management measures. How these measures are developed and how the different RFMOs develop management advice differs, but the end result is ultimately the same. The problems facing tuna fisheries are similar in nearly all areas where tuna fisheries occur. Further, all tuna fisheries, and the RFMOs that manage them, share four fundamental characteristics:

(1) The species covered by each RFMO are nearly the same. Most of them are highly migratory, which requires that for any conservation action to be successful it must apply to all areas where the fish occur. This potentially creates a problem in the Pacific Ocean since there are significant mixings of stocks between the eastern and the western Pacific. To deal with the consequences of this, there needs to be effective cooperation between the various RFMOs involved.

(2) Not only are the fish themselves highly migratory, but the vessels that hunt them are migratory too. They move from the jurisdiction of one RFMO to that of another with great ease. It is not uncommon for a single vessel to move between oceans in a single year, or to move from the eastern boundary of one ocean to the western boundary of the same ocean several times in the same year. The management actions taken by one RFMO will therefore inevitably have consequences on other fisheries and other bodies.

(3) The tuna market is international. Tuna products move throughout this world market on a regular basis and with great ease. The price paid for raw tuna destined for canning, discounted for transportation costs, is nearly the same world-wide. An increase in catch in one area, or a reduction in another, perhaps due to the enactment of management measures, has a ripple effect throughout all areas and markets.

(4) The problems of collecting catch and effort statistics are similar in nearly all fisheries. In fact, the same type of data is collected by different RFMOs as the same vessel passes through their respective areas of responsibility.

It has been suggested that the way forward is to establish a single, global management organization for tuna. Such a global organization could provide a focal point for better coordination of fisheries management among nations. For example, conservation and management measures formulated under the auspices of a global body could be designed to minimize effects of regulatory actions in the area of one fishery, on fisheries in other areas.

A growing fishing capacity and excess fishing effort is also common to most tuna fisheries. Solutions to these problems cannot be found while ignoring other areas and other fisheries. The issues of allocation of fishing capacity and catches are the same in nearly all fisheries. A global organization would be in the best position to produce long-term solutions to these difficult problems by developing criteria and formats for implementation of global application. Some national fleets fish on two or three major fishing grounds during a single year, while other less mobile fleets are restricted to more regional patterns of exploitation. When making allocations, consideration could be given to whether any of the participant fleets fish in other areas, and this would be recognized in making such allocations.

It would also be far more efficient and cost-effective to place responsibility for collecting catch and effort statistics and size composition information in one global organization. It seems redundant for each organization to maintain its own separate data base, group of technicians, and so forth, to monitor the activities of vessels as they move from area to area. Also, a single database could be maintained where data would be readily accessible to scientists and governments.

Of course, there would be many political obstacles to such a development; not least the differences in membership between the various existing RFMOs. The development of a single global organization would necessarily be a long-term process. However, we are already seeing a trend towards increased cooperation between RFMOs through, for example, the FAO biennial meeting of regional fishery bodies. One very interesting development has been the move to establish a much closer relationship between the new RFMO for the Western Central Pacific and the IATTC. Member States of each organization have recognized the need to establish some sort of formal coordination mechanism that harmonizes the work of the two organizations. It is likely that this trend will continue in future. For example, it is quite logical to expect to see the development of similar mechanisms for cooperation between the Western Central Pacific organization and the IOTC and CCSBT.

¹ President Richard M. Nixon, Statement on United States Policy for the Seabed, 23 May 1970, 62 U.S. Dept. of State Bull. 737 (1970). Also reproduced in S. H. Lay *et al* (eds.), *New Directions in the Law of the Sea*, Vol. II (1973), at 751-752.

² Statement of Ambassador Satya N. Nandan (Fiji), Chairman of the UN Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks at the resumed sixth session of the Conference, 4 December 1995.

³ Agreement for the implementation of the provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995) 34 ILM 968. Reproduced in *The Law of the Sea: Compendium of Basic Documents*, International Seabed Authority in collaboration with Caribbean Law Publishing Company, Kingston, 2001.

⁴ One of the earliest was a Proclamation of James I of 1609 prohibiting fishing in the British and Irish seas without a license. *Proclamation of James I for the Restraint of Foreigners Fishing on the British Coasts* (1609) State Papers, *Dom.*, xlv. 24.

⁵ Convention on Fishing and Conservation of the Living Resources of the High Seas, Geneva, 29 April 1958, 599 UNTS 285.

⁶ According to FAO, over 90 per cent of commercially valuable fish stocks are found within areas under national jurisdiction.

⁷ As of August 2002, there are 138 Parties to the 1982 Convention. Some 120 States worldwide had adopted 200 nautical mile exclusive economic or fisheries zones.

⁸ Satya N. Nandan, Statement to the "Summit of the Seas", St. John's, Newfoundland, September 1997.

⁹ More than 30 regional fishery bodies were established in the 20th century, including 14 since the adoption of the LOSC. See FAO Fisheries Circular No. 959, *Regional Fishery Bodies and Governance: Issues, Actions and Future Directions* (2000).

¹⁰ The fisheries-related provisions of the LOSC use a variety of terms to refer to regional fisheries organizations, for example 'competent international organizations, whether subregional, regional or global' [articles 61(5) and 119(2)], 'subregional or regional organizations' [articles 63(1) and (2)], 'international organizations' [articles 64(1) and 65], 'regional organizations' [article 66] and 'subregional or regional fisheries organizations' [article 118]. The terms are undefined, presumably because the drafters did not consider definitions necessary. Bob Applebaum and Amos Donohue, 'The role of Regional Fisheries Organizations' in Ellen Hey (ed.), *Developments in International Fisheries Law*, Kluwer 1999.

¹¹ Convention for the Establishment of an Inter-American Tropical Tuna Commission, 80 UNTS 3.

¹² International Convention for the Conservation of Atlantic Tunas, 673 UNTS 63.

¹³ Convention for the Conservation of Southern Bluefin Tuna, Canberra 10 May 1993. 1994 Australian Treaty Series 16.

¹⁴ Agreement for the Establishment of the Indian Ocean Tuna Commission, Rome, 25 November 1993.

¹⁵ At the United Nations Conference on Environment and Development in 1992, the problems affecting fisheries were identified succinctly in Chapter 17 of Agenda 21 as 'unregulated fishing, overcapitalization, excessive fleet size, vessels reflagging to escape controls, insufficiently selective gear, unreliable databases and lack of sufficient cooperation between States.'

¹⁶ Code of Conduct for Responsible Fisheries, adopted by the 28th session of the FAO Conference on 31 October 1995.

¹⁷ International Plans of Action have been adopted on seabirds, sharks, capacity and the regulation of IUU fishing. Enforcement covers a wide range of activity from observer programmes, in-port inspection programmes to surveillance, boarding, arrest and prosecution. The ultimate solution, although probably not acceptable in terms of present-day international law, would be to give regional fisheries organizations their own surveillance and enforcement capacity, and to make the rules of the organization enforceable on a reciprocal basis in the courts of all of the members of the organization.

¹⁹ By FAO Conference resolution 13/97, FAO has begun a process of systematic and specific review of each of the FAO fishery bodies.

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- ²⁰ The first meeting of FAO and non-FAO Regional Fisheries Bodies was held in 1999. According to the recommendation of COFI, such meetings are to take place on a regular basis.
- ²¹ The Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean (SEAFO Convention) was adopted in 2001. See Andrew Jackson, 'SEAFO Convention: An Introduction,' International Journal of Marine and Coastal Law, Vol 17, No. 1.
- ²² SPC Oceanic Fisheries Programme, 2002. The four main species of commercial importance are skipjack (1.2 million tonnes in 2001), yellowfin (475,000 tonnes), bigeye (120,000 tonnes) and South Pacific albacore (56,000 tonnes).
- ²³ Since the early 1980s, the Pacific Island countries sought to manage the tuna fisheries through the coordination of national fisheries policies through regional organizations such as the South Pacific Forum Fisheries Agency and the development of regional management initiatives to control the licensing of foreign fishing vessels in the region. The response of some distant water fishing nations to this unilateral approach was to refuse to cooperate with attempts to develop regional licensing arrangements. These fishing nations preferred instead to develop bilateral licensing arrangements with individual island States, hoping to undermine the regional arrangements by a 'divide and rule' approach. Clearly, in the light of the 1995 UN Agreement, neither approach could be considered viable and it was therefore inevitable that both sides would be compelled to cooperate.
- ²⁴ It will be noted that this creates an overlap south of the equator with the area covered by the IATTC, although IATTC does not currently regulate the area in question. In order to deal with this situation, article 22 of the Honolulu Convention provides for cooperation with IATTC in the area of overlap.
- ²⁵ FAO Compliance Agreement, article III, paragraphs (2) and (3). The equivalent provision in the UN Straddling and Highly Migratory Fish Stocks Agreement is article 18 (3) (a).
- ²⁶ Greboval, D. and Munro G., Overcapitalization and excess capacity in world fisheries: underlying economics and methods of control, in Greboval, D. (ed.) Managing fishing capacity, FAO Technical Paper 386 (1999).
- ²⁷ Caddy suggests that unless some attempt can be made to assign property rights to users of high seas resources, this problem seems to be intractable. See Caddy, J., A Global Perspective to Fisheries for Highly Migratory Species and their Management: The Additional Standards Provided for Regional Bodies by the Code of Conduct and the UN Fish Stocks Agreement, IATTC Special Report 13, Symposium on World Tuna Fisheries, 2000.
- ²⁸ Of the five cases on prompt release of vessels under article 292 of the Convention that have come before the ITLOS, all have involved fishing vessels flying flags of convenience.
- ²⁹ IATTC, I CCAT, CCSBT, IOTC and WCPFC.