

## An overview of fisheries management under International Law

Author: - Dr. Yeshwant Naik<sup>1</sup>

The conservation of marine living resources has become more effective with the adoption of the United Nations Convention on the Law of Sea, 1982 (UNCLOS). Coastal states in the Exclusive Economic Zone (EEZ) enjoy 'sovereign rights for the purpose of exploring and exploiting, conserving and managing' the marine living resources.<sup>2</sup> It is true that the exclusive coastal state jurisdiction has not ended the worldwide decline of fish stocks.<sup>3</sup> For over a decade, around 80 percent of the global marine fish stocks were fully exploited or overexploited.<sup>4</sup> The provisions of UNCLOS for coastal state conservation and utilization of EEZ fisheries are largely 'ambiguous, flexible, and unenforceable'.<sup>5</sup> The general principles of international environmental law appear unhelpful in determining the actual status of an environmental proposition in international law.<sup>6</sup> Hence, proper conservation and management policies with regard to marine living resources should be environmentally sound and consistent with international law.<sup>7</sup> Coastal states have wide discretion in determining such measures in each individual case.<sup>8</sup>

### International Legal Regime

The UN Fish Stocks Agreement 1995 applies only to the conservation and management of straddling and highly migratory fish stocks on the high seas. This agreement also applies to straddling and highly migratory stocks within areas under national jurisdiction. It places obligations on coastal states with regard to the conservation and management of such stocks within their EEZs.<sup>9</sup> However, the number of states that have ratified the UN Fish Stock Agreement is remarkably small.<sup>10</sup>

<sup>1</sup> Muenster University

<sup>2</sup> Arts. 56 (1) (a), 57 UNCLOS.

<sup>3</sup> Birnie, P. W., & A. E. Boyle., *International law and the environment*, Oxford University Press, 2002, p. 648.

<sup>4</sup> FAO Fisheries and Aquaculture Department, *The state of world fisheries and aquaculture 2008* (Rome: FAO, 2009), pp. 7, 19.

<sup>5</sup> Christie, D. R. "It don't come EEZ': The Failure and future of coastal state fisheries management" (2004) 14 *Journal of Transnational Law and Policy*, p. 34.

<sup>6</sup> Markowski, M., *The International law of EEZ fisheries*, European Law Publishing, 2010, p. 14.

<sup>7</sup> Applebaum, B., and A. Donohue, "The role of regional fisheries management organizations", in E. Hey (ed.), *Developments in International Fisheries*, Kluwer Law International, 1999, p. 226.

<sup>8</sup> Barnes, R., "The Convention on the Law of the Sea: An Effective Framework for Domestic Fisheries Conservation?" in D. Freestone, R. Kaye, S. M., *International Fisheries Management, International Environmental Law and Policy Series*, Kluwer Law International, 2001, p. 241.

<sup>9</sup> Art. 3 (1) & (2) UN Fish Stocks Agreement.

<sup>10</sup> The UN Fish Stock Agreement has 78 parties as of July 2012.

Article 62(4) of UNCLOS contains an elaborate list of conservation measures and other terms and conditions that coastal states may establish. It includes within its fold the licensing of fishermen and vessels, fees, catch quotas, area, time and gear restrictions, minimum fish sizes, monitoring requirements and enforcement procedures. Article 61(3) of UNCLOS refers to qualified MSY (Maximum Sustainable Yield) and includes a non-exhaustive list of environmental and economic factors to be taken into account in determining MSY. However, MSY is not defined by UNCLOS, but is 'generally defined as the largest annual catch or yield of a fishery that can be taken continuously from the stock, based on the renewability of the resource'.<sup>11</sup> It is the exclusive responsibility of coastal states to determine the total allowable catch of the living resources in its exclusive economic zone.<sup>12</sup> Article 61 (2) of UNCLOS requires coastal states to take into account the best scientific evidence available in determining conservation and management measures. However, there is no express duty on the coastal states to undertake scientific research.<sup>13</sup> The primary obligation to conserve living resources in the EEZ reasonably imposes the burden of acquiring data that makes this obligation achievable within the limits of coastal states financial resources.<sup>14</sup> Consequently, wherever fishing causes or threatens serious damage to biodiversity, the Convention on Biological Diversity will apply.<sup>15</sup> In order to protect the environment, the precautionary approach shall be widely applied by states according to their own capabilities.<sup>16</sup> In case of fisheries management, a precautionary approach has found much better recognition. However, scientists and managers are of the opinion that one reason for the failure of fisheries management among many others is uncertainty and ignorance about important bio-ecological as well as socio-economic processes involved in fisheries.<sup>17</sup> Coastal states shall determine their capacity to harvest the living resources of the exclusive economic zone. Where coastal states does not have the capacity to harvest the entire allowable catch, they shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations give other states access to the surplus of the allowable catch.<sup>18</sup>

### Right to Fisheries

One cannot overlook the possibilities of coastal state's fisheries management clashing with the rights of individuals in matters of their right to private property.<sup>19</sup> For that matter, no private property rights exist in relation to fishes swimming in the ocean. Private property rights may

<sup>11</sup> *supra* note 4, p. 402, *supra* note 7, p. 243, *supra* note 2, p. 552.

<sup>12</sup> Art.61 (I) UNCLOS.

<sup>13</sup> *supra* note 7, p.242; see Burke, W.T., "The New International Law of Fisheries: UNCLOS 1982 and Beyond," Clarendon Press, 1994, p.57, see also Kaye, S.M. *supra* note 7, pp.102-103.

<sup>14</sup> Burke, W.T., "The New International Law of Fisheries", 1994, p.57.

<sup>15</sup> Boyle, A., *Relationship between international environmental law and other branches of international law*, in D.Bodansky, J. Brunnee & E. Hey (eds.), Oxford University Press, 2007, p.139, see Art. 2 Convention on Biological Diversity, Rio de Janeiro, 05 June 1992, in force 29 December 1993.

<sup>16</sup> Rio Declaration on Environment and Development, Rio de Janeiro, June 1992, UN Doc.A/CONF.151/126 (Vol. 1).

<sup>17</sup> Gracia, S.M., *The precautionary approach to fisheries: progress review and main issues (1995-2000)*, in M.H.Nordquist and J.N. Moore (eds.) "Current fisheries issues and the Food and Agriculture Organization of the United Nations", Nijhoff Publishers, 2000, p.479.

<sup>18</sup> Art.62 (2) United Nations Convention on the Law of Sea.

<sup>19</sup> *supra* note 14, p.126.

arise only when the fishes are caught and passed into the possession of an individual fisherman.<sup>20</sup> In good faith, coastal states are free to establish terms and conditions, laws and regulations relating to foreign access consistent with UNCLOS.<sup>21</sup> The property rights of fishermen are thus protected against uncompensated formal and de facto expropriations by a number of regional human rights treaties. The rights of indigenous peoples also become relevant where fisheries management rules directly or indirectly interfere with the access of indigenous communities to traditional fishing practices. Issues of equal treatment and non-discrimination may also arise in the allocation of fishing authorizations and quotas. Furthermore, the right to food can also provide arguments in favor of fisheries exploitation.<sup>22</sup>

In any case proper conservation of marine living resources can be attained only with the help of effective laws leading to its effective implementation. Awareness and education on this issue is necessary for a stronger societal support. At the same time, reforming the law and management policies in order to suit the changing circumstances cannot be overlooked. If every nation harmonically resolves to abide by the rules of international law, achieving this task isn't an impossibility.

**Author :**

Dr. Yeshwant Naik,  
Westfälische Universität Münster, Germany

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<sup>20</sup> Churchill, R.R., & A.V. Lowe., "The Law of the Sea", Manchester University Press, 1999, p.281.

<sup>21</sup> Arts. 62(2), (4), 300 UNCLOS.

<sup>22</sup> Supra note 5, at pp.78, 81, 83, 91, 96.



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