CONTIGUOUS ZONES FOR FISHING PURPOSES

CARLOS G. PLATON *

STATEMENT OF THE PROBLEM.

The principle in International Law that the high seas partake of the nature of *res communis* in the sense that no one State may appropriate a portion of it to the exclusion of other States has been, through the practice of States, subjected to the limitation that a littoral State may, over a portion of such sea, exercise special jurisdictional rights for the purpose of enforcing its territorial laws.[1] In other words, beyond the territorial waters and over the contiguous zone, the competence of a State is ordinarily confined to the right to take such measures as are necessary to secure itself from injury. The validity of such right has never been seriously questioned and States, since the English *Hovering Laws*, have come to recognize it.[2]

But the problem often arises when a State attempts to establish a contiguous zone not for the purpose of enforcing its customs, sanitary or police regulations but solely for the purpose of conserving [3] and regulating the exploitation of the marine resources found therein. For while a State may without question enforce such laws as are necessary for the protection of the marine resources within its territorial waters,[4] it cannot, however, without meeting serious objection, unqualifiedly extend its fishery laws to a point that comes within a

---

* Notes & Comments Editor, *Philippine Law Journal*, 1962-63.

[1] Article 20 of the Harvard Research Draft on the Law of Territorial Waters (1929) provides: "The navigation of the high sea is free to all States. On the high sea adjacent to the marginal sea, however, a State may take such measures as may be necessary for the enforcement within its territory or territorial waters of its customs, navigation, sanitary or police laws or regulations, or for its immediate protection." *See* also *Replies of Governments* to the League of Nations questionnaire on Territorial Waters, c. 74. M. 39. 1929. v. 2, pp. 22-34, 104 ff., and Philipp C. Jessup's *The Law of Territorial Waters and Maritime Jurisdiction* (1927), 75; 112, 241-352, cited in Herbert W. Briggs, *The Law of Nations* (1952), p. 373.

[2] *See* H. A. Smith, *The Law and Customs of the Sea*, p. 41; Church v. Hubart, 2 Cranch 187, also reported in Briggs, *op. cit.*, p. 356.

[3] "Conservation of the living resources of the high seas" means the "aggregate of the measures rendering possible the optimum sustainable yield from those resources so as to secure a maximum supply for food and other marine products." Article 50, The Convention on Fishing and Conservation of the Living Resources of High Seas. This definition was subsequently adopted by the 1958 Geneva Conference on the Law of the Sea, (Article 2). 2 Official Records 139 (1958).

[4] H. A. Smith, *op. cit.*, p. 41; *The Argonaut and Jones H. French* decided by the Tribunal of the British-American Claims Arbitration on December 2, 1921; Colombos, *Law of Nations*, p. 126.

part of the high seas because beyond the line that marks the territorial sea, the interests of the littoral State lose their exclusivistic character since here the interests of other States become involved. Thus, during the Hague Codification Conference in 1930 a majority of the attending States objected to the practice of some States of appropriating for themselves portions of the high seas adjacent to their territorial waters for the purpose of regulating the use of the marine resources there. It was claimed that international law does not recognize the right of a coastal State to establish a contiguous zone for fisheries protection or monopoly in the absence of a treaty.[5]

The principal objection to the practice of establishing contiguous zones for fisheries protection seems to be predicated upon the internationally recognized principle of the freedom of the seas. The high seas are, under customary international law, beyond the exclusive sovereignty and jurisdiction of any one State since they concededly come within the category of *res communis* (common to all) and may then be exploited by all States in any manner to which they lend themselves.[6]

Being therefore an area over which States have traditionally exercised equal jurisdiction, it has been claimed that the matter of regulating the exploitation of the fisheries therein should be the concern of all States, such resources being the property of the international community.[7]

States denying the validity of contiguous zones for fishery purposes likewise seriously hold in suspect the competence of one State to formulate conservation measures. This was evident during the Rome Conference in 1955 where States favouring the system of international co-operation claimed that conservation measures should be

---

[5] Acts of the Conference, Proceedings of the Second Committee on Territorial Waters, League Doc., 1930 v. 16, pp. 140-141.

[6] *See* the Report of the International Law Commission covering the Work of its eighth session held from April 23 to July 4, 1956, General Assembly official records, Eleventh session Supp. No. 9 (A/5159), Article 27.

The Geneva Conference on the Law of the Sea held in 1958 adopted this principle, thus: "The high seas being open to all nations, no State may validly purport to subject any part of them to its sovereignty. Freedom of the high seas is exercised under the conditions laid down by these articles and by the other rules of international law. It comprises, *inter alia*, both for coastal and non-coastal states: (1) Freedom of navigation, (2) Freedom of fishing, (3) Freedom to lay submarine cables and pipelines, (4) Freedom to fly over the high seas.

[7] *See* the Remarks of Mr. Scelle in I.L.C. Summary Records, U.N. Doc. No. A/SR/166/p. 15, (1952). Mr. Scelle claims that if a State were permitted to exercise one right after another in zones extending beyond the limit of its territorial sea, the concept of the territorial sea would become void of all significance x x x The only sovereignty which could be expressed in the high seas was the sovereignty of the international community expressed through international law.

based on scientific and technical evidence, a matter which is not necessarily within the competence of a coastal State. A proposal was therefore made which sought to entitle all States interested to supply pertinent evidence and to have such evidence considered on an equal footing with a view to formulating adequate conservation measures.[8]

UNILATERAL MEASURES ESTABLISHING CONTIGUOUS ZONES FOR FISHERIES PROTECTION AND REGULATION.

These considerations seem to explain why the trend today has been towards the system of international co-operation in the conservation of the marine resources in the high seas.[9] Only a few States have actually incorporated into their municipal laws measures designed to regulate the exploitation of the marine resources found in areas of the high seas contiguous to their territorial waters.

Argentina, since as far back as 1907, has consistently regulated the exploitation of the fisheries in areas of the high seas adjacent to its territorial waters. A Presidential Decree, promulgated on September 18 of that year, defined Argentina's "territorial sea for fishing purposes" as that zone extending to as far as ten miles to the open sea starting from the line of other waters around all the land territory. Within the defined area fishing was to be done only in pursuance of the regulatory measures provided for in the decree.[10]

In 1946, another decree was promulgated under which Argentina claims exclusive fishing rights over the "epicontinental sea" or waters above its continental shelf and which extends to 200 miles into the open sea.[11]

Canada, in 1927, to arrest the alarming effects of trawling in the waters on its Atlantic Coast, adopted regulations which prohibit trawling within 12 miles from its shores except on certain seasons of the year.[12]

Chile, Ecuador and Peru, in a Joint Declaration on Maritime Zones in 1952 claimed exclusive jurisdiction to regulate the taking of

---

[8] *See* the Records of the Plenary Meetings of the Conference, Doc. A/CONF. 10/SR.

[9] For a complete list in chronological order of international agreements relating to fisheries and their utilization and conservation, see Preparatory Document No. 18, prepared by the Secretariat of the U.N. (A/CONF. 13/23). A cursory examination of the list will reveal that the practice of international co-operation as a means of conserving the fisheries in the high sea is the more acceptable among a majority of States.

[10] U.N. Legislative Series, Laws and Regulations on the Regime of the High Sea, U.N. Doc. No. ST/LEG/SER. B/1, p. 1.

[11] Argentina Decree No. 14,708 of Oct. 11, 1946; U.N. Doc. No. ST/LEG/SER. B/1, p. 5.

[12] U.N. Doc. No. ST/LEG/SER. B/1, p. 57.

the fish off their coasts within a span of 200 miles to the high seas. The declaration proclaimed "as a principle of their maritime policy that each of them possesses sole sovereignty and jurisdiction over the area of the sea adjacent to the coast of its own country and extending not less than 200 nautical miles from the said coast." [13] Prior to this joint declaration, Ecuador, in 1934, passed a law regulating maritime fishing and hunting in the sea up to a distance of 15 miles and establishing close seasons for catching fish and molluscs and crustaceans.[14] The Peruvian Decree No. 781 of August 1, 1947 also defined a 200-mile area from the Peruvian shore within which fishing by foreigners was prohibited.[15]

Costa Rica, by its legislative Decree of November 2, 1949, proclaimed the right of the Costa Rican government to take conservation measures. The Decree, which repealed an earlier one, defines a 200-mile area for conservation purposes.[16]

Cuba,[17] through a Legislative Decree of February 25, 1945, and Venezuela,[18] through the Law of July 27, 1956, declared their right to regulate the exploitation of the "sea mamals" beyond the three-mile territorial sea.

El Salvador, in Article 7 of its 1950 Constitution claims similar fishing rights. The Constitution provides that "the territory of the Republic x x x includes the adjacent sea within a distance of two hundred miles from the line of the lowest tide." [19]

The Icelandic Law of April 5, 1948 in Article 1, granted the Ministry of Fisheries the power to issue regulations "establishing explicitly bounded conservation zones within limits of the continental shelf of Iceland wherein all fisheries shall be subject to Icelandic rules and control." [20]

Indo-China, by a Presidential Decree promulgated on September 22, 1936, declared that for the purpose of fishing, the territorial waters extend 20 kilometers from the shore at low-water mark. The Decree totally prohibits any foreign vessel from engaging in fish-

---

[13] U.N. Doc. No. ST/LEG/SER. B/16, at p. 723-724, (1957).
[14] U.N. Doc. No. ST/LEG/SER. B/1, p. 68.
[15] U.N. Doc. No. ST/LEG/SER. B/1, p. 16.
[16] U.N. Doc. No. ST/LEG/SER. B/1, p. 4.
[17] *See* the Cuban Official Gazette of February 25, 1954.
[18] *See* the Venezuelan Official Gazette of August 17, 1956.
[19] U.N. Doc. No. ST/LEG/SER. B/6, p. 14.
[20] U.N. Doc. No. A/2456; Article 2, however ,makes a reservation to the effect that regulations promulgated under Article 1 shall be enforced only to the extent compatible with agreements with other countries to which Iceland is or may become a party.

ing in such zone and subjects the offender to either fine or imprisonment or both.[21]

The Mexican Fisheries Regulations of March 5, 1927 proclaimed that national fish resources include all products of aquatic life which can be exploited within an area that is not less than twenty kilometers from the shores. Like the Icelandic Fisheries law, however, Mexico expressly recognizes any fishery rights which a foreign vessel might have by virtue of a treaty between its national State and Mexico.[22]

The United States, on September 28, 1945, declared that it is the policy of the United States with respect to coastal fisheries in certain areas of the high seas to regulate the exploitation of the fisheries therein. The Proclamation states that "in view of the pressing need for conservation and protection of fishery purposes, the Government of the United States regard it as proper to establish conservation zones in those areas of the high seas contiguous to the coast of the United States wherein fishing have been or in the future may be developed and maintained on a substantial scale." [23]

India, since 1956, has claimed jurisdiction over fishing conservation zones covering 100 miles from the line that marks the territorial sea. The 1957 Presidential Proclamation regarding Fishing in Adjacent Seas [24] states that India has the right to regulate fishing activities in the open sea areas adjacent to its territorial waters within a distance of 100 miles for the purpose of conservation.[25]

Russia, since as early as May 24, 1921 has taken measures for the regulation and protection of Fisheries outside its territorial waters. The Protection of Fisheries and Game Reserves in the Arctic Ocean and the White Sea Decree of May 24, 1921, declared that the "RSFSR shall have the exclusive right to utilize fisheries and game areas within x x x a distance of 12 sea miles seaward from the low-mark along both continental and insular shores." Section 2 of the Proclamation states that in said areas, the right to engage in fishing

---

[21] ST/LEG/SER. B/1, p. 75.
[22] U.N. Doc. No. ST/LEG/SER. B/1, p. 84.
[23] U.N. Doc No. ST/LEG/SER. B/1, p. 112.
[24] This Proclamation modified the Presidential Proclamation of November 29, 1956 under which India proclaimed the right to "establish conservation zones in areas of the high seas adjacent to the territorial waters of India, but within a distance of one hundred nautical miles from the outer limits of those waters," for the purpose of regulating fisheries and establishing conservation measures. The 1957 Proclamation, however, added the proviso that India recognizes the right of a foreign State to fish within the defined area by virtue of a treaty. Supp. to Laws and Regulations on the Regime of the Territorial Sea, U.N. Doc. No. A/CONF. 19/5, p. 13 (1960).
[25] U.N. Legislative Series, A/CONF. 13/27, pp. 65-66.

and hunting may be granted only to Russian citizens by special permission of the local authorities.[26]

THE PHILIPPINE CLAIM.[27]

The Philippines, during the 1958 and 1960 United Nations Conferences on the Law of the Sea at Geneva, laid claim to a territorial sea that would extend to a distance of more than twelve miles.[28] The Philippines claimed that straight baselines [29] should also be applied to archipelagic states[30] whose component parts are so close to one another that they make up one compact unit, and from such baselines all the waters embraced within a defined latitude and longitude [31] should be considered as part of the Philippine sea.[32] In justification of the first claim, the Philippines asserted that it has always been considered as a unit and this fact is evident from the provisions of the Treaty of Paris signed between the United States and Spain on December 10, 1898 which provided, *inter alia,* that "Spain cedes to the United States the archipelago known as the Philippine Islands and comprehending the islands lying within x x x" and also from the treaty signed between the United States and North Borneo in 1930 in Washington.[33] And in support of the second claim, the Philippines declared that the country's security, economic welfare and commercial, fiscal and political interests required a span of sea that would extend beyond the traditional three miles.

Recognition of the Philippine claim to more than twelve miles of territorial waters, however, was suspended. It seems that the principal objection to it is the old principle of the freedom of the seas. This objection may really be valid considering that the Philippine claim did not, unlike the unilateral claims of States considered above, distinguish between territorial waters over which coastal states traditionally exercise sovereignty, and contiguous zones for particular interests. For if, as it has been claimed,[34] the Philippines depends to a significant degree on fish for its national diet,

---

[26] U.N. Legislative Series, ST/LEG/SER. B/1, p. 124.

[27] For an exhaustive discussion of the Philippine territorial waters, *see* Jorge R. Coquia's "The Territorial waters of Archipelagos," The Philippine International Law Journal, vol. 1, no. 1, pp. 139-156.

[28] A/CONF. 13/c. 1/L. 98; *See* also Republic Act No. 3046 which in effect makes claim to the same span of sea.

[29] "Straight base lines" refers to that method of determining the belt of territorial waters by measuring from the line that connects the outermost islands of a group. League of Nations Document, C-196, M-70, 1927, V. p. 72.

[30] An archipelago is a formation of two or more islands which geographically may be considered as a whole. Colombos, *The Law of the Sea, supra.*

[31] For the technical description, see Coquia, *supra.*

[32] A/CONF. 13/c. 1/L. 98.

[33] League of Nations Treaty Series, vol. 137, p. 297; *see* also Commonwealth Act No. 4003, entitled "An Act to amend and compile the laws relating to Fish and other aquatic resources of the Philippine Islands."

a maximum supply of it could be as effectively secured by establishing contiguous zones for fishery purposes and without necessarily making claim over the sea itself as part of the national territory.

THE POLICY BEHIND UNILATERAL CONSERVATION MEASURES.

The best argument in favor of unilateral claims to fisheries found beyond territorial waters is perhaps the experience of some coastal States that unlimited fishing at all seasons seriously depletes the seas of fish.[35] Thus it was shown at the Rome Conference in 1955 that unregulated fishing had in fact depleted the marine resources off the North Sea, in the Arctic Waters, in the North-East Pacific and the Bering Sea.[36]

Independent of the fact that fishery resources are not inexhaustible,[37] new methods of fishing have proved so destructive and wasteful that if these practices are tolerated without inhibitions, they will inevitably result in the hastened extinction of fisheries over large areas of the seas.[38] It is, for instance, the experience of Peru that unlimited exploitation of the fisheries in areas of the open sea contiguous to its territorial waters has so diminished the fish population and the guano yield [39] of the sea birds that feed on such fisheries has considerably diminished, too.[40]

In the Rome Conference, it was also argued that since a coastal State has a special interest in the preservation of the fisheries found in areas of the high seas contiguous to the territorial waters of the coastal State, such State is in consequence the most competent to determine what measures will effect the end of fishery conservation.[41]

In this respect, Russia has claimed that each State is most competent and is free to unilaterally fix the limits of its territorial sea

---

[34] Senator Arturo Tolentino, Chief of the Philippine Delegation to the UN Conference on the Law of the Sea, justified the Philippine claim not only on grounds of economic security but also on other grounds (viz., political and military security and other grounds) which, to my mind, have been sufficiently answered by Prof. F. P. Feliciano in his paper, "Comments on the Territorial Waters of Archipelagos," Philippine International Law Journal, vol. 1, no. 1, p. 157.

[35] *See* Colombos, International Law of the Sea, (1959), p. 349.

[36] *See* Lucas, C.E., "Regulations of North Sea Fisheries under the Convention of 1946." Doc. A/CONF. 10/L. 5; Hansen, P., "The Importance of Conservation of Stocks of Fish and Sea Mammals in Arctic Waters." A/CONF. 10/L. 31.

[37] Garcia Amador, *The Exploitation and Conservation of the Resources of the Sea* (1959), p. 142.

[38] *See Colombos, op. cit.*, p. 349.

[39] Guano, the waste of sea birds, is one of the principal products for export of Peru.

[40] U.N. Doc. No. ST/LEG/SER. B/1, p. 16. (1951).

[41] *See* Records of the Plenary Meeting of the Conference, Docs. A/CONF. 10/SR.

at whatever breadth it considers as necessary in order that it may satisfy its local needs "as it conceives such needs." [42]

Conservation measures are thus taken to "obtain the optimum sustainable yield with the minimum harm to the species concerned and to its ecological environment." [43] The objective is to secure a maximum supply for the exclusive consumption of the coastal State.[44]

Iceland, for instance, during the Second Conference on the Law of the Sea at Geneva (1960), underscored the need for unilateral conservation and exploitation of the fisheries in areas of the high seas adjacent to its territorial waters to secure as much as possible to the Icelandic people a maximum supply of fish. The Icelandic people, it was claimed, have always been dependent for survival upon the fisheries within and beyond the Icelandic waters. It was shown that Iceland's fishery exports made up about 97 per cent of its total yearly exports.[45]

In the same conference Peru claimed that its social and economic conditions are determined to a considerable degree by the fish resources thriving in the adjacent Peruvian Current and moving up the West Coast of South America and by the *guano* yield of the sea birds living upon such fish resources. Thus, Peru claimed that the 200-mile territorial sea for fishing purposes defined in the Peruvian Decree of August 1, 1947 is justified.[46]

India's justification for its unilateral extension of its territorial sea for fishery purposes is similar. At the Conference it claimed that the Presidential Proclamation of November 29, 1956 extending the territorial waters of India to 100 miles for fishery purposes was prompted by the fact that India's basic food supply comes from fish.[47]

And the Philippines, of course, tried to justify its claims to over twelve miles of territorial sea on the basis of the country's

---

[42] International Law Commission, Summary Records, U.N. Doc. No. A/C.N. 4/SR. 166 p. 3, (1952).

[43] See the full text of the Joint Cuban and Mexican draft submitted to the Rome Conference, Doc. A/CONF. 10/GC. 1, (par. 1).

[44] *See* Article 2 of the Geneva Conference on the Law of the Sea (1959), 2 Official Records 1391; *See* also the technical and extensive discussion on the subject by Profs. Myers C. McDougal and W. T. Burke in "Community interest in a narrow Territorial Sea x x x," Cornell Law Quarterly, Winter, '60, pp. 177-200.

[45] U.N. Doc. No. A/CONF. 19/C. 1 SR. 11, pp. 4-10, (1960).

[46] U.N. Doc. No. A/CONF. 19/C.1 SR. 7, p. 5 ff., (1960).

[47] Supp. to the Laws and Regulations on the Regime of the Territorial Sea, U.N. Doc. No. A/CONF. 19/5, p. 13, (1960).

The Cuban and Mexican draft (see footnote 43) referring possibly to the trend towards international co-operation in the conservation of marine resources found in areas of the high sea, suggested that conservation programmes should take account of the needs of the coastal State and its special interests in maintaining the productivity of the resources of the high seas near its coasts.

need for a sizable annual supply of fish. Thus, it has been stated that, "the population of the Philippines has since time immemorial depended essentially on fish as their staple food. Still an underdeveloped country, fishing and farming are the basic means of livelihood of the people. Annually, the people, especially among the Visayan Islands (the most numerous groups of islands between the biggest islands of Luzon and Mindanao), catch an approximate amount of 387,170 metric tons of fish for their food. With its ever increasing population, the Philippines needs a much greater amount of fish. It is essential therefore that the Filipinos should reserve for themselves and their posterity the fishing grounds in and around their islands. Lacking the technical know-how and the sufficient capital, the Filipino fishermen using crude methods of fishing boats would be helpless against the more powerful and efficient fishing vessels of foreign powers who want to have larger areas of these seas open to their use and exploitation. By using the traditional rule that each island has its own territorial sea, the fast, big deep sea fishing boats of other states, equipped with refrigeration and other efficient means of fishing would be depriving the Philippine population of its basic means of livelihood." [48]

While this certainly is a very valid justification for any claim to a contiguous zone for fishery purposes, one wonders, however, if it would make a sufficient basis for the country's unilateral claim to more than twelve miles of territorial sea.

The Peruvian and the Icelandic claims best epitomize, I think, the policy of coastal States in enacting legislations extending, for fishery purposes, their territorial seas. It is claimed that adjacent fisheries are inadequate to support both the needs of the littoral State and foreign States.[49] They claim therefore that the coastal State must have exclusive access to a larger ocean area from which it could secure itself a future fishery yield.[50]

CONCLUSION.

It must be noted that for all the claims of littoral States to a more substantial slice of the high seas, it is evident that these claims relate only to the regulation, conservation and exploitation of the marine fauna thriving in such seas. With the exception of El Sal-

---

[48] Jorge R. Coquia, "The Territorial Waters of Archipelagos," *supra*, p. 138.

[49] Jessup, "The United Nations Conference on the Law of the Sea, What was accomplished," 52 American Journal of International Law, 607 (1958).

[50] *See* McDougal, *op. cit.*, p. 178. Prof. McDougal's paper, however, centers more on the broader question raised by the practice of some States of unilaterally extending their territorial waters not only for fishery purposes, but for any and all purposes.

vador,[51] all the State legislations considered in this paper [52] delimit the territorial waters of the State to the traditional three miles or, in some cases,[53] to six or twelve miles. But even if, in several instances, a coastal State's territorial sea goes beyond the traditional three-mile span recognized by International Law it is significant nonetheless to note that the sphere of sovereign authority of practically all of the States (with the exception of El Salvador) establishing contiguous zones for fishing purposes, is not coterminous with their fisheries claim to the areas of the high seas adjacent to their territorial waters.

In view of this, there seems to be a need to recognize the validity of State legislations establishing contiguous zones for fishing purposes, most especially so when such zones are established in consideration of the State's economic needs and there is adequate proof that open fishing in such zones will considerably deplete the marine resources found therein. The high seas after all retain the character of *res communis* if only in the sense that on them as well as in the space super-incumbent on such seas, States retain their freedom to navigate.

---

[51] The breadth of the territorial waters of El Salvador was defined in 1950 as extending to 200 miles to the open sea. U.N. Legislative Series, ST/LEG/SER. B/6, (1956).

[52] There are several other States whose territorial waters for fishery purposes extend beyond their territorial seas. Thus, Korea's fishery conservation laws cover 60 miles; Ceylon, 100 miles; Lebanon, 6 miles; Morocco, 6 miles; Thailand, 12 miles; and Yugoslavia, 10 miles. But due to the inadequacy of library materials this paper had to limit the survey to States whose territorial sea legislations are available for reference.

[53] Ecuador's territorial sea extends 6 miles. (Supp. to the Laws and Regulations on the Regime of the High Seas. vol. 1. A/CONF. 13/27 (1958); India, 6 miles, (U.N. Legislative Series ST/LEG/SER. B/6, (1956); Mexico, 6 miles, (U.N. Legislative Series, Laws and Regulations on the Regime of the Territorial Sea, (ST/LEG/SER. B/6 Add. 1);U.S.S.R., 12 miles (A/CN. 4/SR. 167, p. 6); Venezuela, 12 miles (Second Report on the Regime of the Territorial Sea, (A/CN. 4/61, Feb. 19, 1953).