SANTIAGO NEGOTIATIONS ON FISHERY CONSERVATION PROBLEMS AMONG CHILE, ECUADOR, PERU, AND THE UNITED STATES

BACKGROUND

Representatives of the United States met with representatives of Chile, Ecuador, and Peru at Santiago, Chile, from September 14 to October 5, 1955, to negotiate an agreement for the conservation of fishery resources of the eastern Pacific. While considerable progress was made in clarifying the views and interests of the parties to the negotiations, the delegations encountered basic problems which stood in the way of reaching agreement and led to the suspension of the negotiations in order that further consideration might be given to those problems in the respective governments.

Behind these negotiations lay a legal controversy between the United States and the Governments of Chile, Ecuador, and Peru with respect to the claims of the three South American countries to exclusive sovereignty over a so-called maritime zone extending not less than 200 miles off their coasts. Claims over such an area had been advanced by Chile and Peru individually in 1947. In August 1952 the Declaration of Santiago was signed by the three South American countries stating 200-mile claims in a joint manner and pledging themselves to collaborate for the protection of maritime resources in the area. Later they agreed not to enter into any international agreements affecting these claims without the concurrence of the other parties to the Declaration. It was because of this pledge that the United States, which first proposed such negotiations to the Government of Ecuador, agreed to negotiate simultaneously with all three South American Governments.

Despite United States protests against the claims of the three countries, which were directly in conflict with the well-established principle of the freedom of the seas, various actions by Ecuador and Peru sharpened the legal controversy. Fishing vessels of United States registry operating on the high seas off the coasts of Ecuador and Peru during 1954 and 1955 were seized and subjected to fines or taxes, or were otherwise molested. These incidents culminated in the seizure in March 1955 of two United States fishing vessels some 25 miles from the coast by an Ecuadoran patrol boat, in the process of which an American seaman was seriously wounded by gunfire.

Various high officials of the Governments of Chile, Ecuador, and Peru assured representatives of the United States that the sole purpose of the claims to sovereignty over the high seas set forth in the Santiago Declaration was to insure the conservation of the living resources of the sea which the three coastal countries considered essential to their economic development and their future welfare. The United States, in accordance with its well-established policy of promoting the conservation of fishery resources, therefore made a dual proposal to the three countries in a note handed to their Foreign Offices by the United States Embassies on May 13, 1955. In this note the United States proposed that the dispute over the claims by those countries to sovereignty and jurisdiction over the ocean to a distance of 200 miles from their shores be submitted to the International Court of Justice, and that negotiations be entered into between representatives of the three countries and the United States for the conclusion of an agreement for the conservation of fishery resources in which the four countries had a common concern. Such an agreement would not refer to the extent of territorial waters.

1/ Reprinted from The Department of State Bulletin, vol. XXXIII, no. 860 (December 19, 1955), pp. 1025-1039.
Note: Also see Commercial Fisheries Review, September 1955, pp. 1-13.

In their response to this note, the three South American countries on June 3, 1955, replied that they were not prepared to consider at the time whether or not the legal controversy should be submitted to the International Court of Justice (none of them having accepted the compulsory jurisdiction of the Court) but that they were prepared to initiate jointly the proposed negotiation of a conservation agreement.

U. S. AGREES TO NEGOTIATIONS

In a further note handed to the three Governments on July 9, 1955, the United States expressed regret at the unreadiness of the South American countries to submit the legal controversy to the International Court of Justice. The United States agreed nevertheless to open negotiations with the three countries for an agreement for the conservation of fishery resources of the eastern Pacific Ocean in general conformity with the conclusions on technical aspects of fishery conservation approved by the United Nations International Technical Conference on the Conservation of the Living Resources of the Sea (Rome, April 18-May 10, 1955). It was stated specifically that any such agreement would have to be drafted without reference to the claims of any of the four Governments with respect to territorial waters or other forms of special jurisdiction over the seas adjacent to their coasts.

After the formal opening of the negotiations on September 14, 1955, by His Excellency Rear Admiral Kare Olsen Nielsen, Foreign Minister of Chile, the question of how to proceed with the negotiations was discussed. The United States delegation proposed the following three points, to be discussed in the order indicated:

1. Consideration of the principal fishery conservation problems of the southeast Pacific of concern to the participating governments;

2. Examination of existing types of conservation measures and procedures that might be useful in solving these problems;

3. Type of agreement that would be required for satisfactory resolution of the conservation problems confronted, and provisions of such an agreement.

Two days later the delegations of Chile, Ecuador, and Peru, who acted in concert throughout the negotiations, replied that in their view the negotiations could be better facilitated by the immediate submittal by the United States of proposals for a conservation agreement. The delegations of these three Governments (which became known as the CEP delegations) also urged that in making any such proposals the United States take into account the desirability of preventing repetition of incidents such as those which had taken place involving United States fishermen during the past months.

U. S. PROPOSALS FOR CONSERVATION AGREEMENT

Accordingly, on September 20 the United States delegation presented to the other delegations a full statement of its understanding of the problems of fishery conservation in the southeastern Pacific, insofar as the United States had an interest therein and knowledge thereof, and submitted, on the basis of this understanding, its proposals for a conservation agreement.

In these documents the United States pointed out that its principal concern was with the stocks of yellowfin, skipjack, and big-eyed tuna and with small bait fish used in catching the tuna. The distribution of these stocks of tuna in the Pacific Ocean was described in relation to ocean current systems. Data concerning the condition of these stocks of tuna were referred to, emanating principally from the studies carried out by the Inter-American Tropical Tuna Commission.

The work of the Inter-American Tropical Tuna Commission was discussed, and the United States delegation pointed out that the convention which established that commission included, in its opinion, all or most of the provisions needed to handle the joint conservation problems of tuna and bait fish. However, since the CEP countries had not accepted an earlier invitation to join in this cooperative project for stocks of fish extending into the waters off their coasts, it appeared that they found the convention inadequate in one or more respects. The United States delegation stated that if they would explain these deficiencies, it would help in determining the type of agreement which would be satisfactory.

With reference to the drafting of a conservation agreement the United States delegation set forth its main ideas in document 7, and later in document 9. These documents outlined a conservation program involving the establishment of an international commission on which each participating state would be represented by a national section having one vote. The commission would carry out scientific research on stocks of fish of interest to two or more member states. In the discussion it was made clear that a state would be considered as having an interest in the conservation of a stock of fish either when it participated in the fishing of such stock or when such stock occurred in waters adjacent to its coast. The expenses of the commission with respect to any specific research program would be allocated to the member countries in relation to their share of the total catch of that stock of fish. The commission would be directed to determine, on the basis of scientific investigations, what, if any, conservation measures would be required to make possible the maximum sustainable productivity of a given stock of fish and to recommend the adoption of such measures to the Governments. Decisions of the commission were to be taken by agreement among all the national sections, but in the event of a failure to reach agreement, technical issues could be submitted to an arbitral procedure for a final settlement.

When the commission, either as a result of its own decision or of the arbitral findings, recommended conservation measures to the member states, these would go into effect automatically within a certain period of time unless a country objected. In the event of such objection, the United States proposals suggested the issue could again be submitted to an arbitral procedure for decision, and the award in this case would become binding upon all member states.

AVOIDING FURTHER INCIDENTS

The proposals incorporated in the documents referred to set forth the United States position. However, an additional oral statement at the meeting of September 20 was made in reply to the CEP request that consideration be given to means of avoiding further incidents. The United States delegation suggested that the conclusion of a conservation agreement along the lines proposed would greatly help avoid further incidents by providing for international regulation of vessels of the parties fishing in the waters off the coasts of the CEP countries. Rules would be established by agreement among the countries on the proposed international commission and, in the view of the United States, should be enforced by each Government against its own vessels. The United States delegation observed that it had noted with interest the statements of officials of the CEP Governments that the consideration which should govern activities of foreign fishermen in the waters off their coasts should be that they conform to rules for the conservation of the species, and suggest that so long as the commission established such regulations by agreement of all member states, no further difficulties regarding their adoption and validity should be encountered.

The United States proposals did not, however, prove acceptable to the CEP countries. On September 23 they stated their disagreement therewith and proposed certain alternative ideas differing in various respects from those advanced by the

United States. A major difference in the proposals put forth by the CEP countries had to do with the role assigned to the coastal state in enforcing any conservation measures which the international commission might propose, or which the coastal state itself might wish to put into effect. The CEP countries wished to have the agreement recognize the right of the coastal state to exclusive control of fisheries out to 12 miles from its shores and also in areas which each coastal state would unilaterally designate as constituting "areas traditionally exploited" by it. These areas would, judging from illustrative material presented during the negotiations, extend 50 to 60 miles beyond a 12-mile zone and cover most of the desirable fishing grounds off the coasts of the three South American countries. Fishing within these two classes of areas was to be controlled by licenses issued by the coastal state. In the remainder of the area covered by the proposed agreement, fishing for tuna and bait fish would be permitted subject to existing conservation regulations which would presumably include not only those established by the new commission but also apparently regulations promulgated by the three South American States either individually or jointly. Moreover, Chile, Ecuador, and Peru wished in essence to have exclusive jurisdiction to enforce the regulations within a 200-mile zone and, further, to occupy a preferential position with respect to any quotas governing the quantity, kind, etc., of fish taken which might be established pursuant to the conservation program.

The negotiations at this point began to focus upon what proved to be an insuperable obstacle, namely, the insistence of the CEP countries on inserting in any agreement provisions which would in effect recognize their claims to exclusive jurisdiction over large areas of the high seas off their coasts. The U. S. delegation pointed out that the authority to license fishing operations would involve the authority not only to determine the fees and other conditions of the licenses but also the authority to withhold them completely.

Moreover, the U. S. delegation pointed out that these provisions were in no sense required for the effective execution of a conservation program. In support of this point the United States amplified and clarified its proposals regarding the controversial issues. It stressed that effective enforcement could be achieved by agreement on the provisions which would accord to the properly constituted authorities of any contracting party the right to board any fishing vessel flying the flag of a contracting party within the convention area if there were reason to believe that a conservation regulation was being violated, and, if supporting evidence was found, to take the vessel into the port and prefer charges against it. It urged that at this point the vessel should be promptly turned over to officials of the country of registry for trial and, if guilty, for punishment of the offense. It was pointed out that this system had been incorporated satisfactorily in several other international fishery conservation agreements.

Furthermore, in order to avoid damaging the juridicial position of either side, the United States delegation proposed that an article be adopted in the convention clearly stating that it was being entered into "without affecting the position of any contracting state in regard to territorial waters."

Finally, the United States, while unable to accept the idea of exclusive jurisdiction by the coastal state over the "traditional" fishing areas which it might unilaterally declare, made a substitute proposal. It agreed to consider any proposals which the CEP countries might wish to advance to take care of special problems or situations involving small coastal fishing villages in the CEP countries which were dependent directly upon the sea for their sustenance. This proposal was justified on humanitarian grounds. The United States delegation insisted, however, that any cases falling under this general proposal would have to be supported by a factual showing of the dependence of the community upon the sea for its sustenance. This proposal did not prove to be of interest to the CEP states.

CEP DRAFT CONVENTION

At the same meeting at which the United States submitted its document 9, the CEP countries presented a complete draft convention, modifying in some respects their early proposals. However, the same fundamental obstacles to agreement remained, namely the desire of the CEP states to assert exclusive jurisdiction over large areas of the high seas off their coasts. A new thought was introduced in regard to the trial of alleged violations. The CEP draft suggested the setting up of a special jurisdiction under which the national section of the state making the arrest would try the vessel charged with an offense by means of administrative procedure and would impose penalties. It was further suggested that should the alleged offender wish to appeal he could do so to a special tribunal made up of the two national sections of the commission other than those representing the country of the alleged offender and the country of the arresting officer. In view of the bilateral character of the agreement proposed by the CEP countries, with Chile, Ecuador, and Peru identified as one party, and the United States identified as the other party, this procedure would, in most cases, result in two members of the same party hearing appeals from decisions in which the other member of that party was involved.

NEGOTIATIONS SUSPENDED

At this stage it became clear that the negotiations had proceeded to a point which exhausted the capacity of the delegations to reach agreement within their instructions. The issue posed by the insistence of the CEP countries on exclusive jurisdiction over areas which the United States considered to be high seas in accordance with existing international law was apparently insuperable. The proposal for special tribunals to try offenders posed problems which would at the very least require careful and extended consideration, certainly within the United States Government. The proposals of the United States with respect to policing and enforcing the area likewise proved to be beyond the authority of the CEP delegations to accept. Accordingly, a decision was made to suspend the negotiations and a communique was issued announcing this decision.

Differences in the interpretation of scientific information were also brought out in the course of the negotiations. The CEP countries in their document of September 23, advanced a theory of "eco-systems" and "biomas" according to which the interdependence of life on the coastal land with the living communities of the sea, plus the geographic, hydrographic, climatic, and other environmental factors influencing both, were said to create a relationship of such unity as to serve as a scientific basis for the legal claim of coastal states to preferential rights over adjacent waters. The United States delegation challenged this concept, pointing out that the idea of the existence of a perfect unity and interdependence between the communities that live in the sea and the coastal populations could have at most limited, if any, validity, such as for example in the well-known case of the guano bird populations of Peru. It stated that, on the contrary, conditions responsible for the existence of rich marine life in the area off the west coast of South America were the result of meteorological and oceanographical factors originating far from those areas--factors such as major wind systems of the Pacific and the interplay of its great oceanic currents. It also pointed out that many stocks of fish of greatest importance, such as tuna, moved widely over a broad area through and beyond the "biomas" of the area in question and that the interrelated communities of living organisms of the ocean, moreover, certainly bore no relationship to national boundaries as established by man on the land.

Such differences were in part responsible for a substantial variance of opinion regarding the area to be covered by the proposed conservation agreement. The United States urged that, since some of the most important stocks of fish to be conserved (yellowfin and skipjack tunas) ranged all the way from the waters off Chile

north to California, the convention should cover this entire area and be open to adherence of other American coastal states contiguous to these waters. Otherwise, only divided and therefore less effective attention could be given to those important stocks of fish. The CEP countries made it clear, however, that their interest was confined to waters off their coasts and that they were not prepared to enter into a broader agreement. The United States finally stated that, if the CEP states found it impossible to participate in a broader arrangement, it would, should other outstanding differences be resolved, agree to work out with them a convention limited to the four negotiating states. However, in that case the United States would suggest certain changes in the functions to be assigned to the proposed commission to avoid conflict or duplication with the research activities of other organizations.

PURPORT OF 1945 PROCLAMATION

The United States delegation was interested to note during the course of the negotiations that official or public opinion in the CEP countries labored under considerable misunderstanding in respect to facts relating to United States policy regarding fishery conservation. For example, the purport and effect of the proclamation issued by the President of the United States in 1945 concerning fishery conservation was widely misinterpreted as constituting a precedent for unilateral claims to large offshore areas of high seas for conservation purposes. The United States delegation repeatedly made clear that the United States through the Truman proclamation did not claim exclusive jurisdiction over the high seas off its coasts but on the contrary recognized that when foreign fishermen participated in fisheries off the coast of the United States beyond the 3-mile limit, conservation regulations would be worked out with the agreement of the governments concerned. It explained that only when United States nationals alone were involved would the United States establish the conservation regulations unilaterally in the exercise of the right of any government to regulate its own nationals on the high seas.

Another misconception of United States policy at times reflected in statements appearing in the local press during the course of the negotiations was that the United States represented those countries which wished to be free to fish without restraint anywhere in the world, as opposed to the CEP countries, which represented the desire of other states to protect and conserve fishery resources. The United States delegation took such opportunities as it could to reiterate the firmly established policy of the United States to promote the conservation of fishery resources in which it had an interest in any area of the world. It was pointed out that the United States had in fact entered into more international agreements for the conservation of fishery resources than any other country. The regulations under these conservation agreements have proved highly beneficial to the fisheries concerned and thereby demonstrate to interested people in the United States, especially its fishermen, the positive value of effective conservation programs. The initiative taken by the United States in establishing with the Governments of Costa Rica and Panama the Inter-American Tropical Tuna Convention (which is open to adherence by other interested states) has produced the most extensive and useful series of conservation studies that have been developed for any stocks of fish in the southeast Pacific. The work of the Inter-American Tropical Tuna Commission has already established a firm basis of knowledge concerning the condition of these stocks of fish and has placed the commission in a position to devise and recommend conservation regulations at any time, should the condition of these tuna stocks indicate such measures to be necessary.

In the course of the Santiago negotiations the United States made every effort to include in its proposals for a conservation agreement measures and procedures adequate for the cooperative activities necessary to assure the continued productivity of the stocks of fish in the eastern Pacific Ocean of interest to the four countries. Such an agreement would make the participating countries full partners in a conservation program involving effective research, recommendations for conservation

based on scientific data, and enforcement of necessary measures. However, it was not possible to conclude such an agreement owing to the inability of the delegations of Chile, Ecuador, and Peru, without further consultation with their respective Governments, to negotiate an agreement which did not include provisions in effect giving recognition to their claims to exclusive jurisdiction over large areas of the high seas off their coasts.

HANDLING BAIT SHRIMP

To handle bait shrimp properly the shrimp must be in good condition when transferred to the holding tanks or pens. They must not be handled any more than necessary, and the water should be clean and uncontaminated. It is best to pump water directly from the ocean through the shrimp tank. If this is not possible, then the water should be changed as frequently as is convenient and should be aerated to keep it well supplied with oxygen.

Strict care should be taken to see that there is no copper or brass anywhere in the tanks or the pipes supplying the salt water to them. This is important since small quantities of copper going into solution with the sea water are sufficient to kill the shrimp. The tanks should be made of some material that will not contaminate the water--wooden or glass tanks are best. Concrete tanks should be coated with asphaltum paint to waterproof them. Such tanks should be thoroughly soaked and flushed to make sure that any soluble material in the paint or tank that will contaminate the water is removed. Floating boxes in water where there is a moderate flow are the best.

The temperature is an important factor. In the northern part of Florida where the white shrimp are caught it is best not to allow the temperature to exceed 60° F. The optimum temperature is between 50° and 60° F. Elsewhere where the pinks are caught, particularly in southern Florida, the temperature may be allowed to go as high as 80° F.

Since uneaten food fouls the water, it is advisable not to feed bait shrimp. Some dealers do feed their shrimp, however, using chopped up barnacles, fish, shrimp, and similar foods.

If no water circulation is used in the tanks, three shrimp per cubic foot may be held for a considerable time. With circulation this figure can be increased to ten shrimp. For short holding periods the number-per-cubic-foot can be increased considerably.

--The Live Bait Shrimp Fishery of the Northeast Coast of Florida,
The Marine Laboratory, University of Miami,
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