



Relative Stability in Context International Fisheries Law

Erik J. Molenaar

Deputy Director, Netherlands Institute for the Law
of the Sea (NILOS), Utrecht University &
Professor, K.G. Jebsen Centre for the Law of the
Sea (JCLOS), UiT The Arctic University of Norway.
e.j.molenaar@uu.nl



Universiteit Utrecht

Overview presentation

- Definitions
- Consensual nature of international law
- Allocation and package deals
- Allocation under international fisheries law
- Relative stability under current CFP
- Conclusions



Definitions

- Allocation of fishing opportunities
 - To ensure TAC is not exceeded
 - TAC allocated among qualified participants
 - Catch or effort quota
 - Step by step process
 - Agreement on allocation criteria
 - Agreement on operationalizing allocation criteria through allocation keys/formulas (e.g. reference period)
- Alternative to allocation: 'Olympic-style' or 'Derby-style' fishery



Consensual nature of international law

- A State is not bound by international law unless it has consented to it (*pacta tertiis* rule)
- Decision-making in global and regional negotiations and institutions in principle by consensus
 - Even in case procedures on simple-majority or qualified-majority voting exist, often preference not to use them (lowest common denominator problem)
- Many decision-making procedures also allow States to 'opt-out'; often used for decisions on allocation



Allocation and package deals

- Within EU and in coastal State arrangements in the North-East Atlantic, allocation often part of package deal on
 - TAC
 - Reciprocal fisheries access (equal access)
 - The ability to do quota swaps
 - Technical measures and enforcement/control measures
 - Market access
- Advantages and disadvantages
 - Integrative bargaining (as opposed to distributive bargaining) can break deadlocks
 - Once agreed, allocations can be difficult to change due to linkages with other components of the package



Allocation under international fisheries law

- UNCLOS & UNFSA
 - Framework instruments: actual fisheries regulation carried out by States individually and collectively (e.g. through RFMOs and the EU)
 - Many due diligence obligations (as opposed to obligations of result)
 - Several categories of due diligence obligations
 - Conservation (as part of the precautionary and ecosystem approaches to fisheries management)
 - Optimum utilization (access to surplus of the TAC)
 - Cooperation on transboundary (shared, straddling and highly migratory) and discrete high seas fish stocks



Allocation under international fisheries law (cont.)

- UNCLOS: No explicit reference to allocation (only in context surplus of the TAC)
- UNFSA: Explicit reference to allocation:
 - In context of obligation to determine “compatible conservation and management measures” (Art. 7)
 - Historical catches, zonal attachment and dependency
 - Allocation among key functions of RFMOs (Art. 10)
 - Criteria for determining the “nature and extent of participatory rights” of new members (Art. 11)
 - Non-exhaustive, non-prioritized & non-weighted
- Conclusion: minimal guidance & broad discretionary powers for States



Article 11 New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for new participants in a subregional or regional fisheries management arrangement, States shall take into account, *inter alia*:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.



Relative stability under current CFP

- First laid down in 1983 CFP Basic Regulation and operationalized in 1983 TACs and Quota Regulation
- 1983 allocation keys
 - Linked to equal access regime and the change from 12 to 200 nm exclusive fisheries jurisdiction
 - Three criteria
 1. Historical catches (1973-1978)
 2. Dependency as enshrined in 1976 'Hague Preferences'
 3. 'Jurisdictional losses' (1973-1976)
 - Adjustments based on Hague Preferences
- Allocation keys following accession negotiations
- Allocation keys for new fishing opportunities



Conclusions

1. Agreement on allocation difficult due to consensual nature of international law, as reflected in decision-making procedures
2. Including allocation in package deals can have advantages and disadvantages
3. The guidance provided by the UNCLOS and the UNFSA on the allocation of fishing opportunities is minimal and leaves States a broad margin of discretion
 - Not only a challenge but also an opportunity
 - considerable leeway for tailor-made mechanisms;
 - opportunities to show stewardship & leadership and thereby contribute to the progressive development of international law





Thanks!

Questions?



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