



Multilateral Fisheries Allocation: An Overview of Global Instruments

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Structure of Presentation

- Introduction
- United Nations Convention on the Law of the Sea (UNCLOS)
- United Nations Fish Stocks Agreement (UNFSA)
- International Jurisprudence relating to Allocation Disputes
- Calls for Action on Allocation by Global Fora
- Non-Governmental Guidance on Allocation
- Some Conclusions



Introduction

- Presentation limited to allocation of fishing opportunities; not
 - Issues related to membership in RFMOs
 - Broader issue of sharing “burden of conservation action” (Art. 24(2)(c) of the UNFSA)
- Acronym RFMO comprises regional fisheries management arrangement (RFMA)



UNCLOS

- Framework convention
- As regards fishing: main rights and obligations for States acting in their capacities as coastal States or high seas fishing States
 - Rights: fishing entitlements
 - Shared & straddling stocks: “occur within” (Art. 63)
 - Obligations, e.g. cooperate in relation to transboundary fish stocks and discrete high seas fish stocks
- No explicit or implicit reference to the need to agree on allocation of fishing opportunities, within or outside RFMOs; focus on TAC and avoiding over-exploitation
 - Allocation criteria in Art. 62(3) re access to the surplus of the TAC in EEZs of coastal States
- Non-discrimination in high seas fisheries conservation measures (Art. 119(3))



UNCLOS (cont.)

- Dispute settlement (Part XV of the UNCLOS)
 - Point of departure: compulsory procedures entailing binding decisions
 - Main exceptions and limitations in context fisheries
 - Articles 281 and 282: parties to a dispute have agreed to exclude recourse to Part XV, e.g. in an RFMO's constitutive instrument
 - No such exclusion in NEAFC Convention
 - Article 297(3)(a): fisheries issues relating to EEZ are excluded, but still subject to compulsory conciliation (with many qualifications...)



UNFSA

- Implementation Agreement of the UNCLOS
- Duty to cooperate re straddling and highly migratory fish stocks = duty to cooperate through RFMOs
 - Confirms primacy of RFMOs
- Art. 7: Compatibility
 - Allocation criteria re coastal State maritime zones vs high seas
 - In absence of agreement: provisional arrangements or - when these cannot be agreed - dispute settlement



Article 7 Compatibility of conservation and management measures

- (d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;
- (e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and
- (f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

UNFSA (cont.)

- Art. 10: Functions of RFMOs
 - (b) “agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort”
- Art. 11: ‘New members or participants’: Criteria for determining the “nature and extent of participatory rights” for new members or participants
 - But similar to criteria used within RFMOs for the allocation of fishing opportunities between existing members
 - Non-exhaustive (“*inter alia*”), non-prioritized & non-weighted
 - No attention to procedural dimension (apart from dispute settlement)



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.

UNFSA (cont.)

- Dispute settlement (Part VIII of the UNFSA)
 - Art. 28: Obligation to agree on efficient and expeditious decision-making procedures
 - Art. 29: Use of *ad hoc* expert panels for disputes with a technical nature
 - Art. 30: Part XV of the UNCLOS applies *mutatis mutandis*



International Jurisprudence relating to Allocation Disputes

- On an allocation dispute
 - 2013 'Findings and Recommendations of the Review Panel' established under the SPRFMO Convention
- In the context of an allocation dispute
 - 1999-2000 *Southern Bluefin Tuna* cases
 - Interpretation of Articles 281 and 282 of the UNCLOS reversed by 2015 *South China Sea* case
 - 2014 *Atlanto-Scandian Herring* cases



Calls for Action on Allocation by Global Fora

- Annual UNGA 'Fish' Resolutions (e.g. 2015)
- 2006 UNFSA Review Conference & 2010 Resumed UNFSA Review Conference
 - Both on participation and allocation
- Also at 2016 Resumed UNFSA Review Conference?

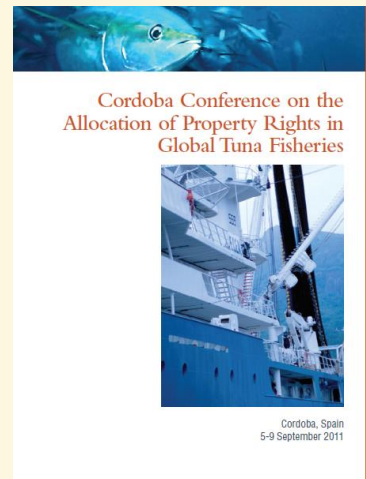
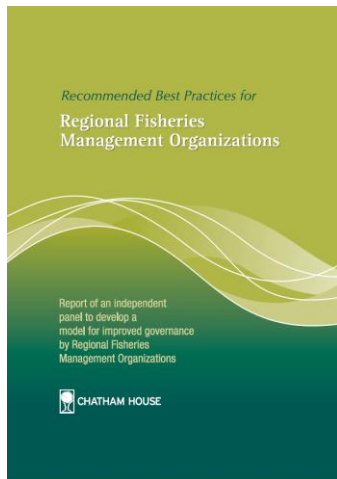


2015 UNGA Fish Resolution

148. Urges regional fisheries management organizations and arrangements to improve transparency and to ensure that their decision-making processes are fair and transparent, rely on the best scientific information available, incorporate the precautionary approach and ecosystem approaches, address participatory rights, including through, *inter alia*, the development of **transparent criteria for allocating fishing opportunities which reflects, where appropriate, the relevant provisions of the Agreement, taking due account, inter alia, of the status of the relevant stocks and the respective interests in the fishery;**”

Non-Governmental Guidance on Allocation

- *2007 Recommended Best Practices for Regional Fisheries Management Organizations* (Chatham House)
- *2009 OECD Strengthening Regional Fisheries Management Organisations*
- *2011 ISSF Cordoba Conference on the Allocation of Property Rights in Global Tuna Fisheries*



Some Conclusions

1. States and RFMOs are responsible for agreeing on allocations and developing robust allocation mechanisms
2. Global instruments provide only limited guidance to States and RFMOs in this regard. This offers
 - a) considerable leeway for tailor-made mechanisms;
 - b) opportunities to show stewardship & leadership and thereby contribute to the progressive development of international law
3. Recourse to compulsory dispute settlement procedures is available under the UNCLOS and the UNFSA to certain (aspects of) disputes on allocation
 - But actually using such procedures is not necessarily always the best option





Thanks for your attention!

Questions?



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