

*Article 56*

Although there may, in certain circumstances, be some justification for a state not engaged in fishing in an area not contiguous to its coast requesting a fishing state to take certain conservation measures, care should be taken that this request would not extend to measures necessarily having to be taken within the boundaries of the fishing state. This Article, therefore, should be qualified to indicate that the fishing state would be under no obligation to take measures within its boundaries.

The Government of Canada is of the opinion that these Articles should be subject to the "abstention principle" which was considered at the Technical Conference on the Conservation of the Living Resources of the Sea held in Rome in 1955 and which is stated in the Report of the Conference (page 7, paragraphs 61-62) namely:

"61. A special case exists where countries, through research, regulation of their own fishermen and other activities, have restored or developed or maintained stocks of fish so that their productivity is being maintained and utilized at levels reasonably approximating their maximum sustainable productivity, and where the continuance of this level of productivity depends upon such sustained research and regulation. Under these conditions, the participation of additional States in the exploitation of the resource will yield no increase in food to mankind, but will threaten the success of the conservation programme. Where opportunities exist for a country or countries to develop or restore the productivity of resources, and where such development or restoration by the harvesting State or States is necessary to maintain the productivity of resources, conditions should be made favourable for such action.

"62. The International North Pacific Fishery Commission provides a method for handling the special case mentioned above. It was recognized that new entrants in such fisheries threatened the continued success of the conservation programme. Under these circumstances the State or States not participating in fishing the stocks in question agreed to abstain from such fishing when the Commission determines that the stock reasonably satisfies all the following conditions:

- (a) Evidence based upon scientific research indicates that more extensive exploitation of the stock will not provide a substantial increase in yield;
- (b) The exploitation of the stock is limited or otherwise regulated for conservation purposes by each party substantially engaging in its exploitation; and
- (c) The stock is the subject of extensive scientific study designed to discover whether it is being fully utilized, and what conditions are necessary for maintaining its maximum sustained productivity. The Convention provides that, when these conditions are satisfied, the States which have not engaged in substantial exploitation of the stock will be recommended to abstain from fishing such stock, while the States engaged in substantial exploitation will continue to carry out the necessary conservation measures. Meanwhile, the abstaining States may participate in fishing other stocks of fish in the same area."

All of the above comments are, of course, provisional at this stage. The fact that comments have not been submitted on other matters does not indicate that the remainder of the draft articles are necessarily acceptable to the Canadian government as they now stand. The comments are submitted with a view to facilitating the exchange of views among countries that will be essential in working out agreed provisions on the Law of the Sea.