

PACIFIC FISHERY CONSERVATION CONVENTIONS

A COMPARISON OF ORGANISATIONAL STRUCTURES

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I. INTRODUCTION*

The occurrence of declining catches from important historic fisheries has compelled abandonment within the past half-century of the belief cherished at least since the time of Grotius as to the inexhaustible supply of marine resources. In the effort to reverse the adverse trend which has developed or threatened to develop for certain fisheries, the United States has played a leading role by participating in more marine conservation conventions than any other State. In the expectation that States enjoying Pacific fisheries resources will be parties to further conservation conventions, this paper will be concerned with one aspect of fishery conventions which merits greater specific attention.

As was strongly evidenced by the representatives of Chile, Ecuador, and Peru at the recent Santiago negotiations and by the representatives of these and other Central and South American States at the more recent meetings of the Inter-American Council of Jurists and at the Ciudad Trujillo Conference,¹ some States currently favour conservation policies which by vesting almost exclusive control in the State contiguous to the water area involved would cause the return of international law to the pre-Grotian era of *mare clausum*.^{1a} However, the strong resistance of the United States to such an

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The following abbreviations are here used: *Ex. Agr. Series* = *Executive Agreement Series* (U.S.); F.A.O. = Food and Agriculture Organisation; *H.C.D.* = *House of Commons Debates*; H.C.P. = High Contracting Parties; I.L.C. = International Law Commission; *Int. Org.* = *International Organisation* (Journal); *L.N.T.S.* = *League of Nations Treaty Series*; *N.F.I.* = *National Fisheries Institute* (Washington); *T.I.A.S.* = *Treaties and Other International Agreements* (U.S.); U.N.G.A. = United Nations General Assembly.

¹"Santiago Negotiations on Fishery Conservation Problems" (1955) 33 *Dept. of State Bull.* 1025; "Territorial Waters and Related Matters—Action Taken by the Third Meeting of the Inter-American Council of Jurists" (1956) 34 *id.* 296; "Problems Relating to the Economic and Legal Regime of the High Seas" *id.* 894. In order jointly to persevere in the matter of urging the 200 mile limit and although the name may not indicate this to be the primary objective, Ecuador, Chile and Peru formed the Permanent Commission for the Conservation and Exploitation of the Maritime Riches of the Southern Pacific. At the third Ordinary Meeting, held in December, 1955, Costa Rica sent an observer.

^{1a}Without resulting in a policy of closed seas the most recent Report of the International Law Commission does recognise that "A coastal State has a special interest in the maintenance of the productivity of the living resources in any area of the high seas

extension of sovereignty² coupled with the indication by the International Law Commission as to the extent of the territorial sea, even if permissibly greater than three miles, suggests that the future conservation of marine resources is likely to be by bilateral or multilateral convention. As it stated in the State Department report on the Ciudad Trujillo Conference, mentioned above, "the conference recognised the great desirability of promoting co-operation among States for the achievement of the optimum sustainable yield of living resources of the high seas and stated that this co-operation could best be achieved through agreements among the States directly interested".

Even if one State is initially able unilaterally to promulgate conservation measures since only her nationals exploit the resource, the subsequent exploitation of that high seas resource by nationals of other States is likely to result in a bilateral or multilateral convention. Especially may this be the case if the General Assembly approves and adopts the I.L.C. draft on the Regime of the High Seas as proposed at the Eighth Session of the I.L.C.³ Article 51 of that proposed draft provides for unilateral regulation of a fishery where only the nationals of the regulating State are exploiting the resource. But more important, Article 53 provides that when nationals of other States engage in fishing within the area covered by the regulations already promulgated for the relevant area, then the nationals of the second State must comply with the existing regulations. If, however, the existing regulations are not acceptable, then Article 53(2) provides for the negotiation by the parties of new measures. Where such negotiations fail then the matter is to be settled by arbitration as provided by Article 57.

The application of these articles may encounter some difficulty where there is uncertainty as to whether only the nationals of the regulating State are exploiting the resource. There may also be difficulty where the two States involved have not resumed diplomatic relations. Aspects of both of these difficulties are involved in the recent attempt of Russia to regulate salmon fishing on the high seas contiguous to certain Russian territorial water. Alleging that Japanese fishing activities were "rapacious" the Soviet rulings made it clear that the rulings were intended to be temporary and that a mutually acceptable agreement was contemplated. The difficulties were resolved in May, 1956, by trade agreements in the form of an Exchange of Notes, which at least the Japanese considered as binding as a treaty.^{3a}

For the reasons mentioned, it is suggested above that there is likely to be increased participation in conservation conventions. In addition, besides the fact that such conventions are able to protect the natural resources while

adjacent to its territorial sea". *Report of the International Law Commission*, Art. 54(1), *U.N.G.A. Off Rec.*, 11th Sess. Supp. No. 9, A/3159, hereinafter cited as *I.L.C. Rep.* See also Arts. 55 and 56 and the Commentary to Art. 49, particularly paras. 9-16 inclusive. The Report is also available in (1957) 51 *A.J.I.L.* 156.

² For recent official declarations of the historic position of the U.S. on this matter see, e.g., "International Co-operation in Fisheries Conservation" (1954) 30 *Dept. of State Bull.* 297; "U.S. Position on Conservation of Fisheries Resources" (1955) 32 *id.* 696; H. Phleger, "Recent Developments Affecting the Regime of the High Seas" 32 *id.* 934. The consistency with which the U.S. adheres to its belief in the three mile limit is perhaps best revealed by the fact that the U.S. Treasury Department may reimburse vessel owners for fines levied upon them by South American countries enforcing the 200 mile limit. The first such payment of \$12,000 was in respect of a fine levied by Ecuador. Other claims for reimbursement are pending. "U.S. Reimburses Sun Pacific, Inc." No. 460 *N.F.I. Flashes* 4 (Oct. 7, 1955).

³ The Report provides by Arts. 52 and 53 that when the nationals of two or more States engage in fishing the same stocks . . . these States shall, at the request of any of them, enter into negotiations with a view to prescribing by agreement the necessary measures for the conservation of such resources". *I.L.C. Rep.*, Art. 52(1), *supra* n.la.

^{3a} For subsequent developments see *N.Y. Times*, Mar. 15, 1:8 (1956); Oct. 20, 2:5 (1956); and Mar. 19, 11:4 (1957) where the Russians tied the fishing agreement up with a trade pact which was in the process of negotiation.

maintaining the principle of a free sea, the bilateral or multilateral fishery convention can be tailored to meet the requirements of most, if not all, fishery conservation problems.⁴ Perhaps of equal importance, conservation conventions, as will be indicated below, can also be tailored to meet most, if not all, the organisational requirements imposed by the domestic conditions within the participating States, while not necessarily diminishing the possibility for creating a reasonably effective convention.

International conservation agreements have covered a very wide terrain, including in addition to fish, at least fur seals, whales, birds and other wild life. A good number of the interesting questions generated by these international conservation efforts and requirements have received some attention.⁵ The present paper is concerned with one aspect of the subject which has yet to receive adequate attention,⁶ namely, the types of organisational structures and procedures which have been attempted for a specific class of fishery conservation conventions. The type of convention here to be discussed deals with a fishery exploited by or of interest to the nationals of two or three States, where one of the participating parties is the United States.⁷ Specific

⁴For a listing of some of the different conservation problems and the different procedures which are available, see the Report to the I.L.C. from the International Technical Conference on the Conservation of the Living Resources of the Sea, esp. Parts III and IV, *U.N.G.A. A/Conf. 10/L.4* (Mar. 29, 1955), hereinafter referred to as the Rome Conference.

⁵For example, see particularly, A. P. Daggett, "The Regulation of Maritime Fisheries by Treaty" (1934) 28 *A.J.I.L.* 693; H. E. Gregory and K. Barnes, *North Pacific Fisheries* (1939); S. S. Hayden, *The International Protection of Wildlife* (1942); S. A. Riesenfeld, *Protection of Coastal Fisheries under International Law* (1942); J. Tomasevich, *International Agreements on Conservation of Marine Resources* (1943); L. L. Leonard, *International Regulation of Fisheries* (1944). For further references see, "Bibliography on the Regime of the High Seas", pt. vii, *Protection of the Products of the Sea, U.N.G.A. A/CN.4/26* (Apr. 25, 1950).

⁶During the preparation of this study there was held the Rome Conference (*supra* n.4). The head of the U.S. Delegation to the Conference was the very able W. C. Herrington, who, together with J. L. Kask (see n.81 *infra*) presented to the Conference a paper (for Item 12a of the Provisional Agenda) which tersely presented the basic organisational machinery under each of the major conservation Conventions since the establishment in 1902 of the International Council for the Exploration of the Sea. (See W. C. Herrington and J. L. Kask, "International Fishery Conservation Problems and Solutions Developed in Existing Conventions"). This paper discussed at least sixteen Conventions which deal with investigation or regulation (or both) of fishes, fur seals, or whales. See also the *Report of the Rome Conference to the International Law Commission*, pt. v, A, briefly reviewing existing international conservation organisations. *U.N. Doc. A/Conf. 10/5/Rev. 2*. See also the State Department documents on the seal and fisheries Conventions, presented in *84th Cong., 1st Sess., Hearings before a Subcommittee of the Committee on Foreign Relations, Senate, On the Great Lakes Fisheries Convention* 26-32 (Apr. 27, 1955).

⁷For an early study see McKay, *Preliminary Report on the International Control of Fisheries on the High Seas* (1929). The following are the main conventions to be considered: (1) Apr. 11, 1908, U.S.-U.K., Concerning the Fisheries in Waters Contiguous to the United States and the Dominion of Canada ((1908) 2 *A.J.I.L. Supp.* 322, hereinafter termed "the 1908 Convention with Great Britain"). Although this Convention applied primarily to internal boundary lakes and rivers as well as to some high sea waters, it is here considered because of its historic interest in regard to the subsequent Conventions covering part of the same waters.

(2) Mar. 2, 1923, U.S.-Canada, for the Preservation of the Halibut Fisheries of the Northern Pacific Ocean ((1925) 32 *L.N.T.S.* 94, hereinafter termed "the 1923 Halibut Convention").

(3) Dec. 23, 1925, U.S.-Mexico to Prevent Smuggling and for Certain Other Objects ((1926) 48 *L.N.T.S.* 444, hereinafter termed "the 1925 Convention with Mexico").

(4) May 9, 1930, U.S.-Canada, for the Preservation of the Halibut Fishery of the Northern Pacific Ocean ((1931) 121 *L.N.T.S.* 46, hereinafter termed "the 1930 Halibut Convention").

(5) Jan. 29, 1937, U.S.-Canada, Revising the Convention of May 9, 1930 above ((1937) 181 *L.N.T.S.* 210, hereinafter termed "the 1937 Halibut Convention").

(6) May 26, 1938, U.S.-Canada, for the Protection, Preservation and Extension of the Sockeye Salmon Fisheries of the Fraser River System ((1938) 184 *L.N.T.S.* 306, hereinafter termed "the Salmon Convention").

(7) Jan. 25, 1949, U.S.-Mexico for the Establishment of an International Commission for the Scientific Investigation of Tuna (*T.I.A.S.* 2094, hereinafter termed "the Mexico Tuna Convention").

attention will not be directed to the North West Atlantic Convention,⁸ nor to the recently consummated Great Lakes Convention,⁹ because it is believed that neither of those international agreements are as important as the various Pacific fishery conventions insofar as concerns the near-future development of probably the greatest number of fishery conservation agreements. The number of parties involved, the number of species within the Convention area, and the extent of the area covered by the North West Atlantic Convention make the created organisational framework more complex than is likely to be the case for the majority of possible near-future conventions. The Great Lakes Convention, on the other hand, is intended to deal with a very limited and specialised problem. The Commission created by this latter Convention is designed primarily to co-ordinate the fisheries research in the Great Lakes and to carry through a programme for control of the devastating sea lamprey.¹⁰

The greatest number of international fishery conservation agreements involve only two or three parties, and with the possible exception of the North West Atlantic Convention, this type is economically the most important for the fishery industry of the United States. It is not difficult to understand why the bilateral agreement should be preferred. When only two States share the resource and effectively control its exploitation, there is no need to utilise the almost necessarily more cumbersome machinery of multilateral agreements, nor is it necessary to subject national interests to as many international demands. An examination of all the conservation agreements to which the United States is a party seems to suggest that the latter of these conditions implies the former. In conservation, as in other matters, States reveal a characteristic antagonism towards any agreement restricting their freedom of action even though such restriction is indispensable for the preservation of the interest involved.¹¹ And it is worthy of note that in some instances, even when extinction or industrially fatal diminution of the fishery stock threatens, there may still be national pressures within one or more of the parties to the contemplated conservation agreement adequately persuasive to forestall effective international co-operation. However, despite the fact that national or other pressures may prevent consummation of an agreement, we shall hereafter be concerned only with the shape of the instrument ratified or submitted for ratification. Of course, the pressures aimed at preventing ratification may not be ignored, since they may be important in determining the shape of the instrument.

(8) May 31, 1949, U.S.-Costa Rica for the Establishment of an Inter-American Tropical Tuna Commission ((1951) 80 *U.N.T.S.* 4, hereinafter termed "the Costa Rica Tuna Convention").

(9) May 9, 1952, U.S.-Canada-Japan Concerning the Fisheries of the North Pacific Ocean (*Dept. of State Press Release* No. 370, May, 1952, hereinafter termed "the North Pacific Convention").

(10) Mar. 2, 1953, U.S.-Canada, for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and the Behring Sea (83rd Cong., 1st Sess., Senate, Exec. Rept. No. 7 (July 23, 1953), hereinafter termed "the 1953 Halibut Convention").

⁸ For text see, (1951) 45 *A.J.I.L.* Supp. 40; *T.I.A.S.* 2089.

⁹ For text see, *Hearings on the Great Lakes Fisheries Convention, supra* n. 6, at 3-6.

¹⁰ C. B. Selak. "The United States-Canadian Great Lakes Fisheries Convention" (1956) 50 *A.J.I.L.* 122; "Great Lakes Fishery Convention Enters into Force" (1955) 33 *Dept. of State Bull.* 677; (1956) 34 *id.* 890. A recent report indicates that a chemical treatment may effectively control the lamprey, but its effect on other fish, and on animals and men is yet to be determined. 66 *Time Magazine* 84 (Nov. 21, 1955). In 1957 the Joint American-Canadian Great Lakes Fisheries Commission outlined a one and a half-million dollar programme for eradication of the lamprey. *N.Y. Times*, Apr. 8, 9:5 (1957).

¹¹ This is especially likely to be true when, as in the Salmon Convention, the territorial waters of a H.C.P. are involved. See G. G. Wilson, "Conservation of Maritime Life" (1928) 22 *A.J.I.L.* 603.

Since no agreements other than those between the United States and Canada on salmon and halibut have existed beyond the initial convention period,¹² it is difficult to make more than a generalisation to the effect that a successful operation leads to centralisation of the conservation objectives within the commission. For example, in the 1923 Halibut Convention (Art. I), the Convention itself established closed seasons, but provided that after three seasons the closed seasons could be changed by agreement of the H.C.P. on the recommendation of the Commission. The 1930 Halibut Convention (Art. I) also provided for closed seasons but provided that the Commission could change the seasons after investigations and upon approval of the H.C.P. The 1937 Halibut Convention (Art. I) also established closed seasons, but on approval of the H.C.P. the Commission was permitted to change the season as to all or any part of the waters covered by the Convention. Finally, in the 1953 Halibut Convention (Art. I. (1)), fishing for halibut in Convention waters is prohibited except as provided by the Commission. The tendency towards increased Commission responsibility is accompanied by, or, more likely, is a result of the fact that as the international commission learns to function what were once important political problems become problems requiring only administrative disposition.¹³ The ability to solve and dispose of what might have become problems requiring official State Department attention indicates a certain maturity of the fishery administrators and scientists who solve the problems. It is possibly the development of this ability which is as important for the ultimate objectives of international conservation enterprises, as the particular scientific or technological conservation procedures to be utilised.

II. COMPOSITION OF COMMISSIONS AND SPECIFIED PROCEDURES

Before proceeding to consider the commission functions under the various successive and different agreements, it may be well to examine the types of commission composition employed and the extent to which commission procedure is specified within the agreement itself. The 1908 Convention with Great Britain (Art. I) provided for a two member Commission, one from each H.C.P. The 1923 Halibut Convention (Art. I) provided for a four man Commission composed of two commissioners from each H.C.P. This arrangement adopted in the 1925 Convention with Mexico (Sec. III, Art. II) and preserved in the 1930 and 1937 Halibut Conventions (Art. I) has the advantage of lower expenses for salaries and also probably the ability to reach decisions more quickly. But in convention matters of the type confronting fishery commissions, the ability to reach prompt decisions is less likely to be valuable than the capacity to reach decisions which, while achieving the desired conservation objectives, will also protect the interests of all those for whom the benefits of conservation are intended.

From the time of the 1930 Salmon Convention (Art. II) to the most recent 1953 Halibut Convention (Art. I (1)) the Commissions there created have been composed of a minimum of three Commissioners from each H.C.P. With the South American States, however, the composition of the commission has not been quite so simple a matter. The 1949 Costa Rica Tuna Convention

¹² The 1923 Halibut Convention, important in the emergence of the dominion treaty-making power, was also the first effective Convention to be aimed at conservation of a threatened high seas fishery. G. A. Finch, "Current Notes" (1928) 22 *A.J.I.L.* 642, 646ff.; N. A. McC. Mackenzie, "The Treaty Making Power in Canada" (1925) 19 *A.J.I.L.* 489, 498. And see on the problem of the Convention, 58 *Canada, H.C.D.* 4609ff. (June 27, 1923).

¹³ W. M. Chapman, "United States Policy on High Seas Fisheries" (1948) 20 *Dept. of State Bull.* 69ff.

(Art. I) provides for *from one to four* Commissioners from each H.C.P. while the 1949 Mexican Tuna Convention (Art. I) provides for four Commissioners from each H.C.P. and the North Pacific Convention (Art. II(2)) provides for *not more than four* Commissioners from each. From the point of view of the United States, three commissioners from the United States is the most desirable arrangement since it enables both the federal and the State governments to be represented, as well as the public at large.¹⁴ However, Mexico wished four commissioners in each section so as to permit representation in its section of the Ministries of Foreign Affairs, Economy, Treasury and Public Credit and Marine. In opposition, Costa Rica did not desire so many commissioners, but since it was economically and administratively desirable for the United States to utilise the same Commissioners for both Tuna Conventions, the Costa Rica Convention provides for from one to four persons in each section.

The Costa Rican compromise provision, and that in the North Pacific Convention suggest the interesting problem as to why any convention should specify the number of commissioners to represent each H.C.P. Since no H.C.P. will be able to secure greater voting power by increased commission representation, it may appear that the two man Commission utilised in the 1908 Convention with Great Britain is the most efficacious as well as the least expensive. Part of the answer to this matter is suggested by the voting provisions of the various agreements. The 1923, 1930 and 1937 Halibut Conventions contained no special provisions directing the size vote required for Commission action, but since the Commission was composed of four members, action would require concurrence of at least three.¹⁵ The 1925 Convention with Mexico (Sec. III, Art. II) required unanimous approval of the Commission, as would be required where there are only two members on the commission.

In regard to these five Conventions last mentioned, it is important to note that the operating unit is a "monistic" commission, as distinguished from the "pluralistic" commissions established under both Tuna Conventions and the North Pacific Convention. A commission is here termed "pluralistic" when the convention itself provides for national sections within the commission so that the voting unit within the commission is not each permitted commissioner, but rather the national section. Under both Tuna Conventions (Art. I(8), in each) and under the North Pacific Convention (Art. II(3)) each national section has one vote,¹⁶ so that commission action requires unanimous approval. It is difficult to appraise the virtue of requiring unanimous approval, as distinguished from majority approval in a monistic commission, since neither the 1925 Convention with Mexico, nor the 1908 Convention with Great Britain were successful. Although the reason for their failure may not be certain, it is unlikely that the voting procedure was at all important.¹⁷ Neither of the presently functioning monistic commissions, that for halibut under the 1953 Convention with Canada (Art. III(1)), and that for salmon

¹⁴ Testimony of W. M. Chapman before the Subcommittee of the Senate Foreign Relations Committee, July 14, 1949, printed in *The Fisheries Conventions*, (U.S. Govt. Printing Office, Wash., D.C., (1949) 63.

¹⁵ However, writing in 1936, a member of the Commission reported that all Commission decisions had been unanimous. E. W. Allen, "The Halibut Commission Its Legal Powers and Functions, in *International Fishery Commission*", Circ. No. 1, (Oct., 1936) 4.

¹⁶ In certain circumstances where only two of the H.C.P. are concerned with a particular fish stock, action in regard thereto requires, instead of unanimous Commission approval, only the approval of the two national sections representing the H.C.P. concerned (Art. III(1) (c) (iii)).

¹⁷ It has been suggested that the 1925 Convention with Mexico failed primarily because

under the 1930 Convention with Canada (Art. VI) require unanimous approval for commission action. Instead, both require that two-thirds of the six member commission approve commission action. The least that can be said for such a procedure is that it does avoid a "deadlock", but probably of greater importance, it makes possible the more vigorous exchange of ideas. It makes it possible for each member of an effective commission to view the common problems rather than focussing attention upon the national interests of the represented H.C.P.

It may be that the purpose of the commission also is influential in determining the character of the commission. Thus where exclusively, or at least primarily, scientific objectives are contemplated and very little, if any, regulation is to be a commission function, it may be more desirable to have a two vote commission whose unanimous decision is required. Where scientific objectives will be the subject of commission decisions, it may not be as difficult to secure unanimity as where economic and political considerations are critical elements in arriving at a decision. In both Tuna Commissions where action requires unanimous agreement, the purpose of the commission is to investigate the tuna fisheries. The commissions' functions under the present conventions do not include the power to make regulations,¹⁸ but at most the commissions can make recommendations, and even such recommendations are not within the immediate purview of the commission's operation since intelligent recommendations require a great deal of careful research and, as regards the tuna, there has been a paucity of research.¹⁹ If the tuna research reveals the necessity for regulations as well as continued investigations, it may then be more beneficial if the monistic, six member, two-thirds-majority-type-commission is utilised as is done in the International Pacific Salmon Fishery Commission and the International Pacific Halibut Commission. Commissions such as those last mentioned are the result of confidence in the commission machinery. Where the commission reveals adequate awareness of the commercial interests while still satisfying the requirements of conservation the two-thirds majority commission is possible once there is overcome that initial resistance against the decentralisation of sovereignty which results whenever participation in an international organisation may compel acceptance of a course of action not agreeable to a dominant element within the State. The resistance is frequently greatest where only one of the H.C.P. to the convention is a major international power, and is most apparent in the Tuna Convention with Mexico.²⁰

Since States exhibit an understandable reluctance to permit regulation of their fishermen without first having at least a hand in the scientific investigations upon which the regulations are based,²¹ and since the acquisition of

of conflict between the industry affected, the State of California, and the federal government. Testimony of W. M. Chapman, *supra* n. 14, at 61.

¹⁸ (1950) 23 *Dept. of State Bull.* 215.

¹⁹ As to what must be known in order to achieve sound tuna conservation, see the testimony of M. C. James before the Sub-committee of the Senate Foreign Relations Committee, *supra* n. 14, at 114ff.

²⁰ Agreement on international conservation may also be frustrated by resistance of the Parties' nationals who like the States themselves are apprehensive of the regulations which may be issued. It was primarily such fears which were responsible for the thirty year interval between the time when a salmon convention was first proposed in 1906 and its entering into force in 1937, resulting in depletion of the stock. Only when there was little more to lose were fishermen and boat-owners prepared to "risk" regulation. Similar fears, similarly unfounded affected the Halibut Conventions. See the testimony of W. M. Chapman and C. E. Jackson, before a Subcommittee of the Senate Interstate and Foreign Commerce Committee, April 4, 1950, printed in the Northwest Atlantic Fisheries Convention (U.S. Govt. Printing Office, 1950) 42ff. 56.

²¹ See W. C. Herrington, "U.S. Policy on Fisheries and Territorial Waters" (1952) 26 *Dept. of State Bull.* 1021, 1022.

confidence in the international committee machinery is a gradual process,²² it is probably best to permit greater national control over the commission in its initial, primarily investigatory functions. In this way there is prepared the groundwork for an effective commission operation as typified for example by the Halibut Commission.

III. ADVISORY COMMITTEES AND PUBLIC HEARINGS

In an efficiently operating commission possessed of both regulatory and investigatory powers, preservation of the diverse national pressures may be made possible through the use of the advisory committee device. Such a committee, although not originally nor presently required either by convention or subsequent congressional action, was utilised as early as 1931 by the Halibut Commission to make available the views of fishermen and boat-owners.²³ The signed Salmon Convention did not provide for an advisory committee, but the forceful and persistent protests of the State of Washington²⁴ in favour of such a committee resulted in the Senate imposing as a condition to ratification, the requirement that the Committee "set up an advisory committee composed of five persons from each country who shall be representative of the various branches of the industry (purse seine, gill net, troll, sport fishing, and one other).²⁵ This advisory committee was to be given full opportunity to examine and to be heard on all proposed orders, regulations, or recommendations". This senatorial addition became a part of the Convention itself.²⁶

In keeping with the pluralistic character of the commission and as distinguished from the above provision of the Salmon Convention which requires an advisory committee, the North Pacific Commission (Art. II(8)) and the Costa Rica Tuna Commission (Art. I(11)) *permit* each national section to establish an advisory committee. The North Pacific Convention specifies that appointees of the advisory committee shall be persons informed on North Pacific fishery problems of common concern, and the Costa Rica Tuna Convention requires that appointees be "well informed concerning tuna fishery

²² The continuing effort to establish a fishery conservation agreement with Mexico goes back at least to the early 1920's. Part of the attempt to create a receptive climate included the establishment of a fishery mission in Mexico to help train Mexican personnel and to help improve the Mexican fishing industry. The mission was established in 1942 on a two year basis (21 *U.N.T.S.* 190) and it has continually been extended. See 80 *U.N.T.S.* 306 for the extension to 1950. In 1947 a similar mission was requested by Costa Rica. That mission recommended a U.S.-Costa Rica fishery convention, but it was not until the Mexico Tuna Convention was signed that Costa Rica exhibited any anxiety for such a Convention. Testimony of W. M. Chapman, *supra* n. 14, 61ff. A fishery mission to El Salvador was effected by an Exchange of Notes in 1951 on a yearly basis and was extended in 1952 (*T.I.A.S.* 2717).

²³ At its regular annual meeting in 1952, the Commission held conferences with representatives of Canadian and U.S. wholesale halibut dealers, as well as with the so-called Conference Board composed of representatives from the fishermen's and vessel owners' organisations. Conferences were also held with representatives of the otter trawling fishery in Washington State and of the Behring Sea crab trawl fishery. The Commission also reviewed the 1951 statistics and the results of its 1951 scientific investigations at a joint meeting with the dealers and fleets. See *Report of the International Fishery Commission* (1952) 8.

²⁴ G. Ireland, "The North Pacific Fisheries" (1942) 36 *A.J.I.L.* 400 at 407ff.; W. M. Chapman, *supra* n. 20, 29ff.

²⁵ At the Jan. 30, 1952 Commission meeting, there were present seven members of the advisory committee. Two represented the gillnet fishermen, one the purse seine fishermen, one the sport fishermen, one the troll fishermen, and two the salmon packers. Where there were two representatives, one represented Canadian interests, and one American. At the Nov. 21, 1952 meeting there were two representatives of the purse seine fishermen, two of the gillnet, two of the troll, two of the salmon packers, and one of the sport fishermen. (*Annual Report of the International Pacific Salmon Fisheries Commission* (1952) 12ff.

²⁶ Protocol of Exchange following the signed Convention, 184 *L.N.T.S.* 306.

problems of common concern". The Mexico Tuna Convention (Art. I(11)) permits each national section to appoint advisers and to meet separately with those advisers when the section deems such a meeting advisable. The use of "advisers" rather than an advisory committee may suggest a more intimate and perhaps less official relationship, but in effect there need not be any substantial difference.

Since the advisory committee for the Halibut Commission is unofficial, there is no compulsion on the Commission to permit the advisory committee to attend Commission meetings. However, the Salmon Convention (Protocol) requires that the advisory committee be invited to all non-executive commission meetings and the Costa Rica Tuna Convention (Art. I(11)) makes a similar provision. The United States desired the same provision in the Mexico Tuna Convention,²⁷ but Mexico did not favour mandatory participation of advisory committees and as a result, the Mexico Convention (Art. I(11)) permits attendance of the commission meeting by the advisory committees only upon invitation of the Commission. The North Pacific Convention (Art. II(8)) is closer to the Salmon Convention provisions in requiring that the advisory committees be invited to attend all sessions of the Commission except those which Commission decides to be *in camera*.

If an advisory committee is to be used, it appears most likely to be acceptable to both H.C.P. if it is not a necessary adjunct to the commission machinery, but rather only a permissive contact with the national scene. Under such an arrangement, a H.C.P. unwilling to have its commission representatives in any way limited by national pressures would be free to participate in the conservation efforts without being burdened with the more complex machinery of a commission and an advisory committee. This is a further argument in favour of a pluralistic commission, since in such a commission each section may be left free to establish whatever relationship it wishes with the national scene. Of course, this same freedom is possible, though perhaps more awkward, under a monistic commission since any group of commissioners on such a commission may be free to consult with various nationals of the appointing H.C.P. The relationship could be made just as formal for a monistic, as for a pluralistic commission, by providing that the commissioners of each H.C.P. may establish an advisory committee. In the light of the fact that there is in the future a possibility of the consummation of fishery conventions with some Central and South American countries,²⁸ it may be well to permit both that commission representation greater than one is permissive up to a certain number, and that the commissioner or commissioners of each H.C.P. are free to entertain such relations with national advisory committees as the commissioners think suitable. If thought necessary it could be added that the advisory committee may attend only those commission sessions which are not *in camera*.

The advantages which accrue from permitting such discretion are multiple. It makes more feasible, conventions with other States who may not have enough trained personnel to provide three commissioners and it makes conventions less burdensome to other States who have not yet developed their

²⁷ W. M. Chapman, *supra* n. 14, 64.

²⁸ The United States-Ecuador Fishery Conference which resulted from the seizure of U.S. vessels by Ecuador, recommended in Art. V of its *Report* that consideration be given to Ecuador joining the Inter-American Tropical Tuna Commission. See (1953) 28 *Dept. of State Bull.* 759. Panama has already joined the Inter-American Commission ((1953) 29 *id.* 489). As pointed out *supra* n. 22, El Salvador has exhibited interest in developing her fisheries. Also see "Santiago Negotiations on Fishery Conservation Problems", cited *supra* n. 1.

fishery resources since fewer compensated persons will be required. Also, the optional use of advisory committees permits co-operation with States who either because they lack interested fishermen, boat-owners, etc., or because their form of government does not demand the intervention of such private interests in international affairs, wish to grant full control to the appointed commissioner.

For the purpose of helping to create confidence in the commission and also to enable the commission to keep aware of the attitudes of those who will be affected by commission decisions the North Pacific Convention (Art. II(9)) and the Costa Rica Tuna Convention (Art. I(12)) permit the commission to hold public hearings. The Mexico Tuna Convention does not permit such hearings. However, it does permit (Art. I(12)) as do the North Pacific and the Costa Rica Tuna Conventions, each national section to hold public hearings in its own territory. Although it may be true that participation by those affected is desirable as an aid to better enforcement,²⁹ it does not follow that there need be such a dilution of authority as to *require* public hearings. This should be especially so where there is an effectively functioning advisory committee. Certainly as regards the United States today, public hearings are not required to enable fishermen and boat-owners to make their views known. Frequently the various groups interested in a particular fishery are adequately well organised and financed to enable them to raise their voices even beyond the hearing of the commission or the advisory committee. Sometimes their voices are as powerful as those of the Grimsby trawlers. Hearings may be desirable and even necessary before the regulatory or investigating bodies begin to function,³⁰ but once the organisational structure has assumed its

²⁹ The enforcement provisions of the three currently functioning international conventions under which high seas regulations may be issued, are quite similar. The 1953 Halibut Convention (Art. II(1)), the Salmon Convention (Art. IX), and the North Pacific Convention (Art. X(1)), permit the officials of any of the H.C.P. to seize violators and detain them for release to the H.C.P. to whose jurisdiction the violators are subject. Violators can be prosecuted only by the H.C.P. to whose jurisdiction they are subject. The 1908 Convention with Great Britain (Art. III) contained the interesting provision that each H.C.P. was to have jurisdiction over all violators within the waters of each H.C.P. and also each H.C.P. was to have jurisdiction "over its own citizens or subjects found within its own jurisdiction who shall have violated the Regulations within the waters of the other party". Since the 1925 Convention with Mexico was primarily aimed at smuggling, its enforcement was left chiefly in the hands of port officials. The Convention provided (S. III, Art. 12) that port authorities of each H.C.P. were to refuse entry to fish reasonably suspected of having been obtained in violation of the laws of either party or in violation of the regulations to be issued pursuant to the convention. Also see *U.N. Legislative Series, Laws and Regulations on the Regime of the High Seas*, (1951) vol. i, pt. iii, c.1.

³⁰ Extremely wide surveys of public opinion were made prior to the former unsuccessful efforts towards a Great Lakes Convention. The Board of Inquiry appointed to study the need for a convention conducted hearings and meetings in twenty-nine cities in which over fifteen hundred persons participated. The Board also sent out over four thousand questionnaires to the fishermen in the area concerned. *Report and Supplement of the International Board of Inquiry for the Great Lakes Fisheries*, (U.S. Govt. Printing Office, 1943); "Report of the International Board of Inquiry for the Great Lakes Fisheries", (1942) 7 *Dept. of State Bull.* 858.

In developing the Tuna Conventions the Department of State did not use public hearings but instead worked very closely with the California Fisheries Committee. This Committee, organised in 1944 to provide effective liaison between the West Coast Tuna interests and the Department of State, represents union, management, and vessel owners' associations engaged in the tuna industry. It also provides representation for the interests of the State of California. In the actual negotiation of the Convention with Mexico the United States delegation included the Chairman of the Committee, Mr. R. S. Croker, as well as two other representatives of local West Coast interests. Mr. A. J. Suomela, then Master Fish Warden, State of Oregon, and Dr. R. VanCleve, from the University of Washington School of Fisheries. Interested industry representatives were also invited to be present in Mexico City and the two present were consulted between the formal meetings. Messrs. Croker and Suomela were also on the official delegation for the Costa Rica Tuna Convention. See the testimony of W. M. Chapman, *cit. supra* n. 14 at 65ff., which also lists the labour, canner, State, and boat-owner organisations which favoured the Tuna Conventions.

general shape and proven itself capable of functioning successfully, it should not be necessary to "carry the issue to the people" in order to effect some innovation. The Convention for the most successful commission, the Halibut Commission, contains no permission for the Commission to hold public hearings.

Considering advisory committees and public hearings against the background of the larger problem of which they form a part, that is, the relations which should obtain between the commission and the various national interests, it cannot be said that any of the conventions presents a fully satisfactory solution. In this respect the provisions of the Mexico Tuna Convention may be the most desirable as regards a pluralistic commission, in that the Convention *permits* each section to appoint advisers and hold public hearings. Such provisions, coupled with the fact that advisers may attend commission sessions as advisers only when the commission so determines, leads to a more centralised commission. By the time the matter under consideration reaches the commission it should have been thrashed out as regards the conflicting national interests and the commission should be left to resolve the conflicting international interests, if any. To achieve such an end, advisers may be useful, but it is unlikely that public hearings will be able to shed much enlightenment. It is probably more than somewhat idealistic to think that by the time the commission is called upon to render a decision, each national section will be able to represent unified and completely harmonious national interests as regards the matter before the commission. But even if this be so, should the entire commission hold public hearings in order to resolve the internal conflicts which beset one of the member States? Or is it thought that public hearings by the commission will be directed towards solution of the international problems? If such be the case it is quite unlikely that there are enough interested persons familiar with the fishery problems and the delicacies of international affairs to warrant a "public hearing". Nor is it realistic to urge that public hearings may be useful in aiding the commission to reach decisions as regards the exercise of their investigatory power since that power is generally directed at objectives which are more amenable to scientific analysis than to public opinion surveys. It is not denied that inclusion in a convention of a provision permitting public hearings by the commission (as well as by the national sections) may serve the very useful purpose of gaining industry and fisherman support for the convention since such a provision reveals to interested groups that they may have some direct influence upon commission decisions. Nor should it be denied that provisions for public hearings generally find favour with elected governmental officials ever fearful of granting to an international commission power to affect interests close to those represented in Congress. If the conventions were to make no provisions for public hearings by the commission, any desirable result attainable by such a procedure would probably also be possible through the use of other devices permitted to the presently functioning commissions.

IV. COMMISSION FUNCTIONS: REGULATION AND INVESTIGATION

In general, commission functions are either, or both, investigatory or

The Department of State proceeded in a similar fashion with respect to the North Pacific Convention. See W. C. Herrington, "Problems Affecting North Pacific Fisheries" (1952) 26 *Dept. of State Bull.* 340, 341, and his testimony before the Senate Foreign Relations Committee, in *International Convention for the High Seas Fisheries* (U.S. Govt. Pr. Off., 1952) 39.

regulatory. With but one exception, those commissions specifically vested with regulatory powers have also been vested with important investigatory powers; the reverse is not true. The one exception is the 1908 Convention with Great Britain where the Commission was granted extremely broad powers to draw up regulations which were to become effective upon executive promulgation, even though no prior investigations were to be carried out by the Commission. In fact, the 1908 Commission was to prepare within six months after being named, "a system of uniform and common International Regulations for the protection and preservation of the food fishes [in the convention waters] which Regulations shall embrace close seasons, limitations as to the character, size, and manner of use of nets, engines, gear, apparatus, and other appliances; a uniform system of registry . . . ; an arrangement for concurrent measures for the propagation of fish; and such other provisions and measures as the commission shall deem necessary" (Art. II). It will be recalled that this Commission was never successful.

Equally unsuccessful, the International Fishery Commission between United States and Mexico, established by the 1925 Convention with Mexico, was also granted considerable regulatory powers with very little emphasised investigatory powers despite language in the Convention requiring the Commission to "make a thorough study of whatever subjects are necessary for carrying out the purposes of this section" (Sec. III, Art. 11). The preamble to Section III specified the three purposes as: "(1) to facilitate the labours of the corresponding authorities in conserving and developing the marine life resources . . . ; (2) to prevent smuggling in all kinds of marine products; and (3) to consider and to make recommendations with respect to the collection of the revenue from fish and other marine products". This statement of the purposes for which the Commission was created probably suffices to indicate that conservation of the fishery was no more the object of the Convention than was investigation with a view towards scientific regulation. In "defence" of the 1908 and 1925 Conventions, especially the former, it is necessary to note that even forty years ago it was still a common belief that the supply of ocean fish was unlimited and that man's little forays among the fish were totally unimportant, especially as compared to the natural fluctuations of the stocks;³¹ nor was the devastating effect of the mother-ship type of fishing operation then fully appreciated.³²

A. *The Halibut and Salmon Commission Functions.*

In opposition to the above two unsuccessful Conventions, the Halibut Conventions, the Salmon Convention, the Tuna Conventions, and the North Pacific

³¹ W. M. Chapman, *supra* n. 13, at 68. It now appears that for some stocks of fish, natural fluctuations are negligible, while for others, e.g., herring and sardine, they are of central significance. See papers by G. Rollesen, A. L. Terter and A. V. Taning in S.I., *U.N. Scientific Conference on the Conservation and Utilization of Resources*, vol. viii, Wildlife and Fish Resources, Doc. E/Conf. 7/7 (1951) (hereinafter cited as "*U.N. Conference on Conservation and Utilization*").

³² W. M. Chapman, cited *supra* n. 13, at 70ff.; E. W. Allen, "The North Pacific Fisheries" (1937) 10 *Pacific Affairs* 136, 143. Actually, Japan experimented with factory ships as early as 1920 and had a successful crab-meat factory ship in service by 1922. See S. Idei, "Floating Factories on the Pacific" (1929) 2 *Pacific Affairs* 699. Even more alarming are the 24 or so Russian factory ship-trawlers under construction in Kiel, West Germany. These vessels, staffed by crews of approximately 100 men and women, are more than 240 feet long with a tonnage of 2,555. According to press reports the daily maximum capacity of these vessels is viewed by some Western observers as bordering

Convention all contain important provisions regarding the commission's investigatory functions. In 1923, the Halibut Convention contained a "blanket-type function clause"; it declared (Art. III), "The Commission shall make a thorough investigation into the life history of The Pacific Halibut. The Commission shall report the results of its investigations . . . and shall make recommendations as to the regulations of the halibut fishery of the North Pacific Ocean . . .".³³ The 1930 Halibut Convention preserved the first two of these powers without substantial change but added a second paragraph to Art. III in which the regulatory powers of the Commission (subject to the approval of the H.C.P.) were given in more detail. The Commission was empowered to divide the Convention waters into areas,³⁴ to limit the catch from each area, to fix the size and character of the fishing appliances used, to make regulations for the collections of statistics, and to close those areas or parts of them as were found by the Commission to be inhabited by small immature fish. Thus this Commission had power to limit the catch in two ways, first by limiting the catch as above provided and second, by limiting the season as provided by Art. I. The Commission had no enforcement powers nor could its regulations deal with any commercial objectives.³⁵

The 1937 Halibut Convention included the same powers, with one added (Art. III(c)) by which the Commission could prohibit the departure of a vessel to a halibut fishery area after a date when, in the judgment of the Commission, there were already a sufficient number of vessels going to or already in that area to catch the limit set for the area. The 1937 Convention (Art. I) also gave increased power to the Commission in permitting it to deal with halibut caught incidentally during a closed season while fishing for other species. The two prior Conventions (Art. I, in both) had permitted the crew to eat such halibut and had provided that the uneaten portion was to be auctioned off by each H.C.P. with the proceeds going to the treasuries of the H.C.P.³⁶ The 1953 Convention retained the prior Commission powers and added some.³⁷ Under the present Convention the Commission may also fix one or more seasons in each area,³⁸ may limit the size of the fish taken as well as the quantity, may close nursing grounds, and may regulate the

on the "fantastic". It is listed at 20 tons of fillets, 10 tons of frozen fish, and 20 tons of fish meal, each 24 hours. This requires a daily catch of 50 tons of fish which can hardly be achieved on a permanent basis even on the richest fishing banks in the world.

It is also worth noting that during the 1955-56 fishing year the British White Fish Authority was experimenting with a project for "freezing fish at sea" on a commercial scale. A 188 foot vessel was used with a hold capacity of from 600,000 to 800,000 pounds of frozen fish. "British Experiment with Freezing-Fish-at-Sea" No. 443 *N.F.I. Flashes* 8 (June 10, 1955).

³³ In its first report the Commission made five recommendations, the substance of which was subsequently recognised by the later conventions. One recommendation was for the division of the Convention waters into areas, one for prohibition of unduly destructive fishing gear, one for a change in the closed season, and one for licensing halibut vessels, largely to insure receipt of the required statistical records. (1931) *Report of the International Fisheries Commission* 13ff.

³⁴ For the reason that the fish were found not to be moving freely from one bank to another, so that each bank had to be treated as a separate fishing ground. E. W. Allen, *supra* n. 15 at 2; H. A. Dunlop, "Why are There Separate Areas?" *International Fisheries Commission*, Circular No. 5 (Dec. 1937); *id.*, "The Effects of Fishing Upon the Stocks of Pacific Halibut", *U.N. Conference on Conservation and Utilisation*, *supra* n. 31, at 16.

³⁵ E. W. Allen, *supra* n. 15, at 3.

³⁶ The 1925 Convention with Mexico (S. III, Art. 12) provided that illegal cargoes could be sold at auction with the proceeds to be regarded as belonging to the H.C.P. in equal moieties, and, as the H.C.P. determined, the proceeds were to be used for the payment of the salaries and other expenses of the Commission.

³⁷ "Halibut Convention with Canada", (1953) 29 *Dept. of State Bull.* 723.

³⁸ It was expected that this would increase the yield from some under-exploited halibut stocks. The Commission had recommended in the 1946 treaty changes which would permit the Commission to spread the fishing season over a longer period. The relation between the amount of fishing done and the size of the fish population is not a simple direct one.

disposition of halibut caught incidentally when fishing for other species during an open or closed season. As was previously observed, the powers of the Commission have expanded with its success, and it has been successful.³⁹

The powers and functions of the Commission established by the 1930 Salmon Convention reflect the problems indigenous to the situation which the Commission was expected to, and has, improved.⁴⁰ The primary function was to "make a thorough investigation into the natural history of the Fraser River Sockeye Salmon, into hatchery methods, spawning ground conditions and other related matters" (Art. III). The Commission was also empowered to improve spawning grounds, construct and maintain hatcheries, rearing ponds, etc. The Commission was also to recommend to the H.C.P. methods for overcoming destruction to the ascent of the salmon. It was pursuant to this power of recommendation that the Commission recommended, and the H.C.P. carried out, the two million dollar project at Hell's Gate, chiefly aimed at removing obstruction to the salmon ascent.⁴¹ The Commission was also empowered by Art. IV to limit or prohibit the taking of salmon, and by Art. V to fix the mesh size in all fishing gear and appliances. The Commission could exercise the latter power at all times in regard to the high seas and during the spring or Chinook Salmon fishing season in the territorial waters of the H.C.P. In ratifying the Convention, the Senate imposed two conditions upon the exercise of powers granted by Arts. IV and V. First, the Commission was prevented from authorising any type of gear contrary to the laws of the State of Washington, and the second condition prohibited the Commission from promulgating or enforcing any regulations until two cycles of salmon runs had been investigated, or until the lapse of eight years.

B. The Tuna Commission Functions and the Matter of the Relations Between Different Commissions.

The functions of the two Tuna Commissions are very much alike and exclusively investigatory.⁴² The purposes of the investigations are to determine whether regulation of the fishery is to be recommended to the H.C.P. So little is actually known about the tuna that even the Convention waters were of necessity left indefinite.⁴³ Both Commissions are to investigate certain types

Under-fishing as well as over-fishing may produce undesirable results. See as to halibut, W. F. Thompson, *Theory of the Effect of Fishing on the Stock of Halibut* (1937), *Rep. No. 12 of the International Fisheries Commission*; H. A. Dunlop, *cit supra* n. 34. See also Graham, "Overfishing", *U.N. Conference on Conservation and Utilisation, supra* n. 31, at 20; W. M. Chapman, *cit supra* n. 13, at 68.

³⁹ Since the Commission undertook the regulation of the fishery, the annual catch has increased by about 14 million pounds, and the fish are caught in a shorter period of time. This latter fact coupled with the fact that the fleet has doubled in size, has greatly reduced the length of the fishing season. In general, see the *Reports of the Commission*; also F. H. Bell, H. A. Dunlop, N. L. Freeman, *Pacific Coast Halibut Landings 1888 to 1950 and Catch According to Area of Origin (1952) Report No. 17 of the International Fisheries Commission*; E. W. Allen, "International Law and Fish" (1951) 9 *The Advocate* 121; J. Tomasevich, *supra* n. 5, at 187ff.

⁴⁰ The 1951 Fraser River Sockeye run was the most successful since the 1903 cycle-year. The 1951 run contributed \$8,233,000,000 more to the economy of the U.S. and Canada than in the previous cycle-year 1947. The 1952 run was the largest since the 1912 cycle-year. The millions of dollars gained by the fishery during 1951 and 1952 many times exceed the entire cost of the Commission's efforts to rehabilitate the Fraser River sockeye runs. See the 1951 *Report of the International Pacific Salmon Fisheries Commission*, and the previous annual Reports.

⁴¹ For the Commission recommendation see *Ex. Agr. Series* 479. The statistics given *supra* n. 40 reveal the success of the work at Hell's Gate.

⁴² (1950) 22 *Dept. State Bull.* 496; (1950) 23 *id.* 215.

⁴³ W. M. Chapman testified before the Senate Foreign Relations Committee that little

of tuna⁴⁴ as well as tuna bait,⁴⁵ and are to collect and analyse data, study methods for increasing the fish population, conduct those fishing and other activities necessary for the above purposes,⁴⁶ obtain the relevant statistics⁴⁷ in regard to catches and other aspects of the fishing operation,⁴⁸ and to disseminate reports covering the results of the Commission findings. In addition, the Costa Rica Convention contains one further provision (Art. II(5)) according to which the Commission may make recommendations to the H.C.P. for their joint action in maintaining the fish populations which will permit the maximum sustained catch.⁴⁹

To carry out its work, the Commission, under both Conventions (Art. I(13)), is permitted to designate a director of investigations who is removable at the pleasure of the Commission. The director is the chief administrative officer and has charge of preparing the Commission budget, estimate and programme of investigation, authorising funds disbursement, appointing and directing personnel, co-ordinating the Commission functions with those of other organisations, drafting reports, and such other duties as the Commis-

is known about the tuna other than that they are far-ranging and fast swimming, and that it is possible that the same fish found off Ecuador in one season are found off Costa Rica in another, and off Mexico in a third. It was thought, however, that little admixture took place between the tuna of the eastern and central Pacific, and therefore the Costa Rica Convention confines the Convention waters to the eastern Pacific. Mexico fearing that such a limitation may be construed as a limitation on her permissible area of fishing, insisted upon including all the Pacific water off the coasts of both countries. W. M. Chapman, *supra* n. 14, at 62.

Illustrative of the far-ranging capacity of tuna is the albacore tagged 1,300 miles north of Hawaii on Oct. 5, 1954 and recaptured near Japan, 2,370 miles away 471 days later. See "FWS Reports Tagged Tuna", No. 485 *N.F.I. Flashes* 3 (Apr. 6, 1956).

⁴⁴A difference in language between the two Conventions places the emphasis in the Costa Rica Convention upon the yellowfin and shipjack tuna, and on anchoviella, since they are in greater need of investigation in that area. However, the Costa Rica Convention does not exclude the other species covered by the Mexico Convention. The difference in emphasis is one reason why two conventions were necessary. Certain of the species (bonitos and yellow tails) to be investigated by the International Commission for the Scientific Investigation of Tuna are not of concern to countries south of Mexico. Also the kinds of bait used off northern Mexico and southern California are entirely different from those used in tropical waters. But since central and southern Mexico do share the interest in the types of tuna and bait to be investigated under the Costa Rica Convention, it was hoped that Mexico would adhere to the Costa Rica Convention. W. M. Chapman, *supra* n. 14 at 63.

⁴⁵The disappearance of the most important species of anchoviella from the Gulf of Nicoya is one of the main concerns under the Costa Rica Convention. In an effort to re-establish the source, Panama made a gift of two boat-loads of the anchoviella. (1953) 29 *Dept. of State Bull.* 489.

⁴⁶In the Costa Rica Note subsequent to the Convention, (Mar. 3, 1950) Costa Rica specified that the Commission "is authorised to engage in fishing and other activities for scientific research exclusively, and that no commercial ventures by the Commission are contemplated". 80 *U.N.T.S.* 14, at 15.

⁴⁷The Commission has been able to collect important data on current and historical tuna fishing activities from the U.S. tuna fleet, but in addition to such data the Commission will have to collect those from its research vessels and other investigations, before the need for regulations can be determined. ((1953) 29 *Dept. of State Bull.* 489). In collecting the necessary statistics, the privacy of certain records as to individual catches and individual company operations are protected by providing (Art. I(17) in the Mexico Tuna Convention, and Art. I(15) in that with Costa Rica) that the Commission adopt rules regarding such records. Apart from these private records, each section of the Commission may obtain certified copies of all Commission documents. Unlike the Costa Rica Convention, that with Mexico requires that the Commission rules for handling confidential records must be submitted to the H.C.P. for approval. *Cf.* the provision of the North Pacific Convention (Art. VIII), that no H.C.P. is required to supply the records of individual operations to the International North Pacific Fisheries Commission.

⁴⁸The Mexico Tuna Convention provides (Art. II(5)) that, if necessary, the H.C.P. shall enact legislation requiring those engaged in the tuna fishing to keep records of operation in such form and frequency as the Commission deems necessary.

⁴⁹As already suggested (*supra* n. 38) the determination of what is the maximum sustained catch is quite complex, involving not only the quantity of fish but also their food supply available in the fishery, so that enough fish are removed to enable those that remain to have an adequate food supply for reaching marketable size. On the other hand, not so many fish should be removed as to permit part of the available food supply to be wasted.

sion may impose.⁵⁰ The Mexico Convention (Art. I(14)) provides for an Assistant Director of Investigations to aid the Director, and Art. I (13) requires that the Director and Assistant Director be nationals of different H.C.P. The Costa Rica Convention was probably unable to contain such a provision primarily for lack of trained Costa Rican personnel to occupy the position of Assistant Director. That the Director is to co-ordinate the Commission activities and those of other organisations suggests the growing awareness of the fact that there may be a good deal to be gained from co-operation between various different fishery conservation commissions. Sometimes this co-operation can be obtained by overlapping personnel⁵¹ and sometimes through official relations. Both Tuna Conventions (Art. I(16) for the Costa Rica Convention and Art. I(18) for the Mexico Convention) provide that the Commission may request technical and scientific services of, and information from, official agencies of the H.C.P., and any international, public or private institution or organisation, or any private individuals.

The question of official relations among the various international conservation commissions is part of a larger problem. There are those who favour multilateral international organisations for conservation purposes,⁵² and there are those who think that more effective conservation can be achieved through wider use of the halibut and salmon type of bilateral agreement,⁵³ or the limited multilateral agreement.

The Food and Agricultural Organisation has exhibited what Mr. Allen⁵⁴ thinks of as a typical bureaucratic government tendency in attempting to extend its jurisdiction by the establishment of fishery councils in which the F.A.O. occupies a central position. The F.A.O. has been interested in establishing councils patterned after the Councils for Exploration of The Sea, at least since its Quebec Conference in 1945. It was pursuant to an F.A.O. invitation in 1947 that eleven nations participated in the meetings which culminated in the Indo-Pacific Fisheries Convention.⁵⁵

In support of the bilateral conventions of which there have been two proven examples, it must be noted that there has yet to be a successful multilateral fishery convention. However, as has been pointed out,⁵⁶ there have been some "accidental" factors which have greatly lent to the success of the Halibut Convention. And on the other hand the failures of the multilateral agreements have not been due to any inherent organisational weakness. The Japanese denunciations of the fur seal and whaling agreements were part of a larger Japanese plan unrelated to successful exploitation of a marine resource. The plethora of landing places for illegal catches, the historic national antagonisms, and the unwillingness to believe that the supply of ocean fish was exhaustible, all helped to contribute to the defeat of the various early multilateral

⁵⁰ Although neither the current Halibut nor Salmon Conventions contain provisions for the Commission appointment of a director of investigations, both Commissions have utilised such an organisational framework and include a director and assistant director of investigations.

⁵¹ The U.S. Commissioners are the same persons for both the Tuna Conventions. There have been individual Commissioners who served on both the Halibut and Salmon Commissions. Until 1951 when he resigned his position on the Salmon Commission, E. W. Allen represented the public on both Commissions. From 1940 to 1946 C. E. Jackson represented the U.S. in both Commissions, and from 1939 to 1948 A. J. Whitmore represented Canada on both Commissions.

⁵² L. L. Leonard, *supra* n. 5, at 172.

⁵³ E. W. Allen, *supra* n. 39; *id.*, "FAO Fisheries Meeting at Barguio", (1948) 42 *A.J.I.L.* 634, 635 and "International Aspects of Fishery Conservation", *Pacific Northwest Industry* 160, 161 (June 1950).

⁵⁴ *Ibid.*

⁵⁵ T.I.A.S. 1895. And see A. W. Anderson, "The Indo-Pacific Fisheries Council" (1948) 19 *Dept. of State Bull.* 12.

⁵⁶ J. Tomasevich, *supra* n. 5, at 211ff.

agreements. Before a careful evaluation will be possible, before a reasonable basis for comparison obtains, it will be necessary to observe the two current multilateral fishery conventions which have the best chances for success, the Northwest Atlantic Convention and the Indo-Pacific Convention.

Some advantages of a multilateral agreement are fairly obvious. Such an agreement would avoid the type of situation which arose when the British proprietors of the 8,000 ton mother-ship *The Thorland* (manned by a Norwegian crew) threatened to send their ship to the Pacific Halibut Banks which had up to then been self-denyingly conserved while the British proprietors of *The Thorland* were depleting some of the originally richest banks in the world off Greenland. On the other hand, would it not be better to solve such a problem (as it was solved) through diplomatic channels, and thus avoid the necessity of having the United Kingdom as a party to a Convention dealing with a fishery in which the United Kingdom had no "vested" interests? Would it be desirable to have sixty nations pass upon the regulations for the Pacific Halibut Fishery which only two nations exploit, while conserving the resource? It is entirely possible that the advantages of a multilateral agreement could be retained while the disadvantages are avoided, and it is precisely at this objective that the North Pacific and Northwest Atlantic Conventions are aimed.

C. The North Pacific Commission Functions and the Effects of the Abstention Principle.

The functions of the Commission established by the North Pacific Convention (Art. II) are not as clear cut as those for any of the other commissions already considered.⁵⁷ This is largely due to the conservation innovation effected by that Convention whereby a party to the Convention is required to abstain from the fishing of a fishery stock which is already being exploited by another party or the other parties to the Convention, when that exploitation satisfies certain conditions. The Commission is required to make an annual determination, after study, as to whether certain specified stocks of fish continue to qualify for protection. These stocks of fish are specified in the Annexe, and as regards those in the original list, the Commission may not make any determination until five years after the convention enters into the force. The Commission, upon request of a H.C.P., also studies a stock of fish to determine whether that stock qualifies for protection. If it does, the commission recommends the addition of that stock to the Annexe and that the non-exploiting parties continue to abstain while the exploiting parties continue to carry out the necessary conservation measures. At the October-November 1955 Tokyo meetings of the Commission the American Sections requested that the nations commence those studies required to qualify a fishery for abstention. It was thus hoped that by 1958 certain new fisheries may qualify for application of the abstention principle.

The incorporation of the abstention principle within the North Pacific Convention has been considered as approaching a solution to at least two related major fisheries problems. First, it succeeds in preventing Japanese exploitation of the historic, conserved fisheries of the United States and Canada, and second, it does so while not violating the strong, traditional

⁵⁷ Fisheries Convention Signed by U.S., Canada, Japan", (1952) 26 *Dept. of State Bull.* 830.

Anglo-American policy of *mare liberum*.⁵⁸ Whether or not there was any international legal right which could justify exclusion of a State from a high seas resource, it has been urged that equity and justice required recognition of the fact that a built-up resource should be protected from destructive exploitation. In addition to enforcement costs, Canada and the United States have each spent over \$800,000 since 1924 on the Halibut Fishery, and the annual cost of the Fraser River Salmon Fishery exceeded \$290,000 for the past five years. The latter amount is in addition to the \$2,000,000 Hell's Gate Project.⁵⁹

Even if the abstention principle is acceptable there may still be difficulties in applying it. One important such difficulty is created by the migratory habits of the fish. Because of the apparent loss at sea of many salmon expected to be found within the salmon fishery area to which the abstention principle has been applied, at the November 1955 Tokyo meeting of the Commission it was decided that extensive tagging experiments be carried out by the nations concerned.

However, as has been observed, there is an alternative to excluding a State from a high seas fishery to prevent its destructive exploitation, namely, that the admitted State comply with the conservation regulations.⁶⁰ But admission to the fishery subject to compliance with the conservation procedures is quite distinct from exclusion. It is a moot question whether the States responsible for the conservation of a high seas resource have any international legal right to reserve it. The North Pacific Convention could hardly be said to be declaratory of such a right; at most it could be said to be the first explicit recognition of the need for such an international right. Part of the difficulty resides in the fact, as Mr. Borchard observed, that the "division between conservation and unwanted competition is not always easy to draw".⁶¹ The competitive threat of Japan is not difficult to appreciate when cognizance is taken of the manner in which her fishery industries operate and the compensation available to the fishermen.⁶²

The Commission created by the North Pacific Convention may also study any stock of fish under substantial exploitation by two or more H.C.P., if any interested H.C.P. so requests and the stock is not already covered by a conservation agreement which existed at the conclusion of the Convention. The purpose of such study is to determine the need for joint conservation measures and to recommend such measures. Although in making the deter-

⁵⁸ The nature of the position taken by the U.S. has been previously mentioned, *supra* n. 2. Also see W. C. Herrington, *supra* nn. 21, 30; W. M. Chapman, *supra* n. 13.

⁵⁹ Testimony of W. C. Herrington, *supra* n. 30, at 33.

⁶⁰ W. W. Bishop Jr., "The Need for a Japanese Fisheries Agreement" (1951) 45 *A.J.I.L.* 712, 715. This is the position taken by the I.L.C. in its draft on the Regime of the High Seas, *supra* n. 3. The Report of the Rome Conference, *supra* n. 4, does however, include mention of the abstention principle. At the Rome Conference the head of the U.S. delegation submitted a paper to the Conference dealing with the matter of abstention. W. C. Herrington, "Comments on the Principle of Abstention".

⁶¹ E. M. Borchard, "Resources of the Continental Shelf" (1946) 40 *A.J.I.L.* 53, 55.

In this connection it is interesting to consider the problems encountered by the Australian attempts to regulate the pearling activities in an area of approximately 700,000 square miles of high seas. See L.F.E. Goldie, "The Occupation of the Sedentary Fisheries off the Australian Coasts" (1953) 1 *Sydney L.R.* 84; *id.*, "The Fisheries Act and the Pearl Fisheries Act" (1953) same *Review* 96.

⁶² E. G. Seidensticker, "Japanese Fisheries Reform: A Case Study" (1951) 20 *Far Eastern Survey* 185. On the "new principle" and also on the Japanese concern lest it unfavourably colour Japan's fishing interests in other areas, see E. W. Allen, "A New Concept for Fishery Treaties" (1952) 46 *A.J.I.L.* 319, 321ff.; see also C. B. Selak, "The Proposed International Convention for the High Seas Fisheries of the North Pacific Ocean" (1952) 46 *A.J.I.L.* 323; "Tripartite Fishery Conference" (1952) 6 *Int. Org.* 340; "Fisheries Convention Signed by U.S., Canada, Japan", cited *supra* n. 57; Testimony of W. C. Herrington, *supra* n. 30, at 25.

minations and recommendations only the national sections of those H.C.P. engaged in the substantial exploitation of the stock may participate, the report of the decision and recommendation is sent to all the H.C.P. The Commission may also request reports from the parties concerned as to the measures they have adopted with regard to the stocks of fish in the Annexe. This information is transmitted to the other H.C.P. The Commission is also empowered to recommend the enactment of schedules of equivalent penalties for Convention violations, to study the records supplied to the Commission by the H.C.P. upon request of the Commission (pursuant to Art. VIII), and to submit an annual report to the H.C.P. on the Commission's work with appropriate recommendations. Because of the abstention principle, the Commission is also empowered to take steps in agreement with the parties concerned in order to determine whether the conservation measures agreed to by the exploiting parties are being continued. In distinction to the provisions of the Tuna Conventions setting out with some detail the power to appoint a director of investigations and his duties, the North Pacific Convention merely provides (Art. II(13)) that the Commission may employ personnel and acquire facilities necessary for the performance of its functions.

As already observed, the necessarily more intricate commission function under the North Pacific Convention flows from the Convention's application of the principle of abstention. So long as the advantages and disadvantages of a Commission recommendation or decision are not to be equally applicable to all of the H.C.P., it is to be expected that each such decision or recommendation will require considerably greater precautions than those required for a decision of general applicability. Since the North Pacific Convention guarantees Japanese abstention in the already established halibut and salmon fisheries of the United States and Canada,⁶³ it is too soon to determine the effectiveness of what, in effect, are super-commission powers. The International North Pacific Fishery Commission, empowered as it is to recommend removal from the Annexe for failure to continue the necessary conservation measures, may be in a position to pass judgment upon the work of other commissions.⁶⁴

There are also some ambiguities of language in the North Pacific Convention which suggest a super-commission status for the International North Pacific Fishery Commission. Art. III(1) (c) (i) provides that the commission shall "study, on request of any contracting party concerned any stock of fish which is under substantial exploitation by two or more of the contracting parties, and which is not covered by a conservation agreement between such parties existing at the time of the conclusion of the convention, for the purpose of determining the need for joint conservation measures". Does this mean that if after four years⁶⁵ the United States and Mexico succeed in ratifying a conservation agreement (as distinguished from the present investigating

⁶³ After 13 months of Convention operation it appears that the Japanese are staying west of the longitudinal line for salmon fixed by the Annexe to the Convention. (See testimony of W. Looney, 83rd Cong., 2nd Sess., *Hearing before a Subcommittee of the Senate Committee on Interstate and Foreign Commerce on S. 3713, Implementing International Convention for High Seas Fisheries of the Northern Pacific Ocean*, 9 (July 12, 1954). This has not hurt the Japanese salmon catch, since 60,000,000 salmon were expected to be caught by the end of the 1955 season. The Japanese problem was, therefore, how to dispose profitably of the post-war record catch. ("Japan Expected to Catch 60,000,000 Salmon", No. 452 *N.F.I. Flashes* 3 (Aug. 12, 1955).

⁶⁴ Apparently such a possibility was excluded by the testimony of W. Looney, Acting Special Assistant for Fisheries and Wildlife to the Under-Secretary of State in 83rd Cong., 2nd Sess., *Hearing before the House Committee on Merchant Marine and Fisheries on H.R. 9786 to Give Effect to the International Convention for the High Seas Fisheries of the North Pacific 19* (July 13, 1954). His reasoning, however, was not clear.

⁶⁵ This is the period of initial duration for the Mexico Tuna Convention (Art. III(12)).

agreement)⁶⁶ for tuna, that Japan or Canada could then request the International North Pacific Fishery Commission to study the need for joint conservation measures by the United States and Japan or Canada if Japan or Canada is also fishing tuna in the Pacific waters off the United States? Such waters are included in both the North Pacific Convention (Art. I(1)) and the present Mexico Tuna Convention (Preamble, and Art. II(1)).⁶⁷ Does Art. III(1) (c) (i) mean that under the above circumstances, the Japanese or Canadian national section(s) would participate with the United States section in making that determination and in recommending necessary joint conservation measures? Such would appear to be the case if the United States and Canada or Japan were engaged in substantial exploitation of the stock of fish, since this is the criterion imposed by Art. III(1) (c) (i). If the International North Pacific Fishery Commission were to recommend certain conservation measures for the H.C.P. to the North Pacific Convention, may not those recommendations conflict with the recommendations made by the future United States-Mexico Tuna Conservation Commission? If they were to conflict, which would prevail? There may be persuasive compulsion for compliance with the recommendation of the North Pacific Commission, since failure to do so may result in the stock of fish not qualifying for abstention. For example, the United States and Canada are substantially exploiting the tuna stocks in the Pacific waters off United States and Mexico, and the United States has entered into a conservation agreement with Mexico. If, under such circumstances, the United States-Mexico Commission should urge a particular regulation while the North Pacific Commission recommended a more stringent one, the failure of the United States to accept and comply with the latter, even though Canada did do so, may result in the inability of the United States and Canada to have the stock qualify for abstention by Japan. The fact that Mexico was also harvesting some of the tuna would not of itself preclude a recommendation for abstention unless, as is most unlikely, Mexico were then harvesting the greater part of the stock (Proviso (2) to Art. IV).

D. Convention Specification of Commission Activities.

As in other respects, the recent Tuna and North Pacific Conventions have provided in some detail the method of commission procedure, unlike

⁶⁶ The existing investigatory agreement would not satisfy the requirement of Art. III(1) (c) (i) that there be an existing conservation agreement at the time of the convention. The first reason, which is debatable, is that the present Mexican Convention, unlike that with Costa Rica, does not permit the Commission to make any recommendations for conservation, and hence the Convention may be difficult to classify as a conservation agreement. But in any event, the Convention with Mexico would not fall within the exception, since the "existing convention" need not be between parties to the North Pacific Convention.

⁶⁷ It is not impossible that Japan may fish for tuna in some of the waters covered by the existing Mexico Tuna Convention, although an area of approximately 2,000 square miles separates the western from the eastern tuna fishing. Indeed, on May 15, 1956 it was announced that in association with Mexican fishing interests a Japanese company was going to engage in drag-net fishing in Mexican waters. ("Japanese Plan Fishing Ventures in Mexican Waters", No. 494 *N.F.I. Flashes* 4 (June 22, 1956)). The U.S. Canada and Japan are currently exploiting the albacore tuna stock, which is found in the open sea from British Columbia to Lower California. It is the most desirable species for canning and from 1943 to 1947 accounted for 19 per cent. of the total West Coast catch. The albacore migrates over great distances, perhaps across the Pacific. Even prior to World War II, Japan, as well as Russia, was interested in the tuna, and the importance of fish to the Japanese diet and economy suggests the possibility that the North Pacific Convention will not deter the expansionist proclivities of the Japanese fishing industry. Prior to the war Japan was thought to have caught approximately 16 billion pounds of fish in the Pacific alone, (about a quarter of the world catch), while the U.S. took about

the prior Halibut and Salmon Conventions. The Mexico Tuna Convention is probably the most careful in attempting to delineate the permissive commission mechanics. That Convention provides (Art. I(9)) that the Commission may adopt, and amend as the occasion requires, rules or by-laws for the conduct of the meetings and for the performance of its functions. These rules and amendments must be submitted to the H.C.P. and become effective thirty days thereafter unless disapproved before the period has elapsed. Both the Costa Rica Tuna Convention (Art. I(9)) and the North Pacific Convention (Art. II(4)) permit the Commission to adopt and amend its own rules for the conduct of its meetings without requiring their submission to the H.C.P. for approval. The Mexico Tuna Convention also exhibits greater control of the H.C.P. over the creation and operation of the Commission than do the other two Conventions in that under the Mexico Convention (Art. I(5)) it is the H.C.P. who agree on a place for the commission headquarters, whereas the Costa Rica Convention (Art. I (5)) permits the Commission to select the location or locations⁶⁸ for its headquarters, and the North Pacific Convention (Art. II(7)) allows similar discretion to the Commission created by the Convention.⁶⁹

The Mexico Convention also differs from the others in requiring (Art. I(6)) that the Commission meet at least twice a year and at such other times as either national section may request. Both the Costa Rica Convention (Art. I(6)) and the North Pacific Convention (Art. II(5)) require only one meeting a year. Further meetings of the Inter-American Tuna Commission are held whenever requested by either national section; and further meetings of the International North Pacific Commission are held when requested by a majority of the sections.

The Mexico Convention also differs from the other two in specifying (Art. I(10)) that the employment of personnel by the Commission shall be distributed equitably between nationals of the two H.C.P. except in special instances where the appointment of persons of other nationalities is desirable. The Costa Rica Convention (Art. I(10)) and the North Pacific Convention (Art. II(13)) merely empower the Commission to employ necessary personnel. The three Conventions are alike in requiring (Art. I(7) in both Tuna Conventions, and Art. II(a) in the North Pacific Convention) that the top elected executive officials of the commission are to be elected in such a way that the positions are filled in turn by nationals of each of the H.C.P. The Tuna Conventions provide for an annually elected chairman and secretary; the North Pacific Convention provides for an annually elected chairman, vice-chairman and secretary.

4.5 billions from both oceans. Japan, the U.S. and Canada are currently taking about 10 billion pounds from the North Pacific. Japan was then said to have one and a half million fishermen and several hundred thousand vessels. In Japan, fishing supports directly or indirectly thirty per cent. of the population. As a food, fish is second only to rice and is preferred to beef by the Japanese and Malayan people. Tuna and eel cost more than the best beef in Japan. See W. M. Chapman, "Tuna in the Mandate Islands" (1946) 15 *Far Eastern Survey* 317; E. W. Allen, "International Aspects of Fishery Conservation" *supra* n. 53, at 161; A. W. C. T. Herre, "Japanese Fisheries and Fish Supplies" (1943) 12 *Far Eastern Survey* 99. As reported in the *F.A.O. Yearbook of Fishery Statistics* (1952-53) vol. iv, pt. i (Rome, Italy), the U.S. is now second to Japan among the fish catching nations of the world.

⁶⁸ Since the territorial waters of Costa Rica are an important source of bait, the Commission planned to establish a branch headquarters there, but with the main offices and laboratories in Southern California (1951). 24 *Dept of State Bull.* 109.

⁶⁹ The North Pacific Commission located its headquarters at the University of British Columbia, near several marine research institutions studying the water area of concern. See "Fisheries Commission Selects Headquarters" (1954) 30 *Dept. of State Bull.* 327.

V. COSTS OF COMMISSION OPERATION AND DURATION OF CONVENTIONS

In all international conservation work, the costs of the operation are an important consideration; this is especially so when, as with the Tuna Conventions, the primary object is investigation. When the primary commission functions contemplate extensive scientific investigations, the costs for the administrative commission operations may be nominal in comparison.⁷⁰ A usual type of convention provision dealing with costs merely provides that each H.C.P. pay the salary of its own commissioner and that the two H.C.P. pay the joint expenses in equal moieties.⁷¹ This type of provision appeared in the 1908 Convention with Great Britain (Art. V), and in the 1925 Convention with Mexico (Art. II, Sec. III). It is currently used in the 1953 Halibut Convention (Art. III(1)) and in the Salmon Convention (Art. II).⁷² Since the Salmon Convention contemplated the establishment and improvement of hatcheries and spawning grounds, Art. VIII required each H.C.P. to acquire and place at the disposition of the Commission any land within its territory required for such purposes.

The Tuna and North Pacific Conventions contain substantially identical provisions in regard to costs. They require that the Commission submit for approval its annual budget (Art. I(4) in both Tuna Conventions, and Art. II (12) in the North Pacific Convention), and that the joint expenses of the Commission are to be paid in the proportions and in the form recommended by the Commission and approved by the H.C.P. (Art. I(3) in both Tuna Conventions, and Art. II(11) in North Pacific Convention). The Costa Rica Convention specifies that the proportion of joint expenses to be paid by each H.C.P. is to be related to the "proportions of the total catch from the fisheries covered by this Convention utilised by that [H.C.P.]". In the Exchange of Notes following the Costa Rica Convention, Costa Rica specified that it understood the quoted passage to mean the "part of the total catch which is used for domestic consumption in the territory of [the H.C.P.] or is the object of commercial transactions the financial benefits of which accrue entirely or in their major portion to individuals or firms whose proprietors or stockholders are domiciled in the territory of [the H.C.P.]".⁷³ Although the Mexico

⁷⁰ There is no separate administrative budget for the Salmon or Halibut Commissions. The estimated annual administrative costs for the Tuna Commissions was not expected to exceed \$5,000. The expected U.S. contributions to the International North Pacific Fisheries Commission for administrative expenses was expected to be about \$11,500, with \$7,500 additional for the travelling and *per diem* expenses of the Commissioners. Testimony of W. M. Chapman, *supra* n. 14, 64, and W. C. Herrington, *supra* n. 30, at 19ff, 37ff.

⁷¹ It may be that the H.C.P. do not actually each pay a half of the joint expenses directly to the Commission. Rather, as with the Salmon Convention, one Party, there Canada, pays all the joint Commission expenses and then recovers one half from the other H.C.P.

⁷² Because the Salmon Convention was designed to establish a largely non-existent fishery, and since the H.C.P. were to share the expenses equally, Art. VII provided that the Commission should so regulate the fishery that the fishermen of each H.C.P. were to obtain an equal share of the permitted catch.

⁷³ 80 *U.N.T.S.* 14ff. In the light of the estimated expenses for the contemplated scientific investigations, it is not difficult to appreciate the Costa Rican anxiety in having the basis for assessment made clear. It was estimated that the first year of operation for both Commissions would involve an expenditure of approximately \$90,000, but that in each of the next two years, the amount was estimated at \$750,000. Normal operations in the succeeding years will cost about \$400,000 per year. Such large expenditures were thought to be justified in light of the fact that the wholesale value of the tuna canned, in 1948 alone, was in excess of \$125,000,000. The tuna industry supplies employment

Convention did not make specific the fact that joint expenses were to be in proportion to the interests in the fishery, it is this method which was contemplated for fixing the proportion of the expenses.⁷⁴ In both cases the share for the United States was expected to be approximately ninety-five per cent.⁷⁵

The extensive investigations contemplated by the conventions, initially concerned only with scientific investigation, necessarily require considerable duration for the conventions. The extent of this duration is, of course, proportionate to the already available knowledge and the foreseen difficulties in regard to the fishery subject to the convention. Thus the Salmon Convention provided for an initial sixteen year period during which the commission was to remain in force, and the Costa Rica Convention provides for a ten year period.⁷⁶ Mexico, although recognising that the investigations may be inconclusive within the four year period provided by that Convention, was unwilling to be bound beyond a four year period. The initial period for the North Pacific Convention is ten years and that for the 1953 Halibut Convention is five years. Although all the parties to an agreement are able to agree to replace it or to cause it to be ineffective, it is open to question whether the ten year period in the North Pacific Convention was warranted in light of its novel character and the complexities involved in its administration. The ten year period was there necessitated not because of extensive contemplated scientific investigations, but rather in order to secure more permanent Japanese agreement not to invade conserved fisheries⁷⁷ than the promise made in Prime Minister Yoshida's Note of February 7, 1951.⁷⁸ And although the single objective could have been accomplished by a much

in California alone for over 5,000 fishermen and 7,000 fish processing workers. The property investment exceeded \$70,000,000 and the value of the catch in 1949 at the fishermen's level was in excess of \$50,000,000 for California. Testimony of W. M. Chapman, *supra* n. 14, at 64; testimony of W. F. Knowland, *supra* n. 14 at 75. The actual U.S. appropriation to the Inter-American Tropical Tuna Commission during 1954-55 was \$115,445. See *Hearing*, *supra* n. 64, at 28.

⁷⁴ Where a central purpose of the Convention is not (as with the Tuna Conventions) the establishment of friendly relations, but rather (as with the Salmon Convention) to create an actual international conservation effort, it may not be desirable to assess costs on the basis of varying degrees of participation in the fishery unless records measuring participation are highly reliable. The problem of reliable records is of course always present, but may be acute where, as in some Central and South American countries, experience in keeping accurate statistical records is inadequate.

⁷⁵ It has actually been 99.8%. *Hearings*, *supra* n. 64, at 28.

⁷⁶ By way of comparison the 1908 Convention with Great Britain, which, it will be recalled, placed little emphasis upon research, provided no specific period for the duration of the Convention (Art. VI). Instead, the regulations provided for by the Convention were to remain in force for a period of four years, and then from year to year until either H.C.P. requested a revision. Upon such a request and revision the new regulations, when adopted by the H.C.P., were to remain in force for a period of four years and then on a year to year basis. This type of provision may appear to be unduly static and unresponsive to unusual conditions which may occur early after adoption of a set of regulations. However, the Convention did permit the H.C.P., by joint or concurrent action, upon recommendation of the Commission, to make "modifications" in the regulations at any time. The context of use of both terms, "revisions" and "modifications", suggested that the latter refers only to minor changes. If so, such provisions may be especially inadequate for regulating a fishery subject to substantial natural fluctuations.

⁷⁷ A great deal has been written about the actual or threatened Japanese invasion of the United States fisheries and the Japanese lack of conservation consciousness. See, for example, K. Barnes, "The Clash of Fishing Interests in the Pacific" (1936) 5 *Far Eastern Survey* 243; K. Barnes and H. E. Gregory, "Alaska Salmon in World Politics" (1938) 7 *id.* 47; E. W. Allen, *supra* n. 32; P. C. Jessup, "The Pacific Coast Fisheries" (1939) 33 *A.J.I.L.* 129; "Progress of Japanese Fishing Industry Conservation Programme" (1949) 20 *Dept. of State Bull.* 833.

⁷⁸ (1951) 24 *Dept. of State Bull.* 351. In this Note Prime Minister Yoshida stated that Japan would prohibit her resident nationals from fishing in conserved fisheries where Japanese nationals or vessels were not conducting operations in 1940. This arrangement was to continue until the consummation of a more permanent convention. W. W. Bishop *Jnr.*, cited *supra* n. 60.

less elaborate convention,⁷⁹ the one actually negotiated achieved this single objective while also giving concrete manifestation to the apparent United States policy in regard to high seas fisheries, especially as promulgated in the 1945 Fisheries Proclamation.⁸⁰ In some ways the North Pacific Convention does go beyond the Proclamation in that it appears to recognise a third party beneficiary right in having hitherto internationally free resources subject to conservation. In a shrinking world of increasing economic interdependence, and in view of the vast food resources available from the *mare liberum* if properly managed,⁸¹ the recognition in public international law of such third party beneficiary rights may be highly desirable. The interesting point for present purposes, is not that such rights have been recognised, but rather the fact that initial and continuous recognition of the right is made not by the original Conventions, but by a commission created, in part, for that purpose. It is also important that the criteria for ascertaining the existence and continuity of the right are not political or economic in origin, but are rather intended to be scientific.

⁷⁹ It could have been provided, as many West Coast fishermen wished, that the nationals of each H.C.P. were not to fish within 100 or 150 miles of the shores of the other H.C.P. Or it could have been provided, as some have urged, that the nationals of the other H.C.P. be required to keep out of areas declared (whether unilaterally or by treaty) to be conserved. In some respects the actual provisions of the North Pacific Convention are even more extreme than those proposals, since abstention from fishing is by reference to a stock of fish, and hence the area in which fishing may be prohibited can be beyond 150 miles from shore. Testimony of W. C. Herrington, *supra* n. 30, 16ff.; *id.*, "Problems Affecting North Pacific Fisheries" (1952) 26 *Dept. of State Bull.* 340, 341; E. W. Allen, "Developing Fishery Protection" (1942) 36 *A.J.I.L.* 115; *id.*, "Control of Fisheries Beyond Three Miles" (1939) 14 *Wash. L. R.* 91, 97ff.; W. W. Bishop Jr., *supra* n. 60, at 717ff.

⁸⁰ The central point of the proclamation is the distinction between exercise of authority over the high seas by the littoral State for the limited purpose of marine resources conservation and the exercise of sovereignty over the same region. See W. W. Bishop, Jr., "Exercise of Jurisdiction for Special Purposes in High Sea Areas Beyond the Outer Limit of Territorial Waters", Address Before Sixth Conference of Inter-American Bar Association, Detroit, 1949, repr. 99 *Cong. Rec.* 2586 (Mar. 30, 1953); E. M. Borchard, cited *supra* n. 61; E. D. Dickinson, "Jurisdiction at the Maritime Frontier" (1926) 40 *Harv. L.R.* 1; J. W. Bingham, "The Continental Shelf and the Marginal Belt" (1946) 40 *A.J.I.L.* 173; *id.*, *Report on the International Law of Pacific Coastal Fisheries* (1938); C. B. Selak, "Recent Developments in High Seas Fishery Jurisdiction Under the Presidential Proclamation of 1945" (1950) 44 *A.J.I.L.* 670; E. W. Allen, "Legal Limits of Coastal Fishery Protection" (1946) 21 *Wash. L.R.* 1; Testimony of W. M. Chapman, *supra* n. 14, at 34; *id.*, "The Fishery Proclamation of 1945" (1951) 177; and *supra* n. 39.

⁸¹ Dr. J. L. Kask, Chief Biologist for the Fishery Division of the F.A.O., estimated in 1950 that the world fisheries were producing about forty billion pounds. He also indicated that two-thirds of the surface of the globe is water capable of supporting food fishes in both the vertical and horizontal planes, unlike land which is limited to the latter. In mentioning these statistics, Mr. Allen observed, "... to get down to the farmyard level, one of the experts of our National Research Council calculated that although the hog is rated as the most efficient of all meat producing animals, man-hours spent in fishing produce from four to ten times as many pounds of food as a farmer raising hogs". E. W. Allen, cited *supra* n. 39. See also the section devoted to the topic of "Developing Fishery Resources", in *U.N. Conference on Conservation and Utilisation*, *supra* n. 31, esp. 27-66.