The CAOF Agreement: Key Issues of International Fisheries Law

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Overview presentation

- The Participants in the Five-plus-Five Process
- A Unique Scenario
- The Participants’ Interests
- The Package Deal
- Concluding Observations
The Participants in the Five-plus-Five Process

• Not just the Arctic Five vs the Other Five
  – Denmark on behalf of the Faroe Islands and Greenland (DFG): hybrid
  – 6 Arctic States (Arctic Five + Iceland) or: 6 Arctic Ocean coastal States
  – EU: acting in a *de facto* capacity of high seas fishing State, but also representing 3 Arctic States
  – China, EU, Japan and South Korea all have (*de facto*) Observer status with the Arctic Council
A Unique Scenario

• The Five-plus-Five had opportunity to determine the conditions under which a future high seas fishery would be allowed to commence
• The Arctic Five had already seized this opportunity by means of 2015 Oslo Declaration, which has two key elements
  – Geographical scope: only the high seas portion of the central Arctic Ocean
  – Qualified abstention from high seas fishing
• The Other Five agreed to use these two key elements as a point of departure and these also ended up in CAOF Agreement
The Participants’ Interests

• These two key elements create a fundamental difference between the central Arctic Ocean fisheries interests of the Arctic Five on the one hand, and the Other Five on the other.

• In essence, the Other Five will be more inclined to favor commencement of high seas fishing than the Arctic Five.
  – Arctic Five only supportive of commencement if either they intend to participate in high seas fishing themselves, or if such fishing would not significantly conflict with their coastal State interests.
    • utilization-oriented coastal State interests
    • conservation-oriented coastal State interests
The Participants’ Interests (cont.)

• Interests in the broader domains of international fisheries law, the international law of the sea and the international law relating to the Arctic
  – Some of the Other Five had concerns on ‘multilateral creeping coastal State jurisdiction’ in the BBNJ Process & the Five-plus-Five process
  – Dissatisfaction of China, EU, Japan and South Korea with their inferior participatory status in the Arctic Council, the Arctic Council System & new, more peripheral Arctic bodies
The Package Deal

- All these interests of the participants eventually led to a package deal on 4 components
  1. decision-making;
  2. the requirements for entry into force;
  3. duration of the Agreement; and
  4. recognition of the special responsibilities and interests of the Arctic Five in the central Arctic Ocean
Concluding observations

• The CAOF Agreement is in many ways a landmark agreement
  – Application precautionary approach
  – Important step in gradual transformation of the freedom of the high seas
• The equality of the Five-plus-Five under the CAOF Agreement only exists in form
• Optimal use of the CAOF Agreement’s full potential in precautionary and ecosystem-based fisheries management
Thanks!

Questions?