

Objectives:

Students will:

- Learn how conflicts in international law can be resolved.
- Explain some major provisions of the Convention on the Law of the Sea.
- Describe one recent fishing-related international conflict.
- Advocate positions on that conflict.
- Compare and contrast various resolutions to the conflict.

Standards Addressed

- Explain how nation-states interact with each other.

Materials

- “The United Nations Convention on the Law of the Sea” handout for each student
- “Chile vs. the European Union: A Dispute About Fish” handout for each student
- “Resolution of the Dispute” handout for each student
- Enough copies of the Role Cards for the members of each of three groups to have the appropriate card

A Dispute over Fish (A Case Study in How International Tribunals Work)

The Convention on the Law of the Sea, adopted in 1982 and coming into force in 1994, is actually a complex set of laws dealing with such issues as navigational rights, territorial sea limits, the legal status of resources on the seabed, and protection of the marine environment. Yet the existence of the convention has not stopped conflicts over ocean-related issues, particularly fishing. Indeed, the United Nations reported that 100 nations were involved in a fishing-related dispute in the 1990s.

In this lesson, students learn about a particular dispute involving Chile and the European Union, advocating positions on the issue and making a decision.

Procedure

1. Brainstorm and discuss international conflict.

Tell students that today's lesson is going to focus on a conflict among nations. Ask students to list as many causes of international conflict as they can. If no one mentions fishing, explain that the conflict students will be focusing on is fishing.

Tell students that issues related to fishing and other uses of the world's oceans (e.g., mining the seabed, navigation for military purposes or involving hazard cargoes, offshore oil production) have caused international conflicts for many years. These conflicts led to the creation of the United Nations Convention on the Law of the Sea, an international law that deals with so many complex issues that it took nine years to write. The Convention on the Law of the Sea was adopted in 1982.

2. Read and discuss about the Convention on the Law of the Sea.

Distribute "The United National Convention on the Law of the Sea" handout and allow students to read it. Lead a class discussion, using such questions as:

- What were some of the problems that led the United Nations to begin working on the Convention on the Law of the Sea?
- What are some of the Convention's major provisions?
- Do you think conflicts about the uses of the ocean could still occur after adoption of the Convention on the Law of the Sea? Why or why not?

3. Read and discuss about conflict between Chile and the European Union.

Tell students that conflicts over uses of the ocean have continued; conflicts about fishing have been especially common. In the 1990s, the United Nations estimated that as many as 100 countries were involved in conflicts related to fishing. One conflict, which is still on the docket of the International Tribunal of the Law of the Sea, involves Chile and the European Union.

Distribute the "Chile vs. the European Union: A Dispute about Fish" handout and go over it with students, making sure that they understand the nature of the conflict between Chile and the EU. Review the questions and the map of swordfish migration presented in the handout.

4. Role-play representatives who will prepare and present arguments to the International Tribunal.

Divide the class into three groups: one group will represent Chile, one the European Union, and the other the members of the International Tribunal. Give each group copies of the appropriate role card and allow time for them to prepare their roles. While the representatives of Chile and the European Union prepare arguments, the judges should be learning as much as they can about the case and formulating questions they want to ask the advocates.

When students have finished their preparations, regroup them into triads, with each including one representative of Chile, one representative of the European Union, and one judge. Have the students make their arguments, then ask each judge to render a decision.

Reconvene the class and ask each judge to give their opinion and the argument that was most convincing to them. Conduct a general class discussion of which arguments were most convincing and why.

5. Read and discuss the actual resolution.

Distribute the "Resolution of the Dispute" handout and go over it with the class. What is the students' opinion of the way in which the conflict was actually resolved? Is it a good resolution? Why or why not? How is the actual resolution of the conflict similar to and different from the decisions handed down by the judges in your class?

To assess student learning, have students write essays analyzing the resolution of the Chile-European Union fishing dispute, comparing and contrasting the resolution with the decisions rendered by judges in your classroom.

Extension Activity

Ask students to find out whether the United States is currently involved in any fishing disputes. As both a coastal country and a country that does a considerable amount of high-sea fishing, its interests are complicated. What is the U.S. position on issues related to high-sea fishing? What interests does this position reflect?

THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA

Until the 1980s, the primary law of the sea was based on a principle established in the 1600s: Nations had rights over a narrow belt of the ocean along their coastline and the rest of the oceans was considered to belong to no one and be free for use by all. This was called the freedom of the seas doctrine.

By the middle of the 20th century, however, concern about the oceans was growing. Pollution was becoming a problem, as was decline in fish populations. Coastal countries worried about the harvesting of fish by what were known as long-distance fishing boats. The navies of superpowers sought to make their presence known in all the world's oceans. Nations wanted to extend their jurisdiction farther from their shores. In the late 1940s, several South American countries asserted their jurisdiction over waters up to 200 miles from their coasts. Other countries around the world made various claims that flew in the face of the freedom of the seas doctrine.

It was time for a new look at the law of the sea. This “new look” took nine years—beginning in 1973 and culminating in 1982—with the United Nations Convention on the Law of the Sea. The convention went into force in 1994, when the required number of nations had adopted it.

The Convention on the Law of the Sea deals with many issues—navigational rights, territorial sea rights, sea limits, the legal status of resources on the seabed, and protection of the marine environment. The following are just a few of its important provisions:

- Coastal nations have complete jurisdiction over 12 miles of sea from the coastline. Foreign fishing boats can pass through the territorial sea but cannot fish there. The coastal country can establish laws to preserve the environment and regulate fishing within its territorial waters. These rules can be enforced up to 24 miles from the coastline if necessary to prevent violations within the nation's territorial waters.
- Coastal nations are granted exclusive economic rights in the seas up to 200 miles from their coasts. This means that the coastal states have the right to explore and use living resources within this area. Thus, the coastal state can decide how many fish can be caught and what actions should be taken to prevent overfishing.
- Beyond the exclusive economic zones, the freedom of the high seas is maintained. This means that anyone can fish in the high seas. However, all nations have a duty to regulate their own citizens who fish the high seas to ensure “the conservation of the living resources of the high seas.”
- Nations have a duty to protect the marine environment and to inform others if the environment is in danger of being damaged.
- Disputes concerning provisions of the Convention are to be settled peacefully. The International Tribunal for the Law of the Sea is one of the methods for resolving such disputes.



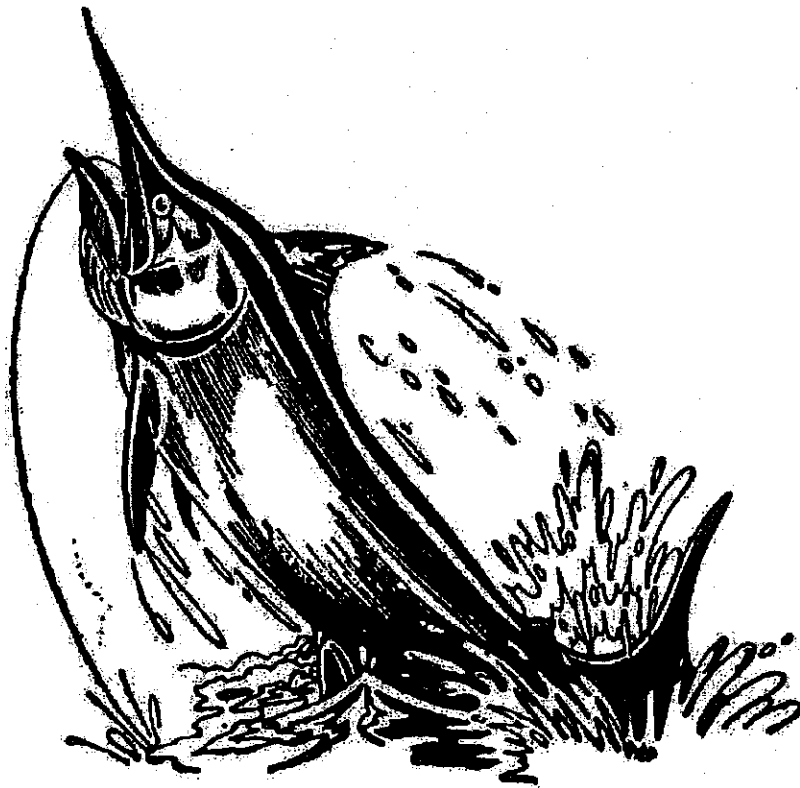
CHILE VS. THE EUROPEAN UNION: A DISPUTE OVER FISH

Swordfish became the subject of a hot dispute between Chile and the European Union in the 1990s. Swordfish migrate throughout the South Pacific. At times, they are within the exclusive economic zone of various countries, such as Chile. At other times, they are in the high seas, making them subject to fishing by long-distance fishing boats, including those from Europe.

Chile argued that European fishing boats were taking too many swordfish, with no regard to sustaining the swordfish population, thus violating the Convention on the Law of the Sea. Chile refused to allow the European fishing boats to come into Chilean ports to unload swordfish. The European Union argued that Chile's refusal to give them access to ports was an attempt to extend sovereignty to the high seas and violated another international law, the General Agreement on Tariffs and Trade (GATT). GATT was passed in 1994 and is administered by the World Trade Organization.

The European Union originally argued that the dispute should be settled by the WTO. Chile said that the dispute was not about trade but about conservation of ocean resources.

In 2000, Chile and the European Union finally agreed to have the dispute settled by a special five-judge panel (called a Chamber) of the International Tribunal of the Law of the Sea.



Role Cards

Representatives of Chile

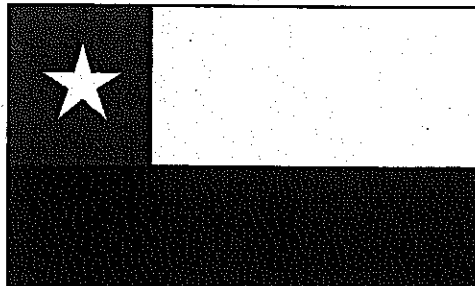
As representatives of Chile, you will have five minutes to present your best arguments to the Chamber of the Tribunal of the Law of the Sea. The judges may ask you questions.

Four European fishing vessels have been fishing the high seas of the Southeast Pacific. These vessels catch many swordfish, a fact that is affecting the supply of swordfish that are available within your nation's exclusive economic zone. You believe that the European vessels have violated the Convention on the Law of the Sea in several ways:

- The Europeans have not adopted any laws that would require their fishing vessels to act in ways that will protect the living resources of the high seas.
- The Europeans are not reporting their catches as they are required to do.
- The Europeans are not cooperating with the coastal state (i.e., Chile) in working to conserve this highly migratory species.

You have closed your ports to European vessels that want to unload swordfish catches. You believe this action is justified by the need to conserve the living resources of the oceans. The European vessels use fishing gear that results in many other species being caught, including sharks, leatherback turtles, and albatross seabirds. Because the Europeans refuse to take actions that would prevent this damage to species of the South Pacific, you feel justified in taking unilateral action.

In 1999, the International Tribunal on the Law of the Sea issued a judgment on what was known as the Bluefin Tuna Case. In that case, Australia and New Zealand argued that Japan was not cooperating in efforts to conserve bluefin tuna. The Tribunal ruled that nations should act with caution and ordered measures designed to preserve tuna stocks in the region. In addition, the International Court of Justice held in 1996 that there is a general obligation to respect the environment in areas beyond national control. You believe these cases support your position.



Role Cards

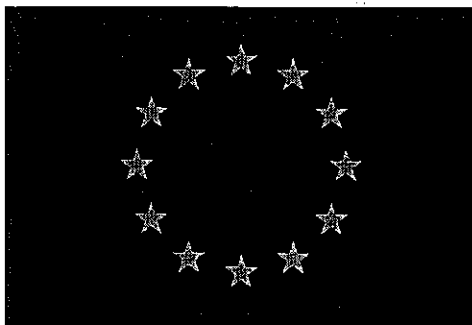
Representatives of the European Union

As representatives of the European Union, you will have five minutes to present your best arguments to the Chamber of the Tribunal of the Law of the Sea. The judges may ask you questions.

Four European fishing vessels have been operating in the Southeast Pacific, fishing for swordfish. You believe that these vessels should have the right to unload their catch in Chilean ports under the General Agreement on Tariffs and Trades, which guarantees freedom of transit for goods through the territory of each party to GATT. The companies that own the European fishing vessels hope to re-export the swordfish to markets in other nations, especially in the United States.

You also believe that Chile has violated the Convention on the Law of the Sea by attempting to assert its sovereignty over the high seas. By applying its conservation measures to the high seas and thereby refusing access to its ports, Chile is essentially restricting the freedom of the high seas. If Chile has a problem with the actions of your fishing vessels, it should negotiate with you, not try to restrict freedom on the high seas by applying its laws beyond the 200-mile exclusive economic zone.

In 1998, in a case known as the Shrimp-Turtle case, a panel of the World Trade Organization ruled against the United States' efforts to ban imported shrimp from countries that did not comply with U.S. laws designed to protect turtles from being caught in shrimp nets. The WTO ruled that the U.S. ban was a discriminatory action that "undermined" free trade. You believe this case supports your position.



Role Cards

Judges of the International Tribunal of the Law of the Sea

As judges on the special Chamber of the International Tribunal of the Law of the Sea, you will hear five-minute arguments from both sides. You will also have the opportunity to ask questions to clarify the positions of Chile and the European Union.

Four European fishing vessels have been fishing the high seas of the Southeast Pacific. These vessels catch many swordfish, a fact that the Chileans believe is affecting the supply of swordfish that are available within Chile's exclusive economic zone. Chile has therefore closed its ports to European vessels that want to unload swordfish catches. The Chileans believe this action is justified by the need to conserve the living resources of the oceans.

On the other hand, the Europeans believe that these vessels should have the right to unload their catch in Chilean ports under the General Agreement on Tariffs and Trades, which guarantees freedom of transit for goods through the territory of each party to GATT. They also believe that Chile has violated the Convention on the Law of the Sea by attempting to assert its sovereignty over the high seas.

You know that tribunals and international organizations have been grappling with issues related to economic preservation and that attention to these matters is coming to be regarded as an obligation of all nations. However, the move toward free trade also seems to be an international priority. Thus, cases from various organizations have resulted in rulings that might be seen as contradictory.

In 1999, your International Tribunal on the Law of the Sea issued a judgment on what was known as the Bluefin Tuna Case. In that case, Australia and New Zealand argued that Japan was not cooperating in efforts to conserve bluefin tuna. The Tribunal ruled that nations should act with caution and ordered measures designed to preserve tuna stocks in the region. In addition, the International Court of Justice held in 1996 that there is a general obligation to respect the environment in areas beyond national control. However, in 1998, in a case known as the Shrimp-Turtle case, a panel of the World Trade Organization ruled against the United States' efforts to ban imported shrimp from countries that did not comply with U.S. laws designed to protect turtles from being caught in shrimp nets. The WTO ruled that the U.S. ban was a discriminatory action that "undermined" free trade.

International Tribunal for
the Law of the Sea



Tribunal International
du droit de la mer

RESOLUTION OF THE DISPUTE

In 2001, Chile and the European Union reached a tentative resolution to their dispute. The agreement called for the establishment of a technical commission made up of representatives of both Chile and the European Union. The commission was to design conservation measures for the swordfish population in the Southeast Pacific. Fishing boats that catch swordfish using the program established in the commission will be given access to Chilean ports to unload up to a thousand tons of swordfish yearly. The work of the technical commission will eventually be used as the foundation for a multilateral conservation organization that other countries will be invited to join.

The dispute remains on the docket of the Tribunal, which will resume proceedings if the agreement fails.

