ISSN 0251-6479

FAO
LEGISLATIVE
STUDY

63

The burden of proof in natural resources legislation

Some critical issues for fisheries law

Food
and
Agriculture
Organization
of
the
United
Nations

The burden of proof in natural resources legislation

Some critical issues for fisheries law

FAO
LEGISLATIVE
STUDY

63

by
David Freestone
Legal Adviser
Head, Environment and International Law Unit
World Bank

This paper was prepared while the author was
Professor of International Law at the
University of Hull, United Kingdom

Food and Agriculture Organization of the United Nations

Rome, 1998

M-08 ISBN
92-5-104140-7

TABLE OF CONTENTS

1. Introduction

Criminal law is an important part of the armoury of states. The power of a state to punish individuals who break its laws is often perceived as an issue close to its sovereignty, and most states use the criminal law for a wide range of disparate purposes - to regulate social and economic behaviour, as well as to protect human life and property and to provide deterrence and retribution. At the same time the imposition of criminal sanctions on the individual is not a matter which is entirely a matter within the discretion of state organs. National Constitutions and laws or codes of criminal procedure commonly lay down both procedural and substantive safeguards for the individual from arbitrary or oppressive state action and these safeguards are supported by the development of international principles protecting human rights which are also both procedural and substantive.

The issue of proof of criminal offences is therefore a key and sometimes controversial issue in most legal systems. Procedural rules vary between the main families of legal systems -the common law and the civil law systems. In addition, matters can be further complicated where a national criminal law implements rights or duties derived from international law, whether from general international customary law or from a treaty such as the 1982 UN Law of the Sea Convention (hereafter referred to as the 1982 UN Convention). Once national criminal laws seek to impose sanctions on foreigners (or aliens as they are known in international law), then further issues come into play regulating the proper exercise of national jurisdiction. In the law of the sea the most widely known issues are those relating to the restrictions upon the exercise of coastal state or port state jurisdiction, but international law also imposes some very general procedural obligations on states relating to the way in which they should exercise jurisdiction over aliens. This, therefore, is the general framework within which issues of proof in natural resources legislation fall to be considered.

Naturally there are wide differences in relevant legal traditions. For example, in common law systems, there is an important distinction between criminal and civil procedures. One of the basic tenets of common law criminal procedure, designed it is said to protect civil liberties, is

the presumption of innocence, under which an alleged criminal (the defendant) is deemed innocent unless or until proven guilty by the prosecution. This means that the *burden of proof*, the onus of proving that the defendant has committed a criminal offence, is placed upon the prosecution. This presumption is supported by a further general procedural rule that a criminal case must be proved "beyond all reasonable doubt" -this is known as *the standard of proof*- the level of proof which is required.[1] Under the Napoleonic systems the procedural rules are slightly different but the concepts of burden and standard of proof are still of significance.

Many of these basic principles were developed during the later part of the nineteenth century. Since then the process of regulating industrialised and industrialising societies alike has resulted in a huge increase in the actual volume of legislation, and in the use of the criminal law in a more regulatory fashion in particular to provide support for legislation designed to regulate economic activities. Health and safety legislation lays down standards for such issues as the safety of the work place and hygienic conditions for the sale of food; breach of these standards is a criminal offence. In many legal systems these regulatory criminal offences are often strict or absolute liability offences. This means that the prosecution simply has to prove that a breach of required standards took place, and the factory or shop owner is deemed to have committed an offence, irrespective of whether they were aware of what had taken place. Such an approach makes it easier to secure a conviction for a breach of standards and thus ensures the highest vigilance from those most likely to be in breach. The theory underpinning such an approach to what are usually (but not always) minor offences is that society has an overwhelming interest in ensuring compliance with these standards to which other interests are subordinate. This same approach has also been taken in relation to other offences which are difficult to prove but which seek to protect wider interests, such as the protection of natural resources from illegal logging, hunting, or fishing. Increasingly it has been applied to legislation for the protection of the environment.

An even more extreme form of this policy of deterring the commission of offences which are difficult to police is the use of a *reversal of the burden of proof.* Here the traditional presumption of innocence is reversed and a person in a particular situation is deemed to have

---

[1] In civil cases although the burden of making a case is still on the applicant (the plaintiff) the standard of proof is lower - the "balance of probabilities", or "the preponderance of evidence".

committed a specific offence unless he (or she) can prove to the contrary. So a man with a fish in his possession is deemed to be a poacher unless he can prove it was caught legally.

All these devices have been used by various national legislators to assist in the process of convicting, and thus deterring, those responsible for breaches of rules intended for the protection of the wider public interest. The question is whether there are any limits to the circumstances in which such procedural devices - which disregard traditional safeguards intended for the protection of individual liberties - can be legitimately incorporated into national resources legislation.

2. Development of Precautionary Principle in Environmental Law

The development of the precautionary principle in environmental law is of relevance to this debate in that it is at root concerned with the issue of burden of proof. Although some controversy still surrounds this principle, a version of the precautionary principle was agreed at the 1992 Rio de Janeiro UN Conference on Environment and Development (UNCED). Principle 15 of the Rio Declaration endorses the precautionary approach in the following terms:

> "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost effective measures to prevent environmental degradation."

This is the crux of the precautionary principle: action to prevent serious or irreversible damage should not be delayed until the scientific evidence is clear - by which time it may be

too late [2]. Despite the widespread approval of the precautionary principle or approach - which I have elsewhere called "the most important new policy approach in international environmental cooperation"[3] - commentators are still unclear as to its precise meaning. Nevertheless it is possible to outline its general thrust and to isolate a number of different themes. The precautionary principle first emerged in an international environmental instrument in the context of regional discussions on the status of the North Sea.[4] Despite regulation of both land based pollution and ocean dumping by regional bodies, the quality of the North Sea was seen to be continuing to decline. The German government, when calling the first North Sea Meeting in 1984, had as a negotiating aim the inclusion of a concept of German law, the precautionary principle - *Vorsorgeprincip* - in the Bremen Declaration.[5] It was a partial success. The term "precautionary" does not appear in the English text, but German commentators tell us that the German text uses the term *Vorsorgemass-nahmen.* This is possibly mistranslated as "preventive approach" in the English text.[6] The preventive approach is in fact the traditional approach about which questions were being raised. The traditional approach to environmental regulation is based on the assimilative capacity of the environment. This traditional approach

---

[2] The emergence of the precautionary principle has been a most striking development in international environmental law. In 1990, the UN Secretary General in his Report on the Law of the Sea expressly recognised the "considerable significance of the precautionary principle for future approaches to marine environmental protection and resource conservation and reported that it had been "endorsed by virtually all recent international forums." (UN Doc A/45/721, 19 November 1990. p. 20. para. 6.). Since the Secretary General's 1990 statement virtually every new environmental treaty has made mention of this principle. Recent examples include: the Framework Convention on Climate Change (art. 3(3)) and the Convention on Biological Diversity, (Preambular para. 9), both signed in Rio in June 1992, ((1992) 31 ILM, 814 ff.) and Johnson, *The Earth Summit*, 1993; the 1992 Helsinki Convention on the Protection of the Marine Environment of the Baltic Sea Area (reproduced as appendix to P. Ehlers, "The Helsinki Convention 1992; improving the Baltic Sea Environment" (1993) 8 *The International Journal of Marine and Coastal Law* 191, at 215-243, see Article 3(2)); the 1992 Helsinki Convention on the Protection and Use of Transboundary, Watercourses and Lakes ((1992) 31 ILM 1312, Article 2(5)(a); the 1992 Maastricht Treaty on European Union ((1993) 32 ILM 1693, Article 130R(2));the 1992 Paris Convention for the Protection of the Marine Environment of the North East Atlantic (see Article 2(2)(a)). The FAO Code of Conduct for Responsible Fisheries also contains a reference to the need to apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources, in its General Principles: see Article 6.5. Finally, the 1995 UN Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks contains in Article 6 a very detailed provision on the application of the precautionary approach. See generally *The Precautionary Principle and International Law: The Challenge of Implementation* (David Freestone and Ellen Hey, eds.), 1996.

[3] D. Freestone "The Precautionary Principle" in *International Law and Global Climate Change,(R.* Churchill and D. Freestone, eds.), Dordrecht/London, 1991, p. 36.

[4] G. Peet "The Anticipatory Principle as a Basis for Policy?" in *Environmental Protection of the North Sea*, (P.J. Newman and A.R. Agg eds.) 1988, pp. 503-38.

[5] P. Ehlers, "The History of the North Sea Conferences" in *The North Sea: Perspectives on Regional Environmental Cooperation*, (D. Freestone and T. Ulstra eds.), 1990,*p.* 5.

[6] L. Gundling, "The Status in International Law of the Precautionary Principle", in *ibid.* p. 24.

can be seen in paragraph two of the preamble to the London Dumping Convention which contains the statement that "the capacity of the sea to assimilate wastes and render them harmless, and its ability to regenerate natural resources, is not unlimited." This phrase was originally interpreted to mean that although the capacity of the oceans was accepted as finite, nevertheless actions were permissible unless evidence could be adduced that they caused harm. However, scientific evidence is seldom conclusive and some scientists in any event argue that once detrimental effects are registered, the assimilative capacity of the environment has already been exceeded.

The precautionary approach then is innovative in that it changes the role of scientific data. It requires that once environmental damage is threatened, action should be taken to control or abate environmental interference even though there may still be scientific uncertainty as to the effects of the activities. It thus represents an important tool for decision making in uncertainty. Hence the policy-response in relation to industrial emissions will be to adopt or develop clean technologies rather than simply to rely on an assessment of the risks of various levels of pollutant emissions. It is still, it must be said, controversial. At its strongest it can be used to reverse the traditional burden of proof, so that in cases of scientific uncertainty as to possible effects of particular activities, the burden of proof is passed to the potential polluter, who needs to prove that his, or her, activities will not damage the environment. In this sense it finds its manifestation as a legal burden of proof rule. Such an approach is to be found in the Oslo Convention Prior Justification Procedure[7], under which a potential dumper of industrial waste in the North East Atlantic region has to prove, among other things, that no damage will be caused by the dumping - an effective prohibition.

The precautionary principle, or approach, is now accepted in many regional legal instruments, including the 1992 Maastricht Treaty on European Union. The issue now being addressed is how the principle can be translated into precautionary action under national law. If the essence of the principle is taken to be that, in relation to major risks to the environment, the protection of the environment should be put above normal evidentiary rules, then many of the procedural options discussed in section one above will be relevant for national implementing

---

[7] OSCOM Decision 89/1 of 14 June 1989 on the Reduction and Cessation of Dumping Industrial Wastes at Sea, reproduced in *The North Sea: Basic Legal Documents on Regional Environmental Cooperation*, (D. Freestone and T. IJIstra), 1991, p. 119.

legislation - strict and absolute liability, reversal of the burden of proof, etc.[8] However in the original German concept of *Vorsorgeprincip* there was a concept of proportionality - that action to counter threats should be proportionate to the threat itself. This may well be relevant to an assessment of the extent to which normal procedural safeguards should be discarded for the protection of the environment.

3. The Use of Evidentiary Rules in Fisheries Legislation

The extension of coastal states' jurisdiction over fisheries to 200 nautical miles which took place during the 1970s,[9] posed considerable problems of enforcement, particularly for small states with limited enforcement capacity and extensive newly acquired maritime areas. The solution adopted by the legislation of many, particularly small developing, countries has been to utilise the evidentiary rules as a part of their strategy to improve their enforcement of national fisheries laws, particularly against foreign fishing vessels, many of which came from distant water fishing nations with more sophisticated technology than the coastal state.

The final text of the 1982 UN Convention makes it clear that coastal states may enforce their national fisheries legislation against foreign vessels in the EEZ[10] as well as the territorial sea,[11] archipelagic[12]or internal waters.[13] Fishing by the vessels of foreign states is expressly prohibited during the exercise of innocent passage,[14] and coastal states may exercise proscriptive jurisdiction over foreign vessels exercising the right of transit passage, and archipelagic sea lanes passage "in relation to fishing vessels, the prevention of fishing, including the stowage of fishing gear".[15] Within the EEZ, and *ex hypothesi* the territorial sea[16] coastal states are specifically granted powers to take such measures "including boarding,

---

8 See Report of Conference on *Implementing the Precautionary Principle* (Ed. Bob Earll), The Environment Council, London, 1993.

9 During the course of the Third UN Conference on the Law of the Sea.

10 Article 73, 1982 UN Convention.

11 Article 2, 1982 UN Convention.

12 Article 49(2), but note that under Article 51(1) an archipelagic state "shall respect existing agreements with other States and shall recognise traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States in certain areas falling with archipelagic waters."

13 Article 8, 1982 UN Convention.

14 Article 19(2)(i), 1982 UN Convention.

15 Articles 42(I)(c) and 54, 1982 UN Convention.

16 Article 27(5), 1982 UN Convention.

inspection, arrest and judicial proceedings, as may be necessary to ensure compliance with the laws and regulations adopted by it in conformity with [the] Convention." However, the Convention subjects this to three conditions. First, arrested vessels and crews must be promptly released upon the posting of a reasonable bond or other security. Second, the penalties for violations of fisheries laws and regulations in the EEZ may not include imprisonment, in the absence of agreements to the contrary by the states concerned, or any other form of corporal punishment. Third, in the case of arrest or detention of foreign vessels, the coastal state must promptly inform, through appropriate channels, the flag state of the action taken and of any penalties subsequently imposed. [17]

The fisheries legislation of many jurisdictions has long incorporated the device of shifting the burden of proof for a range of technical issues. These include imposing the burden of proving the nationality of the vessel or of providing evidence as to the possession of a licence, onto the shoulders of a fisher apprehended in controlled waters.[18] Such a shifting of the burden of proof is quite common in national fisheries legislation[19] and this device was utilised in much of the new fisheries legislation of the 1970s and 1980s and extended to apply to all foreign fishery vessels as well as national boats. Taking advantage of the coastal state's right to regulate fisheries within its EEZ as well as the territorial sea, the fisheries legislation of a number of coastal states provides that where a foreign vessel was apprehended fishing illegally, then all the fish found oñ board the vessel were deemed to have been caught illegally in those waters during the commission of the offence.[20] A further step was made by legislation such as that of the Solomon Islands of 1974 which made it an offence to exercise the right of passage through

---

[17] Article 73, 1982 UN Convention, see also Special Issue of *International Journal of Marine and Coastal Law* (1996), Vol. II pp. 137-299.

[18] See e.g. 1980 Fisheries Act of the Republic of Ireland, No. 1 of 1980, section 48 under which the foreign character or origin of a boat is presumed "until the contrary is shown" from the flying of a foreign flag or absence of an Irish flag, the name of the port marked on the stem, or the possessions of documents from which it appears the boat is not Irish. See also section 48(2).

[19] Some national legislation goes considerably further than this. See e.g. the Canadian 1979 Fisheries Act, under which section 25 provides that: (1) in all prosecutions for offences under this Part or the regulations, the burden of proof as to:

(a) the place where any fish were caught;
(b) the person by whom they were caught;
(c) the nets, seines, traps or other means by which the fish were caught; and (d) the person from whom the fish were bought or obtained is on the person purchasing, obtaining or in possession of the fish.

[20] Papua and New Guinea Fisheries Act, 1974, section 21(1), cited Sutherland, (1986) 1 *International Journal of Estuarine and Coastal Law* 22. See also e.g. The Gambia Fisheries Act 1991, section 58; Antigua and Barbuda Fisheries Act 1983, section 34(1).

its EEZ without stowing fishing gear, violation of which raised the presumption that illegal fishing had been taking place and that all fish on board had been caught illegally.[21] The Sri Lanka Fisheries Ordinance,[22] Section 23(1) utilised a similar technique:

"For the purposes of this Ordinance it shall be presumed until the contrary is proved:

(a) that where any fish is found at any time in any fishing boat at any place in Ceylon or in Ceylon waters, such fish was taken:

(i) by the owner of that boat; or

(ii) by the person for the time being in the boat and in charge thereof;

(b) that any fish which is not taken for sport, scientific research, or for any other prescribed purpose, is taken for profit."

And in any prosecution for a contravention of any of the substantive provisions of the Ordinance (s. 14) in respect of any fish, it is rebuttably presumed that such fish were caught in Ceylon waters (s. 26(2)).

More controversial is the legislation of the Seychelles,[23] India[24]and Malaysia,[25] under which fish found'on board a vessel within jurisdictional waters are presumed (without direct evidence of an offence) to have been *caught* within those waters. This approach gives rise to some unease among parliamentary draftsmen because the presumptions are being used to impose liability in situations where the defendant has not been found guilty of any other conduct which would otherwise constitute a criminal offence. Similar unease is felt at a parallel device of the creation of a very broad criminal offence with a spread of defences, for this too imposes the burden of proof on the defendant to prove him/her self innocent by coming within

---

[21] E.g. Solomon Islands Fisheries Act 1974 and Regulation 11 of Fisheries (Foreign Fishing Vessels) Regulations, 1974 1981, ibid.

[22] Cap 212, (as amended).

[23] 1979 Control of Foreign Fishing Vessels Decree of the Seychelles, section 15(1), however section 15(2) allows this presumption to be rebutted if a radio call is made by the foreign fishing vessel before it enters the EEZ indicating that it is exercising its right of free navigation through the EEZ and notifying its proposed route and the quantity of fish aboard. This latter information is not required by the 1982 UN Convention from vessels navigating the EEZ.

[24] *Regional Compendium of Fisheries Legislation (Indian Ocean),* FAO Legislative Studies, 1987.

[25] *Regional Compendium of Fisheries Legislation (Indian Ocean),* FAO Legislative Studies, 1987, p. 15.

the terms of one of the specified defences. Such an approach is taken by the Australian Fisheries Legislation:[26]

> "A person must not, at a place in the Australian Fishing Zone, have in his or her possession or in his or her charge a foreign boat equipped with nets, traps or other equipment for fishing unless..."

The Act envisages a number of defences to this very broad offence including the possession of a licence authorising the use of the boat in that area or that the nets on the boat were stowed and secured and the boat was travelling through the zone for specified purposes. Such purposes include the fact that the boat was travelling "from a point outside the AFZ to another point outside the AFZ by the shortest practicable route".[27] In other words the burden of proof is passed in such a case to the master to prove that his vessel was acting legally - even to the extent that it was exercising a right of passage guaranteed by international law. It is highly debatable whether an individual can legitimately be required to prove that he is exercising a right conferred by international law, still more controversial is the requirement of proving the "shortest practicable route" as this is not required by international law.[28]

While it is obvious that considerable evidential difficulties are presented to coastal states in establishing breaches of its fisheries laws in extended maritime zones, state practice seems to support the view that once *aprima facie* offence has been detected, then reversals of the normal burden of proof are quite legitimate to assist conviction - where the burden is placed on the defendant to use the information which he legitimately has at his disposal to demonstrate his innocence. A small minority of states go rather further than this to rebut the presumption of innocence entirely by an excessively wide definition of an offence (as in the Australian case) or by imposing a criminal presumption on fact situations (such as the possession of fish) which are not in themselves criminal. Even more wide ranging presumptions are to be found in a small minority of offences where the burden of proof is put on a fisher apprehended within the

---

[26] Originally section 13AB of the 1952 Fisheries Act. Now see Division 5 of the 1991 Fisheries Management Act (No. 162), section 101.

[27] Originally section 13AB(3)(b)(iii), discussed in W.R Edeson, "The Effect of Australian Maritime Legislation and Legal Constraints on Enforcement", p. 29. The 1991 Act, section 101 is in essence the same.

[28] See now the Maritime Legislation Amendment Act, 1994, No. 20 of 1994 (Commonwealth) which amends the Seas and Submerged Lands Act, 1973, and introduces an exclusive economic zone.

EEZ to prove that he was acting "in accordance with international law". The Tongan legislation provides that where there are gaps in the master's log - these may be *filled* by the enforcement officer and will be used as presumptive evidence that an offence has been committed.

4. Domestic Constitutional Issues of Reversing the Burden of Proof

State practice reveals a wide spread of situations where the burden of proof is reversed in natural resources legislation. This section will examine a spread of examples and consider whether it is possible to extract any principles from the practice discussed. In particular it is concerned with discerning whether courts have found national laws reversing the burden of proof objectionable on any grounds such as violations of constitutional or human rights, or of fundamental principles of justice.

Although the imposition of strict or absolute liability is a distinct issue in criminal law and procedure, some of the approaches developed by the courts in relation to those types of offences appear also to be applicable to the burden of proof issue. The policy issues involved are also similar.

A large number of examples can be drawn particularly from forestry legislation, from both common law and civil law countries. For example, under the 1927 Indian Forest Act, in any proceedings taken under the Act, or in consequence of the Act, and where a question arises as to the ownership of forestry produce, it is presumed that the produce is the property of the government until the contrary is proved.[29] However in practice the Indian Courts appear to take the view that such a presumption is only an evidentiary rule and the accused cannot be convicted on the basis of the presumption alone.[30] While this rule eases somewhat the task of apprehending illegal tree fellers it has also been seen to be a major disincentive to private tree growing.

---

[29] The Indian Forestry Act, 1927, section 69.

[30] For example, the Hondol Forest Rules under which such a presumption is only an evidential rule and the accused cannot be convicted on the basis of the presumption alone *Sideswam-Panda v State* AIR 1954 0rissa 16 at 16. See further Bedva's *Law of Forests, 5 th* dition 1989, Law Book Co.-Allahabad.

In the Republic of Guinea, with a civil law tradition, a number of presumptions are used to aid the apprehension of poachers under forest wildlife law. Under Article 136 of the 1990 Law, which utilises the *"inscription de faux"* procedure, once a written report of an alleged violation is made by an authorised agent, the onus of proof is passed to the defendant to prove the contrary.[31] Similarly in assessing an allegation that there has been a breach of the proscription on approaching, chasing or shooting at game, it is an offence to have an undischarged firearm in your possession or vehicle, or to have a discharged firearm or to be within fifteen metres of a vehicle in which such a firearm is carried.[32]

The more serious the threat is perceived to be, the more draconian the response may be. Under Jordanian Law, in an inheritance from the colonial era, to address the problem of fires in forests, the local community was deemed to be responsible for forest fires for which the culprit was not found.[33] In the 1993 Sarawak Forest legislation, passed to address the problem of indigenous people barricading forest roads to hinder the extraction of timber from traditional forest areas, any person found within a designated area of a barricade is [rebuttably] deemed to have built the barricade and thus to have committed an imprisonable offence.[34]

In industrial societies strong public demands for strong food and drugs safety legislation, and latterly for a strong response to the problems of environmental pollution, have also given rise to a spread of public welfare legislation which often imposes strict and absolute liability. The offences created by this legislation are sometimes termed regulatory or "quasi-criminal" as the legislation regulates the way in which a normally lawful activity is conducted.[35] Here the

---

[31] Republic of Guinea, Ordonnance No. 007/PRG/SGG/90 du 15 février 1990 portant Code de la protection de la faune sauvage et réglementation de la chasse (as amended), Article 136: Les délits en matière de chasse ou de protection de la faune sont prouvés soit par procès-verbaux, soit par témoins à défaut où en cas d'insuffisance de procès-verbaux. Ils font foi jusqu'à inscrition de faux. Dans le cas où les procès-verbaux sont dressés par des agents assermentés sur le rapport d'un indicateur, ils ne font foi que jusqu'à preuve du contraire. For discussion see M.A.Mekouar, *Report intérimaire: Mise en oeuvre du code de la protection de la faune et réglementation de la chasse,* UN FAO, August 1993.

[32] Article 138, *ibid.* Article 139 also makes it an offence for a known hunter to be found close to a protected area with a gun or with a torch or other light source adapted to be worn on the head.

[33] Per M.A.Mekouar, Mission Report on Forestry Legislation in Jordan: Conclusions and Recommendations. December, 1993 (GCP/TNT/539/ITA).

[34] 1993 Sarawak Forest Law.

[35] "Regulatory Offences" were described by the British Law Commission in 1978 to be "statutory offences which are considered necessary in a highly organised society but conviction of which is not generally regarded as always involving moral turpitude on the part of the individual offender. Examples of such offences may be found in legislation protecting health and safety in employment, or safeguarding the physical environment. Law Commission, *Report on the Mental Element in Crime* (LAW COM., No. 89), 1978, p. 41.

legislator has created offences of discharging prohibited wastes or causing pollution which have none of the traditional requirements of *mens rea* or guilty knowledge.

In the first instance there was some reluctance in common law courts to interpret acts of parliament in a way which eliminated the intention to commit an offence - regarded as an important safeguard in criminal procedure. However, in *Alphacell* v *Woodward*[36] the House of Lords - the highest court in the United Kingdom - in a decision influential throughout the common law world, held that the offence of "causing poisonous, noxious or polluting matter to enter a stream"[37] did not require a guilty intent. Lord Wilberforce, supported by the other members of the House, said: "In my opinion, complication of this case by infusion of the concept of *mens rea*, and its exceptions, is unnecessary and undesirable." Lord Salmon was even more explicit in his discussion of the policy issues involved:

"If... it were held to be the law that no conviction could be obtained under the ... Act unless the prosecution could discharge the often impossible onus of proving that the pollution was caused intentionally or negligently, a great deal of pollution would go unpunished and undeterred to the relief of many riparian factory owners. As a result, many rivers which are now filthy would become filthier still and many rivers which are now clean would lose their cleanliness. The legislation no doubt recognised that as a matter of public policy this would be most unfortunate.[38]

Regulatory offences of this kind, which are accepted as necessary infringements of normal evidentiary rules for wider social and economic reasons have come to be interpreted strictly by the courts throughout the common law world. The major limitation on their use was initially the principle that the penalties for offences committed under such legislation are purely financial - they are not punishable by imprisonment or (in the terminology of the 1982 UN Convention) "any other form of corporal punishment". As the concept has become more widely accepted and penalties for environmental and similar offences have escalated, this distinction appears to have been abandoned. Indeed in a number of countries, imprisonment for the directors of companies committing such offences has specifically been introduced to increase

---

[36] [1972] 2 All ER 475.

[37] Contrary to section 2(1) of the Rivers (Prevention of Pollution) Act, 1951.

[38] [1972] 2 All ER 475 at 491-

the deterrent effects of convictions.[39] The policy statement in the U.S. Sentencing Guidelines specifically provide that "[If] national security, public health or safety was significantly endangered, the court may increase the sentence above the guideline range to reflect the nature and circumstances of the offense."[40]

This view of such regulatory offences as "quasi-criminal" and therefore not requiring such rigorous procedural safeguards has even been maintained in those common law countries with entrenched human rights provisions in their constitutions, such as Canada. The Canadian Charter of Rights and Freedoms guarantees certain procedural safeguards including the presumption of innocence.[41] Nevertheless the Canadian Supreme Court has been prepared to uphold strict liability offences, as well as reverse,burdens of proof. In *R* v *Wholesale Travel Group Inc.*[42] Cory J. said in the Canadian Supreme Court:

> "constitutional standards developed in the criminal context cannot be applied automatically to regulatory offences ... Practically speaking it would be impossible for the government to monitor adequately every industry so as to be able to prove actual intent or *mens rea* in each case. Thus, the creation of strict liability offences ... does not violate section 7 of the Charter".

In this case however there was a strong minority dissent,[43] led by the Chief Justice, who argued that the label "'regulatory' loses much of its relevance when one considers that an accused faces up to five years imprisonment upon conviction."[44] However, the majority of the Supreme Court appeared to feel that there was no violation even in such a situation.

---

[39] See for example US legislation, such as the Clean Air Act, 42 U.S.C. § 7401 et seq.; Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. See further Liability of Corporate Officers and Directors, pp. 316-319.

[40] Ibid., citing Guidelines Manual § 5K2.14; 18 U.S.C. § 3553(B).

[41] 1982 Constitution Act, Part 1, Canadian Charter of Rights and Freedoms. Section 7 Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.

Section 11 Any person charged with an offence has the right...

(d) to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal;...

(g) not to be found guilty on account of any act or omission unless, at the time of the act or omission, it constituted an offence under Canadian law or international law or was criminal according to the general principles of law recognised by the community of nations."

[42] (1991) 67 CCC (3rd) 193.

[43] A minority of four (Lamer C.J.C., La Forest, Sopinka and McLachlin JJ.) in a court of nine.

[44] At p. 189.

The Wholesale Travel Group Case is of particular interest for this discussion because the act under consideration included a provision placing a reverse onus of proof on the defendant to establish (on a balance of probabilities) the available defences (in this case "due diligence"). A similarly strong minority view was also voiced in this case by Lamer CJ with the support of three of his colleagues that it was contrary to the presumption of innocence provisions of the Charter (s. 11 (d)) for a regulatory statute to include such a provision on the basis that the presumption of innocence guarantee is clearly a principle of fundamental justice.[45] A majority of the court, however, considered that the fundamental importance of the legislative objective in the case was proportional to the effects of such a reverse onus and thus it did not violate section 11(d).[46]

Other common law jurisdictions seem likely to adopt a broadly similar approach,[47] especially if they adhere to the strict doctrine of the supremacy of Parliament. For example, in the UK the 1992 Aggravated Vehicle-Taking Act specifically reverses the burden of proof by raising a presumption that where a person commits a "taking and driving" offence (under section 12 of the 1968 Theft Act) and the vehicle is shown to have been driven dangerously, and or to have caused an accident or damage, that person is deemed to have committed the additional offence of Aggravated Vehicle-Taking unless he/she can prove to the contrary.[48] The English Courts have not to date raised serious questions over its application.

However there is a limited jurisprudence on the issue of the presumption of innocence in "strictly criminal" cases in other common law countries such as Hong Kong and New Zealand, which have adopted Bills of Rights Acts. In the Hong Kong Case of *Attorney-General of Hong Kong* v *Lee Kong-Kut*[49] the Judicial Committee of the Privy Council had to consider the application of the 1991 Hong Kong Bill of Rights Ordinance, section 3(2) of which provided that all pre-existing legislation that did not admit of a construction consistent with the ordinance was, to the extent of the inconsistency, repealed. Section 8 contains the Hong Kong Bill of Rights, Article II (1) of which provides that "Everyone charged with a criminal offence

---

[45] At p. 197. "The objective [of ensuring those guilty ... are convicted] is of sufficient importance to warrant overriding the right guaranteed by section 11(d) of the Charter." per lacobucci J., Gonthierand Stevenson JJ. concurring; per Cory J. L' Heureaux-Dubé J. separate concurring opinions.

[46] Per lacobucci J., Gonthier and Stephenson JJ concurring.

[47] See e.g. *McKnight v NZBiogas Industries Ltd* [1994] 2 NZLR 664. [48] 1992 Aggravated Vehicle Taking Act, 1992, 11, see section 1.

[49] [1993] A.C. 951 (Privy Council).

shall have the right to be presumed innocent until proved guilty according to law." The accused in this case had been charged with two offences. The first concerned the charge of having possession of cash reasonably suspected of having been stolen or unlawfully obtained.[50] The second related to assisting another to retain the benefits of drug trafficking.[51] The Privy Council drew a distinction between the two offences. It found that the first offence violated the provision of the Bill of Rights Ordinance relating to the presumption of innocence in that it reduced the burden of proof on the prosecution to proving possession by the defendant and facts from which a reasonable suspicion could be inferred - matters of mere formality in most cases.[52] Indeed the inability to give a satisfactory explanation for possession was not a special defence but the most important element of the offence. However the second offence required the prosecution to prove that the defendant had been involved in an arrangement relating to another person's proceeds of drug trafficking while knowing or having reasonable grounds to believe that that person was involved with such trafficking. Although there were specific defences available which put the onus on the defendant, these the Privy Council thought were justifiable in the circumstances of the war against drug trafficking.

A similar approach has been taken by the New Zealand Court of Appeal, even though in New Zealand the 1990 Bill of Rights Act is not entrenched in a way similar to the Canadian Charter or the Hong Kong Bill. The New Zealand Act requires that wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in the Bill, that meaning shall be preferred to any other.[53] Section 25(c) of the 1990 Act, which contains a similar provision to those already considered, stipulates that any person charged with an offence has, as a rninimum right, the right to be presumed innocent until proven guilty. In *R* v *Rangi,* the New Zealand Court of Appeal found that the presumption of innocence provisions required that in interpreting a criminal statute which made it an offence to have a knife in a public place "without lawful authority or reasonable excuse" the onus of proof was not on the defendant to show such excuse but upon the prosecution.

---

[50] Contrary to section 30 of the Hong Kong Summary Offences Ordinance which provides for imprisonment for a fine of $1,000 or imprisonment for three months.

[51] Contrary to section 25{l)(a) of the Hong Kong Trafficking (Recovery of Proceeds) Ordinance, reported to be modelled on the United Kingdom 1986 Drug Trafficking Act.

[52] Lord Woolf delivering the judgment, at p. 973.

[53] Section 6 provides that wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in the Bill, that meaning shall be preferred to any other meaning.

The fact remains however that both Lee Kwong-Kut and Rangi concern "strictly criminal" rather than regulatory offences, where a different approach may well be taken. Nevertheless, in two 1994 cases involving environment and fisheries issues, New Zealand Courts appear to have had little hesitation in upholding convictions on offences on strict liability.[54]

Although the issue of reversing the onus of proof has been identified as a constitutional/human rights issue in common law jurisdictions such as Canada, Hong Kong and New Zealand, the jurisprudence on the issue is not only limited, but also at a very early stage of development. On the evidence available it is hard to find any cases where "regulatory legislation" which imposes harsh proof requirements on the accused whether by means of strict or absolute liability offences - or by reversing the burden of proof - has been ruled unconstitutional. However this does not mean that in the future the approaches developed in relation to "strictly criminal" cases may not be applied by the same courts to draconian "regulatory" offences.

The Papua New Guinea Supreme Court had to deal with a reverse onus of proof case in *Constitutional Reference No. 3 of 1978; Re Inter-Group Fighting Act, 1977.*[55] In this case section 10 (3) of the Inter-Group Fighting Act provided that "A person charged with an offence against this section is guilty of that offence unless he proves to the satisfaction of the Court, that he did not take part in the actual fighting." The Constitution of Papua New Guinea provides for a presumption of innocence in section 37(4) in the following terms:

> "A person charged with an offence: (a) shall be presumed innocent until proved guilty according to law, but a law may place upon a person charged with an offence the burden of proving particular facts which are, or would with the exercise of reasonable care be, peculiarly within bis knowledge"

Much of the discussion concerned the question whether the participation in an inter-group fight was, within the language of the Constitution, "peculiarly" within the knowledge of the person charged. By a majority, it was found that the provision violated the

---

54 McKnight v NZ Biogas Industries Ltd. [1994] 2 NZLR 664 and *Ministry of Agriculture and Fisheries v Pranglev and MAFF v Folwell* [1994] 1 NZLR 416.

55 [1978] PNGLR 421.

constitutional presumption of innocence, and further that the provision could not be severed so as to retain the rest of the section. Saldanha J, one of the majority, put the conclusion in the following terms:

> "It might be thought that as all that sub-section 11(3) docs is to provide a bonus by enabling an accused person to secure his acquittal if he can prove that he did not take part in the actual fighting that there has been no serious erosion of the right to the protection of the law. I am of the opinion however that it is a bad precedent, the thin end of the wedge. The Supreme Court has been appointed the guardian of the people's fundamental rights and freedoms as defined in the Constitution. It should be vigilant to ensure that there is not the slightest infringement of any of these rights and freedoms." (p. 431)

Although it did not determine the matter conclusively for the purposes of the meaning of the term in the Papua New Guinea constitution, ii was recognized that the term "peculiarly wimin the knowledge of the accused had acquired a certain meaning in the common law, referring to such circumstance as requiring the accused to prove that he or she possessed a licence etc.

The decision is a straightforward illustration of what can be expected in countries with a system of constitutionally guaranteed fundamental rights which include the presumption of innocence.

More recently, in the Republic of South Africa, the Constitutional Court has had to deal with a number of cases in which reverse onus provisions were under consideration, mostly being clauses enacted in an earlier era of South Africa's history, though since the enactment of its new constitution, with its presumption of innocence provision, these clauses have been found to be unacceptable.

In the case of *Scagel! v. Attorney General of the Western Cape and others*[56], the Constitutional Court had to consider a number of provisions which reversed the burden of proof. One of the provisions under consideration read:

> "If any policeman authorized to enter any place is wilfully prevented from or obstructed or delayed in entering such place, the person in control or in charge of such place shall on being charged with permitting the playing of any gambling game, be presumed, until the contrary is proved, to have permitted the playing of such gambling game at such place".

The Court had no problem in concluding that "this provision imposes a legal burden on the accused. Once a certain set of facts have been established, an element of the offence is presumed to have been proved and the accused is required to produce evidence on a preponderance of probabilities to rebut that presumption. In a series of cases, this Court has held that provisions of this nature, which impose a legal burden on the accused which could result in the accused being convicted of an offence despite the existence of a reasonable doubt as to the guilt of the accused, are in breach of section 25(3)(c) on the ground that they constitute a breach of the presumption of innocence."

In another recent decision of the Constitutional Court in South Africa, there have been *obiter dicta* suggesting that in fact the crucial question is whether there has been a fair trial. The case also raised in *obiter dicta* the question whether there was an exception in the case of so called regulatory offences.

The case in question is the *State v. Cotzee, Cotzee, De Bruin, and Marais*[57]. The Court had to consider two deeming provisions. The first stated:

> "If at criminal proceedings at which an accused is charged with an offence of which a false representation is an element, it is proved that a false representation was made by the accused, he shall be deemed, unless the contrary is proved, to have made such representation knowing it to be false".

---

[56] (1996)2 SACR 579(CC).

[57] 1997 (3) SA 527 (CC)

This was found to infringe the presumption of innocence in the South African Constitution (section 25(3)(c)), nor could it be saved on the basis that in addition to being a law of general application, it was a law which was reasonable, and justifiable in an open and democratic society based on freedom and equality and necessity.

Another section considered in that case was designed to facilitate the criminal prosecution of corporations, their directors, and servants and members of associations. The clause read:

> "When an offence has been committed, whether by the performance of any act or by the failure to perform any act, for which any corporate body is or was liable to prosecution, any person who was at the time of the commission of the offence, a director or servant of the corporate body shall be deemed guilty of the said offence, unless it is proved that he did not take part in the commission of the offence and that he could not have prevented it...".

In the words of Langa J. (p. 24):

> "In the final analysis, whether [the section] creates a form of statutory **liability,** with a shift in onus in respect of a part thereof or a new crime with a special defence, the result is the same. The objection which is fundamental to the reversal of onus in this case is that the provision offends against the principle of **a** fair **trial** which requires that the prosecution establish its case without assistance from the accused. In either event, the right of the accused to be presumed innocent is breached."

It was also argued that the statutory provision in question, being "regulatory" **in nature,** was an exception to the presumption of innocence. While it was held that the effect of the provision went well beyond what might be "regulatory", considerable doubt was cast on whether it would have mattered if it had been regulatory. Again in the words of Langa J., at paragraph 43:

> "Further, I am by no means persuaded that the mere categorization of an offence as regulatory would necessarily have the effect of a lower standard of scrutiny as contended for by the Government. The presumption of innocence is breached whenever the effect of a reverse onus provision is such that the accused could be convicted despite the existence of a reasonable doubt as to guilt or innocence"

In the South African Constitution, the presumption of innocence is one of several protections listed under the general banner of a right to a fair trial, whereas in most situations the presumption of innocence and the right to a fair trial are listed as separate rights.. However, in *the Coetzee case*, there were *obiter dicta* to the effect that the mere fact that you might be found guilty where there remained a reasonable doubt as to guilt was in itself enough to infringe the right to a fair trial.

The case as a whole is a lengthy consideration of reverse onus of proof provisions, and while it turns on the wording of the South African Constitution to some extent, it is a strong reminder of the importance of the presumption of innocence.

5. International Law Implications

Under customary international law, states have a general obligation to treat aliens in a manner which coincides with international law standards. Although some controversy still exists as to whether these standards simply require the non-discriminatory application of national standards or are objective international *minimum* standards, the substantial case law in this area seems to support the view that a state's treatment of aliens must meet certain objective basic standards; reparations have been awarded for denial of justice in even in situations where aliens have been treated on a par with nationals. However, the content of the standards in these cases is inevitably very basic - access to the courts, basic humanitarian conditions in prison, proper standards of judicial administration. For the obvious reason that for a state to take an international claim to judicial settlement there must be a substantial grievance, none of the case law determined under customary law relates to the more sophisticated issues of burdens of proof before national courts. This level of "fine tuning" of criminal procedure has been largely

subsumed by the development of international conventional law relating to the protection of civil and political rights.

The development of international instruments for the protection of human rights has added another dimension to the debate as to the way in which national legal systems impose national criminal procedures and sanctions on foreign nations. The Universal Declaration of Human Rights, Article 11(1) provides that:

> "Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence."

Similar provisions are to be found in Article 14 of the International Covenant on Civil and Political Rights,[58] and in the regional conventions such as the European Convention on Human Rights (1CCC), Article 6(2)[59] and the American Convention on Human Rights,[60] the African Charter on Human Rights and Peoples' Rights.[61]

Although there is an extensive and growing case law and practice in the application of some of these conventions - particularly the ICCC and the ECHR - the jurisprudence which has accumulated on the issue of presumption of innocence tends to concentrate on the circumstances of the trial itself. The European Court has summarised this as follows:

> "Paragraph 2 embodies the principle of the presumption of innocence. It requires, *inter alia,* mat when carrying out their duties, the members of a court should not start with the preconceived idea mat the accused has committed the offence charged; the burden of proof is on the prosecution, and any doubt should benefit the accused. It also follows that it is for the prosecution to inform the accused of the case that will

---

[58] Article 14(1) provides: "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law."

[59] Article 6(2) provides: "Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law."

[60] Article 8(2) provides in part "Every person accused of a serious crime has the right to be presumed innocent so long as his guilt has not been proven according to law."

[61] Article 7(1) as relevant provides: "Every individual shall have the right to have his [sic] cause heard. This comprises:... (b) the right to be presumed innocent until proved guilty by a competent court tribunal."

be made *against* him, so that he may prepare and present his defence accordingly, and to adduce evidence sufficient to convict him."[62]

However, once the Court moves to consider questions of presumptions, it appears to adopt a more pragmatic approach. In the *Salabiaku Case*[63] the applicant was convicted not merely for the possession of unlawfully imported prohibited goods but also for the offence of smuggling such goods on the basis that a legal presumption of accountability was inferred from their possession. As van Dijk and van Hoof point out: "The Court stressed the relative nature of the distinction between presumption of accountability and presumption of guilt. Presumptions of law and fact operate in every legal system; this is not as such contrary to the Convention. The contracting states are, however, under the obligation to remain within reasonable limits in this respect as regards their criminal law provisions, taking into account the importance of what is at stake, and to maintain the rights of the defence".[64] Despite the fact that the use of the presumption that the goods had been smuggled resulted in the defendant being convicted of an imprisonable offence, this did not constitute breach of the Convention requirements that the defendant be presumed innocent until proved guilty. However the Court continued to say that Article 6, paragraph 2 does not merely lay down a guarantee to be respected by the courts in the conduct of legal proceedings but equally by the legislature, and the words "according to law" are not to be construed exclusively with reference to domestic law but contain a reference to the fundamental principle of the rule of law.[65]

It is difficult to develop too wide an interpretation on such limited jurisprudence. It is clear that as a matter of human rights protection the use of presumptions to shift the burden of proof in criminal cases is not *per se* a breach of the presumption of innocence protected by the treaties. However, the *Salabiaku case* does suggest that there are some limits to the use of what the European Court calls the "presumption of accountability". These limits represent limits on the freedom of manoeuvre of national legislatures, rather than simply the judiciary, and seem to

---

[62] Judgment of 6 Dec. 1988, *Barbera, Messegué and Jabardo.* A. 146 (1989), p. 33. cited Van Dyke and Van Hoof, *The Theory and Practice of the European Convention on Human Rights* (2 ed., 1990), p. 341.

[63] *Salibiaku* v *France* (1988) 13 *European Human Rights* Reports 127.

[64] *Ibid.* Also Van Dyke and Van Hoof, *ibid.*

[65] *Ibid.*

include a concept of proportionality, as well as certain base line "rule of law standards" which have yet to emerge.

6. Conclusions

The examination of state practice through legislation and case law raises as many problems as it solves. The case law on the human rights aspects of the use of presumptions of guilt whether emanating from national or international courts is still developing and as yet unrefined, Despite the trenchant distinction drawn in some cases between quasi-criminal/regulatory offences and "true" criminal offences, it is not clear that the dividing line is so clear. As the Canadian Chief Justice pointed out in the *Wholesale Travel Group* case, the distinction becomes less significant if regulatory offences carry substantial periods of imprisonment. The same may even be said of fines of such large amounts as to bankrupt even medium sized undertakings. Although the main target of regulatory offences may be companies, there should be an issue of balance or reasonableness involved even in proceedings of this nature.

Nevertheless, having said this, three aspects of the fisheries legislative practice in relation to burden of proof seem to give cause for concern. The first relates to situations where a presumption of illegality is raised even though the party is engaged in an activity which is not *prima facie* illegal. An example of this would be the presumption that all fish in a vessel within the EEZ are deemed to have been caught within that EEZ, as under section 15(1) of the Seychelles Act.[66]

The second, typified by the Australian legislation, relates to the creation of a wide ranging offence - again for activities which are not in themselves *prima facie* illegal (the possession of fishing equipment by a foreign vessel within the AFZ). Here their primary offence is subject to a series of defences which effectively place the burden of proof upon the defendant to prove him or herself innocent.

---

[66] NB footnote 23 above for the situation in which this presumption can be rebutted.

The third relates to situations where the legislation obliges the defendant to prove that his or her activities are in accordance with international law. This is one of the defences available under the Australian legislation {albeit in very restricted circumstances) and it has appeared in draft legislative proposals elsewhere. While all legal systems incorporate certain presumptions - the basic evidence of justification of the presumption is that it requires the defendant to show something which is easier for him to prove than the prosecution. This is not the case where he may be required to prove *what* the law is, particularly in relation to international law. To require this would run counter to the basic responsibility of the court to determine what the law is and to apply it. To require proof of what the law is seems to confuse international law with foreign law, for in most legal systems, international law is seen as part of the local or national law, while it is foreign law which has to be proved in cases where it is relevant.

While most legal systems appear to have accepted the concept of the strict liability regulatory offence, there is a distinction between such offences and a reversal of the normal burden of proof. Regulatory offences are traditionally utilised in circumstances where the person embarking on the activities is aware of the risks involved whether these be the health and safety implications of employing a work force or running an chemical factory. The activity itself carries risks - such as an employee being injured or a polluting leak occurring. It is obviously arguable whether fishing in international waters is a similar kind of activity.

Further, the strict liability offence itself proscribes the results - leaving issues of *mens rea*, negligence or recklessness etc. to be argued. And under what has been called the "half way house" approach a range of defences will be available.[67]

There is a distinction between such offences and situations where the burden of proof is imposed virtually entirely on the defendant, in that all the prosecution has to show is that the defendant is engaged in an activity - possessing fish or traversing the EEZ - which are intrinsically perfectly legal. Such a provision seems likely to fall foul of the developing jurisprudence relating to protection of civil rights in that all the cases stress the issue of balance of ends against means. While the 1982 UN Convention itself prohibits imprisonment and corporal punishment, very high fines and confiscation of assets can and often do result from

---

[67] *Civil Aviation* v. *McKenzie* [1983]NZLR78.

conviction. It seems unlikely that such legislation would be upheld, were it to be subjected to review by the courts examined here which are developing approaches to the presumption of innocence. However, where provision is made for the protection of fundamental human rights, including the presumption of innocence, or perhaps merely a right to a fair trial, there is a clear tendency against permitting any reversal of the burden of proof except in very limited situations.

Even if new fisheries legislation may, for technical jurisdictional reasons, be currently outside the ambit of the international and regional human rights tribunals, good drafting practice at the very least should coincide with what seems both fair and reasonable according to that emerging jurisprudence.

FAO LEGISLATIVE STUDIES

1. Wildlife and national park legislation in Asia, I97I (E*)
2. Wildlife and national park legislation in Latin America, I97I (E* S*)
3. Vicuña conservation legislation, I97I (E* S*)
4. Legal systems for environment protection: Japan, Sweden, United States, I972 (E*)
5. Agrarian law and judicial systems, I975 (E F S*)
6. Agricultural credit legislation in selected developing countries, I974 (E)
7. An outline of food law, I975 (E F S)
8. Legislación de aguas en América Central, Caribe y México - Vol. I, I975 (S)
9. A legal and institutional framework for natural resources management, I975 (E S)
10. Water law in selected European countries (Belgium, England and Wales, France, Israel, Italy, Spain, Turkey) - Vol. I, I975 (E F S)
11. Fundamentos teóricos para una legislación tributaria en el sector agropecuario, 1975 (S)
12. International food standards and national laws, 1976 (E/F*)
13. Derecho agrario y desarrollo agrícola: estado actual y perspectivas en América Latina, 1976 (S)
14. Legal and institutional responses to growing water demand, I977 (E F S)
15. Systematic index of international water resources treaties, declarations, acts and cases by basin -Vol. I, I978 (E/F/S)
16. Seed legislation, 1980 (E F S)
17. Water law in selected African countries, 1979 (E F S)
18. Reforma agraria y desarrollo rural integrado, 1979 (S)
19. Water legislation in South American countries, 1983 (E FS)
20. Legislation on wildlife, hunting and protected areas in some European countries, I980 (E F S)

21 Rev. 3. Coastal state requirements for foreign fishing, 1988 (E F S)

21 Rev. 4. Coastal state requirements for foreign fishing, 1993(E)

22. Agricultural insurance legislation, 1981 (E S)
23. The law of international water resources, 1980 (EFS)
24. Irrigation users' organizations in the legislation and administration of certain Latin American countries, 1983 (ES)
25. Legislation on wildlife and protected areas in Africa, 1984 (E F)
26. The UN Convention on the Law of the Sea: impacts on tuna regulation, 1982 (E F)
27. Regional compendium of fisheries legislation - West Africa (CECAF Region), 1983 (E/F*)
28. Plant protection legislation, 1984 (E F S)
29. Legislation on foods for infants and small children, 1983 (E*)
30. Water law in selected European countries (Cyprus, Finland, the Netherlands, Union of Soviet Socialist Republics, Yugoslavia) - Vol. II, 1983 (E)
31. The role of legislation in land use planning for developing countries, 1985 (E)
32. Agricultural census legislation, 1984 (E)
33. Legislation on productivity in agriculture: a comparative outline, 1985 (E F S)
34. Systematic index of international water resources treaties, declarations, acts and cases by basin -Vol. Il, I984 (E/F/S)
35. Regional compendium of fisheries legislation (Western Pacific Region) - Vols. I and II, 1984 (E)
36. Legislation controlling the international beef and veal trade, 1985 (E F S)
37. La législation forestière au Cap-Vert, en Ethiopie, en Gambie, au Mali et en Mauritanie, au Niger, au Rwanda et au Sénégal, 1986 (F)
38. The environmental impact of economic incentives for agricultural production: a comparative law study, 1990 (E F S)
39. Propiedad, tenencia y redistribución de tierras en la legislación de América Central y México, 1986 (S)
40. International groundwater resources law, 1986 (E F S)
41. Land tenure systems and forest policy, 1987 (E F)
42. Regional compendium of fisheries legislation (Indian Ocean Region) - Vols. I and II, 1987 (E)
43. Pesticide labelling legislation, 1988 (E F S)
44. La réforme du droit de la terre dans certains pays d'Afrique francophone, 1987 (F)
45. Legal aspects of international joint ventures in agriculture, 1990 (E)
46. The freshwater-maritime interface: legal and institutional aspects, 1990 (E)
47. The regulation of driftnet fishing on the high seas: legal issues, 1991 (E F)
48. Les périmètres irrigués en droit comparé africain (Madagascar, Maroc, Niger, Sénégal, Tunisie), 1992(F)
49. Analyse préliminaire de certains textes législatifs régissant l'aquaculture, 1993 (F S)
50. Treaties concerning the non-navigational uses of international watercourses - Europe, 1993 (E/F/S)
51. Pesticide registration legislation, 1995 (E/F)
52. Preparating national regulations for water resources management, 1994 (E)
53. Evaluation des impacts sur l'environnement pour un développement rural durable: étude juridique, 1994 (F)
54. Legislation governing food control and quality certification - The authorities and procedures, 1995 (E/F)
55. Treaties concerning the non-navigational uses of international watercourses - Asia, 1995 (E/F)
56. Tendances d'évolution des législations agrofroncières en Afrique francophone, 1996 (F)
57. Coastal State requirements for foreign fishing, 1996 (E)
58. Readings in African customary water law, 1996 (E/F)
59. Cadre juridique de la sécurité alimentaire, 1996 (F)

60. Le foncier-environnement - Fondements juridico-institutionnels pour une gestion viable des ressources naturelles renouvelables au Sahel, 1997 (F)
61. Treaties concerning the non-navigational uses of international watercourses - Africa, 1997 (E/F)
62. Nouveaux principes de législation phytosanitaire, 1997 (F)
63. The burden of proof in natural resources legislation - Some critical issues for fisheries law, 1998 (E)

ANNUAL PUBLICATION

Food and Agricultural Legislation (E/F/S) A selection of significant and illustrative current laws and regulations governing food and agriculture in FAO Member Nations.

Availability: May 1998

Ar	-	Arabic	Multil	-	Multilingual
C	-	Chinese	*		Out of print
E	-	English	* *		In preparation
F	-	French			
P	-	Portuguese			
S	-	Spanish			

The FAO Technical Papers are available through the authorized FAO Sales Agents or directly from Sales and Marketing Group, FAO, Viale delle Terme di Caracalla, 00100Rome, Italy.