To appear in Associazione di Consulenza in Diritto del Mare (ASCOMARE) Yearbook on the Law of the Sea (YLoS) Volume 2 – 'Fisheries and the Law of the Sea in the Anthropocene Era' https://ascomare.com/ylos-volume-2/

Leveraging International Fisheries Law for Maritime Security in the Anthropocene: Addressing Conflicts in Fisheries

Kyle Fawkes,[*] Julia Nakamura,[**] and Mitchell Lennan[***]

Abstract

Maritime security is the backbone of the modern blue economy and blue growth initiatives exemplar of the Anthropocene. While the security of coastal and archipelagic States regarding maritime shipping is safeguarded by the law of the sea regime and other legal frameworks, conflicts in fisheries remain poorly regulated by international law. As technological advances increase anthropogenic pressures in fisheries and the ocean, multilateral cooperation between States, directly or through international organisations, has facilitated economic prosperity while attempting to address sociocultural and environmental concerns arising from multiple uses of the marine space. These generally positive outcomes have largely come at the expense of volatile and often aggressive interactions between diverse groups in the fisheries sector inter-se and between other sectors. From an international law perspective, this chapter provides an appraisal of the existing international fisheries law that addresses conflicts in fisheries that are currently threatening maritime security, the marine environment, fishers' human rights, and ultimately the socio-economic viability of the fisheries sector. First, we clarify the meaning of such conflicts, and explain their causes and consequences, noting that these conflicts can also be exacerbated by the effects of climate change and have significant detrimental impacts on vulnerable groups within the fisheries sector. We go on to explore how international fisheries law deals with conflict in fisheries, map out applicable approaches to conflict curtailment from this legal domain, and conclude by reiterating the need for further research on other legal regimes that can complement and mutually support international fisheries law, for more effectively addressing fisheries conflict and promoting maritime security in the Anthropocene.

[*] Research Fellow at Future Earth Coasts Global Research Project, Fahrenheitstraße 6, 28359 Bremen, Germany; kyle.fawkes@futureearthcoasts.org

[**] PhD Candidate at Strathclyde Centre for Environmental Law and Governance (SCELG), University of Strathclyde Law School, Lord Hope Building, 141 St James Road, Glasgow G4 0LT, UK; julia.nakamura@strath.ac.uk. https://orcid.org/0000-0002-2558-1732

[***] Lecturer in Environmental Law, University of Aberdeen Law School, Taylor Building, Aberdeen AB24 3UB, UK; Affiliate Researcher, SCELG; mitchell.lennan@abdn.ac.uk. https://orcid.org/0000-0003-4744-4496

To appear in Associazione di Consulenza in Diritto del Mare (ASCOMARE) Yearbook on the Law of the Sea (YLoS) Volume 2 – 'Fisheries and the Law of the Sea in the Anthropocene Era' https://ascomare.com/ylos-volume-2/

Keywords: International fisheries law, Maritime security, Conflicts in fisheries, Anthropocene

1. Introduction

Maritime security is the backbone of the modern blue economy and supports blue growth initiatives. Over the past seventy years, technological advances in marine capture fisheries along with multilateral cooperation between States and international organisations have paved the way for economic growth in marine spaces around the world, fostering market variety and facilitating consumer comfort. However, these generally positive outcomes which are an exemplar of the Anthropocene[1] – the theme of this Yearbook's volume – have largely come at the expense of volatile and often aggressive interactions between diverse groups in the fisheries sector. Abhorrent scenes of violence between users of maritime space sporadically flash across media platforms,[2] providing a glimpse of the brutality in these largely veiled occurrences.

Like all conflicts, fisheries quarrels have serious consequences for national security and sustainability, impacting trade, economic growth, diplomatic trust, food security, environmental health, and livelihoods.[3] For coastal communities across the globe, especially in the global south, these conflictual interactions have more impactful negative consequences on the prosperity and effectiveness of their fishing activities.[4] The impacts, under a criminological lens, are also staggering. With a conservative methodology, Devlin and others identified that between 1990 and 2017, the Horn of Africa saw 1,549 abductions, 496 injuries, 15 sexual

[1] Shankar Sswani, Xavier Asurto, Sebastian Ferse, Marian Glaser, Lisa Campbell, Joshua E Cinner, Tracey Dalton, Lekelia D. Jenkins, Marc L. Miller, Richard Pollnac, Ismael Vaccaro, Patrick Christie, 'Marine resource management and conservation in the Anthropocene' *Environmental Conservation* 45 (2018) 192–202.

[2] Helen Wieffering 'Fights over illegal fishing lead to armed conflicts, death' *Associated Press* (31 March 2022) <https://apnews.com/article/business-environment-middle-east-fish-only-on-ap-88e59a1748ba76fdc5847cc7a44e3fa6> accessed 31 October 2022.

[3] Carolyn DuBois and Christos Zografos, 'Conflicts at Sea between Artisanal and Industrial Fishers: Inter-Sectoral Interactions and Dispute Resolution in Senegal' (2012) 36 Marine Policy 1211; Lol I. Dahlet, Amber Himes-Cornell and Rebecca Metzner, 'Fisheries Conflicts as Drivers of Social Transformation' (2021) 53 Current Opinion in Environmental Sustainability 9; Robert Pomeroy, John Parks, Karina L. Mrakovcich, Christopher LaMonica, 'Drivers and Impacts of Fisheries Scarcity, Competition, and Conflict on Maritime Security' (2016) 67 Marine Policy 94.

[4] Maarten Bavinck, 'Understanding Fisheries Conflicts in the South - A Legal Pluralist Perspective' (2005) 18 Society and Natural Resources 805; Richard B. Pollnac, 'Cooperation and Conflict between Large- and Small-Scale Fisheries: A Southeast Asian Example' in William W. Taylor, Michael G. Schechter and Lois G. Wolfson (eds), *Globalization: Effects on Fisheries Resources* (Cambridge University Press 2007).

assaults, and 406 fatalities as a direct result of fisheries conflicts.[5] Similarly, a recent review by the Associated Press found 360 occurrences of State-sponsored violent conflicts involving fishing boats with 850 foreign vessels seized in the last five years.[6] Despite their implications, conflicts in fisheries are still poorly understood. Part of the issue, as Bavinck elaborates, is that these conflicts 'are embedded in different normative perspectives, social realities, and economic concerns',[7] meaning that outbreaks are intimately tied to extraneous drivers, creating a volatile mixture of motives and consequences that cloud the reality of what actually instigated a single conflictual event. From a regulatory perspective, their management is further complicated because, while they occur at the confluence of global trade routes, seafood supply chains, and maritime security, they exist outside the purview of any single legal regime. Confrontations may also take place outside the competence of a single State, or State-to-State dynamic and instead operate through sub-State actors which then indirectly 'threaten more traditional state-based security.'[8]

It remains unclear what exactly *conflicts in fisheries* entail and whether it is adequately regulated in international law, if at all. The current chapter aims to address these two main questions. The authors investigate how international fisheries law can be leveraged to promote peaceful relationships among fishers at sea and curtail conflict between foreign fishing vessels and coastal States' national fleets, as well as between flag State fishing vessels on the high seas. After clarifying what we understand as conflicts in fisheries and explaining the different types of conflict falling under this umbrella concept, illustrating in more detail a couple of them (section 2), we map out the applicable international law provisions that relate to conflict prevention and curtailment (section 3). We then make specific recommendations on how international fisheries law can be harnessed to minimise conflicts and promote maritime security (section 4). In providing this appraisal, we seek not to prescribe laws for nations facing conflicts in fisheries, nor do we evaluate the effectiveness of relevant laws in mitigating such

[5] Tsung-Han Tai, Shih-Ming Kao and Wan-Chun Ho, 'International Soft Laws against IUU Fishing for Sustainable Marine Resources: Adoption of the Voluntary Guidelines for Flag State Performance and Challenges for Taiwan' (2020) 12 Sustainability (Switzerland); Sarah M. Glaser, Paige M. Roberts and Kaija J. Hurlburt, 'Foreign Illegal, Unreported, and Unregulated Fishing in Somali Waters Perpetuates Conflict' (2019) 6 Frontiers in Marine Science; Jessica Spijkers, Tiffany H. Morrison, Robert Blasiak, Graeme S. Cumming, Matthew Osborne, James Watson, Henrik Österblom, 'Marine Fisheries and Future Ocean Conflict' (2018) 19 Fish and Fisheries 798.

[6] Wieffering (n 2).

[7] Bavinck (n 4).

[8] Elizabeth R. Desombre, 'The Security Implications of Fisheries' (2019) 95 International Affairs 1019.

conflicts. Rather, we seek to enhance knowledge about 'conflicts in fisheries' and clarify international fisheries law's contribution to this problem, while also noting the need for and importance of an integrated analysis of relevant international legal instruments, from different regimes, which can be useful in addressing specific types of conflicts in fisheries.

2. Conflicts in Fsheries

Conflicts in fisheries can take a range of different and convoluted forms. Disputes may involve anything from verbal disagreements and complaints to property damage, gear confiscation, and vandalism all the way up to abductions, injuries and even fatalities.[9] To come to terms with how fishing relations may escalate to more severe levels of conflict, we do not differentiate the level of severity across conflicts, but we acknowledge that the different degrees of seriousness can lead to different legal responses.[10] For clarity, we categorise various conflict manifestations and forms. The nature of these confrontations is ultimately shaped by their driving forces – most apparently whether the conflict stems from the fishing activity, and thus directly relating to it ('direct fisheries conflict'), or whether the conflict is not about fisheries *per se*, but involves a fisheries player - e.g., a fisher, a fishing gear, or a fishing vessel - which impacts the fisheries sector ('indirect fisheries conflict'). Fisheries conflict may occur on land, in inland waters (such as lakes and rivers), and in marine waters. We clarify what those two categories mean, with a focus on the marine context.

The first category – direct fisheries conflicts – arises from the mere exercise of fishing activities, thus involving fishers *inter se*, and fishers *with* stakeholders engaged in ocean activities. Direct fisheries conflicts between fishers (*inter-se*) can be the result of competition for stocks, competition for fishing grounds, clashes for authority, and retaliation for gear destruction in marine waters.[11] Such types of conflict occur within and between fisheries subsectors, making more apparent the differences between the large-scale industrial fisheries

[9] Colleen Devlin, Sarah M. Glaser, Joshua E. Lambert, Ciera Villegas, 'The Causes and Consequences of Fisheries Conflict around the Horn of Africa' (2021) Journal of Peace Research.

[10] It depends on a range of factors, from the individuals involved to the consequences of the conflict, which can lead to different types of penalties to the individuals. Parallels can be drawn from the different types of enforcement approaches to illegal fishing, that is, administrative, criminal, or both. See Blaise Kuemlangan and others, 'Enforcement Approaches against Illegal Fishing in National Fisheries Legislation' (2022) Marine Policy, under review.

[11] Dyhia Belhabib, U. Rashid Sumaila and Philippe Le Billon, 'The Fisheries of Africa: Exploitation, Policy, and Maritime Security Trends' (2019) 101 Marine Policy 80 at 86.

and small-scale artisanal subsectors, the latter of which is challenged by unfair competition and marginalisation.[12] Direct fisheries conflict may also involve spats between fishers *with* other stakeholders, such as aquaculturists for the same said reasons. Such types of conflict can also arise from competition for marine space, associated with socio-environmental impacts caused in shared waters, such as in the case of oil and gas and other large-scale undertakings that may cause marine pollution and communities displacement, or with environmental conservation initiatives aiming to establish marine protected areas. This first category of conflicts encompasses the definition of 'fishery conflict' put forward by Spijkers and others, as 'disagreements that occur between two or more actors and centre on the ownership or management of marine fishery resources.'[13]

The second category -indirect fisheries conflicts - is driven by contentions that are independent of fishing activity or fisheries management, but still, involve fishers or fishing vessels. These conflicts may involve external actors, who utilise, for instance, a fishing vessel to commit a crime or an illegal act, such as an assault or to illegally transport groups of individuals to another country. They may also involve a fisher who uses fishing gear to fight against and harm an individual for theft or revenge. For instance, fishers on the Niger Delta have been known to align with organised criminal groups to support navigation and operations in piracy attacks.[14] Accidents caused by other vessels or bunkers[15] that unintentionally hit fishing vessels or gear can also raise such types of conflicts in fisheries, as well as accidents between fishing vessels and armed forces.[16] Similarly, the stress associated with facilitating illicit drug transport or human trafficking onboard fishing vessels has been shown to lead to

[12] Due to the potential and actual significant impacts caused by large-scale industrial fisheries, it is argued that this subsector should be subject to integrated environmental socio-cultural impact assessments. See Julia Nakamura, Daniela Diz and Elisa Morgera, 'International Legal Requirements for Environmental and Socio-Cultural Impact Assessment for Large-scale Industrial Fisheries' (2022) Review of European, Comparative and International Environmental Law 1.

[13] Jessica Spijkers, Andrew Merrie, Colette C. C. Wabnitz, Matthew Osborne, Malin Mobjörk, Örjan Bodin, Elizabeth R. Selig, Philippe Le Billon, Cullen S. Hendrix, Gerald G. Singh, Patrick W. Keys, Tiffany H. Morrison, 'Exploring the Future of Fishery Conflict through Narrative Scenarios' (2021) 4 One Earth 386.

[14] Ifesinachi Okafor-Yarwood, 'The Cyclical Nature of Maritime Security Threats: Illegal, Unreported, and Unregulated Fishing as a Threat to Human and National Security in the Gulf of Guinea' (2020) 13.

[15] Sam Chambers, 'Many dead as bunker tanker collides with fishing vessel off Incheon' Splash247 (4 September 2017) <https://splash247.com/many-dead-bunker-tanker-collides-fishing-vessel-off-incheon/> accessed 15 January 2023.

[16] Thomas Nyagah, James Mwangi, Larry Attree, 'Inside Kenya's War on Terror: the case of Lamu' *Saferworld: Preventing violent conflict. Building safer lives* (no date) <https://www.saferworld.org.uk/long-reads/inside-kenyaas-war-on-terror-the-case-of-lamu> accessed 31 October 2022.

violent fallout that also involves fishers.[17] These conflicts are entirely unrelated to the fishing activity itself nor do they concern a disagreement relating to the management of fishery resources. They are, nevertheless, conflicts that occur in a fisheries scenario, consequently impacting the fisheries sector and contributing to a conflictual environment within fisheries.

In addition to the direct fisheries conflict and indirect fisheries conflict, we also identify another type of conflict, which is not an additional category of fisheries conflict per se, but is rather a transversal conflict that may affect both direct and indirect fisheries conflict. This is what we call 'cross-cutting climate change-induced conflict in fisheries', which is an issue that can be associated with and related to any conflict in fisheries and which deserves special attention, thus, will be examined as a standalone conflict. In addition to climate-related issues, other factors can exacerbate fisheries conflicts in general. In some cases, for instance, the presence of rampant illegal or foreign fishing can stoke the emotion of law-abiding, local communities to the point where grievance spills into violence.[18] In a similar vein, poverty, terrestrial based civil unrest, environmental destruction, weak governance, and criminal activity can add to the pressures that fishers face and thereby propel discontent.[19] In these circumstances, fishers within the same fisheries sub-sector may enter into conflict, or the conflict may be divided across the various fisheries sub-sectors, including large-scale industrial fishing, small-scale artisanal fishing, and recreational fishing. Our categorisation of conflicts in fisheries is structured and explained in **Table 1**.

Table 1. Types of conflicts in fisheries

Conflicts in Fisheries	Direct fisheries conflict				Indirect fisheries conflict
	International level		National level		
	Bilateral fishing agreements conflict	High seas fishing conflict	Large- and small-scale fishing conflict	Fisheries sector and other sectors conflict	

[17] Dyhia Belhabib, Philippe Le Billon and David J. Wrathall, 'Narco-Fish: Global Fisheries and Drug Trafficking' (2020) 21 Fish and Fisheries 992.

[18] Tai and others (n 5); Glaser and others (n 5); Spijkers and others (n 5).

[19] Jessica Spijkers, Gerald G. Singh, Colette C. C. Wabnitz, Henrik Österblom, Graeme S. Cumming, Tiffany H. Morrison, 'Identifying Predictors of International Fisheries Conflict' (2021) 22 Fish and Fisheries 834.

Causes	Competition for stocks, fishing areas and authority	Competition for stocks, fishing areas and authority	Competition for stocks, fishing areas and authority	· Competition for marine space · Socio-environmental impacts caused by other large-scale undertakings · Environmental conservation initiatives impacting fishing activities	Illegal, or criminal, or military activities unrelated to fishing
Location	National marine waters of the hosting country (coastal State or archipelagic State)	High seas	National marine and inland waters of the coastal State or archipelagic State	National marine and inland waters of the coastal State or archipelagic State	Anywhere
Cross-cutting climate change-induced conflict in fisheries					

In order to better understand 'direct fisheries conflicts', we provide a more detailed analysis of 'bilateral fishing agreement conflict' between a foreign fleet[20] that fishes in a coastal State's waters and the coastal State's national fishing fleet. This helps us in understanding what conflicts in fisheries entail in practice. When distinguishing international fisheries conflicts, it is important to recall that fisheries operate in an international business space, which can shroud the division between domestic and foreign vessels. For instance, while a fishing vessel may be registered in Brazil and thus flying the Brazilian flag, its owner can be a British company, and

[20] To account for the complexity of fisheries business, we consider foreign fleets to include any vessels managed or regulated by entities based outside the coastal state's waters of fishing activity. This may include vessels with; (1) foreign flags, (2) foreign crewing, or (3) foreign ownership ties (beneficial ownership, joint ventures or chartering arrangements that include a foreign entity).

its crew may include Argentinians and other citizens from neighbouring countries. At the same time, a conflict may occur between such a vessel and a United States of America-flagged fishing vessel in Suriname's waters with an equally complex makeup of crew nationalities. Bilateral conflicts therefore may include those involving cis-flagged but foreign-influenced vessels, such as those with a foreign crew or ownership ties. Within this devolved, international complex, head-on clashes between fishers are often fuelled by underlying socio-cultural tensions, which can be framed by industry operations or regional politics and instability.

2.1. Bilateral Fishing Agreement Conflict

Bilateral fishing agreement conflicts can play out in several ways. If a fishing activity takes place under a formal access arrangement – pursuant to Article 62(2) of the 1982 UN Convention on the Law of the Sea (LOSC),[21] – any ensuing conflict may take on a State-to-State dynamic. The 'cod wars' in the North Atlantic and the fishing disputes between Canada and Spain on the Grand Banks exemplify this type of conflict. However, not all conflicts achieve this nationalist flavour. Instead, many occur on an ad hoc basis between individual vessels or crews and without wider influence from governments, politicians, or national media. Yet, literature has persistently alerted the need for fishing partnership agreements to take account of the socio-cultural and environmental impacts caused by foreign fishing fleets on the coastal communities of the hosting developing countries, as many of such agreements fail to fully realise sustainability standards in practice.[22] Alternatively, access to fishing grounds may be granted at the sub-State level. More commercially focused arrangements such as joint venture partnerships, charter agreements, and the local registration of foreign-owned vessels have the potential to create a bilateral interface that is not managed by State-to-State relations.[23]

[21] United Nations Convention on the Law of the Sea (Montego Bay, adopted 10 December 1982, entered into force 16 November 1994) 1833 *UNTS* 396.

[22] Solène Guggisberg, 'The EU's Regulation on the Sustainable Management of External Fishing Fleets' (2019) 34 International and European Law Perspectives 291; Anna S. Antonova, 'The rhetoric of 'responsible fishing': Notions of human rights and sustainability in the European Union's bilateral fishing agreements with developing States' (2016) 70 Marine Policy 77; Antonius Gagern and Jeroen van den Bergh, 'A critical review of fishing agreements with tropical developing countries' (2013) 38 Marine Policy 375; Clair Gammage, 'A Sustainability Impact Assessment of the Economic Partnership Agreements: Challenging the Participatory Process' (2010) 3 The L & Dev Rev 108; For a dissenting opinion, see Mihail Vatsov, 'Towards achieving sustainable fishing through EU trade agreements?' [2019] 3(1): 1. Europe and the World: A law review.

[23] André Standing, 'Mirage of Pirates: State-Corporate Crime in West Africa's Fisheries' (2015) 4 State Crime Journal 2.

By their nature, bilateral fishing agreement conflicts usually occur within close proximity to shore, drawing in local political, cultural, and economic concerns. So, while they may be sparked by competition over space and resources, they are often elevated in severity by social dynamics such as perceived unfairness over quota distribution or competitive advantage, or foreign influence (resource drainage).[24] In some cases, these social dynamics may be enough to instigate conflict. In parts of West Africa, for instance, foreign fishing has so severely undermined the livelihoods of some local communities that it could be said to have contributed to regional destabilisation and forced migration.[25] In other cases, authorities and communities may take active action against foreign or illegal fishing vessels as a deterrent. Indonesia, for instance, made international headlines between 2014 and 2019 when their Ministry of Marine Affairs and Fisheries committed to exploding hundreds of vessels that were found to be illegally fishing in their waters.[26]

These complex non-legal concerns can also bring about new legal situations, which can lead to conflict. Take the United Kingdom (UK)'s departure from the European Union (EU) and its Common Fisheries Policy for example.[27] Political, social, and economic arguments led to Brexit which created a new legal landscape for the UK, EU, and other States to navigate in the form of the UK-EU Trade and Cooperation Agreement (TCA) and its fisheries provisions.[28] This replaced the EU Common Fisheries Policy that managed fishery resources under the

[24] Nichols R, Parks J, Pollnac R, Campson T, Genio E, Marlessy C, Holle E, Pido M, Nissapa A, Boromthanarat S, Thu Hue N, 'Fishing Access Agreements and Harvesting Decisions of Host and Distant Water Fishing Nations' (2015) 54 Marine Policy 77; Ifesinachi Okafor-Yarwood and Belhabib Dyhia, 'The Duplicity of the European Union Common Fisheries Policy in Third Countries: Evidence from the Gulf of Guinea' (2020) 184 Ocean and Coastal Management 104953.

[25] Jessica H. Jönsson, 'Overfishing, Social Problems, and Ecosocial Sustainability in Senegalese Fishing Communities' (2019) 27 Journal of Community Practice 213 at pg. 213; Mariko Frame, 'Foreign Investment in African Resources: The Ecological Aspect to Imperialism and Unequal Exchange' (2014) ProQuest Dissertations and Theses at 131.

[26] Vincent Bevins ''I'm nasty.' How an Indonesian government official won admirers by blowing up boats.' *The Washington Post* (5 September 2018) <https://www.washingtonpost.com/world/2018/09/05/im-nasty-how-an-indonesian-government-official-won-admirers-by-blowing-up-boats/> accessed 31 October 2022.

[27] See generally, Jonatan Echebarria Fernández, Tafsir Matin Johansson, Jon A. Skinner, Mitchell Lennan (eds), *Fisheries and the Law in Europe - Regulation After Brexit* (Routledge, 2022).

[28] Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, December 30, 2020 (entered into force provisionally on 1 January 2021 and definitively on 1 May 2021) UKTS 2021 No. 8; OJ 2021 L149/10 (TCA); Fisheries provisions are found in Articles 493–511.

principles of equal access and relative stability.[29] Interpretation of the fisheries provisions of the TCA has already led to conflicts. In May 2021, Jersey authorities were accused of unilaterally imposing new licensing conditions on French vessels to fish within the territorial sea around the island without the consent of the French authorities, as specified by the TCA.[30] The responses to this included the blockading of Jersey ports by French fishing vessels, threats of cutting off the electricity supply to Jersey by some members of the French Government, and the deployment of so-called 'gunboats' to Jersey by the UK Government (conveniently on the day of a local election in the UK).[31] While this licensing issue is by and large resolved, tensions remain.[32]

Far from shore, Brexit has also brought a historical territorial and resource dispute between the UK and the Republic of Ireland to the fore over the small remote sea rock of Rockall and the fishery resources within its 12 nm territorial sea.[33] The complex fishery resources around Rockall are of interest not just to the UK and Ireland, but also EU Member States and Icelandic and Russian fishing fleets.[34] Another layer of complexity is that while the UK holds *de jure* and *de facto* sovereignty over Rockall,[35] and the waters around it are part of

[29] Treaty on the Functioning of the European Union, OJ 2016 C202/47, Article 3(1)(d); Reg. 1380/2013, OJ 2013 L354/22; see also Ellen Hoefnagel, Birgit de Vos, and Erik Buiman, 'Quota swapping, relative stability and transparency' 57 *Marine Policy* (2015) 111–119.

[30] TCA, Article 502; See Andrew Serdy, 'The Fisheries Provisions of the Trade and Cooperation Agreement - An Analytical Conspectus' in Jonatan Echebarria Fernández, Tafsir Matin Johansson, Jon A. Skinner, Mitchell Lennan (eds), *Fisheries and the Law in Europe - Regulation After Brexit* (Routledge, 2022) 32, at 44–45; Gerard van Balsfoort and others 'A Synoptic Overview of Expert Opinion on Fisheries in a Post-Brexit World' in Echebarria Fernández (2022) 123–124.

[31] Daniel Boffey and Lisa O'Carroll, 'UK sends navy vessels to Jersey amid post-Brexit fishing row with France' *The Guardian* (5 May 2021) <https://www.theguardian.com/uk-news/2021/may/05/uk-hits-back-at-french-threat-to-cut-jerseys-electricity-supply> accessed 21 January 2023; Bryce D. Stewart BD, Chris Williams, Richard Barnes, Suzannah F. Walmsley, Griffin Carpenter, 'The Brexit deal and UK fisheries, has reality matched the rehetoric?' 21 *Maritime Studies* (2022) 1, at 11; van Balsfoort and others, (n 30); Joe Mays 'Fresh Brexit Fish Spat Averted as Jersey Extends French Amnesty' *Bloomberg* 28 June 2021 <https://www.bloomberg.com/news/articles/2021-06-28/freshbrexit-fish-spat-averted-as-jersey-extends-french-amnesty> accessed 21 January 2023.

[32] Stewart and others, (n 31) 11.

[33] van Balsfoort and others, (n 30) 124–126.

[34] Mercedes Rosello, Mitchell Lennan, Jonatan Echebarria Fernández JE, Tafsir Matin Johansson, 'Fisheries Enforcement in a Post-Brexit World', in Echebarria Fernández and others (2022), at 94–96.

[35] See Richard Collins, 'Sovereignty has 'Rock-all' to Do with It … or Has It? What's at Stake in the Recent Diplomatic Spat between Scotland and Ireland?' *EJIL:TALK! Blog of the European Jounral of International Law* (8 July 2019), <https://www.ejiltalk.org/sovereignty-has-rock-all-to-do-with-it-or-has-it-whatsat-stake-in-the-recent-diplomatic-spat-between-scotland-and-ireland/>; James Harrison, 'Guest Blog – Unpacking the Legal Disputes over Rockall' *SPICe Spotlight* (18 June 2019), <https://spice-spotlight.scot/2019/06/18/guest-blog-unpacking-the-legal-disputesover-rockall/>; *contra* Rían Derrig, 'An Irish Claim to Rockall' *EJIL:TALK! Blog of*

the UK EEZ,[36] its fisheries matters are administered by Scotland, including enforcement of fisheries conservation and management measures.[37] Mere hours after Brexit took effect, 'the Scottish marine protection vessel *Jura* had stopped Irish fishing vessel *Northern Celt* from entering Rockall waters beyond the 12 nm of the UK territorial waters.'[38] This exercise of enforcement jurisdiction by the Scottish authorities caused a diplomatic incident between Ireland and the UK 'and even prompted calls for Ireland to step up claims over Rockall.'[39]

The above considered, bilateral fisheries conflicts can occur in multiple formulations. High-level incidents may lead to serious consequences at the local level, while smaller incidents may have huge repercussions at the inter-State level. In any case, all conflicts play out within a complex web of legal, cultural, political and economic factors.

2.2 Cross-Cutting and Climate Change-Induced Conflict in Fisheries

More recently, climate change and its consequences have reached the ocean governance discussion. There are increasing concerns regarding the nexus between climate change and fisheries.[40] The main impacts of climate change on fisheries are numerous and pervasive. They include impacts on primary productivity, growth, and distribution of fish populations from warming waters. Ocean acidification impacts the behaviour, distribution, and survival rate of many fish populations. Consequences of climate change include loss of habitat, sea level rise (which can destroy coastal fishing infrastructure), depletion of fish populations and resulting scarcity, increased competition and fishing intensity, shifting maritime boundaries, and shifting

the European Jounral of International Law (14 January 2021) <https://www.ejiltalk.org/an-irish-claim-to-rockall/> accessed 31 October 2022.

[36] The Exclusive Economic Zone Order 2013, <https://www.legislation.gov.uk/uksi/2013/3161/contents/made> accessed 31 October 2022.

[37] Island of Rockall Act 1972, C2, <https://www.legislation.gov.uk/ukpga/1972/2>; Scotland Act, 1998 Sch 5, S C6, <https://www.legislation.gov.uk/ukpga/1998/46/contents> accessed 21 January 2023.

[38] Rosello et al, (n 34).

[39] ibid.

[40] See, for example, Nathan L. Bindoff, 'Chapter 5: Changing Ocean, Marine Ecosystems and Dependent Communities' in IPCC, *The Ocean and Cryosphere in a Changing Climate: Special Report of the Intergovernmental Panel on Climate Change* (Cambridge University Press 2022) 447; Mitchell Lennan, 'Fisheries Redistribution under Climate Change: Rethinking the Law to Address the "Governance Gap" in Platjouw FM and Pozdnakova A (eds.) *The Environmental Rule of Law for the Oceans* (Cambridge University Press, 2023) 163-177; Manuel Barange, Tarûb Bahri, Malcolm C. M. Beveridge, Kevern L. Cochrane, Simon Funge-Smith, Florence Poulain, 'Impacts of Climate Change on Fisheries and Aquaculture: Synthesis of Current Knowledge, Adaptation and Mitigation Options' (FAO, 2018).

fish populations.[41] In particular, the general trend in fish species moving towards the Poles or into deeper water.[42] Yet, while it has been identified that climate exacerbates known drivers of fisheries conflicts,[43] the international legal literature is scarce in addressing the linkages between climate change and conflicts in fisheries. Here again we need to distinguish what the type of conflict we mean by 'cross-cutting climate change-induced' conflict in fisheries. We do not refer to the conflicts that may arise from climate-related disasters in marine and coastal spaces, such as sea level rise, extreme weather events, beach erosion, and inundation, which may lead to conflicting situations among fishers and fishing communities due to the associated distress, often leading to forced relocation and loss of property, fisheries tools, and facilities. The type of conflict in fisheries that we associate with climate change concerns the direct fisheries conflict caused by the absence of stocks in a given location impacted by the change in distributional patterns.[44]

Generally, climate-driven shifts in fish stocks can cause exacerbation of fisheries conflicts and the creation of new ones, undermine fixed area-based management tools such as marine protected areas, and contribute to loss of ecosystem goods and services with food security and human rights implications for communities reliant on the ocean. Shifts in fish stocks can lead to breakdown in cooperation between States as fish move into new management jurisdictions and the receiving State acts unilaterally to exploit the stock (e.g. the 'Mackerel Wars' between Iceland, the EU and the UK).[45] Within States, conflicts between users of fish stocks as they move into deeper waters. This considered, climate change is not just a confounding factor in fisheries conflicts, but can also induce conflicts in its own right. On that basis, legal solutions to curtailing fisheries conflicts must take into account climate change as

[41] Elizabeth Mendenhall, Cullen Hendrix, Elizabeth Nyman, Paige M. Roberts, John Robison Hoopes, James R. Watson, Vicky W. Y. Lam, Rashid Sumaila, 'Climate Change Increases the Risk of Fisheries Conflict' (2020) 117 Marine Policy 103954.

[42] Malin L. Pinsky, Boris Worm, Michael J. Fogarty, Jorge L. Sarmiento, Simon A. Levin, 'Marine Taxa Track Local Climate Velocities' (2013) 341 Science 1239; Rebecca G Asch, 'Climate Change and Decadal Shifts in the Phenology of Larval Fishes in the California Current Ecosystem' (2015) 112 Proceedings of the National Academy of Sciences E4065; Kristin M. Kleisner, Michael J. Fogarty, Sally McGee, Analie Barnett, Paula Fratantoni, Jennifer Greene, Jonathan A. Hare, Sean M. Lucey, Cristopher McGuire, Jay Odell, Vincent S. Saba, Laurel Smith, Katherin J. Weaver, Malin L. Pinsky,'The Effects of Sub-Regional Climate Velocity on the Distribution and Spatial Extent of Marine Species Assemblages' (2016) 11 PLOS ONE e0149220.

[43] Mendenhall (n 41).

[44] See Malin L. Pinksy, 'Preparing Ocean Governance for Species on the Move' (2018) 360 Science 1189.

[45] Andreas Østhagen, Jessica Spijkers, Olav Anders Totland, 'Collapse of Cooperation? The North-Atlantic Mackerel Dispute and Lessons for International Cooperation on Transboundary Fish Stocks' (2020) 19 Maritime Studies 155.

a factor. From a managerial perspective, adopting climate change adaptation measures in fisheries management has been sought to be useful and important in avoiding conflicts in the fishing industry. For instance, diversifying products and markets to maximise fishery value as catches decline due to climate change can help to avoid conflicts in post-harvesting contexts.[46] Through a 'poverty lens', adaptation measures would need to address 'issues of power imbalances and inequity disadvantaging the poor', including with respect to stakeholders' conflict.[47]

3. International Law and Conflicts in Fisheries

To better understand how international law, including binding and non-binding instruments, address conflicts in fisheries, our analysis departs from two elementary assumptions. First, that the law of the sea regime is a non-hierarchical, yet fragmented, States-centred framework, which is primarily devoted to protecting the interests of States and their fishing vessels, rather than the concerns of people at sea.[48] Examining conflicts in fisheries in the law of the sea regime, thus, predominantly leads to the search for provisions that deal with the obligations of States with respect to maritime safety and security at sea, maritime transit, and the duties of the respective fishing vessels in relation to these matters.

Our second assumption is that conflicts in fisheries, particularly direct conflict in fisheries at the international level, essentially concern disagreements upon fisheries access, quota distribution, management decisions, and conservation – issues that are primarily the object of international fisheries law.[49] However, we also acknowledge that perception, regional stability, and cultural relations can play an equally important part in cultivating the conditions for conflict to flourish. In this framework, conflict in fisheries may be specifically regulated by effectively managing resources while also ensuring harmonious relationships among the actors

[46] Tarûb Bahri, Marcelo Vasconcellos, David Welch, Johanna Johnson, R. Ian Perry, Xuechan Ma, Rishi Sharma, 'Adaptive management of fisheries in response to climate change.' FAO Fisheries and Aquaculture Technical Paper No. 667. Rome, FAO, at 72-73 and 155.

[47] Barange and others (n 40) 2.

[48] Irini Papanicolopulu, *International Law and the Protection of People at Sea* (Oxford University Press 2018); Vasco Becker-Weinberg, 'Time to Get Serious about Combating Forced Labour and Human Trafficking in Fisheries' (2020) 36 The International Journal of Marine and Coastal Law 88.

[49] Richard Caddell, 'International Fisheries Law and Interactions with Global Regimes and Processes' in Erik J. Molenaar EJ and Richard Caddell (eds), *Strengthening International Fisheries Law in an Era of Changing Oceans* (Hart Publishing 2019).

within the fisheries sector.[50] In the next subsection, we examine the relevant instruments under international fisheries law to clarify their pertinence to preventing and combating conflicts in fisheries.

3.1 States' Binding Obligations Relevant to Conflicts in Fisheries

The security of coastal States and archipelagic States, as regards maritime shipping, is safeguarded by the LOSC,[51] but this treaty is silent as regards States' obligations to ensure security in fisheries. General obligations to cooperate and to 'seek agreement' on the management and conservation of transboundary fish stocks do not relate (at least directly) to the security of fishers on board fishing vessels at sea. Further, there are still no internationally recognised standards or procedures for addressing these conflicts in a 'non-escalatory manner.'[52] These confrontations often take place outside the competency of a single State, or State-to-State dynamic and may instead operate through sub-State actors which then indirectly 'threaten more traditional State-based security.'[53]

One could say that the LOSC is implicitly concerned with all types of conflict in the ocean, without focusing on fisheries conflicts in particular. This broad approach is reflected in the LOSC's objectives, which include providing 'a legal order for the seas and oceans which will facilitate international communication and will promote the peaceful uses of the seas and oceans.'[54] This intention is enshrined in certain provisions that are helpful in preventing eventual clashes in fisheries and between fishing vessels. In explicit terms, conflicts in fisheries are enshrined in a single provision, Article 59, which deals with conflict arising 'between the interests of the coastal State and any other State or States' in respect of the 'attribution of rights and jurisdiction in the exclusive economic zone' (EEZ). In this event, the LOSC clarifies the parameters for conflict resolution, that is, based on 'equity and in the light of all the relevant circumstances, taking into account the respective importance of the interests involved to the Parties as well as to the international community as a whole.'[55] Yet, this provision is known to

[50] Devlin (n 9).

[51] LOSC, Articles 19, 25, and 52.

[52] Jessica Spijkers, Gerald Singh, Robert Blasiak, Tiffany H. Morrison, Philippe Le Billon, Henrik Österblom, 'Global Patterns of Fisheries Conflict: Forty Years of Data' (2019) 57 Global Environmental Change.

[53] Desombre (n 8).

[54] LOSC, Preamble.

[55] ibid., Article 59.

be 'controversial' by scholars, as it neglects 'presumption in favour of either the coastal State or community interests in resolving new issues that may arise'.[56] Notwithstanding, these are interstates' conflicts, which may arise from conflicting fishing interests in the EEZ of coastal States and other States. International fisheries disputes between States have indeed increased over the last decades, as well discussed by scholars.[57]

One can associate other provisions of the LOSC relevant to fisheries conflict with those related to maritime security. For instance, fishing activities by foreign vessels in the territorial seas of coastal States and archipelagic States cannot be prejudicial to these States' peace, good order or security[58] (Articles 19 and 52). To that end, coastal States and archipelagic States have the right to temporarily suspend the 'innocent passage' of foreign ships as deemed essential to protect their security (Articles 25 and 52). Similarly, Article 27 provides exemptions on the exclusivity of flag State jurisdiction when foreign vessels commit certain acts during their passage through the territorial sea of a third State. Article 27 specifies that a coastal State may 'arrest' or 'conduct investigation in connection with any crime committed on board' if (a) the consequences of the crime extend to the coastal State; (b) the crime is of a kind to disturb the peace of the country or the good order of the territorial sea; (c) the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or (d) such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.[59] These provisions are indeed the closest the LOSC gets to addressing maritime security in the fisheries context.[60]

As conflicts in fisheries involve disputes between *persons* rather than interstate conflicts, it is no surprise that the LOSC has little to offer in the former respect. Indeed, the central focus of the Convention is on stipulating obligations on States and ships, with minimal

[56] Nigel Bankes, 'Legislative and enforcement jurisdiction of the coastal state with respect to fisheries in the exclusive economic zone' in Øystein Jensen (ed), *The Development of the Law of the Sea Convention* (Edward Elgar Publishing 2020), at 74; Gemma Andreone, 'The Exclusive Economic Zone' in Donald Rothwell et al (eds), *The Oxford Handbook of the Law of the Sea* (Oxford University Press 2014), at 166.

[57] Bankes (n 56); Robin Churchill, 'The Jurisprudence of the International Tribunal for the Law of the Sea relating to Fisheries: Is There Much in the Net?' (2007) 22 IJMCL 383.

[58] LOSC, Articles 19 and 52

[59] LOSC, Article 27.

[60] Barnes and Rossello also identify the provisions relating to 'general conduct' in the Area (Article 138) and to disclosure of information (Article 302), but these are less related to conflicts in fisheries. See Richard Barnes and Mercedes Rosello, 'Fisheries and maritime security: understanding and enhancing the connection' in Malcolm D. Evans and Sofia Galani (eds) *Maritime Security and the Law of the Sea: Help or Hindrance?* (Edward Elgar Publishing 2020), at 56.

attention to social dimensions and the persons involved in maritime activities. This issue has led scholars to recourse to human rights and other relevant regimes for the protection of people at sea.[61] In this respect, it is worth noting that disputes arising from the application of the LOSC could arguably include the protection of fishers, based on the interpretation and application of 'other rules of international law not compatible with this Convention', as stipulated in Article 293. As such, while the International Tribunal for the Law of the Sea (ITLOS) has not dealt specifically with the protection of human rights of fishers in its jurisprudence, scholars have argued that the Tribunal could, based on Article 293, interpret human rights rules for the protection of individuals.[62] This desirable approach could foster the ITLOS' adjudication of human rights violations in the context of fisheries conflict.

There are other instances where the LOSC sets out important requirements for preventing conflicts in fisheries among States. The core contribution of the Convention in delineating the ocean into maritime zones and its applicable rules indeed clarify access rights to marine resources as well as bestow coastal States with the remit to deploy a number of legal tools to avoid violence within their water. Oral has ventured so far as to say that the progression of coastal States' sovereign rights over their 200nm EEZ is 'the most important international legal response' to have ever addressed fisheries conflicts between local and foreign fleets.[63] For starters, resource sovereignty has enabled coastal States to prohibit fishing access to vessels, companies, or States that have engaged in or supported fisheries conflict.[64] In other words, they may use access as a bargaining chip for conduct. In many countries, sovereignty over the EEZ has been buttressed by spatial separation schemes such as inshore exclusion zones (IEZ), foreign fisheries exclusion zones, or artisanal fishing zones. These measures are used to reserve areas for small-scale or artisanal fleets and thereby shield them from competition and confrontational interactions with industrial or foreign vessels. In Ghana, for instance, the Fisheries Act defines the IEZ, which is 'the coastal waters between the coastline and the 30-

[61] Papanicolopulu (n 48); Steven Haines, 'Developing Human Rights at Sea' (2021) 35(1) Ocean Y Online 18, at 30. See also Tafsir M Ndiyae, 'Human Rights at Sea and the Law of the Sea' (2019) 10 Beijing L Rev 261.

[62] Anna Petrig A, Marta Bo, 'The International Tribunal for the Law of the Sea and Human Rights' in Martin Scheinin (eds) *Human Rights Norms in 'Other' International Courts* (Cambridge University Press 2019), at 355; and Anne Peters, *Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge University Press, 2016).

[63] Nilufer Oral, 'Reflections on the Past, Present, and Future of IUU Fishing under International Law' (2020) 22 International Community Law Review 368, at 370.

[64] Chris Armstrong, 'Abuse, Exploitation, and Floating Jurisdiction: Protecting Workers at Sea*' (2022) 30 Journal of Political Philosophy 3.

metre isobath or the 6 nautical miles offshore limit whichever is further', as reserved 'exclusively' for small semi-industrial vessels, canoes and recreational fishing vessels. While the Act does not specifically prescribe the zone as a remedy to avoid systematic conflict, the connection between conflict and spatial competition is well documented in Ghana.[65] In fact, reports suggest that IEZs have led to less conflict in many developing countries, including Liberia,[66] Sierra Leone,[67] and Cameroon.[68] In Africa, over ninety percent of coastal States have now designated some form of spatially managed, inshore fishing zone.[69] While there has been greater monitoring and enforcement efforts in recent years, incursions into this zone still occur and with recent volatility in certain demersal fish stocks, some have acknowledged that the industrial trawlers may be incentivised to venture into the IEZs by the higher abundance of stocks and the flourishing benthic habitats.

The LOSC is not the only legally binding instrument to address conflicts in fisheries in a more, let us say, indirect way. For its part, the LOSC's implementing instrument, which elaborates its provisions on the conservation and management of straddling fish stocks and highly migratory fish stocks - the 1995 UN Fish Stocks Agreement (UNFSA) - relates to conflicts in fisheries, by imbedding the agreement's purpose of contributing to 'the maintenance of international peace and security' (Preamble).[70] The Agreement is also helpful in addressing conflict in fisheries by means of regulating interstate cooperation in the management and conservation of the said stocks, but, like the LOSC, the Agreement is relevant

[65] Katherine L. Seto, 'Local Fishery, Global Commodity: Conflict, Cooperation, and Competition in Ghana's Coastal Fisheries' (PhD Thesis, UC Berkeley, 2017); Godfred A. Ameyaw, Martin Tsamenyi, Alistair Mcilgorm, Denis W. Aheto, 'Challenges in the Management of Small-Scale Marine Fisheries Conflicts in Ghana' (2021) 211 Ocean and Coastal Management 105791.

[66] Environmental Justice Foundation, 'Inshore Exclusions Zone: A lifeline for Liberia's Fishers' (26 June 2017) <https://ejfoundation.org/news-media/inshore-exclusion-zone-a-lifeline-for-liberias-fishers> accessed 31 October 2022.

[67] Andrew Baio and Sheku Sei, 'On the Development of Territorial Use Rights in the Marine Small-Scale Fisheries of Sierra Leone' (2019), *Conference: Global Conference on Tenure & User Rights in Fisheries 2018: Achieving Sustainable Development Goals by 2030*, 10-14 September 2018, Yeosu, South Korea.

[68] Maurice Beseng M and James A. Malcolm, 'Maritime Security and the Securitisation of Fisheries in the Gulf of Guinea: Experiences from Cameroon' (2021) 21 Conflict, Security and Development 517.

[69] Dyhia Belhabib, William W. L. Cheung, David Kroodsma, Vicky W. Y. Lam, Philip J. Underwood, John Virdin, 'Catching Industrial Fishing Incursions into Inshore Waters of Africa from Space' (2020) 21 Fish and Fisheries 379.

[70] 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 (adopted 4 August 1995, entered into force11 December 2001) 2167 UNTS.40 (UN Fish Stocks Agreement or UNFSA).

in addressing conflicts between States and not among fishers directly. Two legally binding instruments that have a more direct impact on preventing conflicts among fishers are those adopted under the Food and Agriculture Organization of the United Nations (FAO) auspices: the so-called 1993 Compliance Agreement,[71] and the 2009 Port States Measures Agreement (PSMA).[72] The former is important in requiring flag States to ensure fishing vessels flying their flags do not violate nor undermine the effectiveness of international conservation and management measures (CMMs).[73] By setting out parameters for international cooperation on high seas fishing, through, inter alia, maintenance of fishing vessels' records and information exchange, the Compliance Agreement promotes order among States fishing on the high seas. The PSMA, in turn, can be useful to protect fishers (nationals from the port State) against potential threats from foreign fishing vessels engaged in illegal, unreported, and unregulated (IUU) fishing attempting to land their fish or otherwise calling voluntarily into port.[74] Critically, the PSMA obliges port States to scrutinise and inspect the conduct of foreign fishing in line with obligations vis-à-vis the port State law, or flag State treaty law.[75] Where the port State has 'clear grounds for believing that a vessel has engaged in IUU fishing or fishing related activities' they are required to, inter alia, notify the flag State and deny the vessel use of the port, cargo discharge, transhipment, and re-supply.[76] The implementation of domestic legislation to action the PSMA may extend beyond these requirements to even include criminal proceedings against a vessel owner or crew.[77] Yet, the LOSC prohibits the coastal State to impose imprisonment, unless otherwise agreed with the concerned States, as well as the

[71] Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (adopted 29 November 1993, entered into force 24 April 2003) 2221 UNTS 91 (Compliance Agreement).

[72] Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (adopted 22 November 2009, entered into force 5 June 2016) (Port State Measures Agreement or PSMA).

[73] ibid., Article 1(a).

[74] ibid.

[75] Callum Musto and Efthymios Papastavridis, 'Tackling Illegal, Unreported and Unregulated Fishing through Port State Measures Ported, and Unregulated Fishing through Port State Measures' (2021) 22 Melbourne Journal of International Law 1; Food and Agriculture Organization, 'International Plan of Action to Prevent, Deter And Eliminate Illegal, Unreported and Unregulated Fishing' (2001), Rome: Food and Agriculture Organization of the United Nations <http://www.fao.org/3/a-y1224e.pdf>.

[76] Shorter title for Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (adopted 22 November 2009, entered into force 5 June 2016) (Port State Measures Agreement), Article 18.

[77] Musto and Papastavridis (n 75); Anastasia Telesetsky, 'Scuttling IUU Fishing and Rewarding Sustainable Fishing: Enhancing the Effectiveness of the Port State Measures Agreement with Trade-Related Measures' (2014) 38 Seattle University Law Review 1237.

application of corporal punishment as penalties for the violation of fisheries legislation in the coastal State's EEZ.[78]

Under the PSMA, IUU fishing is interpreted according to the definition of the FAO International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing (IPOA-IUU), which includes 'illegal fishing' as 'fishing in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.' Where the national fisheries legislation of a port State explicitly prohibits conflicts in fisheries (such as in relation to fishing gear destruction - ex. Ghana Fisheries Act), and the foreign fishing vessel attempting to land its catches at port engages in fisheries conflict, then the port State can play an important role in curtailing fisheries conflict.[79] Regardless of the substance of national laws, the PSMA and wider port State control remit can also limit hostilities by proxy – either directly leveraging the connection between IUU fishing and violent outbreaks[80] or indirectly restricting illegal practices that erode the sustainability of coastal stocks and undermine efforts to promote peaceful environmental management. Outside the PSMA, port States can voluntarily impose access restrictions on their ports under customary international law.[81] While many States have made inroads by using port State control to buffer their economies from illegal activities at sea, ports of convenience continue to challenge the effectiveness of administering these supply chain pinch points. This factors in an additional driver for fisheries conflict.

In a slightly different context, some legal instruments have broadened the normative terrain over which Member States may intervene in foreign vessel operations. The Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA Convention) allows Member States to take criminal corrective action against any person who 'endangers the safe navigation of [a] ship' by forcing control over that ship, acting violently against a person onboard, or destroying or damaging a ship, cargo, or maritime navigation facilities.[82] Originally designed to root out maritime terrorism, this provision consequently pushes the extraterritorial jurisdiction of member States to the high seas and territorial waters

[78] LOSC, Article 73(3).

[79] Arron N. Honniball, 'The Exclusive Jurisdiction of Flag States: A Limitation on Pro-Active Port States?' (2016) 31 International Journal of Marine and Coastal Law 3.

[80] Dyhia Belhabib D and Philippe Le Billon, 'Fish Crimes in the Global Oceans' (2022) 8 Science Advances 1

[81] LOSC, Article 25(2).

[82] Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (adopted 10 March 1988, entered into force 1 March 1992) 1678 UNTS.

of other Member States when safe navigation is threatened. In one of the first applications of the SUA Convention, a Chinese cook, Shi, was sentenced, by the Ninth Circuit Court in the United States to 36 years in prison after killing two crew members aboard a Seychellois-flagged fishing vessel.[83] While not necessarily a conflict between two fishing vessels per se, the Shi case provides a useful example for how the SUA Convention might be utilised to combat international violence in the fishing industry.

The international community has also devised instruments to advance the degree of flag State responsibility. For instance, the Cape Town Agreement, administered by the International Maritime Organization (IMO) and the International Labour Organization's (ILO) C188 treaty on Working Conditions in the Fishing Industry has made purposeful strides to raise standards onboard fishing vessels and provide an added layer of legal safeguards for crews.[84] The Cape Town Agreement addresses vessel design, construction and equipment requirements and will enter into force '12 months after at least 22 States, with an aggregate 3,600 fishing vessels of 24m in length' have agreed to be bound by it.[85] Importantly, this treaty will ensure safety requirements for those types of fishing vessels. The ILO's C-188, on the other hand, entered into force in 2017 and sets minimum standards of human rights, crew safety, employment certification, and labour conditions on board fishing vessels.[86] Both instruments mandate the development of inspection systems, which improves the level of surveillance over vessels and adds further opportunities for investigation. Article 44 of the ILO C-188 is critical in this capacity as it includes a 'no more favourable treatment' clause ensuring that even vessels flagged to States who have not ratified the Convention are subject to the same level of legal

[83] Makoto Seta, 'A Murder at Sea Isn't Just a Murder! The Expanding Scope of Universal Jurisdiction under the SUA Convention' in Patrick Chaumette (eds), *Maritime Areas: Control and Prevention of Illegal Traffics at Sea,* (GOMYLEX
2016).

[84] Cape Town Agreement on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 International Maritime Organization (adopted October 2012); International Labour Organization 'Working in Fishing Convention (ILO 188)' (adopted 14 June 2007, entered into force 16 November 2017).

[85] International Maritime Organization '2012 Cape Town Agreement to enhance fishing safety' (Hot Topics, 2019) <www.imo.org/en/MediaCentre/HotTopics/Pages/CapeTownAgreementForFishing.aspx> accessed 15 October 2022.

[86] Gavin G. McDonald, Cristoforo Costello, Jennifer Bone, Reniel B. Cabral, Valerie Farabee, Timothy Hochberg, David Kroodsma, Tracey Mangin, Kyle C. Meng, Olivier Zahn, 'Satellites Can Reveal Global Extent of Forced Labor in the World's Fishing Fleet' (2021) 118 Proceedings of the National Academy of Sciences of the United States of America 1.

standards during inspections.[87] While not targeting conflict directly, these approaches tackle associated symptoms of the fishing industry's opacity. Forced labour and violent clashes between vessels often go hand in hand, and in some cases, they may share the same root causes – including weak government oversight, organised crime, etc.[88] For the ILO C-188 in particular, some of the stipulations may even address certain features of the industry that motivate conflict. For instance, its prescribed standards for payment, food, accommodation, medical, and social security may help to quell the sense of desperation that many fishers may feel during long, challenging voyages. Yet, the ILO C-188 has a peculiar feature in that its application is flexible, in anticipation of the potential conflicts that its requirements may raise in the fisheries sector in general. Its applicability can only trigger after the competent authority consult with the representative organisations of employers and workers concerned and representative organisations of fishing vessel owners and fishers.[89] After such consultation, a Member may exclude fishing vessels operating in rivers, lakes, or canals or limited categories of fishers or fishing vessels from the requirements of the Convention.[90] This flexibility may allow governments to exempt small-scale fishing vessels from certain obligations that may impose an unfair or inappropriate burden on small-scale fisheries, as some requirements of the ILO C-188 depend on financial and technical capacity of the fishing vessel owner.[91] The ILO C-188 still counts with a poor number of ratification, so its contribution to preventing and curtailing fisheries conflict, although very promising, remains quite limited.

3.2 International Guidance Relevant to Conflict in Fisheries

While the legally binding instruments are primarily focused on interstate conflicts in fisheries, indirectly pertinent in addressing conflicts among fishers, the international non-binding

[87] Working in Fishing Convention (ILO 188); Alejandro J. Garcia Lozano, Jessica L. Decker Sparks, Davina P. Durgana, Courtney M. Farthing, Juno Fitzpatrick, BirgitteKrough-Poulsen, Gavin McDonald, Sara McDonald, Yoshitaka Ota, Nicole Sarto, Andrés M. Cisneros-Montemayor, Gabrielle Lout, Elena Finkbeiner, John N. Kittinger, 'Decent Work in Fisheries: Current Trends and Key Considerations for Future Research and Policy' (2022) 136 Marine Policy.

[88] Blake D. Ratner, Björn Åsgård and Edward H. Allison, 'Fishing for Justice: Human Rights, Development, and Fisheries Sector Reform' (2014) 27 Global Environmental Change 120; Emma Witbooi and others, 'Organized Crime in the Fisheries Sector Threatens a Sustainable Ocean Economy' (2020) 588 Nature 1; Garcia Lozano and others, 'Decent Work in Fisheries: Current Trends and Key Considerations for Future Research and Policy' (2022) 136 Marine Policy.

[89] Working in Fishing Convention (ILO 188), Article 1(c).

[90] ibid., Article 3(1).

[91] ibid., Articles 10(3), 12 and 14.

guidance offers a more detailed and directly relevant account of the matter. The 1995 Code of Conduct for Responsible Fisheries adopts a precautionary approach in dealing with conflicts in *fisheries management*, requiring States and RFMO/As to 'regulate fishing in such a way as to *avoid risk of conflict* among fishers using different vessels, gear and fishing methods.'[92] This Article 7.6.5 of the Code is the only provision explicitly referring to 'conflict', but there are several measures to avoid risk of conflict outlined in the Code. For instance, encouraging States to: develop and apply 'selective and environmentally safe fishing gear and practices';[93] recognise traditional practices, needs, and interests of indigenous and local fishers and their communities when adopting conservation and management measures (CMMs); evaluate social impacts from alternative CMMs;[94] and implement effective fisheries monitoring, control, surveillance, and law enforcement measures, including through observer programmes, inspection schemes, and vessel monitoring systems,[95] which are important measures to deal with conflicts in fisheries. While these provisions relate to fisheries management, other provisions of the Code are attentive to the protection of fishers, such as Article 6.17, recommending States to ensure 'safe, healthy and fair working and living conditions' in fishing activities, and Article 6.18, calling for the protection of 'rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood', also noting the importance of 'preferential access' to traditional fishing grounds. These measures are key to avoiding conflicts in fisheries, because fishers would be less likely to dispute one another if they are secured social protection and priorities, particularly in the case of the most vulnerable groups.

In this respect, there are other two voluntary instruments adopted under the FAO auspices that are particularly important in dealing with conflicts in fisheries, and are particularly concerned with vulnerable groups. The 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forestry in the Context of National Food Security (Tenure Guidelines), which deals with conflicts in *fisheries tenure*, are informed by the principle that States should 'prevent tenure disputes, *violent conflicts* and corruption' by taking 'active measures to prevent tenure disputes from arising and from escalating into violent

[92] FAO, 'Code of Conduct for Responsible Fisheries' (adopted at the 28th Session of the FAO Conference, Rome, 31 October 1995) Resolution 4/95 FAO Conference (CCRF), Article 7.6.5, emphasis added.

[93] ibid., Article 6.6.

[94] ibid., Articles 7.6.6 and 7.6.7.

[95] ibid., Article 7.7.3.

conflicts'.[96] The Tenure Guidelines further suggest States to respect and promote 'customary approaches' of local communities with customary tenure systems to 'resolving tenure conflicts within communities', and to develop or strengthen 'means of resolving conflict' between such communities.[97] Moreover, States are called upon to facilitate the operations of efficient and transparent markets to foster equal participation and opportunities for mutually beneficial tenure rights' transfers that 'lessen conflict and instability'.[98] Section 25 of the Tenure Guidelines is entirely dedicated to 'conflicts in respect to tenure of land, fisheries and forests'. While some recommendations under this section concern situations of armed conflict among States,[99] others relate to conflicts arising from 'tenure problems', noting the importance of resolving such problems through 'peaceful means', such as by using customary and local mechanisms that provide 'fair, reliable, gender-sensitive, accessible and non-discriminatory ways of promptly resolving disputes' over tenure rights to fisheries.[100] As such, the Tenure Guidelines comprehensively address conflict in fisheries tenure.

The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines) acknowledge the conflicts between small-scale fishers and their communities and large-scale fishing operations, requiring States to provide special support to the former groups and combat arbitrary evictions, as small-scale fishing communities are 'often the weaker party in conflicts with other sectors'.[101] Elaborating on the Code's Article 6.18, the SSF Guidelines call upon States to protect small-scale fisheries through the 'creation and enforcement of exclusive zones' for this sector, and to give due consideration to small-scale fisheries prior to entering into fishing agreements.[102] The SSF Guidelines follow the ecosystem approach to fisheries, which is based on precautionary and risk-management principles,[103] and go beyond the Code's provisions protecting fishers and

[96] FAO, 'Voluntary Guidelines on the Responsible Governance of Tenure of land, fisheries and forests in the Context of National Food Security' (adopted at the 38th (Special) Session of the Committee on World Food Security, Rome, 22 May 2012) (Tenure Guidelines), subsection 3.1(5).

[97] ibid., subsection 9.11.

[98] ibid., subsection 11.2.

[99] ibid., subsection 25.1 and 25.2.

[100] ibid., subsection 25.3 and 25.4.

[101] FAO, 'Voluntary Guidelines for Securing Sustainable Small-scale fisheries in the context of food security and poverty eradication' (adopted at the 31st Session of the Committee on Fisheries, Rome, 9-13 June 2014) (SSF Guidelines), preamble and subsection 5.9.

[102] ibid., subsection 5.7.

[103] ibid., subsection 3.1(8).

their rights, by following a human rights-based approach.[104] The Guidelines' principles are anchored on international human rights law and standards,[105] enshrined throughout the Guidelines' text, which heighten its normative significance.[106] In connection with the Tenure Guidelines, the protection of human rights and dignity of small-scale fishers in situations of armed conflict are also promoted by the SSF Guidelines.[107]

There are other voluntary instruments and technical guidelines under the FAO auspices that are relevant for conflicts in fisheries by means of addressing specific matters and aiming to promote safety, security and order in fisheries governance generally. These instruments include the 2001 IPOA-IUU,[108] and the 2010 Recommendations for decked fishing vessels of less than 12 metres in length.[109] Notably, the 2014 Voluntary Guidelines for Flag State Performance,[110] among other things, offer a framework by which to measure the effectiveness of flag State performance in deterring IUU fishing, elaborating on requirements for vessel authorization, record keeping, flag State compliance measures, and cooperation between flag and coastal States.[111] It is also worth noting that the ecosystem approach to fisheries (EAF), whose normative content and guidelines were developed by the FAO through technical guidelines and legal guides,[112] is concerned with addressing conflicts in fisheries management. One of the EAF legal components is about 'mechanisms for conflict management', calling for

[104] ibid., subsection 1.2.

[105] ibid., subsection 3.

[106] Julia N. Nakamura, 'Legal Reflections on the Small-Scale Fisheries Guidelines: Building a Global Safety Net for Small-Scale Fisheries' (2022) 37 IJMCL 31.

[107] SSF Guidelines (n 101), subsection 6.18.

[108] FAO. 2001. International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (Rome, FAO. 2001) 24p.

[109] Food and Agriculture Organization of the United Nations, 'Voluntary Guidelines for Flag State Performance' (adopted on 8 February 2013) (Guidelines for Flag State Performance).

[110] IMO/FAO/ILO, 'Recommendations for Decked Fishing Vessels of Less than 12 metres in Length and Undecked Fishing Vessels' (approved by the 87th Session of the IMO Maritime Safety Committee, 12 to 21 May 2010; the 309th Session of the Governing Body of ILO; and recommended by 29th Session of COFI in January 2011).

[111] Judith Swan and Karine Erikstein, 'Voluntary Guidelines for Flag State Performance: A New Tool to Conquer IUU Fishing' (2014) 29 International Journal of Marine and Coastal Law 116.

[112] FAO, 'The ecosystem approach to fisheries' (FAO Technical Guidelines for Responsible Fisheries No 4, Suppl 2 Rome 2003); FAO, The human dimensions of the ecosystem approach to fisheries (FAO Technical Guidelines for Responsible Fisheries No 4, Suppl 2, Add. 2, Rome, 2009); FAO, A How-to Guide on legislating for an ecosystem approach to fisheries (FAO EAF-Nansen Project Report No 27 Rome, 2016); FAO, Legislating for an ecosystem approach to fisheries – revisited – an update of the 2011 legal study on the ecosystem approach to fisheries (FAO EAF-Nansen Programme Report No. 36, Rome, 2021).

the use of integrated management of aquatic ecosystems to 'minimize conflict between resource[s] users'.[113] This matter is, in fact, notably absent in many countries' fisheries legislation, as recent EAF legal assessments have indicated.[114] Importantly, in the 2021 Declaration for Sustainable Fisheries and Aquaculture of the FAO Committee on Fisheries, Member States stressed again the need to address issues of safe, healthy and fair working conditions, forced labour, social protection, and safety at sea, in cooperation with other relevant international organisations, including the ILO and IMO.[115]

3.3 Regional Approaches to Conflicts in Fisheries

In addition to more geographically agnostic instruments, international fisheries law also lies across a system of regional mechanisms, including the regional fisheries management organisations (RFMOs). These are regulated under the LOSC and the UNFSA.[116] RFMOs lay out important obligations, through CMMs, for their respective Member States to caretake migratory fish stocks falling under the concerned RFMO's area of competence, as well as set out requirements to be observed by flag States' associated fishing activity. As such, RFMOs can control conflictual behaviour among fishing vessels flying the flags of its Member States, and influence the conditions that may lead to social volatility in RFMOs' areas of competence. They also serve to facilitate States' cooperation in managing and conserving migratory fish stocks, but they remain insufficient in addressing conflicts in fisheries because their mandates to no cover conflicts as a topic, and – only more recently – have certain RFMOs been addressing issues such as labour and safety in conservation and management measures. However, in general, regional fishery bodies, not only RFMOs but also regional fishery advisory bodies (RFABs) have the potential to, inter alia, build trust between States, foster geopolitical cohesion through co-management, reduce competition, support collective resource

[113] FAO, A How-to Guide on legislating for an ecosystem approach to fisheries (FAO EAF-Nansen Project Report No 27 Rome, 2016), at 24.

[114] E.g. Julia N. Nakamura and others, 'Legal report on the ecosystem approach to fisheries in Benin – An analysis of the ecosystem approach to fisheries in selected national policy and legal instruments of Benin' (2022) EAF-Nansen Programme No. 53. Rome, FAO. https://doi.org/10.4060/cc2120en; Julia N. Nakamura J, Teresa Amador and Abdullah Al Arif, 'Legal report on the ecosystem approach to fisheries in Bangladesh – An analysis of the ecosystem approach to fisheries in selected national policy and legal instruments of Bangladesh' (2022) EAF-Nansen Programme No. 49. Rome, FAO. https://doi.org/10.4060/cc2560en.

[115] FAO, '2021 COFI Declaration for Sustainable Fisheries and Aquaculture' (FAO, Rome, 2021).

[116] LOSC, Articles 63-65; UNFSA, Article 8.

control and collectively fashion legal stipulations that promote peace.[117] Ratner et al., for instance, show how collaborative, multi-stakeholder dialogue workshops have reduced conflict over fresh-water fisheries resources in Uganda, Zambia, and Cambodia. While by no means an assured means to counter-conflict, Ratner et al., explain how voicing concerns, reflecting on historic challenges, and strategizing for future coexistence "can strengthen marginalised voices, help make incremental improvements and provide examples of innovation that lay the groundwork for more systemic reforms" - ultimately contributing to conflict prevention.[118]

Certain RFMOs' constituent instruments, which contain provisions that enshrine the concern with conflict in fisheries from a State's perspective, but not direct conflict among fishers. For instance, the Preamble of the Convention for the Conservation of the Antarctic Marine Living Resources (CCAMLR) states 'that it is in the interest of all mankind to preserve the waters surrounding the Antarctic continent for peaceful purposes only and to prevent their becoming the scene or object of international discord.'[119] Other RFMOs' constituent instruments include articles detailing principles and processes for dispute resolution between Member States. Adopting a preventative language, the South Pacific Regional Fisheries Management Organisation (SPRFMO) Convention, for instance, specifies that 'Contracting Parties shall cooperate in order to prevent disputes.'[120]

In turn, the Western and Central Pacific Fisheries Commission (WCPFC)[121] has built upon port and coastal State approaches to craft specific sanctioning mechanisms that guard Member States from illicit actors. IUU blacklists - as they have come to be known - are used by over a dozen regional bodies to identify, shape, and restrict the operations of vessels that do not comply with the stipulations of regional fisheries law.[122] Established in its sixteenth regular

[117] Cullen Hendrix and Zachary Lien. 'Managing fisheries conflict in the 21st century: a role for regional management organizations?' *New Security Beat*, (1 February 2021) <https://www.newsecuritybeat.org/2021/02/managing-fisheries-conflict-21st-century-role-regional-management-organizations/> accessed 31 October 2022.

[118] Blake D. Ratner and others, 'Investing in Multi-Stakeholder Dialogue to Address Natural Resource Competition and Conflict' (2018) 28 Development in Practice 799 <https://doi.org/10.1080/09614524.2018.1478950> at 810.

[119] Convention on the Conservation of Antarctic Marine Living Resources (adopted 20 May 1980, entered into force 7 April 1982) 1329 UNTS 47.

[120] Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean (adopted 14 November 2009, entered into force 24 August 2012) 2899 UNTS.

[121] Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (adopted 5 September 2000, entered into force 19 June 2004) 2275 UNTS. 43.

[122] Zoe Scanlon, 'Safeguarding the Legitimacy of Illegal, Unreported and Unregulated Fishing Vessel Listings' (2019) 68 International and Comparative Law Quarterly 369.

session in 2019, the WCPFC maintains an IUU fishing blacklist that is designed to target vessels who have 'undermined the effectiveness of the WCPFC Convention and the WCPFC measures in force.'[123] Since the functions of the WCPFC are inclusive of promoting 'the peaceful resolution of disputes', their IUU fishing blacklist could, in theory, be interpreted as a tool to restrain or deter vessels that engage in or initiate fisheries conflict. The penalties for vessels landing on an IUU blacklist can be strict, including restrictions on transshipments, landing, re-supply, chartering, and commercial transactions within Member States.[124] Many regional bodies now share intel and automatically sanction vessels that appear on other organisations' lists.[125]

Meanwhile, other multilateral platforms, like the Nauru Agreement, have seemingly addressed conflict by stoking coordinated, adaptive management of common stocks.[126] The Nauru Agreement's vessel day scheme set out in the Palau Arrangement, for instance,[127] limits the amount of fishing effort – measured in the number of purse seine 'fishing days' – across the collective EEZs of its Parties. These fishing days are internally allocated to the Parties and can be sold to non-Parties for a standardised, minimum licensing fee. As a block, the Parties to the Nauru Agreement are able to negotiate effectively for the price of the vessel days, providing them with more control over the fishery. Certain experts have suggested block-system negotiations have reduced the need for State-State competition in bidding wars and limited the competition between different fishing fleets in the region.[128] Collectively, these outcomes can mitigate local resentment toward foreign fishing vessels while also providing negotiating

[123] Western and Central Pacific Fisheries Commission 'Conservation and Management Measure to Establish a List of Vessels Presumed to have Carried out Illegal, Unreported and Unregulated Fishing Activities in the WCPO' Sixteenth Regular Session (5-11 December 2019) S 1.

[124] ibid; Scanlon (n 122).

[125] ibid.

[126] Merrick Burden and Rod Fujita, 'Better Fisheries Management Can Help Reduce Conflict, Improve Food Security, and Increase Economic Productivity in the Face of Climate Change' (2019) 108 Marine Policy 103610 <https://doi.org/10.1016/j.marpol.2019.103610>; Nauru Agreement Concerning Cooperation in the Management of Fisheries of Common Stocks (adopted 11 February 1982, entered into force 2 December 1982) (Nauru Agreement).

[127] Palau Arrangement for the Management of the Western Pacific Purse Seine Fishery (adopted 2 October 1992, entry into force 31 October 1995) (as amended 1 December 2007) (Palau Arrangement).

[128] Merrick Burden and Rod Fujita, 'Better Fisheries Management Can Help Reduce Conflict, Improve Food Security, and Increase Economic Productivity in the Face of Climate Change' (2019) 108 Marine Policy 103610.

leverage to Member States - especially when it comes to redressing potential conflicts or IUU activities that have come as a result of distant water fishing efforts.[129]

Other organisations like the Pacific Islands Forum Fisheries Agency (FFA)[130] have supported monitoring and surveillance. The Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region[131] sits within the auspices of the FFA and arguably gives Member States opportunities to further develop collaborative fisheries enforcement through efforts including information exchange, subsidiary agreements to share surveillance infrastructures, and the interjurisdictional coordination of prosecutions. The FFA also has a distinguished role in facilitating the national implementation of vessel monitoring systems and observer requirements for foreign flagged vessels operating in certain countries, such as the Solomon Islands - contributing to resource sovereignty, peaceful fisheries management and overall system legitimacy.

4. Conclusions and Recommendations

Fisheries conflicts are formidably embedded within a larger societal curtain involving sustainability ambitions, macroeconomic considerations, and food security features. Amongst this sea of pressures, explosive and sporadic altercations between fishers must be halted for the sake of their lives and the overall maritime order and security. At the same time, these conflicts occur at the fringes of mainstream media and political discourse, which make their mitigation very sensitive and difficult to achieve by decision makers. In this article, we shed light on what fisheries conflicts mean and how different types of conflicts occur in fisheries. We identified and interpreted selected international and regional fisheries legal instruments to clarify their approaches that are useful in addressing fisheries conflict.

Critically, we find that such legal approaches tackling fisheries conflict are reflective of the complex reality of the industry: there is no single *force de jure* or one-stop-shop addressing conflict. Instead, tactics are baked into the underlying international legal framework and vary considerably from across a slate of international legal tools. While most instruments

[129] Gilman EL, Ardron J, Clark N, Clark N, 'Standard for Assessing Transparency in Information on Compliance with Obligations of Regional Fisheries Management organizations: Validation through assessment of the Western and Central Pacific Fisheries Commission' (2015) 57 Marine Policy.

[130] South Pacific Forum Fisheries Agency Convention (adopted 10 July 1979, entered into force 9 August 1979).

[131] Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region (adopted 9 July 1992, entered into force 20 May 1993) (Niue Treaty).

do not refer explicitly to 'conflict' in a fisheries context, they provide a range of States' obligations (in the case of legally binding instruments) and States and non-State actors' guidance (for non-binding instruments), which are instrumental in preventing fisheries conflicts. These requirements and guidance are important for setting out principles (e.g. combatting fisheries conflict, promoting and applying the ecosystem approach to fisheries), safety standards and decent working conditions (e.g. tackling forced labour), management approaches (e.g. establishing fisheries exclusive zones, delineating zones for small-scale fishers), monitoring, control, and surveillance (e.g. inspections, combating IUU fishing), and enforcement (e.g. applying adequate penalties for violation of rules), all which can be used to tackle fisheries conflicts and promote maritime security.

While the LOSC, UNFSA and PSMA have a stronger impact, others have yet to attract a broader community of States in adhering to its obligations, which is the case of the SUA Convention, the Compliance Agreement and the C-188. This is where non-binding instruments, such as the Tenure Guidelines, the SSF Guidelines, and the IPOA-IUU, can play a significant role in detailing requirements relevant to fisheries conflict, which States and non-State actors can implement, granted with more flexibility. In turn, regional mechanisms offer legal solutions with a necessary level of geographic specificity to target certain more localised, transboundary concerns like perceived unfairness over quota distribution.

Through the coordinated approach of regional platforms, States can also diplomatically negotiate, collectively take decisions, and overcome historical tensions, which can ultimately reduce conflict in fisheries at the individual level, shaping a more peaceful governance of common fisheries resources. While there may not be a silver bullet solution, the examples outlined in this chapter offer potential for effective prevention, control and management of fisheries conflict in the 21th century Anthropogenic fishing industry. We do not consider that a dedicated legal regime on fisheries conflict would be desirable nor practicable, as disparate motivations, nature, and different types of fisheries conflict necessarily demand multiple legal responses from different legal regimes. We showed what international fisheries law has to offer, but there is certainly an array of other international and regional instruments from other specialised regimes, notably human rights, biodiversity, and even trade (if considered potential trade sanctions that could be imposed for States whose nationals or flagged vessels indicate high incidents of fisheries conflict), which can complement and mutually support the legal responses against fisheries conflict. As Vidas articulates, 'we need to enter the transitional period where existing structures are retained, of necessity—as the only means we have to

facilitate the shift in our approaches.'[132] At the same time, current international fisheries law must be moulded to fill gaps and evolve with emerging trends in fisheries conflict - climate change impacts, resource scarcity, civil conflicts, and technological advancements. As international fisheries law exemplifies, 'transboundary fisheries management is the path forward for the future.'[133] However, peripheral regimes including human rights, climate change, international environmental law, and international business administration also have important ties to fishing operations and could be integrated into the conflict conversation to broaden the normative lens trough which we consider international fisheries conflict. As Brown and Keating articulate: 'It may not be too much of an exaggeration to suggest that politics in the 21st century will be shaped, in part, by how well these disputes can be resolved.'[134]

[132] Davor Vidas, 'The Anthropocene and the International Law of the Sea' (2011) 369 Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences 909.

[133] Pomeroy and others, (n 6).

[134] Oli Brown and Michael Keating, 'Addressing Natural Resource Conflicts Working Towards More Effective Resolution of National and Sub-National Resource Disputes' (2015) Chatham House: The Royal Institute of International Affairs, at 2.

References[135]

- Ameyaw GA, Tsamenyi M, Mcilgorm A, Aheto DW, 'Challenges in the Management of Small-Scale Marine Fisheries Conflicts in Ghana' (2021) 211 Ocean and Coastal Management 105791.
- Andreone G, 'The Exclusive Economic Zone' in Donald Rothwell et al (eds), The Oxford Handbook of the Law of the Sea (Oxford University Press 2014).
- Antonova AS, 'The rhetoric of 'responsible fishing': Notions of human rights and sustainability in the European Union's bilateral fishing agreements with developing States' (2016) 70 Marine Policy 77.
- Armstrong C, 'Abuse, Exploitation, and Floating Jurisdiction: Protecting Workers at Sea*' (2022) 30 Journal of Political Philosophy 3.
- Asch RG, 'Climate Change and Decadal Shifts in the Phenology of Larval Fishes in the California Current Ecosystem' (2015) 112 Proceedings of the National Academy of Sciences E4065.
- Aswani S, Asurto X, Ferse S, Glaser M, Campbell L, Cinner JE, Dalton T, Jenkins LD, Miller ML, Pollnac R, Vaccaro I, Christie P, 'Marine resource management and conservation in the Anthropocene' Environmental Conservation 45 (2018) 192.
- Bahri T, Vasconcellos M, Welch DJ, Johnson J, Perry RI, Ma X, Sharma R, 'Adaptive management of fisheries in response to climate change.' FAO Fisheries and Aquaculture Technical Paper No. 667. Rome, FAO.
- Baio A and Sei S, 'On the Development of Territorial Use Rights in the Marine Small-Scale Fisheries of Sierra Leone' (2019), Conference: Global Conference on Tenure & User Rights in Fisheries 2018: Achieving Sustainable Development Goals by 2030, 10-14 September 2018, Yeosu, South Korea.
- Bankes N, 'Legislative and enforcement jurisdiction of the coastal state with respect to fisheries in the exclusive economic zone' in Jensen Ø (ed), The Development of the Law of the Sea Convention (Edward Elgar Publishing 2020) .
- Barange M, Bahri T, Beveridge MCM, Cochrane KL, Funge-Smith S, Poulain F, 'Impacts of Climate Change on Fisheries and Aquaculture: Synthesis of Current Knowledge, Adaptation and Mitigation Options' (FAO, 2018).
- Barnes R and and Rosello M, 'Fisheries and maritime security: understanding and enhancing the connection' in Evans MD and Galani S (eds) Maritime Security and the Law of the Sea: Help or Hindrance? (Edward Elgar Publishing 2020).
- Bavinck M, 'Understanding Fisheries Conflicts in the South - A Legal Pluralist Perspective' (2005) 18 Society and Natural Resources 805.

[135] All internet sources have last been accessed on 18 January 2023.

- Becker-Weinberg V, 'Time to Get Serious about Combating Forced Labour and Human Trafficking in Fisheries' (2020) 36 The International Journal of Marine and Coastal Law 88.
- Belhabib D, Cheung WWL, Kroodsma D, Lam VWY, Underwood PJ, Virdin J, 'Catching Industrial Fishing Incursions into Inshore Waters of Africa from Space' (2020) 21 Fish and Fisheries 379.
- Belhabib D, Le Billon P, 'Fish Crimes in the Global Oceans' (2022) 8 Science Advances 1.
- Belhabib D, Le Billon P, Wrathall DJ, 'Narco-Fish: Global Fisheries and Drug Trafficking' (2020) 21 Fish and Fisheries 992.
- Belhabib D, Sumaila UR, Le Billon P, 'The Fisheries of Africa: Exploitation, Policy, and Maritime Security Trends' (2019) 101 Marine Policy 80.
- Beseng M, Malcolm JA, 'Maritime Security and the Securitisation of Fisheries in the Gulf of Guinea: Experiences from Cameroon' (2021) 21 Conflict, Security and Development 517.
- Bindoff NL, 'Chapter 5: Changing Ocean, Marine Ecosystems and Dependent Communities' in IPCC, The Ocean and Cryosphere in a Changing Climate: Special Report of the Intergovernmental Panel on Climate Change (Cambridge University Press 2022) 447.
- Burden M, Fujita R, 'Better Fisheries Management Can Help Reduce Conflict, Improve Food Security, and Increase Economic Productivity in the Face of Climate Change' (2019) 108 Marine Policy 103610.
- Churchill R, 'The Jurisprudence of the International Tribunal for the Law of the Sea relating to Fisheries: Is There Much in the Net?' (2007) 22 IJMCL 383.
- Cullen Hendrix and Zachary Lien. 'Managing fisheries conflict in the 21st century: a role for regional management organizations?' New Security Beat, (1 February 2021) <https://www.newsecuritybeat.org/2021/02/managing-fisheries-conflict-21st-century-role-regional-management-organizations/>.
- Dahlet LI, Himes-Cornell A, Metzner R, 'Fisheries Conflicts as Drivers of Social Transformation' (2021) 53 Current Opinion in Environmental Sustainability 9.
- Daniel Boffey and Lisa O'Carroll, 'UK sends navy vessels to Jersey amid post-Brexit fishing row with France' The Guardian (5 May 2021) <https://www.theguardian.com/uk-news/2021/may/05/uk-hits-back-at-french-threat-to-cut-jerseys-electricity-supply>.
- Desombre ER, 'The Security Implications of Fisheries' (2019) 95 International Affairs 1019.
- Devlin C, Glaser SM, Lambert JE, Villegas C, 'The Causes and Consequences of Fisheries Conflict around the Horn of Africa' (2021) Journal of Peace Research.
- DuBois C and Zografos C, 'Conflicts at Sea between Artisanal and Industrial Fishers: Inter-Sectoral Interactions and Dispute Resolution in Senegal' (2012) 36 Marine Policy 1211.
- Fernández JE, Johansson TM, Skinner JA, Lennan M (eds), Fisheries and the Law in Europe - Regulation After Brexit (Routledge, 2022).

- Frame M, 'Foreign Investment in African Resources: The Ecological Aspect to Imperialism and Unequal Exchange' (2014) ProQuest Dissertations and Theses.
- Gagern A and van den Bergh J, 'A critical review of fishing agreements with tropical developing countries' (2013) 38 Marine Policy 375.
- Gammage C, 'A Sustainability Impact Assessment of the Economic Partnership Agreements: Challenging the Participatory Process' (2010) 3 The L & Dev Rev 108.
- Garcia Lozano AJ and others, 'Decent Work in Fisheries: Current Trends and Key Considerations for Future Research and Policy' (2022) 136 Marine Policy.
- Garcia Lozano AJ, Decker JLS, Durgana DP, Farthing CM, Fitzpatrick J, Krough-Poulsen B, McDonald G, McDonald S, Ota Y, Sarto N, Cisneros-Montemayor AM, Lout G, Finkbeiner E, Kittinger JN, 'Decent Work in Fisheries: Current Trends and Key Considerations for Future Research and Policy' (2022) 136 Marine Policy.
- Gilman EL, Ardron J, Clark N, Clark N, 'Standard for Assessing Transparency in Information on Compliance with Obligations of Regional Fisheries Management organizations: Validation through assessment of the Western and Central Pacific Fisheries Commission' (2015) 57 Marine Policy.
- Glaser SM, Roberts PM and Hurlburt KJ, 'Foreign Illegal, Unreported, and Unregulated Fishing in Somali Waters Perpetuates Conflict' (2019) 6 Frontiers in Marine Science.
- Guggisberg S, 'The EU's Regulation on the Sustainable Management of External Fishing Fleets' (2019) 34 International and European Law Perspectives 291.
- Helen Wieffering 'Fights over illegal fishing lead to armed conflicts, death' Associated Press (31 March 2022) <https://apnews.com/article/business-environment-middle-east-fish-only-on-ap-88e59a1748ba76fdc5847cc7a44e3fa6>.
- Hoefnagel E, de Vos B, and Buiman E, 'Quota swapping, relative stability and transparency' 57 Marine Policy (2015) 111.
- Honniball AN, 'The Exclusive Jurisdiction of Flag States: A Limitation on Pro-Active Port States?' (2016) 31 International Journal of Marine and Coastal Law 3.
- James Harrison, 'Guest Blog – Unpacking the Legal Disputes over Rockall' SPICe Spotlight (18 June 2019), https://spice-spotlight.scot/2019/06/18/guest-blog-unpacking-the-legal-disputesover-rockall/.
- Jönsson JH, 'Overfishing, Social Problems, and Ecosocial Sustainability in Senegalese Fishing Communities' (2019) 27 Journal of Community Practice 213.
- Kleisner KM, Fogarty MJ, McGee S, Barnett A, Fratantoni P, Greene J, Hare JA, Lucey SM, McGuire C, Odell J, Saba VS, Smith L, Weaver KJ, Pinsky ML,'The Effects of Sub-Regional Climate Velocity on the Distribution and Spatial Extent of Marine Species Assemblages' (2016) 11 PLOS ONE e0149220.

- Kuemlangan B and others, 'Enforcement Approaches against Illegal Fishing in National Fisheries Legislation' (2022) Marine Policy, under review.
- Lennan M, 'Fisheries Redistribution under Climate Change: Rethinking the Law to Address the "Governance Gap" in Platjouw FM and Pozdnakova A (eds.) *The Environmental Rule of Law for the Oceans* (Cambridge University Press, 2023).
- McDonald GG, Costello C, Bone J, Cabra RB, Farabee V, Hochberg T, Kroodsma D, Mangin T, Meng KC, Zahn O, 'Satellites Can Reveal Global Extent of Forced Labor in the World's Fishing Fleet' (2021) 118 Proceedings of the National Academy of Sciences of the United States of America 1.
- Mendenhall E, Hendrix C, Nyman E, Roberts PM, Hoopes JR, Watson JR, Lam VWY, 'Climate Change Increases the Risk of Fisheries Conflict' (2020) 117 Marine Policy 103954.
- Musto C, Papastavridis E, 'Tackling Illegal, Unreported and Unregulated Fishing through Port State Measures Ported, and Unregulated Fishing through Port State Measures Melbourne Journal of International Law' (2021) 22 Melbourne Journal of International Law 1.
- Nakamura J and others, 'Legal report on the ecosystem approach to fisheries in Benin – An analysis of the ecosystem approach to fisheries in selected national policy and legal instruments of Benin' (2022) EAF-Nansen Programme No. 53. Rome, FAO < https://doi.org/10.4060/cc2120en>.
- Nakamura J, 'Legal Reflections on the Small-Scale Fisheries Guidelines: Building a Global Safety Net for Small-Scale Fisheries' (2022) 37 IJMCL 31.
- Nakamura J, Amador T and Al Arif A, 'Legal report on the ecosystem approach to fisheries in Bangladesh – An analysis of the ecosystem approach to fisheries in selected national policy and legal instruments of Bangladesh' (2022) EAF-Nansen Programme No. 49. Rome, FAO. https://doi.org/10.4060/cc2560en.
- Nakamura J, Diz D and Morgera E, 'International Legal Requirements for Environmental and Socio-Cultural Impact Assessment for Large-scale Industrial Fisheries' (2022) Review of European, Comparative and International Environmental Law 1.
- Nichols R, Parks J, Pollnac R, Campson T, Genio E, Marlessy C, Holle E, Pido M, Nissapa A, Boromthanarat S, Thu Hue N, 'Fishing Access Agreements and Harvesting Decisions of Host and Distant Water Fishing Nations' (2015) 54 Marine Policy 77.
- Nyagah, T., Mwangi, J., Attree, L., 'Inside Kenya's War on Terror: the case of Lamu' Saferworld: Preventing violent conflict. Building safer lives (no date) <https://www.saferworld.org.uk/long-reads/inside-kenyaas-war-on-terror-the-case-of-lamu>.
- Okafor-Yarwood I and Belhabib D, 'The Duplicity of the European Union Common Fisheries Policy in Third Countries: Evidence from the Gulf of Guinea' (2020) 184 Ocean and Coastal Management 104953.

- Okafor-Yarwood I, 'The Cyclical Nature of Maritime Security Threats: Illegal, Unreported, and Unregulated Fishing as a Threat to Human and National Security in the Gulf of Guinea' (2020) 13.
- Oral N, 'Reflections on the Past, Present, and Future of IUU Fishing under International Law' (2020) 22 International Community Law Review 368.
- Østhagen A, Spijkers J, Totland OA, 'Collapse of Cooperation? The North-Atlantic Mackerel Dispute and Lessons for International Cooperation on Transboundary Fish Stocks' (2020) 19 Maritime Studies 155.
- Papanicolopulu I, *International Law and the Protection of People at Sea* (Oxford University Press 2018).
- Peters S, *Beyond Human Rights: The Legal Status of the Individual in International Law* (Cambridge University Press, 2016).
- Petrig A, Bo M, 'The International Tribunal for the Law of the Sea and Human Rights' in Martin Scheinin (ed) Human Rights Norms in 'Other' International Courts (Cambridge University Press 2019).
- Pinksy M, 'Preparing Ocean Governance for Species on the Move' (2018) 360 Science 1189.
- Pinsky ML, Worm B, Fogarty MJ, Sarmiento JL, Levin SA, 'Marine Taxa Track Local Climate Velocities' (2013) 341 Science 1239.
- Pollnac RB, 'Cooperation and Conflict between Large- and Small-Scale Fisheries: A Southeast Asian Example' in William W Taylor, Michael G Schechter and Lois G Wolfson (eds), Globalization: Effects on Fisheries Resources (Cambridge University Press 2007).
- Pomeroy R, Parks J, Mrakovcich KL, LaMonica C, 'Drivers and Impacts of Fisheries Scarcity, Competition, and Conflict on Maritime Security' (2016) 67 Marine Policy 94.
- Ratner BD and others, 'Investing in Multi-Stakeholder Dialogue to Address Natural Resource Competition and Conflict' (2018) 28 Development in Practice 799 <https://doi.org/10.1080/09614524.2018.1478950>.
- Ratner BD, Åsgård B and Allison EH, 'Fishing for Justice: Human Rights, Development, and Fisheries Sector Reform' (2014) 27 Global Environmental Change 120.
- Ríán Derrig, 'An Irish Claim to Rockall' EJIL:TALK! Blog of the European Journal of International Law (14 January 2021) <https://www.ejiltalk.org/an-irish-claim-to-rockall/>.
- Richard Collins, 'Sovereignty has 'Rock-all' to Do with It … or Has It? What's at Stake in the Recent Diplomatic Spat between Scotland and Ireland?' EJIL:TALK! Blog of the European Journal of International Law (8 July 2019), <https://www.ejiltalk.org/sovereignty-has-rock-all-to-do-with-it-or-has-it-whatsat-stake-in-the-recent-diplomatic-spat-between-scotland-and-ireland/>.
- Sam Chambers, 'Many dead as bunker tanker collides with fishing vessel off Incheon' Splash247 (4 September 2017) <https://splash247.com/many-dead-bunker-tanker-collides-fishing-vessel-off-incheon/>.

- Scanlon Z, 'Safeguarding the Legitimacy of Illegal, Unreported and Unregulated Fishing Vessel Listings' (2019) 68 International and Comparative Law Quarterly 369.
- Seta M, 'A Murder at Sea Isn't Just a Murder! The Expanding Scope of Universal Jurisdiction under the SUA Convention' in Patrick Chaumette (ed), Maritime Areas: Control and Prevention of Illegal Traffics at Sea, (GOMYLEX 2016).
- Seto KL, 'Local Fishery, Global Commodity: Conflict, Cooperation, and Competition in Ghana's Coastal Fisheries' (PhD Thesis, UC Berkeley, 2017).
- Spijkers J Morrison TH, Blasiak R, Cumming GS, Osborne M, Watson J, Österblom H, 'Marine Fisheries and Future Ocean Conflict' (2018) 19 Fish and Fisheries 798.
- Spijkers J, Merrie A, Wabnitz CCC, Osborne M, Mobjörk M, Bodin Ö, Selig ER, Le Billon P, Hendrix CS, Singh GG, Keys PW, Morrison TF, 'Exploring the Future of Fishery Conflict through Narrative Scenarios' (2021) 4 One Earth 386.
- Spijkers J, Singh G, Blasiak R, Morrison TH, Le Billon P, Österblom H, 'Global Patterns of Fisheries Conflict: Forty Years of Data' (2019) 57 Global Environmental Change.
- Spijkers J, Singh GG, Wabnitz CCC, Österblom H, Cumming GS, Morrison TH, 'Identifying Predictors of International Fisheries Conflict' (2021) 22 Fish and Fisheries 834.
- Standing A, 'Mirage of Pirates: State-Corporate Crime in West Africa's Fisheries' (2015) 4 State Crime Journal 2.
- Stewart BD, Williams C, Barnes R, Walmsley SF, Carpenter G, 'The Brexit deal and UK fisheries, has reality matched the rehetoric?' 21 Maritime Studies (2022) 1.
- Sumaila UR, 'Climate Change Increases the Risk of Fisheries Conflict' (2020) 117 Marine Policy 103954.
- Swan J and Erikstein K, 'Voluntary Guidelines for Flag State Performance: A New Tool to Conquer IUU Fishing' (2014) 29 International Journal of Marine and Coastal Law 116.
- Tai TH, Kao SM and Ho WC, 'International Soft Laws against IUU Fishing for Sustainable Marine Resources: Adoption of the Voluntary Guidelines for Flag State Performance and Challenges for Taiwan' (2020) 12 Sustainability (Switzerland).
- Telesetsky A, 'Scuttling IUU Fishing and Rewarding Sustainable Fishing: Enhancing the Effectiveness of the Port State Measures Agreement with Trade-Related Measures' (2014) 38 Seattle University Law Review 1237.
- Vidas D, 'The Anthropocene and the International Law of the Sea' (2011) 369 Philosophical Transactions of the Royal Society A: Mathematical, Physical and Engineering Sciences 909.
- Vincent Bevins 'I'm nasty.' How an Indonesian government official won admirers by blowing up boats.' The Washington Post (5 September 2018) <https://www.washingtonpost.com/world/2018/09/05/im-nasty-how-an-indonesian-government-official-won-admirers-by-blowing-up-boats/>.

To appear in Associazione di Consulenza in Diritto del Mare (ASCOMARE) Yearbook on the Law of the Sea (YLoS) Volume 2 – 'Fisheries and the Law of the Sea in the Anthropocene Era' https://ascomare.com/ylos-volume-2/

- Witbooi E and others, 'Organized Crime in the Fisheries Sector Threatens a Sustainable Ocean Economy' (2020) 588 Nature 1.