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Combating Illegal, Unreported and Unregulated Fishing: A Comparative Study between European and Chinese Law

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List of Abbreviations

APFIC	Asia-Pacific Fishery Commission
BSC	Black Sea Commission
CAPPMA	China Aquatic Products Processing and Marketing Association
CCAMLR	Commission for the Conservation of Antarctic Marine Living Resources
CCBSP	Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea
CCSBT	Commission for the Conservation of Southern Bluefin Tuna
CDWFA	China Distant Water Fisheries Association
CECAF	Fishery Committee for the Eastern Central Atlantic
CFP	EU Common Fisheries Policy
2013 CFP Regulation	Council Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC
COFI	Committee on Fisheries of the FAO
Control Regulation	Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006; OJ L 343 of 22 December 2009
DEFRA	Department for Environment Food & Rural Affairs of the UK
DG MARE	Directorate-General for Maritime Affairs and Fisheries of the European Commission
eBCD	Electronic Bluefin Tuna Catch Document Programme
ECJ	European Court of Justice
EEZs	Exclusive economic zones
EJF	Environmental Justice Foundation
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FOCs	Flags of Convenience

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GATT	General Agreement on Tariffs and Trade
GFCM	General Fisheries Commission for the Mediterranean
HSVAR	High Seas Vessel Authorisation Record
IATTC	Inter-American Tropical Tuna Commission
ICCAT	International Commission for the Conservation of Atlantic Tunas
IEEP	Institute for European Environmental Policy
IMO	International Maritime Organization
IOTC	Indian Ocean Tuna Commission
IPOA	International Plan of Action
IPOA-IUU	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing
ITLOS	International Tribunal for the Law of the Sea
IUU	Illegal, unreported and unregulated
IUU Regulation	The Council Regulation (EC) No 1005/2008 of 29 September 2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulation (EC) No 1093/94 and (EC) No 1447/1999
JRC	Joint Research Centre of the European Commission
LSPDF	Large-Scale Pelagic Driftnet Fishing
MARM	Ministry of Environment, Rural and Marine Affairs of Spain
MOU	Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of 20 December 1991
MSC	Marine Stewardship Council
MSRA	Magnuson-Stevens Reauthorization Act of the US
NAFO	Northwest Atlantic Fisheries Organization
NASCO	North Atlantic Salmon Conservation Organization
NEAFC	North East Atlantic Fisheries Commission
NGOs	Non-Governmental Organizations
NMFS	National Maritime Fisheries Service of the US
NOAA	National Oceanic and Atmospheric Administration of the United States of America
NPC	National People's Congress of the People's Republic of China
NPOA	National Plans of Action
OECD	Organization for Economic Cooperation and Development
OJ	Official Journal of the European Union
Port-Lex	FAO Database on Port State Measures
PRC	The People's Republic of China

RFBs	Regional Fishery Bodies
RFMOs	Regional Fisheries Management Organizations and Arrangements
SEAFO	South East Atlantic Fisheries Organization
SIOFA	South Indian Ocean Fisheries Agreement
SPRFMO	South Pacific Regional Fisheries Management Organization
SRFC	Sub-Regional Fisheries Commission
SWIOFC	South West Indian Ocean Fisheries Commission
TAAF	Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime areas adjacent to the French Southern and Antarctic Territories
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
The AETR case	ECJ Case 22/70 Commission v Council
UNCED	United Nations Conference on Environment and Development
UNCLOS	United Nations Convention on the Law of the Sea
UNGA	United Nations General Assembly
UNTS	United Nations Treaty Collection
UVI	Unique Vessel Identifier
WCPFC	Western and Central Pacific Fisheries Commission
WECAFC	Western Central Atlantic Fishery Commission
WTO	World Trade Organization

Chapter 1 Introduction

1.1 Research context

1.1.1 Background

Global losses due to illegal, unreported and unregulated (IUU) fishing are estimated to be between 9 billion USD and 24 billion USD annually, representing between 10 and 22 per cent of total fisheries production.¹ In the history of the development of international fisheries law, “combating IUU fishing” is a newly emerging topic. IUU fishing was first formally mentioned during a meeting of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR)² in 1997. It was explicitly addressed in the Secretary-General’s Report to the United Nations General Assembly (UNGA) on Oceans and the Law of the Sea in 1999,³ and followed by the UNGA Resolution 54/32 in 1999,⁴ which called upon States to deal with the problem of IUU fishing.⁵ The 2001 Internation-

¹ Mohammed EY (2014) Fisheries and the post-2015 development agenda. Available via International Institute for Environment and Development. <http://pubs.iied.org/17203IIED.html>. Accessed 18 February 2014.

² The CCAMLR was established in 1982 with the objective of conserving Antarctic marine life under the Convention on the Conservation of Antarctic Marine Living Resources, which was concluded at Canberra on 20 May 1980, UNTS 1329, p. 47.

³ UNGA Report A/54/429 of the Secretary-General regarding oceans and the Law of the Sea, distributed on 30 September 1999. Available via UN Oceans & Law of the Sea. http://www.un.org/depts/los/general_assembly/general_assembly_reports.htm. Accessed on 22 October 2013, para. 98.

⁴ UNGA Resolution 54/32 regarding 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, distributed on 19 January 2000, para. 9.

⁵ OECD (2013) Short history of international actions and initiatives against IUU fishing activities. <http://www.oecd.org>. Accessed 18 January 2013.

al Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)⁶ first specifically defined the term of IUU fishing:

“ 3.1 Illegal fishing refers to activities:

3.1.1 conducted by national or foreign vessels in waters under the jurisdiction of a State, without the permission of that State, or in contravention of its laws and regulations;

3.1.2 conducted by vessels flying the flag of States that are parties to a relevant regional fisheries management organization but operate in contravention of the conservation and management measures adopted by that organization and by which the States are bound, or relevant provisions of the applicable international law; or

3.1.3 in violation of national laws or international obligations, including those undertaken by cooperating States to a relevant regional fisheries management organization.

3.2 Unreported fishing refers to fishing activities:

3.2.1 which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations; or

3.2.2 undertaken in the area of competence of a relevant regional fisheries management organization which have not been reported or have been misreported, in contravention of the reporting procedures of that organization.

3.3 Unregulated fishing refers to fishing activities:

3.3.1 in the area of application of a relevant regional fisheries management organization that are conducted by vessels without nationality, or by those flying the flag of a State not party to that organization, or by a fishing entity, in a manner that is not consistent with or contravenes the conservation and management measures of that organization; or

3.3.2 in areas or for fish stocks in relation to which there are no applicable conservation or management measures and where such fishing activities are conducted in a manner inconsistent with State responsibilities for the conservation of living marine resources under international law.

3.4 Notwithstanding paragraph 3.3, certain unregulated fishing may take place in a manner which is not in violation of applicable interna-

⁶ The IPOA-IUU was adopted by consensus at the 24th Session of Committee on Fisheries (COFI) in Rome on 2 March 2001 and endorsed by the 120th Session of the FAO Council on 23 June 2001. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/003/y1224e/y1224e00.HTM>. Accessed 22 October 2013.

*tional law, and may not require the application of measures envisaged under the International Plan of Action (IPOA).”*⁷

Although IUU fishing is universally called illegal, unreported and unregulated fishing, both unreported and unregulated fishing are subcategories of illegal fishing.⁸ This well explains why measures provided by the IPOA-IUU deal with IUU fishing as a whole instead of illegal, unreported and unregulated separately. The Council Regulation (EC) No 1005/2008 of 29 September 2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulation (EC) No 1093/94 and (EC) No 1447/1999 (IUU Regulation)⁹ mainly adopts this definition except for the omission of paragraph 3.4 of the IPOA-IUU. Paragraph 3.4 of the IPOA-IUU actually creates confusion as to the definition of unregulated fishing. In the context of paragraph 3.3, most unregulated fishing is actually considered illegal. However, paragraph 3.4 excludes fishing activities that are not illegal from the IPOA-IUU’s “*line of fire*” and thereby from the definition of IUU fishing.¹⁰ According to recital 41 of the EU IUU Regulation, IUU fishing refers to a violation of applicable laws, rules or regulations of particular gravity. In China’s national legislation, the term “IUU fishing” indeed refers to “illegal fishing” too. Therefore, this thesis only focuses on the illegality of IUU fishing and applicable measures.

IUU fishing has adverse effects on the marine ecosystem and economy. It aggravates overfishing and usually leads to an underestimation of fisheries resources during stock assessments.¹¹ IUU fishing is also a destructive competition, which is unfair to those who fish in compliance with relevant conservation and manage-

⁷ The IPOA-IUU, para. 3.

⁸ Detailed analysis see: Theilen JT (2013) What’s in a name? The illegality of illegal, unreported and unregulated fishing. *The International Journal of Marine and Coastal Law* 28 (3): 533-550.

⁹ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999; OJ L286 of 29 October 2008, pp. 1-36.

¹⁰ Theilen (2013), p. 542.

¹¹ Doulman DJ (2000) A general overview of some aspects of illegal, unreported and unregulated fishing. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/005/y3274e/y3274e04.htm>. Accessed 15 February 2014; Agnew DJ (2000) The illegal and unregulated fishery for toothfish in the Southern Ocean, and the CCAMLR catch documentation scheme. *Marine Policy*, 24 (5): 361-374; Forrest R, Pitcher TJ, Watson R et al (2002) Estimating illegal and unreported catches from marine ecosystems: a basis for change. *Fish and Fisheries* 3(4): 317-339.

ment measures. Therefore, IUU fishing discourages the effectiveness of such measures adopted nationally and internationally to secure fish stocks for the future.¹² IUU fishing has become an urgent issue in recent years due to the depletion of marine fisheries resources and increased fish demand. Low costs and high profits also encourage infringements of management and conservation measures.

Together with the United Nations Convention on the Law of the Sea (UNCLOS)¹³, the Food and Aquaculture Organization (FAO) has adopted a number of instruments pertaining to combating IUU fishing. Despite the comprehensive framework of legal instruments available, implementation of such instruments remains an open question. Whether current international law is adequate to combat IUU fishing is equally still unknown. In particular, certain States have legislation in place in the field. An assessment of the quality of such legislation and the effectiveness of its enforcement is still lacking. A further question concerns the types of enforcement depending on different attitudes towards international law.

1.1.2 Aim and scope of thesis

This research is a legal comparative study into the practice of the EU and China to combat IUU fishing. By comparing the law and its implementation by the EU and China, this thesis aims to evaluate of the adequacy of the international legal regime for combating IUU fishing. The Member States of the EU and China are both major fishing States and fish markets. They also represent developed and developing States respectively. The EU-China comparison further shows the implementation of international fisheries law at different levels of development based on the corresponding interests of the EU and China. Their success and challenge can be an important source of inspiration for the development in combating IUU fishing as well.

The scope of this thesis is the combat of IUU fishing. Issues such as overfishing or overcapacity in fisheries are beyond the scope of this thesis. As the focus of this research is on State measures against IUU fishing, measures by regional fisheries management organizations and arrangements (RFMOs) will only be referred to in cases where State measures are related to measures of RFMOs in which the EU or/and China participate.

¹² OECD (2004) Using trade measures in the fight against IUU fishing: opportunities and challenges. <http://www.oecd.org/greengrowth/fisheries/34227035.pdf>. Accessed 15 February 2014, p. 2.

¹³ The UNCLOS was concluded at Montego Bay, Jamaica on 10 December 1982 and entered into force on 16 November 1994, UNTS 1833, p. 3.

1.1.3 Significance of the EU-China comparison

The comparison of the EU and China provides an opportunity to study the implementation of international law in respect of combating IUU fishing. As the EU and China represent major fishing States and fish markets, the conclusions therefore provide an insight into whether current international fisheries law is effective to address IUU fishing. Moreover, the EU and China represent developed and developing States respectively. Therefore, the comparison also takes into account the different levels of implementation due to the development.

Although the EU is an association of sovereign States,¹⁴ it has exclusive competence in areas of “the conservation of marine biological resources under the common fisheries policy”. Additionally, the EU has shared competence with Member States concerning fisheries with the exception of the conservation of marine biological resources. In practice, the EU has concluded many international, regional and bilateral fisheries agreements to the exclusion of its Member States. In the field of combating IUU fishing, the EU’s legal acts are mainly adopted in the form of regulations. In fighting against IUU fishing, most of the EU’s legal acts are binding in their entirety and directly applicable in all Member States. Therefore, the comparison between the EU and China is more or less similar to that between sovereign States.

The conservation of fisheries resources and resolving fisheries conflicts are significant for both the EU and China. Given the implementation of the Common Fisheries Policy (CFP), the EU fishing fleet capacity has been reduced in both tonnage and engine power during the last two decades, which has contributed to an increasing domestic demand for fish and fisheries products. On the one hand, the EU actively develops distant water fisheries through fisheries partnership agreements and northern agreements.¹⁵ On the other hand, the EU greatly relies on imports of fish and fisheries products. The EU has not only become the largest fish market, it also attracted over 1.1 billion EUR illegal catches annually before 2010, which represent almost 16 per cent of the EU’s imports of fish.¹⁶ Such illegal catches have gained a competitive price advantage in the EU market, which is

¹⁴ Schorkopf F (2009) The European Union as an association of sovereign States: Karlsruhe’s ruling on the Treaty of Lisbon. *German Law Journal* 10 (8), p. 1219.

¹⁵ The EU has two types of fishing agreements with non-EU countries. Fisheries partnership agreements allow the EU to give financial and technical support in exchange for fishing rights, while the northern agreements are established with Norway, Iceland and the Faeroe Islands to manage jointly shared stocks.

¹⁶ Damanaki M (2011) Zero tolerance on illegal fishing. Speech presented at the 6th International Forum on Illegal, Unreported and Unregulated (IUU) Fishing, Chatham House, London, 13-14 January 2011.

believed to undermine conservation measures and discourage law-abiding fishermen.¹⁷ Therefore, the EU has dedicated itself to combating IUU fishing.

The most outstanding endeavour of the EU was the adoption and implementation of the IUU Regulation. The IUU Regulation deals with IUU fishing mainly through port State measures and trade-market measures. Since the IUU regulation entered into force, the European Commission (Commission) has adopted a set of implementing instruments. By doing this, the EU has established its own legal framework for combating IUU fishing. Furthermore, the EU actively encourages and cooperates with its fish trade partners, such as the US, Japan and China, in order to broaden the influence of the Community law.

Due to the depletion of marine fisheries resources in Chinese waters, China adopted a marine fishing vessel reduction plan for 2003-2010, which did achieve a reduction by 2008 close to the target, but after that both the number of vessels and the total combined power have started to increase again.¹⁸ The resource shortage has intensified along with the implementation of the UNCLOS and the establishment of the 200-nautical-mile exclusive economic zones (EEZs) by China and its neighbouring countries. This has resulted in fisheries conflicts between China and its neighbouring States and many incidents of IUU fishing. In order to alleviate the scarcity of resources, China started to promote the development of its distant water fisheries in 1985. Now China has the largest number of distant-water-fishing vessels in the world, yet its production capacity and industrial scale are much smaller than those of developed countries.¹⁹ China is the world's largest fish processor and exporter too. China contributed almost 12 per cent to the world's exports of fish and fisheries products that were worth about 13.3 billion USD in 2010 and increased further to 17.1 billion USD in 2011.²⁰ Additionally, China became the third-largest importer of fish and fisheries products in the world in 2011.²¹ Therefore, China plays a significant role in combating IUU fishing as a fish market.

China has acceded to the UNCLOS but not the other FAO agreements for combating IUU fishing. However, this does not infer that China has not complied with these agreements. Together with the Fisheries Law of the PRC,²² a series of im-

¹⁷ Damanaki M (2011) Zero tolerance on illegal fishing..

¹⁸ FAO (2012) The state of world fisheries and aquaculture 2012. FAO, Rome, p. 11.

¹⁹ Research group on "Supporting and strengthening distant water fisheries" (2010) Supporting distant water fisheries as a strategic industry (in Chinese). Available via National Bureau of Statistics of China. http://www.stats.gov.cn/tjshujia/zggqgl/t20101018_402676860.htm. Accessed 18 October 2010.

²⁰ FAO (2012), p. 70.

²¹ FAO (2012), p. 16.

²² Adopted at the 14th Meeting of the Standing Committee of the NPC and promulgated by Decree No 34 of the President of the PRC on 20 January 1986,

plementing rules have been adopted by the Ministry of Agriculture in order to implement and enforce China's duties. In 2013, China's State Council promulgated Several Opinions of the State Council on Promoting the Sustainable and Healthy Development of Marine Fisheries, which expressly indicates that China shall strictly combat IUU fishing to ensure the conservation of fishery resources.²³

1.2 Research questions

The objective of this research is to study the implementation of international law pertaining to combating IUU fishing through a legal comparison between the EU and China. The following research questions will be addressed:

- Does international law address the problem of IUU fishing adequately and how?
- What are the respective attitudes of the EU and China towards the development of international IUU fisheries laws, hard law as well as soft law? If there is a different attitude, what are the reasons therefore?
- What are the different fisheries competences between the EU and its Member States? Is this division of competences in the EU comparable to the relationship between China and its local governments?
- How active have the EU and China been in implementing multilateral and bilateral agreements and political instruments? What is their implementation practice?
- What State measures (coastal, flag and port State measures and trade-related measures) are chosen by the EU and China respectively and why? Are State measures taken so far by the EU and China effective to combat IUU fishing?
- What lessons can be learned from the EU and Chinese fisheries policy for the further development of international law regarding IUU fishing?

revised by Decree No 38 of the President of the PRC on 31 October 2000, by Decree No 25 of the President of the PRC on 28 August 2004, by Decree No 18 of the President of the PRC on 28 August 2009 and by Decree No 8 of the President of the PRC on 28 December 2013 respectively. All amendments are available via Pkulaw.cn. <http://en.pkulaw.cn.eproxy1.lib.hku.hk/>. Accessed 10 April 2014.

²³ Several Opinions of the State Council on Promoting Sustainable and Healthy Development of Marine Fisheries was promulgated by the State Council on 8 March 2013. Available via the Central Peoples' Government of the People's Republic of China. http://www.gov.cn/zwgk/2013-06/25/content_2433577.htm. Accessed 3 December 2013.

1.3 Methodology

A comparison between the EU and China as to their combat of IUU fishing is embedded in the international context. The study is based on a combined approach of desk-top and empirical research. The desk-top research includes the examination of international treaties, regional agreements, national legislation, international and national judicial decisions, governmental documents, books, journal articles, internet materials, conference proceedings, working papers and non-governmental organizations (NGOs) records.

Due to the pace of development and breadth of the research, a truly comprehensive review is probably impossible, and certainly beyond the scope of this thesis. The international legal and policy framework to combat IUU fishing has been comprehensively introduced by Mary Ann Palma, Martin Tsamenyi and William Edeson.²⁴ The EU's Common Fisheries Policy and relevant legislation and case law of the European Court of Justice (ECJ) before 2010 have been thoroughly assessed by Robin Churchill and Daniel Owen.²⁵ Guifang Xue has conducted excellent work in her PhD thesis, which elaborates on China's legislative harmonization and policy adjustment in response to certain international fisheries instruments.²⁶

Most information concerning the EU's combat of IUU fishing can be found on the website of the Directorate-General for Maritime Affairs and Fisheries (DG Mare) or the Official Journal of the EU, including legislation and documents, fisheries agreements and protocols, activities of the Commissioner as well as meetings and events. In China's case, there is no official website that publishes all fisheries legislation and implementation. The Chinese government does not publish the texts of fisheries partnership agreements between China and other States. The lack of transparency in the implementation gives outsiders the impression that China's fisheries are not well documented or reported.

The empirical research is comprised of face-to-face interviews as well as phone and email communication. The author interviewed Mr. He Cui, Vice Executive President and Secretary-General of the China Aquatic Products Processing and Marketing Alliance at the 10th International Seafood Summit organized by Sea-Web in Hong Kong in September 2012. The author also interviewed Ms. Gorez Beatrice, Coordinator at Coalition for Fair Fisheries Arrangements in Belgium at the film screening: *Sandgrains* in Brussels on 26 November 2012. Then the author interviewed Mr. Simon Funge-Smith, a Senior Fishery Officer of FAO Regional

²⁴ Palma MA, Tsamenyi M, Edeson WR (2010) Promoting sustainable fisheries: the international legal and policy framework to combat illegal, unreported and unregulated fishing. Martinus Nijhoff Publishers, Leiden.

²⁵ Churchill R, Owen D (2010) The EU Common Fisheries Policy. Oxford University Press, Oxford.

²⁶ Xue G (2004) China's response to international fisheries law and policy: national action and regional cooperation. Dissertation, University of Wollongong.

Office for Asia and the Pacific; Mr. Stylianos Mitolidis from the Directorate General for Maritime Affairs and Fisheries of the European Commission; Mr. Henry DeBey, a Program Coordination Officer of the National Oceanic and Atmospheric Administration of the United States Department of Commerce; Ms. Sophie Nodzinski, a Campaigns Assistant of the Environmental Justice Foundation at the 8th International Forum on Illegal, Unreported and Unregulated Fishing in London in February 2013. Two months later, the author interviewed Mr. Blaise Kuemlangan, the Chief of the Development Law Service of FAO and Mr. Damien Desquiens, a Policy Officer of the Directorate General for Maritime Affairs and Fisheries of the European Commission at the round-table on Current International Legal Issues in the Field of Fisheries in Louvain-la-Neuve. In addition, the author has got important information through email and/or phone communication from Mr. Shuxian Sun, the Chief Engineer of China's National Oceanic Administration; Assoc Prof. Dr. Dan Liu of Shanghai University of International Business and Economics; Mr. Baoshan Huang, Vice President of the China Distant Water Fisheries Association; and Mr. Suk Kyoon Kim, the Korea Coast Guard Commissioner General. The internship at the Legal Department of the ITLOS provides great opportunities for the author to obtain documents and access key persons for interviews, which has been beneficial for the thesis.

1.4 Chapter outline

This book consists of five chapters. The first chapter is the introduction that provides the research context, research questions and methodology of this study.

Chapter 2 introduces the international legal framework for combating IUU fishing. It does not specifically refer to all relevant international instruments as this has already been done by other scholars (e.g. Mary Ann Palma et al). Instead, focus is on international instruments introducing specific State duties and measures against IUU fishing. Those instruments are divided into legally binding laws and non-legally binding instruments in order to provide a background for the discussion of the different attitudes of the EU and China in implementing international law. The different regimes among flag State, coastal State, port State and market State and implementation at the international level also provide a background for the discussion on implementation in subsequent chapters.

Chapter 3 focuses on the implementation of the EU. The general legal framework of the EU for the combat of IUU fishing is discussed, including the EU's competence in the field of fisheries and the EU's external and internal responses to international law. This research mainly mentions legislation since the adoption of the IUU Regulation instead of previous legislation which has been discussed by Robin Churchill and Daniel Owen. Then the chapter comprehensively assesses the

EU's external (port State and trade-market measures) and internal implementation (flag and coastal State measures).

Chapter 4 provides a thorough study of China's legal practice in combating IUU fishing rather than focusing on resources management and bilateral cooperation, because the latter has been done by Guifang Xue. First, the legal framework pertaining to combating IUU fishing is provided. China's participation in international law as well as the reasons why China has not accepted certain international instruments are discussed. China's implementation of international instruments through its domestic legal system is analysed as well. An assessment is given of China's practice as flag, coastal, port and market State. The challenges China has faced are also discussed.

Chapter 5 concludes with a comparison between the European and Chinese practice to combat IUU fishing under international law. It highlights the successes and challenges of implementation. Suggestions for the further development of international law are provided as well. This concluding chapter also identifies the limitations of the present research and provides recommendations for future research.

Chapter 2 International Legal Framework for Combating IUU Fishing

2.1 Introduction

IUU fishing related issues are scattered in the legal framework of responsible and sustainable fisheries. This framework is based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS),²⁷ resolutions of the United Nations General Assembly (UNGA) in this respect and several post-UNCLOS international instruments. Three international agreements were adopted for sustainable fisheries, viz. the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement),²⁸ the 1995 United Nations 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 (UN Fish Stocks Agreement)²⁹ and the 1995 Code of Conduct for Responsible Fisheries (Code of Conduct).³⁰ The 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)³¹ is the first international fisheries instrument that systematically provides for a variety of measures addressing IUU fishing, followed by the 2005 FAO Model Scheme on Port State

²⁷ The UNCLOS was concluded at Montego Bay, Jamaica on 10 December 1982 and entered into force on 16 November 1994, UNTS 1833, p. 3.

²⁸ The FAO Compliance Agreement was adopted at Rome on 24 November 1993 and came into force on 24 April 2003, UNTS 2221, p. 91.

²⁹ The UN Fish Stocks Agreement was concluded at New York on 4 August 1995 and entered into force on 11 December 2001, UNTS 2167, p. 88.

³⁰ The Code of Conduct was unanimously adopted by the Conference of the FAO in Rome on 31 October 1995. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/005/v9878e/v9878e00.HTM>. Accessed on 22 October 2013.

³¹ The IPOA-IUU was adopted by consensus at the 24th Session of Committee on Fisheries (COFI) in Rome on 2 March 2001 and endorsed by the 120th Session of the FAO Council on 23 June 2001. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/003/y1224e/y1224e00.HTM>. Accessed 22 October 2013.

Measures to Combat IUU Fishing (FAO Model Scheme),³² The 2005 FAO Rome Declaration on Illegal, Unreported and Unregulated Fishing (The FAO Rome Declaration on IUU Fishing)³³ and the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO Port State Measures Agreement)³⁴ were adopted especially to deal with IUU fishing.

After introducing the international legal framework to combat IUU fishing, this chapter will further deal with different State duties and measures against IUU fishing.

2.2 International legal framework for combating IUU fishing

The international legal framework for combating IUU fishing is divided up into legally binding laws and non-legally binding instruments.

2.2.1 Legally binding laws

2.2.1.1 The United Nations Convention on the Law of the Sea

The UNCLOS is the cornerstone of modern international fisheries law. The UNCLOS was adopted in 1982 and received wide recognition by 166 States Par-

³² The FAO Model Scheme was endorsed by the 26th Session of the FAO COFI in Rome in 2005. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/010/a0985t/a0985t00.HTM>. Accessed 22 October 2013.

³³ The FAO Rome Declaration on IUU Fishing was adopted by the FAO Ministerial Meeting on Fisheries in Rome on 12 March 2005. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/fishery/ipoa-iuu/publications/en>. Accessed 22 October 2013.

³⁴ The FAO Port State Measures Agreement was adopted by the FAO Conference at its 36th Session in Rome on 22 November 2009. Available via FAO. www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf. Accessed 22 October 2013.

ties to the Convention, including the European Union.³⁵ Thirty years after the Convention was adopted, the main provisions of the UNCLOS may be considered as customary international law. For example, the US, which is not a party to the UNCLOS, publicly acknowledges this.³⁶ The Convention does not directly refer to “IUU fishing”, but it provides general principles that profoundly affect the subsequent development of international fisheries law. The UNCLOS establishes an overall framework for the management and conservation of marine living resources. Key contributions of the UNCLOS include authorizing coastal States sovereignty³⁷ in their territorial area up to 12 nautical miles and sovereign rights³⁸ in their exclusive economic zones (EEZ) as well as codifying the freedom to fish on the high seas³⁹ and the duties of States to conserve and manage living resources of the high seas.⁴⁰ The UNCLOS also provides general requirements for the conservation and utilization of the living resources in coastal State’s EEZ⁴¹ and of transboundary stocks, straddling fish stocks and highly migratory species.⁴² These provisions have formed the basis for fisheries management and conservation in EEZs and on the high seas.

In order to combat IUU fishing, the cooperation and coordination between coastal States and flag States is imperative; the UNCLOS only provides general principles in Articles 63, 64, 87, and 116 to 119, leaving specific issues to subsequent international negotiations and national implementation. The UNCLOS regime provides various possibilities of implementing for complicated problems of boundary delimitation of the territorial seas and the EEZs, which have an effect on the issue of illegal fishing. Examples can be seen in the area around the Spratly Islands. Fisheries conflicts still exist among China, Vietnam, Philippines, Malaysia and Brunei. In order to get the acceptance of the majority, the UNCLOS uses vague language which leads States to interpret it differently.⁴³ Because effective management and conservation of living resources in the EEZ cannot be separated

³⁵ Ocean & Law of the Sea (2014) Table recapitulating the status of the Convention and of the related Agreements. http://www.un.org/Depts/los/reference_files/status2010.pdf. Accessed 26 February 2014.

³⁶ Freestone D (2012) The Law of the Sea Convention at 30: successes, challenges and new agendas. *The International Journal of Marine and Coastal Law* 27, p. 677.

³⁷ The UNCLOS, Arts. 2 and 3.

³⁸ The UNCLOS, Art. 56 (1).

³⁹ The UNCLOS, Arts. 87 and 116.

⁴⁰ The UNCLOS, Arts. 117 and 118.

⁴¹ The UNCLOS, Arts. 61 and 62.

⁴² The UNCLOS, Arts. 63 and 64.

⁴³ Liu Z (2008) The negative influence of the United Nations Convention on the Law of the Sea (UNCLOS) (in Chinese), *Foreign Affairs Review* (Shanghai) 103: 82.

from agreed boundary delimitations, the difficulty to achieve the boundary delimitation creates many obstacles for responsible fisheries.

Additionally, the EEZ regime under the framework of the UNCLOS has made many traditional fishing grounds of some foreign fishermen become EEZs of coastal States. Limited foreign access turns some fishing efforts into illegal fishing activities. In addition, with the expanding EEZs, huge fishing efforts have been excluded from EEZs. Therefore, unregulated fishing has been aggravated on the high seas.

Part XV of the UNCLOS provides the settlement of disputes. Section 1 of Part XV calls upon States to settle a dispute concerning the interpretation or application of the UNCLOS through negotiations or by conciliation. Disputes that cannot be settled may be submitted to the court or tribunal having jurisdiction under section 2 of Part XV, which is a compulsory procedure entailing binding decisions. A State Party to the UNCLOS is required to make a declaration under Article 287 of the UNCLOS to choose the means for the settlement of disputes concerning the interpretation or application of the Convention. Applicable means include: (a) the International Tribunal for the Law of the Sea (ITLOS); (b) the International Court of Justice; (c) an arbitral tribunal constituted in accordance with Annex VII; (d) a special arbitral tribunal constituted in accordance with Annex VIII for fisheries.⁴⁴

As of 25 March 2014, thirty six of the 166 State Parties to the UNCLOS have chosen the ITLOS as (one of) their means of dispute settlement. The ITLOS is most preferred among the means of dispute settlement. Among the thirty six States, thirteen are EU Member States.⁴⁵ Except for the EU Member States, only twenty three other States have selected the ITLOS as a preferred mean of dispute settlement. China has not made any declaration to choose the means mentioned. According to Article 287 (3) of the UNCLOS, China is deemed to accept arbitration in accordance with Annex VII. In addition, if the Parties to a dispute have not accepted the same procedure for the dispute settlement, the dispute may only be submitted to arbitration in accordance with Annex VII.⁴⁶ Even though Parties to a dispute cannot reach an agreement on the means of dispute settlement, Section 2 of Part XV of the UNCLOS confers on the ITLOS compulsory jurisdiction in respect of two issues, viz. provisional measures in Article 290 of the UNCLOS and the prompt release of vessels and crew in Article 292 of the UNCLOS, which are detailed in Sections 2.3.2.3 and 2.3.3.2 respectively.⁴⁷ The ITLOS has compulsory jurisdiction over provisional measures and the prompt release of vessels and crew

⁴⁴ The UNCLOS, Art. 287 (1).

⁴⁵ Oceans & Law of the Sea (2014) Settlement of disputes mechanism. http://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm. Accessed 25 March 2014.

⁴⁶ The UNCLOS, Art. 287 (4).

⁴⁷ Tuerk H (2007-2008) The contribution of the International Tribunal for the Law of the Sea to International Law. *Penn State International Law Review* 26 (2), p. 292.

because they are expeditious issues, which require to be resolved by a pre-established body.⁴⁸

In the field of fisheries, Article 297 (3) of the UNCLOS provides exceptions to the application of compulsory procedures entailing binding decisions.

“(a) Disputes concerning the interpretation or application of the provisions of this Convention with regard to fisheries shall be settled in accordance with section 2, except that the coastal State shall not be obliged to accept the submission to such settlement of any dispute relating to its sovereign rights with respect to the living resources in the exclusive economic zone or their exercise, including its discretionary powers for determining the allowable catch, its harvesting capacity, the allocation of surpluses to other States and the terms and conditions established in its conservation and management laws and regulations.

(b) Where no settlement has been reached by recourse to section 1 of this Part, a dispute shall be submitted to conciliation under Annex V, section 2, at the request of any party to the dispute, when it is alleged that:

(i) a coastal State has manifestly failed to comply with its obligations to ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not seriously endangered;

(ii) a coastal State has arbitrarily refused to determine, at the request of another State, the allowable catch and its capacity to harvest living resources with respect to stocks which that other State is interested in fishing; or

(iii) a coastal State has arbitrarily refused to allocate to any State, under Articles 62, 69 and 70 and under the terms and conditions established by the coastal State consistent with this Convention, the whole or part of the surplus it has declared to exist.”

These exceptions also apply to straddling stocks and highly migratory species that migrate between EEZs and the high seas. Article 32 of the UN Fish Stocks Agreement expressly confirms the application of Article 297 (3) to the Agreement. However, Article 297 (3) of the UNCLOS does not apply to straddling stocks or highly migratory species on the high seas. This means that a coastal State may be excluded from compulsory dispute settlement for a dispute concerning its management of straddling stocks and highly migratory species in its own EEZ. How-

⁴⁸ Escher AK (2004) Release of vessels and crews before the International Tribunal for the Law of the Sea. *The Law and Practice of International Courts and Tribunals* 3, p. 239.

ever, a dispute as to the management of such stocks and species on the high seas may not be excluded according to Article 297 (3).⁴⁹

Additionally, Article 298 (1) (a) (b) and (c) of the UNCLOS stipulates that a State may be excluded from compulsory dispute settlement of Section 2 of Part XV by making a declaration in cases of disputes concerning the interpretation or application of Article 15, 74 and 83, viz. sea boundary delimitations, disputes concerning historic bays or titles, disputes that necessarily involve the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory, military activities, law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under Article 297 (2) or (3), and disputes in respect of which the Security Council of the United Nations is exercising the functions assigned to it by the Charter of the United Nations. In the field of fisheries, disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction excluded from the jurisdiction of a court or tribunal under Article 297 (2) or (3) will not be excluded from compulsory dispute automatically, while such disputes may only be excluded from compulsory dispute settlement through making a declaration by a coastal State. The enforcement measures of a coastal State may include boarding, inspecting, arresting and detaining a vessel, hot pursuit and other measures.

As of 25 March 2014, thirty four States Parties to the UNCLOS have made declarations to indicate that they do not accept any one or more of the compulsory procedures entailing binding decisions with respect to one or more of the categories of disputes provided by Article 298.⁵⁰ Twenty one of these States Parties have explicitly declared that their disputes concerning law enforcement activities in regard to the exercise of sovereign rights or jurisdiction are excluded from one or more of the compulsory procedures of a court or tribunal under Article 297 (2) or (3).⁵¹ However, although the detention of a foreign vessel in the EEZ of a coastal State belongs to law enforcement activities in regard to the exercise of sovereign rights, the exclusion from compulsory dispute settlement by making a declaration should be subject to the limitation of Article 292 of the UNCLOS for the prompt release, which is discussed in Section 2.3.3.2.

⁴⁹ Churchill R (2007) The jurisprudence of the International Tribunal for the Law of the Sea relating to fisheries: is there much in the net? *The International Journal of Marine and Coastal Law* 22, p. 390.

⁵⁰ Oceans & Law of the Sea (2014) Settlement of disputes mechanism.

⁵¹ Oceans & Law of the Sea (2014) Settlement of disputes mechanism.

2.2.1.2 Background of the FAO Compliance Agreement and the UN Fish Stocks Agreement

Due to the expansion of high seas fishing in the early 1990s and the demand for more effective management, Chapter 17 of Agenda 21 requires sustainable utilization and conservation of marine living resources, both on the high seas and in areas under States' national jurisdiction.⁵² Paragraph 17.45 of Agenda 21 emphasizes that monitoring and enforcement of high seas fisheries are inadequate, which results in many problems such as unregulated fishing, vessel reflagging to escape controls, unreliable databases and lack of sufficient cooperation between States. Therefore, paragraph 17.49 urges States to take effective action at the regional and global level to ensure that high seas fisheries are managed in accordance with the UNCLOS. Paragraph 17.50 further calls upon States to convene an intergovernmental conference to promote the effective implementation of the UNCLOS for the conservation and management of straddling fish stocks and high migratory species.

The issue of high seas fishing has also been discussed in other international forums, such as the Conference on Responsible Fishing convened by the FAO in Cancun, Mexico on 6-8 May 1992. During this meeting, the Declaration of Cancun was adopted on 8 May 1992. The Declaration calls upon States to draft an International Code of Conduct for Responsible Fishing and it also demands convening an intergovernmental conference on high seas fisheries.⁵³

In response to the call of Agenda 21 and the Declaration of Cancun, the FAO adopted the 1993 FAO Compliance Agreement and the 1995 Code of Conduct.⁵⁴ The FAO Compliance Agreement is an integral part and also the only legally binding part of the Code of Conduct.⁵⁵ In December 1992, UNGA Resolution No

⁵² Agenda 21 is an action plan of the UN related to sustainable development. It is also an outcome of the United Nations Conference on Environment and Development (UNCED) held in Rio de Janeiro, Brazil, in 1992. Available via United Nations Sustainable Development Knowledge Platform. <http://sustainabledevelopment.un.org/index.php?page=view&nr=23&type=400&menu=35>. Accessed 28 October 2013.

⁵³ Declaration of International Conference on Responsible Fishing, Cancun, Mexico, 8 May 1992, paras. I and IV. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/fishery/about/programme/agreements/en>. Accessed 28 October 2013.

⁵⁴ Balton DA, Zbicz DC (2004) Managing deep-sea fisheries: some threshold questions. *The International Journal of Marine and Coastal Law* 19: 247-258.

⁵⁵ Balton DA (2004) Chapter 4: dealing with the "bad actors" of ocean fisheries. In OECD (ed) *Fish piracy: combating illegal, unreported and unregulated fishing*. OECD, Paris, p. 60.

47/192 was adopted to convene a conference on straddling fish stocks and highly migratory species.⁵⁶

2.2.1.3 The FAO Compliance Agreement

The FAO Compliance Agreement was adopted on 24 November 1993 and came into force on 24 April 2003. Although this Agreement was formulated to deal with the issue of reflagging, it finally became a fisheries agreement that includes the main duties of flag Parties.⁵⁷ Flag Parties' duties are mainly provided in Article III of the FAO Compliance Agreement. Additionally, this Agreement also addresses other issues, such as records of fishing vessels,⁵⁸ exchange of information⁵⁹ and international cooperation.⁶⁰ Significantly, the FAO Compliance Agreement is the first international binding legal instrument that applies port State control to irresponsible fishing.⁶¹

It should be pointed out that, unlike the UNCLOS and the UN Fish Stocks Agreement, the FAO Compliance Agreement focuses on parties instead of States, indicating that the provisions of the FAO Compliance Agreement can only create obligations for States bound by the Agreement.⁶² The FAO Compliance Agreement has only 39 parties, including the European Union, which cannot ensure effective enforcement.⁶³

⁵⁶ Hayashi M (1999) Chapter 4: The Straddling and Highly Migratory Fish Stocks Agreement. In Hey E (ed) *Developments in international fisheries law*. Kluwer Law International, The Hague, p. 57.

⁵⁷ Warner-Kramer DM, Canty K (2000) Stateless fishing vessels: the current international regime and a new approach. *Ocean and Coastal Law Journal* 5, p. 232.

⁵⁸ The FAO Compliance Agreement, Art. IV.

⁵⁹ The FAO Compliance Agreement, Art. V (1).

⁶⁰ The FAO Compliance Agreement, Art. VI.

⁶¹ The FAO Compliance Agreement, Art. V (2).

⁶² Harrison J (2011) *Making the Law of the Sea: a study in the development of international law*. Cambridge University Press, Cambridge; New York, p. 212.

⁶³ FAO (2013) *Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas*. <http://www.fao.org>. Accessed 28 October 2013.

2.2.1.4 The UN Fish Stocks Agreement

The UNCLOS provides general principles for the management and conservation of fish species; while, the purpose of the UN Fish Stocks Agreement is to specify the principles as well as substantive obligations on the conservation and management of straddling fish stocks and highly migratory species.

After several years of negotiation and compromise, the UN Fish Stocks Agreement was adopted on 4 August 1995 and entered into force on 11 December 2001. Later in May 2006 and May 2010, the UN Fish Stocks Agreement was reviewed by States respectively. The 2006 Review Conference, convened pursuant to Article 36 of the Agreement, was held in New York, from 22 to 26 May 2006, in accordance with GA Resolution 59/25 of 17 November 2004 and Resolution 60/31 of 29 November 2005. The 2010 Review Conference, convened pursuant to Article 36 of the Agreement, was held in New York, from 24 to 28 May 2010, in accordance with GA Resolution resumed 63/112 of 5 December 2008 and Resolution 64/72 of 4 December 2009, with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks.⁶⁴ The 2010 UN Fish Stock Agreement Review Conference was held with a view to assessing the effectiveness of the Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. By September 2013, there were 81 parties to the UN Fish Stocks Agreement,⁶⁵ including most of the major flag States and the major markets for fish.⁶⁶ However, several major fishing States are still not parties to the Agreement, including China and many Latin American and African countries. The main reasons of non-participation include: objections to certain provisions that are believed to have amended certain significant principles of the UNCLOS; the obligations of participation in the UN Fish Stocks Agreement outweigh the benefits;

⁶⁴ Available via Ocean & Law of the Sea http://www.un.org/depts/los/convention_agreements/review_conf_fish_stocks.ht. Accessed 8 August 2011.

⁶⁵ Ocean & Law of the Sea (2014) Table recapitulating the status of the Convention and of the related Agreements.

⁶⁶ UNGA (2010) Report of the resumed Review Conference on the 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. Report presented in review conference on the 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, A/CONF.210/2010/7, New York, 24-28 May 2010, Art. 8.

lack of capacity and resources to implement the Agreement; lack of awareness and misconceptions; and lack of direct interest.⁶⁷

Regional fisheries management organizations and arrangements (RFMOs) have been recognized as the principal cooperation mechanism to conserve and manage straddling fish stocks and highly migratory species in the 2010 UN Fish Stocks Agreement Review Conference.⁶⁸ Article 10 of the UN Fish Stocks Agreement spells out the functions of RFMOs in regard to high seas fishing: (a) agree and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory species; (b) agree on participatory rights such as allocations of allowable catch or levels of fishing effort; (c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations; and (d) establish appropriate cooperative mechanisms for effective Monitoring, Control and Surveillance and enforcement.

The overarching RFMO mechanism proposed by the UN Fish Stocks Agreement to manage high seas fishing is that the freedom of fishing on the high seas must comply with the management and conservation measures adopted by relevant RFMOs. Article 8(4) of the UN Fish Stocks Agreement states that “*only those States which are members of such an organisation or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organisation or arrangement, shall have access to the fishery resources to which those measures apply.*” According to this provision, non-compliant vessels flying the flag of non-members of a RFMO concerned, which conduct fishing activities on the high seas covered by this RFMO, are considered as unregulated fishing vessels. Members of this RFMO are required to take measures to prevent activities of such vessels from undermining the measures of the RFMO.⁶⁹ There is a risk that such vessels might be contained in the IUU vessel lists of relevant RFMOs. Under certain conditions, flag States of such vessels may even be restricted by trade measures.⁷⁰ Those measures intend to force distant fishing States to take duties under regional pressure.

The UN Fish Stocks Agreement codifies the most controversial issue - the high seas enforcement by non-flag States, which has been recognized as an exception to the exclusive flag State jurisdiction.⁷¹ Article 21 (1) provides that:

⁶⁷ Molenaar EJ (2011) Non-participation in the Fish Stocks Agreement: status and reasons. *The International Journal of Marine and Coastal Law* 26, pp. 200-213.

⁶⁸ Outcome of the 2010 UN Fish Stocks Agreement Review Conference, preamble 2, in the Report of the 2010 UN Fish Stocks Agreement Review Conference, p. 40.

⁶⁹ The UN Fish Stocks Agreement, Art. 17(4).

⁷⁰ Molenaar (2011), p. 233.

⁷¹ De Yturriaga JA (1997) *The International Regime of Fisheries: from UNCLOS 1982 to the Presential Sea*. Martinus Nijhoff Publishers, the Hague, p.

“In any high seas area covered by a sub regional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, ..., fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.”⁷²

The UN Fish Stocks Agreement is not the first agreement that has adopted high seas enforcement by non-flag States. In fact, several treaties contain provisions concerning such measures, such as the 1978 Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries⁷³ and the 1994 Convention on the Conservation and Management of Pollack Resources in the Central Bering Sea.⁷⁴ However, provisions of enforcement by non-flag States in those treaties are generally bilateral or regional rather than global. The UN Fish Stocks Agreement is the first international fisheries agreement that allows non-flag States to board and inspect fishing vessels of other State Parties on the high seas.⁷⁵ The influence of high seas enforcement on non-flag States is like two sides of a coin. On the one hand, it attracts State Parties that intend to be entitled to exercise non-flag State high seas enforcement. On the other hand, it discourages those that do not want to be subjected to this obligation. Articles 21 and 22 are the major reasons for non-participation in the UN Fish Stocks Agreement. However, the high seas enforcement by non-flag States is not absolute. Members of RFMOs can limit the applica-

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⁷² The UN Fish Stocks Agreement, Art. 21 (1).

⁷³ The Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries was concluded in Ottawa on 24 October 1978 and entered into force on 1 January 1979, Art. XVIII, UNTS 1135, p. 369.

⁷⁴ The Convention on the Conservation and Management of Pollack Resources in the Central Bering Sea was adopted on 16 June 1994 and entered into force on 8 December 1995, Art.11(6)(7). Available via NOAA Fisheries. http://www.afsc.noaa.gov/refm/cbs/convention_description.htm. Accessed 24 October 2013.

⁷⁵ Hayashi M (1996-1997) Enforcement by non-flag States on the high seas under the 1995 Agreement on Straddling and Highly Migratory Fish Stocks. *Georgetown International Environmental Law Review* 9, p.10.

tion of this enforcement to themselves if they adopt an alternative mechanism that can also effectively discharge the obligation.⁷⁶

Although the UN Fish Stocks Agreement authorizes non-flag States to investigate vessels involved in IUU fishing, Article 21 (12) of this Agreement also provides that flag States may take action to fulfil their duties at any time. When the flag State requests, the inspecting State is obliged to release the vessel to the flag State, together with all information on the progress and outcome of its investigation. The UN Fish Stocks Agreement also requires specific flag State duties and port State measures in managing and conserving such stocks.⁷⁷

2.2.1.5 The FAO Port State Measures Agreement

The most recent fisheries agreement negotiated by the FAO is the FAO Port State Measures Agreement, which was adopted in November 2009. As in the 2003 FAO Compliance Agreement and the 2005 UN Fish Stocks Agreement, port State measures are considered another track to deal with irresponsible fishing. Later in the 2001 IPOA-IUU, port State control is explicitly called upon to prevent, deter and eliminate IUU fishing. The 2005 FAO Model Scheme is the first international political instrument to address certain activities recognized as IUU fishing by the 2001 IPOA-IUU. Based on the previous instruments, the FAO Port State Measures Agreement is the first legally binding universal agreement that comprehensively apply port states measures to address IUU fishing.

This Agreement is aimed at the inspection of fishing vessels entering the ports of parties and the verification of whether they have been engaged in IUU fishing.⁷⁸ Through uniform port State measures, IUU catches are supposed to be prohibited from national and international markets, thereby removing the financial incentives for fishing operators to engage in IUU fishing.⁷⁹ Although IUU fishing vessels can use ports of their flag States if the legislation of their flag States allows, “*doing so*

⁷⁶ Rayfuse R (2005) To our children's children's children: from promoting to achieving compliance in high seas fisheries. *The International Journal of Marine and Coastal Law* 20, p. 515.

⁷⁷ The UN Fish Stocks Agreement, Arts. 18, 19 and 23.

⁷⁸ Harrison J (2011), p. 222.

⁷⁹ FAO Fisheries and Aquaculture (2009) Report of the FAO/APFIC regional workshop on port State measures to combat illegal, unreported and unregulated fishing for the South Asian subregion. FAO Fisheries and Aquaculture Report. No. 896. <http://www.fao.org/docrep/011/i0763e/i0763e00.HTM>. Accessed 30 October 2013, para. 23.

is not always economically viable".⁸⁰ The FAO Port State Measures Agreement only provides the minimum standards for port States measures, including the entry into ports,⁸¹ the use of ports,⁸² the inspections⁸³ and the corresponding flag States' role.⁸⁴ Parties to this Agreement can also adopt more stringent port State measures in accordance with international law.⁸⁵

The FAO Port State Measures Agreement will enter into force thirty days after ratification, acceptance, approval or accession of the 25th instrument.⁸⁶ This Agreement has not yet entered into force. However, many States have developed and implemented port State measures. As of October of 2013, 51 States have provided port State measures to the FAO Database on Port State Measures (Port-Lex), including the EU.⁸⁷

Additionally, several RFMOs have coordinated their port State measures with the FAO Port State Measures Agreement. An example can be seen in the 2010 Resolution of the Indian Ocean Tuna Commission (IOTC), which is wholly based on the FAO Port State Measures Agreement.⁸⁸ RFMOs started to adjust their port State measures based on the provisions of the FAO Port State Measures Agreement in order to harmonize and strengthen port State control worldwide. Additionally, RFMOs encourage members to participate in the FAO Port State Measures Agreement, which can also accelerate ratification of the Agreement. Thus, port States measures are expected to be binding measures to combat IUU fishing once the FAO Port State Measures Agreement comes into force.

Although the FAO Port State Measures Agreement is aimed at contracting parties rather than all States, port State measures provided by this Agreement are applicable to all vessels, no matter whether the vessel flies the flag of a Party.⁸⁹ Additionally, it has adopted procedures for dispute settlement similar to those of the UNCLOS. Thus, the effective implementation of this Agreement will not only

⁸⁰ Kuemlangan B, Press M (2010) Preventing, deterring and eliminating IUU fishing – port State measures. *Environmental Policy and Law* 40 (6), p. 264..

⁸¹ The FAO Port State Measures Agreement, Arts. 7-10.

⁸² The FAO Port State Measures Agreement, Art. 11.

⁸³ The FAO Port State Measures Agreement, Arts. 12, 13, 15 and 18.

⁸⁴ The FAO Port State Measures Agreement, Art. 20.

⁸⁵ The FAO Port State Measures Agreement, preamble, Art. 4(1)(b).

⁸⁶ The FAO Port State Measures Agreement, Art. 29(1).

⁸⁷ FAO Fisheries and Aquaculture (2013) Database on Port State Measures. <http://www.fao.org/fishery/psm/search/en>. Accessed 30 October 2013.

⁸⁸ The PEW Environment Group (2010) Preliminary findings from a gap analysis - A comparison of RFMO port state measures with the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, p. 4. Available via the PEW Charitable Trusts Website. <http://www.pewtrusts.org>. Accessed 26 May 2010.

⁸⁹ Harrison J (2011), p. 224.

promote the harmony of port State control across the globe⁹⁰ but also effectively combat IUU fishing.

2.2.2 Non-legally binding instruments

In addition to those legally binding agreements discussed above, a set of non-legally binding fisheries instruments demonstrate the implementation and development of those fisheries agreements, as well as a potential development trend of future international fisheries law. Therefore, the legal framework of the international fisheries law to combat IUU fishing also comprises those non-legally binding fisheries instruments.

2.2.2.1 The Code of Conduct

As mentioned previously, with the increasing concern of responsible fisheries, the Code of Conduct was unanimously adopted by the Conference of the FAO on 31 October 1995. The Code of Conduct is strongly related to the FAO Compliance Agreement and the UN Fish Stocks Agreement. Because the Code of Conduct was negotiated at almost the same time and by many of the same delegates involved in the drafting of those two agreements, a number of provisions and concepts are overlapping.⁹¹ It reiterates the provisions of the UNCLOS as well as generalizes the important requirements of the FAO Compliance Agreement and the UN Fish Stocks Agreement, both which have not received enough recognition to function effectively.⁹² The common provisions dealing with IUU fishing include: establish-

⁹⁰ Palma MA, Tsamenyi M, Edeson WR (2010) Promoting sustainable fisheries: the international legal and policy framework to combat illegal, unreported and unregulated fishing. Martinus Nijhoff Publishers, Leiden, p. 64; The PEW Environment Group (2010) Preliminary findings from a gap analysis - A comparison of RFMO port state measures with the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, p. 1.

⁹¹ Moore G (1999) The Code of Conduct for Responsible Fisheries. In: Hey E (ed) Developments in international fisheries law. Kluwer Law International, the Hague; London; Boston, p. 90.

⁹² Friedrich J (2008) Legal challenges of non-binding instruments: the case of the FAO Code of Conduct for Responsible Fisheries. German Law Journal 9, p. 1547.

ing effective mechanisms for fisheries Monitoring, Control and Surveillance;⁹³ authorization of vessels;⁹⁴ ensuring sufficiently severe sanctions;⁹⁵ participating in RFMOs and implementing laws to address non-compliance;⁹⁶ and other applicable provisions. In particular, the FAO Compliance Agreement constitutes an integral part of the Code of Conduct. Thus, the provisions with respect to fishing operations of the Code of Conduct, including duties of all States and flag States, are overlapping with the FAO Compliance Agreement. Therefore, although the Code of Conduct is not legally binding, provisions of the Code of Conduct that are based on such legally binding agreements can have a legally binding effect.⁹⁷

The Code of Conduct is not merely a supplementary instrument. In contrast, it is the most comprehensive instrument that intends to establish principles and criteria for the elaboration of national and international policies for responsible fisheries in the field of international fisheries regulation.⁹⁸ On the one hand, it has a broad scope that contains conservation and management issues for all fisheries, including capture, processing and trade of fish.⁹⁹ On the other hand, it applies to members and non-members of FAO, fishing entities, sub regional, regional and global organizations, as well as all persons concerned.¹⁰⁰

The main body responsible for the implementation of the Code of Conduct is the FAO Committee on Fisheries (COFI). FAO has submitted biennial progress reports on the Code of Conduct to the COFI since 1999. Those reports analyse the implementation by Members, regional fishery bodies (RFBs) and non-governmental organizations (NGO) and the Secretariat. Such monitoring is based on responses to self-assessment questionnaires that have been sent to countries and RFMOs.¹⁰¹

During the 29th session of the COFI in 2011, a progress report on the implementation of the Code of Conduct and relevant instruments was summarized.¹⁰² There were 36 per cent of FAO Members, 55 per cent of RFBs and 34 per cent of

⁹³ The Code of Conduct, Arts. 7.1.7 and 7.7.3.

⁹⁴ The Code of Conduct, Art. 7.6.2.

⁹⁵ The Code of Conduct, Art. 7.7.2.

⁹⁶ The Code of Conduct, Art. 7.7.5.

⁹⁷ Moore (1999), pp. 91-92.

⁹⁸ The Code of Conduct, Art. 2(b).

⁹⁹ The Code of Conduct, Art. 1.3.

¹⁰⁰ The Code of Conduct, Art. 1.2.

¹⁰¹ Hosch G, Ferraro G and Failler P (2011) The 1995 FAO Code of Conduct for Responsible Fisheries: adopting, implementing or scoring results? *Marine Policy* 35, p. 190.

¹⁰² FAO Fisheries and Aquaculture (2011) Progress in the Implementation of the Code of Conduct for Responsible Fisheries and related instruments, including International Plans of Action and Strategies, and other matters, COFI/2011/2, Rome, Italy, 31 January – 4 February 2011. <http://www.fao.org/fi/website/>. Accessed 6 November 2013.

NGOs that had responded to the questionnaires. The situation of a large number of FAO Members is still unknown, specifically African and Asian countries. Of those who had replied to the questionnaires, 66 per cent of the FAO Members had national policies and legislation entirely or partially conforming to the Code of Conduct.¹⁰³ The Code of Conduct is not globally implemented, particularly in African and Asian regions where IUU fishing is more serious. This situation mainly results from financial constraints, human resources and institutional weaknesses.¹⁰⁴

2.2.2.2 The International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing

The 23rd Session of the COFI in 1999, together with the subsequent FAO Ministerial Meeting on Fisheries, requested FAO to develop a voluntary international plan of action to combat IUU fishing within the framework of the Code of Conduct.¹⁰⁵ After a series of consultations, the IPOA-IUU was adopted by consensus by the COFI on 2 March 2001.

Comparing to the UNCLOS, the FAO Compliance Agreement, the UN Fish Stocks Agreement and the Code of Conduct, the IPOA-IUU is the most comprehensive international instrument that specifically deals with IUU fishing. Also, the IPOA-IUU is generally consistent with previous fisheries instruments as well as provisions of the World Trade Organization (WTO).¹⁰⁶ The objective of the IPOA-IUU is “*to prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law*”.¹⁰⁷ The IPOA-IUU reaffirms many substantive

¹⁰³ FAO Fisheries and Aquaculture (2011), para. 10.

¹⁰⁴ FAO Fisheries and Aquaculture (2011), para. 44.

¹⁰⁵ Doulman DJ (2004) Global overview of IUU fishing and its impacts on national and regional efforts to manage fisheries sustainably: the rationale for the conclusion of the 2001 FAO International Plan of Action. In: FAO. Report of the expert consultation on fishing vessels operating under open registries and their impact on illegal, unreported and unregulated fishing, Miami, Florida, the US, 23-25 September 2003, FAO Fisheries Report No 722, FAO, Rome, p 26.

¹⁰⁶ FAO Fisheries and Aquaculture (2002) Implementation of the International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing, FAO Technical Guidelines for Responsible Fisheries No. 9. FAO, Rome. <http://www.fao.org/docrep/003/y1224e/y1224e00.HTM>. Accessed 6 November 2013, p. 6.

¹⁰⁷ The IPOA-IUU, para. 8.

provisions that have been found in the previous instruments,¹⁰⁸ such as flag State duties, coastal State measures, measures of RFMOs, and duties of non-member States of RFMOs. Moreover, it further specifies certain measures, in particular port State control and trade-market measures.¹⁰⁹ However, it is not necessary to apply all the tools in any situation.¹¹⁰ Similar to the Code of Conduct, the IPOA-IUU is voluntary and applies to a wide scope of stakeholders.¹¹¹

In order to implement the Code of Conduct and the IPOA-IUU, the FAO has developed a set of technical guidelines for responsible fisheries,¹¹² including the Implementation of the International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU Implementation Guidelines) with focus on IUU fishing.

¹⁰⁸ Edeson W (2001) The international plan of action on illegal unreported and unregulated fishing: the legal context of a non-legally binding instrument. *The International Journal of Marine and Coastal Law* 16, p. 622.

¹⁰⁹ Van Houtte A (2004) Flag state responsibility and the contribution of recent international instruments in preventing, deterring and eliminating IUU fishing. In: FAO. Report of the expert consultation on fishing vessels operating under open registries and their impact on illegal, unreported and unregulated fishing, Miami, Florida, the US, 23-25 September 2003, FAO Fisheries Report No 722, FAO, Rome, p. 56.

¹¹⁰ The Implementation of the International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing was adopted by the FAO in 2002. Available via FAO Fisheries and Aquaculture Department. <http://www.fao.org/docrep/005/Y3536E/Y3536E00.HTM>. Accessed 5 March 2014.

¹¹¹ The IPOA-IUU, paras. 4 and 5.

¹¹² FAO Technical guidelines for responsible fisheries can be applied to combat IUU fishing including Fishing Operations (1996), Precautionary Approach to Capture Fisheries and Species Introductions (1996), Integration of Fisheries into Coastal Area Management (1996), Fisheries Management (1997), Responsible Fish Utilization (1998), Fishing Operation: Vessel Monitoring System (1998), Indicators for Sustainable Development of Marine Capture Fisheries (1999), Implementation of the International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing (2002), Fisheries Management: the Ecosystem Approach to Fisheries (2003), Fisheries Management: Managing Fishing Capacity (2008), Fishing Management: the Ecosystem Approach to Fisheries - Best Practices in Eco Ecosystem Modelling for Informing an Ecosystem Approach to Fisheries (2008), Responsible Fish Trade (2009), Information and Knowledge Sharing (2009), Fishing Operations. 2. Best Practices to Reduce Incidental Catch of Seabirds in Capture Fisheries (2009), Fisheries Management: the Ecosystem Approach to Fisheries -The Human Dimension of the Ecosystem Approach to Fisheries (2009) and Fisheries Management: Marine Protected Areas and Fisheries (2011).

States are also called upon to develop and adopt national plans and/or improve their legal framework to deal with IUU fishing. On the one hand, States should develop and implement national plans of action (NPOA) to “*further achieve the objectives of the IPOA and give full effect to its provisions as an integral part of their fisheries management programmes and budgets*”.¹¹³ Individual countries can include NPOA in their fisheries policies. Canada, New Zealand, Spain, the US and certain other States have developed and implemented NPOAs-IUU and strategies. On the other hand, States are encouraged to address in an effective manner all aspects of IUU fishing in their national legislation.¹¹⁴ Some FAO Members, such as the EU, Kuwait, Oman, Senegal, Spain, Suriname and the US, have established domestic legislation for combating IUU fishing.¹¹⁵ It should be pointed out that States can adopt both national plans and establish domestic legislation. For instance, Article 69 of Law 3/2001 on maritime fisheries of Spain provides port inspection and control; while, Spain adopted a national plan of action against IUU fishing in November 2002.¹¹⁶

2.2.2.3 The FAO Model Scheme

The FAO Model Scheme was endorsed by the COFI of FAO in 2005, which is based on the IPOA-IUU and contributes to the FAO Port State Measures Agreement. It provides voluntary minimum principles and guidelines for port State measures, including the designating of ports,¹¹⁷ the refusal of access or use,¹¹⁸ inspections,¹¹⁹ actions taken towards IUU fishing activities¹²⁰ and information requirements for vessels.¹²¹ The annexes contain details on required information to be provided by foreign fishing vessels, port State inspection procedures of foreign fishing vessels, results of port State inspections, training of port State inspectors

¹¹³ The IPOA-IUU, para. 25.

¹¹⁴ The IPOA-IUU, para. 16.

¹¹⁵ UNGA Report A/ 63/128 of the Secretary-General regarding sustainable fisheries, including through the 1995 Fish Stocks Agreement, and related instruments, distributed on 14 July 2008, para. 84.

¹¹⁶ EJF (2006) Las Palmas: port of convenience and gateway to Europe. Available via illegal-fishing. Info. http://www.illegal-fishing.info/item_single.php?item=document&item_id=78&approach_id=13. Accessed 30 January 2006.

¹¹⁷ The FAO Model Scheme, Art. 2.3.

¹¹⁸ The FAO Model Scheme, Arts. 2.5, 2.6 and 2.7.

¹¹⁹ The FAO Model Scheme, Art. 3.

¹²⁰ The FAO Model Scheme, Arts. 4 and 5.

¹²¹ The FAO Model Scheme, Arts. 6-8.

and information systems on port State inspections. As the FAO Port State Measures Agreement has not entered into force, the FAO Model Scheme plays an important role in promoting the development of port State measures against IUU fishing.

2.2.2.4 The FAO Rome Declaration on IUU Fishing

The 2005 FAO Rome Declaration on IUU Fishing aims to call upon States to implement fully all the international instruments for the sustainable use of marine living resources.¹²² It also reiterates the requirements to implement the IPOA-IUU, such as to develop and implement national and regional plans of action, as well as relevant national legislation and regulations to combat IUU fishing.¹²³ The Declaration emphasizes the duties of flag States, port States and coastal States under international law in combating IUU fishing and the function of internationally agreed market-related measures. It furthermore suggests several new actions, for example, the identification, reduction and ultimate elimination of the economic incentives that lead to IUU fishing or fleet overcapacity, as well as the development of a comprehensive global record of fishing vessels within FAO.¹²⁴ The comprehensive global record of fishing vessels “*contains authoritative information to facilitate verification of data in traceability schemes, assist Monitoring, Control and Surveillance, enhance monitoring of flag State performance and deter corruption and other illegal practices*”.¹²⁵ After an Expert Consultation in 2008 and a Technical Consultation in 2010, COFI 2011 concluded that FAO should pursue its development in the form of a voluntary initiative and cooperate with partners such as the International Maritime Organization (IMO) and RFMOs.¹²⁶

¹²² The FAO Rome Declaration on IUU Fishing, para. 1.

¹²³ The FAO Rome Declaration on IUU Fishing, para. 3.

¹²⁴ The FAO Rome Declaration on IUU Fishing, para. 4.

¹²⁵ FAO (2012) Evaluation of FAO’s support to the implementation of the Code of Conduct for Responsible Fisheries, final report. FAO, Rome, p. 34.

¹²⁶ FAO (2012), p. 34.

2.2.2.5 UN Resolutions

The UNGA plays a major role in reviewing the implementation of international fisheries provisions.¹²⁷ The UNGA resolutions on fisheries issues reflect both the implementation and the potential development of international fisheries law.

2.2.2.5.1 UNGA Resolutions on driftnet fishing

With the widespread expansion of large-scale pelagic driftnet fishing (LSPDF), the negative influence of driftnet fishing on either target or non-target species of marine living resources has caused international concern.¹²⁸ In September 1991, the UNGA adopted Resolution 46/215, which requires a global moratorium on LSPDF on the high seas.¹²⁹ The aim of the Resolution is to reduce fishing effort of LSPDF by 50 per cent and ensure that the areas of operation of LSPDF are not expanded.¹³⁰ Moreover, the Resolution encourages States to take measures, individually and collectively, to prevent LSPDF operations on the high seas, including enclosed seas and semi-enclosed seas.¹³¹ Later, the subject of LSPDF, together with unauthorized fishing within national jurisdiction and on the high seas¹³² as well as the issues of by-catch and discards,¹³³ was reiterated in subsequent UNGA resolu-

¹²⁷ Elferink AO (2004) Chapter 15 Reviewing the implementation of the LOS Convention: the role of the United Nations General Assembly and the meeting of States Parties. In: Elferink AO and Rothwell DR (eds) *Oceans Management in the 21st Century Institutional Frameworks and Responses*, Martinus Nijhoff Publishers: Leiden and Boston, 295-312, p. 295.

¹²⁸ UNGA resolutions on large-scale pelagic driftnet fishing (LSPDF) and its impact on the living marine resources of the world's oceans and seas, A/RES/44/225, adopted on 22 December 1989, A/RES/45/197, adopted on 21 December 1990.

¹²⁹ UNGA Resolution on LSPDF and its impact on the living marine resources of the world's oceans and seas, A/RES/46/215, adopted on 20 December 1991.

¹³⁰ A/RES/46/215, paras. 3(a)(b).

¹³¹ A/RES/46/215, para. 4.

¹³² UNGA Resolution on unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas, A/RES/49/116, adopted on 19 December 1994.

¹³³ UNGA Resolution on fisheries by-catch and discards and their impact on the sustainable use of the world's living marine resources, A/RES/49/118, adopted on 19 December 1994.

tions.¹³⁴ Those resolutions encourage all States to implement the measures recommended consistently with the UNGA Resolution 46/215. According to the UNGA Resolution 58/14 of 2004, the incidence of reported LSPDF activities in most oceans and seas has continued to be low, which has reached a satisfactory level.¹³⁵

Since the UNGA Resolution 54/32 of 1999 explicitly calls upon States to deal with the IUU fishing, the problem of IUU fishing is now formally put on the international fisheries calendar. In 2002, the UNGA Resolution 57/142 encourages States to develop and implement national and regional plans of action in order to put into effect the IPOA-IUU by 2004.¹³⁶ This Resolution also suggests establishing effective monitoring, reporting and enforcement, as well as to control fishing vessels and eliminate subsidies that result in IUU fishing.¹³⁷ Thus, although the IPOA-IUU is a non-binding instrument, it gains the support of the UNGA.

2.2.2.5.2 UNGA Resolutions on sustainable fisheries

Since 2003, the UNGA has adopted a set of resolutions on sustainable fisheries that also include the issues mentioned above. In particular, the resolutions on sustainable fisheries contain a part specifically related to IUU fishing.¹³⁸ These resolutions welcome the application of the FAO Rome Declaration on IUU Fishing. They also recognize that the Code of Conduct and its associated international

¹³⁴ UNGA resolutions on LSPDF and its impact on the living marine resources of the world's oceans and seas; unauthorized fishing in zones of national jurisdiction and its impact on the living marine resources of the world's oceans and seas; and fisheries by-catch and discards and their impact on the sustainable use of the world's living marine resources, and other developments, A/RES/50/25, adopted on 5 December 1995, A/RES/51/36, adopted on 9 December 1996, A/RES/52/29, adopted on 26 November 1997, A/RES/53/33, adopted 24 November 1998, A/RES/55/8, adopted 30 October 2000, A/RES/57/142, adopted 12 December 2002.

¹³⁵ UNGA Resolution on sustainable fisheries, including through the 1995 UN Fish Stocks Agreement and related instruments, A/RES/58/14, adopted on 24 November 2003, preamble.

¹³⁶ A/RES/57/142, para. 14.

¹³⁷ A/RES/57/142, para. 14 and 20.

¹³⁸ UNGA resolutions on sustainable fisheries, including through the 1995 UN Fish Stocks Agreement and related instruments, A/RES/58/14, adopted on 24 November 2003, para. 19-29, the A/RES/59/25, paras. 26-38, A/RES/60/31, paras. 33-46, A/RES/61/105, paras. 33-46, A/RES/62/177, paras. 37-55, A/RES/63/112, paras. 42-59, A/RES/64/72, paras. 44-61, A/RES/65/38, paras. 40-56.

plans of action, particularly the IPOA-IUU, have established principles and global standards for conservation of fisheries resources and the management and development of fisheries.¹³⁹

The resolutions reiterate measures adopted under relevant international fisheries law, such as calling upon States to control their nationals and vessels flying their flag not to engage in IUU fishing; to strengthen the international legal framework for intergovernmental cooperation; to become members of the International Monitoring, Control and Surveillance Network for Fisheries-Related Activities; to develop and implement Vessel Monitoring Systems and trade monitoring schemes; to develop national and regional plans of action to implement the IPOA-IUU; to compile a record of vessels in RFMOs; to eliminate subsidies that cause IUU fishing; to organize intergovernmental technical consultation on IUU fishing and implement port State controls at regional level. The IMO and other relevant competent international organizations are invited to examine the ‘genuine link’ related to the flag states duties, while flag and port States are called upon to take measures to combat IUU fishing.¹⁴⁰

Except for these common measures, UNGA Resolution 59/25 of 2004 recognizes the importance of monitoring and controlling of transshipments on the high seas.¹⁴¹ UNGA Resolutions 60/31 of 2005 requests States and relevant international organizations to develop measures to trace fish caught in a manner that undermines international conservation and management measures.¹⁴² It also encourages the development of a comprehensive global record of fishing vessels, including refrigerated transport vessels and supply vessels within the FAO.¹⁴³ This Resolution further urges States individually or through RFMOs to adopt and to implement international market-related measures, which have been reiterated in resolutions adopted in 2006, 2007 and 2008.¹⁴⁴ The UNGA resolutions adopted in 2006, 2007, and 2008 also encourage States to initiate a legally binding instrument on minimum standards for port State measures that then contribute to the establishment of the FAO Port State Measures Agreement.¹⁴⁵ Additionally, those resolutions adopted from 2006 to 2010 call upon flag States and port States to share data on landings and catch quotas, as well as encourage RFMOs to develop open databases in-

¹³⁹ A/RES/58/14, Preamble; A/RES/59/25, Preamble and para. 26; A/RES/60/31, Preamble and para. 33; A/RES/61/105, Preamble and para. 33; and A/RES/62/177, Preamble and para. 37.

¹⁴⁰ A/RES/58/14, paras. 19-29; A/RES/59/25, paras. 27-38; A/RES/60/31, paras. 34-46; A/RES/61/105, paras 34-46; A/RES/62/177, paras. 38-55.

¹⁴¹ A/RES/59/25, para. 34.

¹⁴² A/RES/60/31, para. 40.

¹⁴³ A/RES/60/31, para. 45.

¹⁴⁴ A/RES/60/31, para. 46; A/RES/61/105, para. 46; A/RES/62/177, para. 55; A/RES/63/112, para. 57.

¹⁴⁵ A/RES/61/105, para. 43; A/RES/62/177, para. 51; A/RES/63/112, para. 53.

cluding such data in order to enhance the effectiveness of fisheries management.¹⁴⁶ In addition to these provisions, UNGA Resolution 62/177 of 2007 encourages RFMOs to establish a common list of vessels identified as engaged in IUU fishing and to recognize mutually the IUU fishing vessel lists, and welcomes the denial of port access to vessels appearing in these lists.¹⁴⁷ With the negotiation of the FAO Port State Measures Agreement, UNGA Resolution 64/72 of 2009 and UNGA Resolution 65/38 of 2010 both encourage States to adopt this Agreement.¹⁴⁸ They also call upon information-sharing concerning emerging markets and trade related measures.¹⁴⁹ Additionally, the connections between international organized crime and illegal fishing are a concern.¹⁵⁰

Moreover, the UNGA addresses the problem of deep-sea bottom fishing in UNGA Resolution 59/25, UNGA Resolution 61/105¹⁵¹ and UNGA Resolution 64/72¹⁵² in order to protect deep-sea species and ecosystems beyond national jurisdiction from the destructive impacts of bottom fishing. High seas bottom fishing States include, among others, Australia, China, France, Iceland, Japan, New Zealand, Portugal, Spain, the Russian Federation and South Korea.¹⁵³ However, despite the progress made, UNGA Resolution 66/68 concludes that the urgent actions called for by resolutions 61/105 and 64/72 have not been fully implemented in all cases.¹⁵⁴ UNGA Resolution 66/68 also emphasizes the need for full implementation by all States and RFMOs of their commitments in this respect.¹⁵⁵

¹⁴⁶ A/RES/61/105, para. 44; A/RES/62/177, para. 53; A/RES/63/112, para. 55; A/RES/64/72, para. 57; A/RES/65/38, para. 52.

¹⁴⁷ A/RES/62/177, paras. 44 and 50.

¹⁴⁸ A/RES/64/72, para. 55; A/RES/65/38, para. 50.

¹⁴⁹ A/RES/64/72, para. 60; A/RES/65/38, para. 55.

¹⁵⁰ A/RES/63/112, para. 59; A/RES/64/72, para. 61; A/RES/65/38, para. 56.

¹⁵¹ A/RES/61/105, paras. 80-90.

¹⁵² A/RES/64/72, paras. 113-127.

¹⁵³ Deep Sea Conservation Coalition (2011) Recommendations of the Deep Sea Conservation Coalition to the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. Available via Deep Sea Conservation Coalition. <http://www.savethehighseas.org/publicdocs/dscc-brief-icp-june11.pdf>. Accessed 3 February 2014, p. 2.

¹⁵⁴ A/RES/66/68, para. 129.

¹⁵⁵ A/RES/66/68, para. 122.

2.3 Measures and State duties against IUU fishing provided by international fisheries law

In Section 2.2, an overview of the framework of international fisheries law that can be applied to deal with IUU fishing has been given. In the current Section, the discussion mainly focuses on specific measures against IUU fishing provided by those instruments, including flag State duties and measures over nationals, coastal State measures, port State measures, trade-related measures and other measures.

2.3.1 Flag State duties and measures over nationals

2.3.1.1 Freedom of fishing on the high seas and its constraints

In the list of freedom of the high seas provided in Article 87 of the UNCLOS, only “fishing” is explicitly subjected to certain conditions provided in Articles 116-119, which refers that freedom of fishing, which is indeed a right to fish, is not absolute.¹⁵⁶ According to Article 116 of the UNCLOS, “*All States have the right for their nationals to engage in fishing on the high seas subject to: (a) their treaty obligations; (b) the rights and duties as well as the interests of coastal States provided for, inter alia, in Article 63, paragraph 2, and Articles 64 to 67; and (c) the provisions of the section.*”¹⁵⁷ It can be seen that high seas fishing is subject to three aspects. The first one is treaty obligations by which the high seas fishing State is bound. The second aspect is the rights and duties as well as the interests of coastal States provided for in rules for the conservation and management of transboundary stocks, straddling fish stocks, highly migratory species, anadromous stocks and catadromous species under the UNCLOS. The third aspect provides for conservation and management of the living resources of the high seas under the UNCLOS.

Article 117 of the UNCLOS provides that taking or cooperating with other States in taking measures for its nationals as may be necessary for the conservation of the living resources in the areas of the high seas is a State’s duty. Article 118 of the UNCLOS further requires that “*States shall cooperate with each other in the conservation and management of living resources in the areas of the high seas. States whose nationals exploit identical living resources, or different living*

¹⁵⁶ Henriksen T (2009) Revisiting the freedom of fishing and legal obligations on States not Party to Regional Fisheries Management Organizations. *Ocean Development & International Law* 40, p. 91.

¹⁵⁷ The UNCLOS, Art. 116.

resources in the same area, shall enter into negotiations with a view to taking the measures necessary for the conservation of the living resources concerned. They shall as appropriate, cooperate to establish sub regional or regional fisheries organizations to this end." The UNCLOS does not allow a coastal State to enforce unilaterally jurisdiction over a fishing vessel flying the flag of another State on the high seas. However, measures of RFMOs are the expansion of the jurisdiction of coastal States based on multilateral cooperation among States.¹⁵⁸ In fact, major State Parties of a RFMO are usually coastal States that surround a particular sea area. Thus, through multilateral cooperation, measures of RFMOs on overfishing on the high seas can avoid direct conflicts between a particular coastal state and a particular flag State. Under the UNCLOS regime, the cooperation is also a States' duty. States can directly cooperate through negotiations or even establish sub regional or regional fisheries organizations. The UN Fish Stocks Agreement even stipulates that only if States are participants in a RFMO or cooperating non-Parties to such RFMO, they can access fisheries resources in regulatory waters of the RFMO. According to the cooperating obligation of Article 117 of the UNCLOS, the third State indeed has the obligation to "respect" or "take into account" the conservation and management measures of a RFMO or to ensure that vessels flying its flag are not involved in activities that undermine the effectiveness of such measures.¹⁵⁹ The IPOA-IUU particularly provides port State measures against the non-compliance with management and conservation measures of RFMOs by non-Contracting Parties that may be prohibited from landing or transshipping catches in Contracting Parties waters, unless those vessels can demonstrate that their catches were harvested in ways consistent with the RFMO measures.¹⁶⁰

In practice, RFMOs, such as the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),¹⁶¹ have implemented measures against vessels of non-Contracting Parties, for example, the non-Contracting Party IUU Vessel List.¹⁶² Additionally, RFMOs also implemented measures against all non-compliance activities in areas where their conservation and management measures are applicable. Two significant measures should be introduced. One is the devel-

¹⁵⁸ Li Y (2012) The expansion of the jurisdiction of coastal States over marine fisheries (in Chinese). *Social Scientist* 187 (11), p. 18.

¹⁵⁹ Henriksen T (2009), p. 91; Joyner CC, Aylesworth L (2008) Managing IUU fishing in the Southern Ocean: rethinking the plight of the Patagonian toothfish. In: Chircop A et al (eds) *Ocean Yearbook* 22, Martinus Nijhoff, Leiden, p. 260.

¹⁶⁰ The IPOA-IUU, Art. 63.

¹⁶¹ The CCAMLR was established in 1982 with the objective of conserving Antarctic marine life under the Convention on the Conservation of Antarctic Marine Living Resources, which was concluded at Canberra on 20 May 1980, UNTS 1329, p. 47.

¹⁶² CCAMLR (2013) Non-Contracting Party IUU Vessel List. <http://www.ccamlr.org/en/compliance/non-contracting-party-iuu-vessel-list>. Accessed 15 November 2013.

opment and maintenance of records of vessels fishing in RFMOs areas, including black and white lists. On the one hand, certain RFMOs, such as the CCAMLR, the International Commission for the Conservation of Atlantic Tunas (ICCAT),¹⁶³ the Inter-American Tropical Tuna Commission (IATTC),¹⁶⁴ the Indian Ocean Tuna Commission (IOTC),¹⁶⁵ the Northwest Atlantic Fisheries Organization (NAFO),¹⁶⁶ the North-East Atlantic Fisheries Commission (NEAFC),¹⁶⁷ the South East Atlantic Fisheries Organization (SEAFO)¹⁶⁸ as well as the Western and central Pacific Fisheries Commission (WCPFC)¹⁶⁹, maintain or share lists of vessels that have been found engaged in or supporting IUU fishing within their own or adjacent

¹⁶³ The ICCAT is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas. It was established by the International Convention for the Conservation of Atlantic, which was concluded at Rio de Janeiro on 14 May 1966 and entered into force on 21 March 1969, UNTS 673, p. 63.

¹⁶⁴ The IATTC was established by the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission between the United States of America and the Republic of Costa Rica, signed at Washington on 31 May 1949, UNTS 1041, p. 3. The 1949 Convention was replaced by the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), which was signed at Washington on 13 December 2004 and entered into force on 10 October 2008. Available via IATTC. <http://www.iattc.org/IATTCdocumentationENG.htm>. Accessed 6 March 2014. The IATTC is responsible for the conservation and management of tuna and other marine resources in the eastern Pacific Ocean.

¹⁶⁵ The IOTC was established by the Agreement for the Establishment of the Indian Ocean Tuna Commission, which was concluded at Rome on 25 November 1993, UNTS 1927, p. 329.

¹⁶⁶ The NAFO, replaced the International Commission for the Northwest Atlantic Fisheries, was established by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, which was concluded at Ottawa on 24 October 1978, UNTS 1135, p. 369.

¹⁶⁷ The NEAFC was established by the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, which was concluded at London on 18 November 1980, UNTS 1285, p. 129.

¹⁶⁸ The SEAFO was established under the framework of the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, which was adopted at Windhoek on 20 April 2001 and entered into force on 13 April 2003, UNTS 2221, p. 189.

¹⁶⁹ The WCPFC was established by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which was concluded at Honolulu on 5 September 2000 and entered into force on 19 June 2004, UNTS 2275, p. 43.

convention areas. On the other hand, vessels that are authorized to fish in a RFMO regulatory area by its Contracting Parties or Cooperating Non-Contracting Parties are put on the RFMO's whitelist, such as the lists of ICCAT, CCAMLR, WCPFC and NEAFC.

Another particular measure of RFMOs aims at States that fail to exercise flag State duties against IUU fishing or fail to ensure their nationals do not engage in IUU fishing activities. According to paragraph 84 of the IPOA-IUU:

“When a State fails to ensure that fishing vessels entitled to fly its flag, or, to the greatest extent possible, its nationals, do not engage in IUU fishing activities that affect the fish stocks covered by a relevant [RFMO], the member States, acting through the organization, should draw the problem to the attention of that State. If the problem is not rectified, members of the organization may agree to adopt appropriate measures, through agreed procedures, in accordance with international law.”

In that case, market-related measures are commonly used by RFMOs member States. For example, the ICCAT adopted recommendations to prohibit the imports of Atlantic bluefin tuna, Atlantic bigeye and their products from Equatorial Guinea in 1999 and 2000.¹⁷⁰ In order to lift the trade restrictions, Equatorial Guinea did not allow those vessels involved in IUU fishing to be licensed or flagged by Equatorial Guinea, and took some other corresponding legal actions.¹⁷¹ Thus, in 2004, the ICCAT lifted the import prohibition that was imposed on Equatorial Guinea and recommended to provide technical assistance for the implementation of a statistical-fishing data system.¹⁷²

It should be pointed out that there are still gaps in geographic coverage of RFMOs. According to the UNGA Report A/59/298 of in 2004, there are sea areas where no RFMO exists or the relevant RFMOs are competent only to manage spe-

¹⁷⁰ Recommendation 99-10 by ICCAT Regarding Equatorial Guinea Pursuant to the 1996 ‘Recommendation Regarding Compliance in the Bluefin Tuna and North Atlantic Swordfish Fisheries’, Recommendation 00-16 by ICCAT Regarding Equatorial Guinea Pursuant to the 1998 Resolution Concerning the Unreported and Unregulated Catches of Tuna by Large-Scale Longline Vessels in the Convention Area. Available via ICCAT. <http://www.iccat.int/en/RecsRegs.asp>. Accessed 14 March 2014.

¹⁷¹ Recommendation 04-13 by ICCAT concerning the Lifting of Trade Sanctions against Equatorial Guinea. Available via ICCAT. <http://www.iccat.int/en/RecsRegs.asp>. Accessed 14 March 2014.

¹⁷² Recommendation 04-13 by ICCAT concerning the Lifting of Trade Sanctions against Equatorial Guinea.

cific stocks.¹⁷³ Since the report, conservation and management measures have been adopted in the SEAFO and the WCPFC. In addition, a new RFMO that is the South West Indian Ocean Fisheries Commission (SWIOFC)¹⁷⁴ was established and the South Indian Ocean Fisheries Agreement (SIOFA) was adopted.¹⁷⁵ However, unregulated fishing still exists in the following areas: the South-East Pacific for all fish stocks; and the Caribbean, part of the Indian Ocean, the South-West Atlantic and South-East Pacific for straddling fish stocks and discrete high seas fish stocks.¹⁷⁶ Thus, flag State duties and measures taken by coastal and port States as well as trade-markets are essential complements to the global endeavour to combat IUU fishing.

2.3.1.2 Flag State duties

Except for the general flag State duties provided by the UNCLOS, the FAO Compliance Agreement and the UN Fish Stocks Agreement both stipulate the major flag States duties for high seas fishing or fishing for straddling fish stocks and highly migratory species. The IPOA-IUU also suggests a set of flag State measures for all fishing. The main difference between the IPOA-IUU and previous international fisheries agreements is that the IPOA-IUU is applicable to all IUU fishing activities, no matter where those activities happen or which species concerned.

According to Article 94 of the UNCLOS, a flag State is required to “*exercise its jurisdiction and control in administrative, technical and social matters over ships*

¹⁷³ United Nations (2004) Report of the Secretary-General A/59/298 on sustainable fisheries, including through the UN Fish Stocks Agreement, and related instruments. <http://www.un.org/ga/59/documentation/list2.html>. Accessed 17 November 2013, para. 150.

¹⁷⁴ The SWIOFC was established in 2004 by Resolution 1/127 of the FAO Council under Article VI 1 of the FAO Constitution. FAO Fisheries and Aquaculture (2013) Southwest Indian Ocean Fisheries Commission (SWIOFC). <http://www.fao.org/fishery/rfb/SWIOFC/en#Org-LegalFoundation>. Accessed 18 November 2013.

¹⁷⁵ The SIOFA was adopted on 12 June 2006 and entered into force on 21 June 2012. SIOFA (2013) The Southern Indian Ocean Fisheries Agreement – text. <http://www.siodfa.org/the-sio/the-southern-indian-ocean-fisheries-agreement-text/>. Accessed 24 October 2013.

¹⁷⁶ Oceans & Law of the Sea (2007) Report of the Secretary-General A/62/66/Add.2 on oceans and the law of the sea. http://www.un.org/depts/los/general_assembly/general_assembly_reports.htm. Accessed 17 November 2013, paras. 291-292.

flying its flag” on the high seas.¹⁷⁷ Management measures include maintaining a register of vessels as well as assuming jurisdiction over vessels flying their flags, masters and crew.¹⁷⁸ Although the UNCLOS does not specify the flag State duties for high seas fishing, this provision is considered as the principle of exclusive flag State jurisdiction over vessels on the high seas. In practice, some flag States are unable or unwilling to regulate their fishing vessels on the high seas. They even deny other States to take action against their vessels in the name of the principle of exclusive flag State jurisdiction.¹⁷⁹ This phenomenon is called “flags of convenience” (FOCs). Although there is no worldwide accepted definition of the term, the FOC or open registry vessels are “*vessels flying the flag of a country other than the country of (beneficial) ownership*”.¹⁸⁰ The FOC is one of the major reasons of IUU fishing, but a fishing vessel flying an FOC does not mean that the vessel is IUU fishing.¹⁸¹

A “genuine link” between a flag State and a vessel flying its flag was required to deal with the FOC during the preparations for the 1958 UN Conference on the Law of the Sea in Geneva. In the 1977 United Nations Conference on Trade and Development’s Report on the Economic Consequences of the Existence or Lack of a Genuine Link between Vessels and Flag of Registry, it is concluded that an internationally acceptable and agreed definition of what constitutes a genuine link should be adopted.¹⁸² The Conference also concluded that a genuine link was reflected in an economic connection between the shipping industry and the national economy of the flag State.¹⁸³ In 1986, the United Nations Convention on Conditions for Registration of Ships was adopted under the auspices of the United Nations Conference on Trade and Development.¹⁸⁴ The UN Convention on Conditions for Registration of Ships requires strengthening the genuine link between the State and ships flying its flag. It also requests a flag State to exercise effectively its jurisdiction over its ships, the identification and accountability of ship owners and

¹⁷⁷ The UNCLOS, Art. 94 (1).

¹⁷⁸ The UNCLOS, Art. 94 (2).

¹⁷⁹ Balton (2004), p. 59.

¹⁸⁰ König D (2012) Flags of Convenience. In: Wolfrum R (ed) The Max Planck Encyclopedia of Public International Law, vol IV. Oxford University Press, p. 118.

¹⁸¹ Aqorau T (2007) Illegal, unreported and unregulated fishing in the Western and Central Pacific Ocean (WCPO): some legal and policy issues surrounding control of nationals and charter vessels under the new legal regime in the WCPO. In: Chircop A et al (eds) Ocean Yearbook 21, Martinus Nijhoff, Leiden, p. 181.

¹⁸² König (2012), p. 120.

¹⁸³ König (2012), p. 120.

¹⁸⁴ United Nations Convention on Conditions for Registration of Ships was concluded at Geneva on 7 February 1986. It has not entered into force. UN Doc. TD/RS/CONF/19/Add. 1.

operators, as well as administrative, technical, economic and social matters.¹⁸⁵ However, the United Nations Convention on Conditions for Registration of Ships has not entered into force, which shows it has failed to eliminate FOC by establishing a legally binding concept of an economic genuine link as a prerequisite for registration of ships.¹⁸⁶ During the negotiations of the 1982 UNCLOS, it seemed also far-fetched to build an international consensus to specify the precise standard of a genuine link.¹⁸⁷ Therefore, the UNCLOS does not address the issue of identification of a genuine link.

In fact, “flags of non-compliance”, which comprises States that do not comply with legally binding conservation and management measures, causes more IUU fishing.¹⁸⁸ Although the UNCLOS requires a genuine link between a flag State and the ship flying its flag, the Convention, together with subsequent international fisheries laws, prefers to provide flag State duties rather than to describe a genuine link.¹⁸⁹ The ITLOS states in its Judgment in the M/V “Saiga” (No.2) Case that: “...the purpose of the provisions of the Convention on the need for a genuine link between a ship and its flag State is to secure more effective implementation of the duties of the flag State, and not to establish criteria by reference to which the validity of the registration of ships in a flag State may be challenged by other States”.¹⁹⁰ Thus, rather than a precondition for registration, the requirement of a genuine link indeed needs a flag State to exercise its jurisdiction and effectively control over its flagged vessels.

The FAO Compliance Agreement specifies the exclusive jurisdiction of flag States on the high seas, without modifying the jurisdictional foundation that has been established in the UNCLOS.¹⁹¹ Article III (1) of the FAO Compliance Agreement sets out the fundamental flag State responsibility - each Party should take necessary measures to ensure fishing vessels entitled to fly its flag do not engage in activities that undermine the effectiveness of international conservation

¹⁸⁵ The United Nations Convention on Conditions for Registration of Ships, Art. 1.

¹⁸⁶ König (2012), pp. 119-121.

¹⁸⁷ Lodge MW, Nandan SN (2005) Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995. *The International Journal of Marine and Coastal Law* 20: 345-379.

¹⁸⁸ König (2012), p. 121.

¹⁸⁹ The UNCLOS, Arts. 91 and 94.

¹⁹⁰ ITLOS (1999) The M/V “Saiga” (No. 2) Case (Saint Vincent and the Grenadines v. Guinea), Merits, Judgment of 1 July 1999. Available via International Tribunal for the Law of the Sea. http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_2/merits/Judgment.01.07.99.E.pdf. Accessed 20 November 2013, para. 83.

¹⁹¹ Harrison (2011), pp. 209-210.

and management measures. This requirement is also reiterated by the UN Fish Stocks Agreement,¹⁹² the Code of Conduct¹⁹³ and the IPOA-IUU.¹⁹⁴

2.3.1.2.1 Fishing authorization

The FAO Compliance Agreement pays much attention to fishing authorization on the high seas by flag States. It provides, “*no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party*”.¹⁹⁵ In addition, it requires that a Party shall not authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it can exercise effectively its duties under this Agreement in respect of that fishing vessel.¹⁹⁶ Similar provisions can also be found in the UN Fish Stocks Agreement.¹⁹⁷

Article 18 (3) of the UN Fish Stocks Agreement further lays down specific measures referring to fishing licences, authorizations or permits. In order to implement these measures, the UN Fish Stocks Agreement requires States to establish applicable regulations:

*“(i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any sub regional, regional, or global obligations of the flag State; (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit; (iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States”.*¹⁹⁸

The last clause of this provision particularly points out the flag State duties when fishing within national jurisdiction of other States. This is because the UN

¹⁹² The UN Fish Stocks Agreement, Art. 18 (1).

¹⁹³ The Code of Conduct, Art. 6.11.

¹⁹⁴ The IPOA-IUU, para. 34.

¹⁹⁵ The FAO Compliance Agreement, Art. III (2).

¹⁹⁶ The FAO Compliance Agreement, Art. III (3).

¹⁹⁷ The UN Fish Stocks Agreement, Art. 18 (2).

¹⁹⁸ The UN Fish Stocks Agreement, Art. 18 (3) (b).

Fish Stocks Agreement regulates fishing activities not only on the high seas, but also within EEZs where certain straddling fish stocks and highly migratory species exist.

Additionally, Article III (4) of the FAO Compliance Agreement also provides that the authorization to fish on the high seas will be cancelled if a Party ceases to entitle a vessel to fly its flag. This provision can be considered as a link between fishing vessel registration and fishing authorization.¹⁹⁹

Article III (5) of the FAO Compliance Agreement deals with the issue of reflagging. In principle, “no Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas”. There are three exceptions to this provision. First, the Party is satisfied that “any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years”. The second exception is that when the ownership of the fishing vessel has subsequently changed, the new owner shall provide sufficient evidence to demonstrate that the previous owner has no further legal, beneficial or financial interest in the fishing vessel. Lastly, a Party may authorize a fishing vessel to fish on the high seas after taking into account all relevant facts and decide that granting an authorization would not undermine the objective of this Agreement. Unlike the first two exceptions, the last exception is more general and subjective, which may lead to a greater chance of reflagging.

The FAO Compliance Agreement already provides the conditions for granting, cancelling, forbidding, refusing, suspending and withdrawing the authorization to fish on the high seas. Requirements for the authorization to fish are also laid down in paragraph 44 to paragraph 50 of the IPOA-IUU.

Paragraph 46 of the IPOA-IUU specifically provides certain information that is required to be included in an authorization, including:

“46.1 the name of the vessel, the natural or legal person authorized to fish; and

46.2 the area, scope and duration of the authorization to fish;

46.3 the species, fishing gear authorized, and where appropriate, other applicable management measures”.

Additionally, paragraph 47 of the IPOA-IUU allows flag States and coastal States to add conditions to the authorization to fish. These requirements include Vessel Monitoring Systems, catch report conditions (such as time series of catch,

¹⁹⁹ Sodik DM (2008) Non-legally binding international fisheries instruments and measures to combat illegal, unreported and unregulated fishing. *Australian International Law Journal* 15, p. 86.

effort statistics by vessel, discard statistics and so on), transshipment reports, observer coverage, maintenance of fishing and related log books, navigational equipment, marking of fishing vessels and gear, and unique international identification number.

2.3.1.2.2 Fishing vessel registration

In the field of international fisheries law, authorization of fishing is emphasized more than fishing vessel registration. The different functions of fishing vessel registration and that of authorization are not clarified. The IPOA-IUU particularly elaborates the fishing vessel registration, filling up the gap left by the previous international agreements. First, paragraph 34 of the IPOA-IUU calls upon States to ensure fishing vessels flying their flag do not engage in or support IUU fishing. Thus, before registering a fishing vessel, the flag State should ensure it can exercise its responsibility to avoid the vessel engaging in IUU fishing.²⁰⁰

The IPOA-IUU also requires flag States to avoid the registration of vessels that have a history of non-compliance. There are two exceptions to this provision. The first one is that the ownership of the vessel has subsequently changed and the new owner has provided sufficient evidence to demonstrate that the previous owner or operator has no further legal, beneficial or financial interest in the vessel.²⁰¹ The second exception is that all relevant facts have been taken into account to indicate that flagging the vessel would not result in IUU fishing.²⁰² These requirements are similar to Article III (5) of the FAO Compliance Agreement. However, the FAO Compliance Agreement focuses on fishing authorization; while, paragraph 36 of the IPOA-IUU pays attention to the registration of a vessel. In order to discourage vessel owners who use reflagging for non-compliance with conservation and management measures adopted at the national, regional or global level, the IPOA-IUU also suggests flag States to take uniform actions and standards.²⁰³

In cases where the functions of the registration of a vessel and issuing an authorization to fish are separated, registered vessels without fishing authorization may engage in IUU fishing easily.²⁰⁴ Therefore, paragraph 40 of the IPOA-IUU requires flag States to ensure that each function gives appropriate consideration to the other. In addition, flag States are required to ensure appropriate links between

²⁰⁰ The IPOA-IUU, para. 35.

²⁰¹ The IPOA-IUU, para. 36.

²⁰² The IPOA-IUU, para. 36.

²⁰³ The IPOA-IUU, para. 38.

²⁰⁴ Swan J (2002) Fishing vessels operating under open registers and the exercise of flag state responsibilities - information and options, FAO Fisheries Circular No. 980. FAO, Rome.

the operation of their vessel registries and the records those States keep for their fishing vessels. Once different agencies undertake such functions, States should ensure adequate cooperation and information sharing between the agencies responsible for those functions. To coordinate further the functions between fishing vessel registration and fishing authorization, paragraph 41 of the IPOA-IUU advises flag States to register a fishing vessel in the condition that it is ready to provide an authorization to the vessel to fish within their jurisdictional waters, or on the high seas, or an authorization issued by a coastal State.

2.3.1.2.3 Enforcement measures and sanctions

Flag States are required to take measures to ensure their fishing, transport and support vessels do not engage in or support IUU fishing.²⁰⁵ Article 18 (3) of the UN Fish Stocks Agreement specifies enforcement measures of flag States with regard to fishing vessels, such as requirements for marking of fishing vessels and fishing gear; requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with sub regional, regional and global standards; regulation of transshipment on the high seas; record of fishing vessels; and Monitoring, Control and Surveillance of fishing vessels. The latter two enforcement measures are specifically discussed in following sections due to their significance in combating IUU fishing.

Additionally, flag States should ensure that their vessels do not re-supply fishing vessels engaged in IUU fishing activities or tranship fish to or from those vessels. In order to control the activities of transshipment at sea, paragraph 49 of the IPOA-IUU requires flag States to ensure their fishing, transport and support vessels involved in transshipment at sea have a prior authorization to tranship issued by the flag State. In addition to this requirement, such vessels should report to the national fisheries administration or other designated institution the following information: (a) the date and location of all of their transshipments; (b) the weight by species and catch area of the catch transhipped; (c) the name, registration, flag and other information related to the identification of the vessels involved in the transshipment; and (d) the port of landing of the transhipped catch. Furthermore, paragraph 50 of the IPOA-IUU also requires flag States to make catch and transshipment reports available to relevant national, regional and international organizations, including FAO, under applicable confidentiality requirements. Paragraph 37 of the IPOA-IUU encourages all States involved in a chartering arrangement, including flag States and other States that accept such an arrangement, to take measures to ensure that chartered vessels do not engage in IUU fishing.

²⁰⁵ The IPOA-IUU, para. 48.

Article III (8) of the FAO Compliance Agreement obliges each Party to take enforcement measures against its fishing vessels that contravene the provisions of the FAO Compliance Agreement. In cases where contravention happens, sanctions are required to be sufficiently serious, including depriving offenders of the benefits producing in their illegal activities. For serious offences, flag States must refuse, suspend or withdraw the authorization to fish on the high seas.

Additionally, Article 19 (1) of the UN Fish Stocks Agreement requires States to ensure that fishing vessels flying their flag comply with conservation and management measures established by RFMOs. This Article also requires flag States to investigate immediately any alleged violation and promptly report to the State alleging the violation and the relevant RFMO on the progress and outcome of the investigation. Fishing vessels are required to inform the investigating authority vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation. If there is sufficient evidence, the investigating authority should refer the case to its authorities to institute proceedings according to its laws and, where appropriate, detain the vessel concerned. When it has been proven that a vessel has committed a violation, the vessel cannot continue fishing on the high seas until it complies with all sanctions imposed by the flag States.

Article 19 (2) of the UN Fish Stocks Agreement not only requires adequately severe sanctions in respect of violations, but also provides measures applicable in respect of masters and other officers of fishing vessels, including the refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels. In this respect, sanctions under the UN Fish Stocks Agreement are broader and stricter than those under the FAO Compliance Agreement; for example, the UN Fish Stocks Agreement specifically addresses the individuals who are responsible for irresponsible fishing. Additionally, States are suggested to codify the involvement of IUU fishing as not only an administrative offence but also a criminal offence. Sanctions against nationals in this respect may include monetary fines, confiscation of fishing vessels and fishing gear and denial of future fishing licenses, as well as imprisonment.²⁰⁶ States, such as Australia, New Zealand, Norway, South Africa, Spain and the US, have already established national legislation with respect to individual's compliance with conservation and management measures inside or outside their national waters.²⁰⁷

States are called upon to adopt domestic legislation to prohibit nationals and beneficial owners from engaging in or supporting IUU fishing, to “*cooperate to identify those nationals who are the operators or beneficial owners of vessels involved in IUU fishing*” as well as to impose proper sanctions to those who undermine the law.²⁰⁸ However, the identification of beneficial owners is complicated.

²⁰⁶ Erceg D (2006) Deterring IUU fishing through state control over nationals. *Marine Policy* 30, pp. 173-179

²⁰⁷ Erceg (2006), p. 174.

²⁰⁸ The Outcome of the 2006 UN Fish Stocks Agreement Review Conference, para. 43(j); the IPOA-IUU, para. 18.

One reason is that usually the registered owner of ships can be a shell company. Another reason is that confidentiality legislation or rules of certain countries may prohibit the disclosing of information or beneficial ownership.²⁰⁹

2.3.1.2.4 Record of fishing vessels

In order to apply the flag State supervision, Article IV of the FAO Compliance Agreement requires each Party to maintain a record of fishing vessels entitled to fly its flag and authorized to fish on the high seas, which is also requested by the UN Fish Stocks Agreement.²¹⁰ This Article is in conjunction with Article VI, under which each Party must make readily available to the FAO the following information on each fishing vessel authorized to fish on the high seas, as well as promptly update this information:

- “(a) name of fishing vessel, registration number, previous names (if known), and port of registry;*
- (b) previous flag (if any);*
- (c) International Radio Call Sign (if any);*
- (d) name and address of owner or owners;*
- (e) where and when built;*
- (f) type of vessel;*
- (g) length.”²¹¹*

Each Party shall also make available the following additional information to the FAO to the extent practicable:

- “(a) name and address of operator (manager) or operators (managers) (if any);*
- (b) type of fishing method or methods;*
- (c) moulded depth;*
- (d) beam;*
- (e) gross register tonnage;*
- (f) power of main engine or engines.”²¹²*

The FAO shall circulate periodically this information to the Parties of the FAO Compliance Agreement as well as to global, regional or sub regional fisheries or-

²⁰⁹ Erceg (2006), p. 177.

²¹⁰ The UN Fish Stocks Agreement, Article 18 (3) (c).

²¹¹ The FAO Compliance Agreement, Art. VI (1).

²¹² The FAO Compliance Agreement, Art. VI (2).

ganization. Significantly, flag States shall report to the FAO when fishing vessels flying its flag undermine the effectiveness of international conservation and management measures.

Next to information required by Article VI (1) and (2) of the FAO Compliance Agreement referring to fishing vessels on the high seas, paragraph 42 of the IPOA-IUU provides additional requirements that apply to all fishing vessels and their owners:

“... 42.2 name, address and nationality of the natural or legal person in whose name the vessel is registered;

42.3 name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel;

42.4 name, street address, mailing address and nationality of natural or legal persons with beneficial ownership of the vessel;

42.5 name and ownership history of the vessel, and, where this is known, the history of non-compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and

42.6 vessel dimensions, and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel.”

This provision shows that the natural or legal persons with beneficial ownership of a vessel are stressed in the IPOA-IUU except aspects emphasized in the FAO Compliance Agreement. Additionally, the IPOA-IUU also allows States to include information provided by Article VI (1) and (2) of the FAO Compliance Agreement into their records of fishing vessels that are not authorized to fish on the high seas.²¹³

In order to enforce the record requirements, the FAO especially applies the High Seas Vessel Authorisation Record (HSVAR) database that includes the elemental information of the registration, the authorisation status and the infringements of high seas fishing vessels.²¹⁴ Until October 2013, 60 States had accepted the HSVAR. However, 22 of those are Member States of the European Union, which can be considered as one entity.²¹⁵ Only 22 of the remaining 38 parties have submitted data and only two of the 22 countries have reported that their vessels are

²¹³ The IPOA-IUU, para. 43.

²¹⁴ FAO Fisheries and Aquaculture (2013) HSVAR: High Seas Vessels Authorization Record.

²¹⁵ FAO Fisheries and Aquaculture (2013) HSVAR: High Seas Vessels Authorization Record.

all authorized.²¹⁶ These facts demonstrate that the HSVAR is far from a universal implementation.

Additionally, the Unique Vessel Identifier system, which assigns a global unique number to a vessel, regardless of changes in flag, ownership and names, is the key component of the Global Record to identify and track vessels.²¹⁷ Given the cooperation between the FAO and the IMO, as well as the recommendation of the 2006 UN Fish Stocks Agreement Review Conference, fishing vessels, including refrigerated transport and supply vessels, have been tabulated in the IMO numbering scheme operated by IHS-Fairplay (formerly Lloyd's Register-Fairplay).²¹⁸ Although the participation of the Unique Vessel Identifier system is voluntary, there are around 23,500 fishing vessels currently included in the IHS-Fairplay database, containing fishing vessels from certain main fishing States, such as the EU and China.²¹⁹ However, the numbering scheme merely applies to vessels of 100 gross tonnage and upwards, while it does not apply to vessels less than 100 gross tonnage, which are also usually engaged in IUU fishing. Thus, the Unique Vessel Identifier system works more effectively in large scale fisheries.

2.3.1.2.5 Monitoring, Control and Surveillance

Monitoring, Control and Surveillance of fishing vessels, which is vital to discover IUU fishing, is a means to ensure the implementation of other enforcement measures. Article 18 (3) (g) of the UN Fish Stocks Agreement specifies measures of Monitoring, Control and Surveillance, including:

“(i) the implementation of national inspection schemes and sub regional and regional schemes for cooperation in enforcement pursuant to Article 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;

(ii) the implementation of national observer programmes and sub regional and regional observer programmes in which the flag State is a

²¹⁶ FAO Fisheries and Aquaculture (2013) HSVAR: High Seas Vessels Authorization Record.

²¹⁷ FAO Fisheries and Aquaculture (2012) Report of the thirtieth session of the Committee on Fisheries, No. 1012, 9-13 July 2012, Rome. <http://www.fao.org/docrep/017/i3105e/i3105e00.htm>. Accessed 26 November 2013, para. 56.

²¹⁸ The Outcome of the 2006 UN Fish Stocks Agreement Review Conference, para. 43(l).

²¹⁹ FAO (2013) Unique Vessel Identifier (UVI) – Global Record. <http://www.fao.org/fishery/topic/18021/en>. Accessed 21 April 2013.

participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and

(iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been sub-regionally, regionally or globally agreed among the States concerned.”

It can be seen from the provisions that there are mainly three kinds of Monitoring, Control and Surveillance measures provided by the UN Fish Stocks Agreement, including inspection schemes, observer programmes and Vessel Monitoring Systems. The former two schemes mainly rely on the work of inspectors or observers. Although the latter does not need any active input from anyone on board and the data of vessel locations can be automatically transmitted from vessels to the monitoring centre, data related to catch and other variables still need to a manual input. The major differences between inspection schemes and observer programmes are: inspection schemes allow inspectors to board and inspect a vessel, its licence, gear, equipment, records, facilities, fish and fish products and relevant documents necessary to verify compliance with the relevant conservation and management measures,²²⁰ while observer programmes assign observers to collect catch and bycatch data from particular vessels. A flag State has the duty to require vessels flying its flag and fishing on the high seas or within waters covered by a RFMO to permit access by duly authorized inspectors and observers. In cases where the flag State is a State Party to the UN Fish Stocks Agreement, it even shall require its flagged-vessels to permit access by duly authorized inspectors or observers from other States, which is due to the high seas enforcement by non-flag States codified by the UN Fish Stocks Agreement. However, if a non-Party flag State to the UN Fish Stocks Agreement is not a Party to a RFMO, inspectors from other States are not permitted to board and inspect a vessel flagged to the non-Party State to the UN Fish Stocks Agreement unless the inspectors are authorized by the non-Party State. There is an increase in the prevalence of assigning observers to distant water fishing vessels (including transport vessels); however, it is not sufficiently prevalent due to the capacity and willing of certain States.

Vessel Monitoring Systems, which is useful for flag States to monitor the activities of their vessels when fishing in waters under national jurisdictions and on the high seas, largely facilitate Monitoring, Control and Surveillance. The IPOA-IUU encourages flag States to make Vessel Monitoring Systems a condition for authorization to fish.²²¹ However, Vessel Monitoring Systems are not capable of detecting vessels that are fishing without a licence or not fitted with equipment or not

²²⁰ The UN Fish Stocks Agreement, Art. 22 (2).

²²¹ The IPOA-IUU, para. 47.

reporting.²²² On the other hand, it is useful in detecting non-compliant vessels in maritime patrols in cases where vessels are also being monitored by radar and other types of Vessel Detection Systems.²²³ The 2005 FAO Rome Declaration on IUU Fishing called upon to ensure all large-scale fishing vessels operating on the high seas be fitted with Vessel Monitoring Systems no later than December 2008.²²⁴ Many countries have implemented Vessel Monitoring Systems for their large-scale vessels. For example, the European Union now requires most of its fishing vessels over 15 metres overall length to be included in its Vessel Monitoring Systems programme. Since 2012, including distant water fishing vessels in a Vessel Monitoring System has become an essential condition for approving and confirming distant water fishing projects in China.²²⁵ In addition, RFMOs, such as the NAFO and the NEAFC, are incorporating Vessel Monitoring Systems into their requirements for the vessels of their member States.²²⁶

The inspection schemes, the observer programmes and the Vessel Monitoring Systems, which mostly rely on the compliance of flag States, are supposed to enhance the Monitoring, Control and Surveillance. However, due to the disadvantages of such tools discussed above, the Monitoring, Control and Surveillance needs to be complemented by other tools, such as Port State measures that are discussed in Section 2.3.3. Coastal State measures discussed in Section 2.3.2 also play a significant role in combating IUU fishing within national jurisdiction of States. Trade-market measures as newly developed tools deprive the economic interests of IUU fishing.

2.3.1.3 The lacuna in the flag State duties

As discussed above, there are no globally agreed minimum standards for flag State duties.²²⁷ Although the FAO Compliance Agreement and the UN Fish Stocks Agreement have provided relevant measures, they have not been widely ratified.

²²² FAO Fisheries and Aquaculture (2013) Vessel Monitoring Systems. <http://www.fao.org/fishery/topic/13691/en>. Accessed 20 November 2013.

²²³ FAO Fisheries and Aquaculture (2013) Vessel Monitoring Systems.

²²⁴ FAO Rome Declaration on IUU Fishing, para. 3.

²²⁵ Pkulaw.cn (2012) Notice of the General Office of the Ministry of Agriculture on issuing Provisional Measures on Administration of Distant Water Fishing Vessel Monitoring (in Chinese). <http://www.pkulaw.cn>. Accessed 21 November 2013.

²²⁶ FAO Fisheries and Aquaculture (2013) Vessel Monitoring Systems.

²²⁷ Zwinge T (2011) Duties of flag States to implement and enforce international standards and regulations – and measures to counter their failure to do so. *The Journal of International Business & Law* 10, p. 322.

The principle of exclusive flag State jurisdiction on the high seas depends on the willingness and the abilities of flag States to regulate their fishing vessels.²²⁸ However, flag State duties are not effective enough without other sanctions against a flag State in this respect.²²⁹ Thus, measures taken by coastal States, port States and trade-markets are necessary to deal with non-compliance of flag States. It should be pointed out that high seas enforcement by non-flag State under certain RFMOs' framework has played a significant role in combating IUU fishing, which has been discussed in Section 2.2.1.4. The following sections mainly focus on State measures of coastal, port and trade-market States.

2.3.2 Coastal State duties and measures

2.3.2.1 Sovereignty

The UNCLOS codifies the sovereignty of a coastal State over its territorial sea and archipelagic waters.

“The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.”²³⁰

“Every State has the right to establish the breadth of its territorial sea up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention.”²³¹

Sovereignty in the territorial sea includes sovereignty over the sea bed, the sub-soil and airspace and needs to be exercised in accordance with the UNCLOS and other rules of international law.²³²

Within the territorial seas or archipelagic water, the coastal States has sovereignty over fisheries resources. Fisheries activities in the territorial sea are not

²²⁸ Goodman C (2009) The regime for flag State responsibility in international fisheries law – effective fact, creative fiction, or future work required? *Australian and New Zealand Maritime Law Journal* (2), vol 23, p. 162.

²²⁹ Zwinge (2011), p. 307.

²³⁰ The UNCLOS, Art. 2 (1).

²³¹ The UNCLOS, Art. 3.

²³² The UNCLOS, Art. 2 (2) (3).

considered as being innocent passage for vessels flying a foreign flag, empowering coastal States to prohibit fishing by those vessels unless an agreement allows them to fish.²³³

In the case of archipelagic waters, the UNCLOS also provides that an archipelagic State should respect certain rights of other States.

*“An archipelagic State must: (a) respect existing agreements with other States; (b) recognize traditional fishing rights and other legitimate activities of the immediately adjacent neighbouring States; and (c) at the request of any of the States concerned, negotiate bilateral agreements with such immediately adjacent neighbouring States setting forth the terms and conditions of the exercise of such rights and activities, including the nature, extent and areas to which they apply.”*²³⁴

The UNCLOS does not provide specific conservation and management measures for fishing activities within the sovereignty of coastal States. This is because according to the spirit of the UNCLOS, coastal States have absolute sovereignty in respect of the living and non-living resources under their sovereignty.²³⁵

2.3.2.2 Sovereign rights

One of the most significant influences of the UNCLOS on fisheries is permitting a coastal State to declare a 200-nautical-mile EEZ for, inter alia, fisheries in order to reduce the tragedy of the commons²³⁶ on part of the former high seas. 90 per cent of fish is caught under national jurisdiction, so effective management and conservation within EEZs is particularly important.²³⁷

²³³ The UNCLOS, Art. 19 (2) (i).

²³⁴ The UNCLOS, Art. 51 (1). Also see: Nandan SN, Rosenne S (1993) United Nations Convention on the Law of the Sea 1982 – a commentary. Volume II. Martinus Nijhoff Publisher, Dordrecht; Boston and London, p. 448.

²³⁵ Tsamenyi M, Hanich Q (2012) Fisheries jurisdiction under the Law of the Sea Convention: rights and obligations in maritime zones under the sovereignty of coastal States. *International Journal of Marine and Coastal Law* 27(4), pp. 789-790.

²³⁶ Hardin G (1968) The tragedy of the commons. *Science* 162: 1243-1248.

²³⁷ Barnes R (2006) The Convention on the Law of the Sea: an effective framework for domestic fisheries conservation. In Freestone David, Barnes Richard and Ong David M. (eds.) *The Law of the Sea: Progress and Prospects*, Oxford University Press, Oxford; New York, p. 233.

Under the UNCLOS, a coastal State has sovereign rights rather than sovereignty within its EEZ. Sovereign rights are not as comprehensive as sovereignty and are specific rights. A coastal State has sovereign rights “*for the purpose of exploring and exploiting, conserving and managing the natural resources*” in its EEZ.²³⁸

Other States may claim to share the resources under certain conditions. In order to promote optimum utilization of living resources in the EEZ, the UNCLOS grants a coastal State discretion to adopt laws and regulations when giving access to nationals of other States. These laws and regulations may include: licensing of fishermen; determining harvested species and quotas; regulating fishing seasons, areas, gear and vessels; fixing the age and size of fish and other species that may be caught; specifying information required of fishing vessels; placing observers on board fishing vessels; the landing of all or any part of the catch by such vessels in the ports of the coastal States; terms and conditions relating to joint ventures or other cooperative arrangements and enforcement procedures.²³⁹ In addition, a coastal State is recommended to take effective Monitoring, Control and Surveillance in the EEZ; to cooperate and exchange information with other States; to ensure that an authorization to fish is issued only if the vessel concerned is entered in a record of vessels; to ensure that each vessel maintains a logbook; to ensure that at-sea transshipment and processing of fish are authorized by the coastal State, or conducted in conformity with management regulations; and to avoid licensing a vessel to fish in its waters if such vessel has a history of IUU fishing.²⁴⁰

When exercising the sovereign rights to explore, exploit, conserve and manage living resources in its EEZ, a coastal State is endowed to take actions to ensure compliance with the laws and regulations adopted by it according to the UNCLOS, including boarding, inspection, arrest and judicial proceedings.²⁴¹ With respect to violations of coastal State’s fisheries laws and regulations, imprisonment or some other form of corporal punishment may be imposed only if there is agreement in that respect between the coastal State and the other State or States concerned.²⁴²

In the case of arrest or detention of foreign vessels, the coastal State shall promptly notify the flag State of the action taken and of any penalties imposed.²⁴³ Arrested vessels and their crew should be promptly released if reasonable bond or security is given, which is discussed in Section 2.3.3.2.²⁴⁴

In addition, coastal States also exercises sovereign rights over their continental shelves for the purpose of exploring natural resources, limited to non-living resources and living organisms belonging to sedentary species. The latter are those

²³⁸ The UNCLOS, Art. 56(1).

²³⁹ The UNCLOS, Art. 62(4).

²⁴⁰ The IPOA-IUU, para. 51.

²⁴¹ The UNCLOS, Art. 73(1).

²⁴² The UNCLOS, Art. 73(3).

²⁴³ The UNCLOS, Art. 73(4).

²⁴⁴ The UNCLOS, Art. 73(2).

organisms, which at the harvestable stage, either are immobile on or under the seabed or are unable to move except in constant physical contact with the seabed or the subsoil.²⁴⁵ Such rights are exclusive in the sense that if the coastal State does not explore the continental shelf or exploit its national resources, no one may undertake these activities without the express consent of the coastal State.²⁴⁶ Fisheries resources in the superjacent waters are not under the legal regime of the continental shelf.

2.3.2.3 Coastal States and transboundary stocks, straddling fish stocks and highly migratory species

According to Article 63 of the UNCLOS, transboundary stocks occur within the EEZs of two or more coastal States, while straddling fish stocks are stocks that occur between the EEZ and the adjacent high seas. For the conservation of straddling stocks, agreement between the coastal State and the States fishing for these stocks is similar to that for the conservation of transboundary stocks. In both cases, the States concerned shall work “*either directly or through appropriate sub regional or regional organizations*”.²⁴⁷

The precondition of cooperative fishery management and arrangements of transboundary stocks is that EEZ boundaries have been defined among neighbouring States.²⁴⁸ For those transboundary stocks in areas with agreed EEZ boundaries, multilateral or bilateral cooperation will benefit to the management and conservation of transboundary stocks. Examples can be seen in joint management of transboundary stocks between the EU and its neighbouring countries, such as Norway, Iceland and the Faeroe Islands. On the other hand, fishery conflicts, such as the conflict between China and Korea, usually happen in boundary disputed areas.

The term highly migratory species is derived from Article 64 of the UNCLOS. Although this Convention has not provided a definition of highly migratory species, it uses Annex I to list those species that are considered as highly migratory species. At present, there are 17 species belonging to highly migratory species. Coastal States and other States whose nationals harvest these species should coop-

²⁴⁵ The UNCLOS, Art. 77 (1) (4).

²⁴⁶ The UNCLOS, Art. 77 (2).

²⁴⁷ The UNCLOS, Art. 63.

²⁴⁸ Johnston DM (1992) A postscript. In: Matics KI and McDorman TL (eds) SEAPOL international workshop on challenges to fishery policy and diplomacy in South-east Asia. South-East Asian Programme in Ocean Law, Policy, and Management, Bangkok, Thailand, 6-9 December 1992; Sodik DM (2007) Combating illegal, unreported and unregulated fishing in Indonesian waters: the need for fisheries legislative reform. Dissertation, University of Wollongong, pp. 63-64.

erate directly or through appropriate international organizations. International cooperation is emphasized because multiple coastal States and States whose nationals harvest these species might be involved in the management and conservation of highly migratory species. In regions where there is no appropriate international organization, States concerned should cooperate to establish such an organization and participate in its work.

The cooperation between coastal States and high seas fishing States is further specified by Article 7 of the UN Fish Stocks Agreement. If no agreement between coastal States and high seas fishing States can be reached within a reasonable period of time, any concerned State may invoke the procedures for the dispute settlement provided in Part VIII of the UN Fish Stocks Agreement, which is consistent with the Part XV of the UNCLOS discussed in Section 2.2.1.1.²⁴⁹ A coastal State may be excluded from compulsory dispute settlement for a dispute concerning its management of straddling stocks and highly migratory species in its EEZ. However, the dispute relating to the management of such stocks on the high seas may not be excluded according to Article 297 (3) of the UNCLOS.

A court or tribunal a dispute has been duly submitted to may prescribe provisional measures “*to preserve the respective rights of the parties to the dispute or to prevent serious harm to the marine environment*” pending the final decision.²⁵⁰ The ITLOS has confirmed in the order of the *South Bluefin Tunas cases* that “*the conservation of the living resources of the sea is an element in the protection and preservation of the marine environment*”.²⁵¹ If States are unable to agree on such provisional arrangements, any court or tribunal agreed upon by the parties or failing such agreement within two weeks from the date of the request for provisional measures, the ITLOS may prescribe, modify or revoke provisional measures.²⁵²

Until now, three cases concerning the conservation and management of highly migratory species have been brought to the ITLOS. Two southern bluefin tuna cases are provisional measures proceedings. They mainly focus on the following measures: not aggravating disputes concerned; not exceeding the annual national allocations; not taking any unilateral experimental fishing programme; resuming negotiations to reach agreement on conservation and management measures; and making further efforts to reach agreement with other States and fishing entities engaged in fishing for southern bluefin tuna.²⁵³ Following the ITLOS’s order of provisional measures, the cases were passed to a tribunal. However, the tribunal

²⁴⁹ The UN Fish Stocks Agreement, Art. 7 (4).

²⁵⁰ The UNCLOS, Art. 290 (1).

²⁵¹ ITLOS (1999) Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999. Available via International Tribunal for the Law of the Sea. <http://www.itlos.org/index.php?id=62>. Accessed 18 December 2013, para. 70.

²⁵² The UNCLOS, Art. 290 (5).

²⁵³ ITLOS (1999) Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999.

found that it lacked jurisdiction so that it did not deal with the merits of the dispute. Although the ITLOS's order has been revoked, it indeed has promoted negotiations between parties and eventually has resolved the dispute.²⁵⁴ The other case is the swordfish case, in which the proceedings have been suspended and discontinued because the EU and Chile have reached an understanding to settle the dispute.²⁵⁵

It can be seen that both coastal States and high seas fishing States are rarely willing to settle a dispute concerning conservation and management of straddling fish stocks and highly migratory species according to the dispute settlement provided by the UNCLOS, while negotiation is always the primary recourse.

2.3.2.4 Hot pursuit

As discussed above, a coastal State has sovereignty and sovereign rights to take surveillance and enforcement measures in waters under its national jurisdiction. Although the UNCLOS does not codify the high seas enforcement by non-flag States, the right of hot pursuit, which evolved as a customary international law doctrine²⁵⁶ and is codified by Article 111 of the UNCLOS, may involve enforcement on the high seas. Hot pursuit is not particularly used for combating IUU fishing, which is just one of reasons for commencing a pursuit. Although hot pursuit can be continued on high seas, if certain conditions are fulfilled, it can be seen as an extension of coastal State sovereignty and sovereign rights.²⁵⁷

The ITLOS pointed out in the Judgment of the *M/V Saiga (No 2) Case* that each of the conditions for the exercise of the right of hot pursuit under Article 111 of the UNCLOS has to be satisfied for the pursuit to be legitimate.²⁵⁸ First, the competent authorities of a coastal State must have good reason to believe that the ves-

²⁵⁴ Churchill (2007), p. 415.

²⁵⁵ ITLOS (2009) Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union), Order 2009/1 of 16 December 2009. Available via International Tribunal for the Law of the Sea. <http://www.itlos.org/index.php?id=99>. Accessed 18 December 2013.

²⁵⁶ Poulantzas NM (2002) The right of hot pursuit in international law, 2nd ed. Martinus Nijhoff, The Hague, p. 39.

²⁵⁷ Baird R (2009) Arrests in a cold climate (Part 2) – shaping hot pursuit through State practice. Antarctic and Southern Ocean Law and Policy Occasional Papers 13. Available via USQ ePrints. <http://eprints.usq.edu.au/5604/>. Accessed 16 December 2013, p. 3.

²⁵⁸ ITLOS (1999) The *M/V “Saiga” (No. 2) Case* (Saint Vincent and the Grenadines v. Guinea), Merits, Judgment of 1 July 1999, para. 146.

sel has violated the laws and regulations of that State.²⁵⁹ The ITLOS also found in the *M/V Saiga (No 2) Case* that only having a suspicion could not constitute having good reason to believe.²⁶⁰

The second condition is the maritime zones where a pursuit commences. The pursuit must be commenced when a foreign vessel or one of its boats is within the internal waters, the archipelagic waters, the territorial sea or the contiguous zone of the pursuing State.²⁶¹ Article 111 (1) of the UNCLOS particularly points out that if a foreign vessel is within a contiguous zone, the pursuit may only be undertaken if there has been a violation of the rights for the protection of which the zone was established. According to Article 33 of the UNCLOS, a coastal State may exercise necessary control measures in the contiguous zone to prevent infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea. Therefore, hot pursuit can begin in the contiguous zone when offences relating to the coastal State's customs, fiscal, immigration or sanitary laws and regulations within the coastal State's internal waters or territorial sea.²⁶² Article 111 (2) of the UNCLOS states that the right of hot pursuit applies *mutatis mutandis* to violations of the laws and regulations of the coastal State applicable in the EEZ or on the continental shelf. A coastal State has sovereign rights to explore and exploit the natural resources in its EEZ and on its continental shelf according to the UNCLOS.²⁶³ Therefore, in cases where IUU fishing took place in the EEZ or on the continental shelf and the foreign vessel is within the internal waters, the archipelagic waters and the territorial sea, the competent authorities of the coastal State may begin a pursuit.

The third condition is the time when a pursuit begins. Article 111 (4) states: "*the pursuit may only be commenced after a visual or auditory signal to stop has been given at a distance which enables it to be seen or heard by the foreign ship*". This provision does not require the coastal State to prove that the pursued vessel has received the signal. However, the ITLOS concluded in the Judgment of the *M/V Saiga (No 2) Case* that no signal had been given by Guinea's pursuing vessel at the commencement of the alleged pursuit. An important reason for the conclusion is that both the Master and another witness on the pursued vessel of Saint Vincent and the Grenadines had categorically denied that any such signals had been given.²⁶⁴ It can be seen that in practice a coastal State indeed has to prove

²⁵⁹ The UNCLOS, Art. 111 (1).

²⁶⁰ ITLOS (1999) The *M/V "Saiga" (No. 2) Case* (Saint Vincent and the Grenadines v. Guinea), Merits, Judgment of 1 July 1999, para. 147.

²⁶¹ The UNCLOS, Art. 111 (1).

²⁶² For more detailed discussion on hot pursuit that commences in the contiguous zone, see: Walker R (2011) International law of the sea: applying the doctrine of hot pursuit in the 21st Century. *Auckland University Law Review* 17, p 204.

²⁶³ The UNCLOS, Arts. 56 and 77.

²⁶⁴ ITLOS (1999) The *M/V "Saiga" (No. 2) Case* (Saint Vincent and the Grenadines v. Guinea), Merits, Judgment of 1 July 1999, para. 148.

that the pursued vessel has received the signal otherwise judges may decide against the coastal State.

Fourth, the pursuit must be continuous and uninterrupted.²⁶⁵ Although the term “interrupted” has not been defined in the UNCLOS, it is arguable that short gaps due to weather, darkness or other such factors do not prevent the pursuing vessel from continuing the pursuit and should not be considered as a substantial interruption.²⁶⁶

Fifth, Article 111 (4) of the UNCLOS provides “*the right of hot pursuit ceases as soon as the ship pursued enters the territorial sea of its own State or of a third State*”. A pursued vessel may enter in the territorial seas of a third State for the purpose of avoiding the pursuit, which is contrary to the continuous and expeditious passage.²⁶⁷ In that case, the third State can deem the passage is non-innocent and proceed against the vessel in accordance with its own law, while strictly speaking the pursuit has ceased.²⁶⁸ State practice intends to broaden the interpretation of UNCLOS provisions. For example, the Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime areas adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands was concluded in 2003.²⁶⁹ The Treaty allows each Party to continue a hot pursuit through the other’s territorial seas to combat IUU fishing.²⁷⁰ Additionally, a pursued vessel may temporarily enter the territorial sea of a third State and re-enter the EEZ of that State and the high seas in order to be “*washed clean of its sins by the territorial waters of a third State*”.²⁷¹ In that case, it is unknown whether it is lawful under the UNCLOS to recommence hot pursuit

²⁶⁵ The UNCLOS, Art. 111 (1).

²⁶⁶ Baird (2009), p. 12.

²⁶⁷ The UNCLOS, Art. 18 (2).

²⁶⁸ Gullett W, Schofield C (2007) Pushing the limits of the Law of the Sea Convention: Australian and French cooperative surveillance and enforcement in the Southern Ocean. *The International Journal of Marine and Coastal Law* 22 (4), p. 568.

²⁶⁹ The Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime areas adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands was signed on 24 November 2003, and entered into force on 1 February 2005. Available via the Parliament of Australia. <http://www.aph.gov.au/>. Accessed 17 December 2013, Arts. 4 and 6.

²⁷⁰ Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime areas adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands, Arts. 4 and 6.

²⁷¹ Reuland RC (1993) The customary right of hot pursuit onto the high seas: annotations to Article 111 of the Law of the Sea Convention. *Virginia Journal of International Law* 33, p. 581.

when the pursued vessel re-enters the high seas, which needs the proof of future cases.

Sixth, Article 111(4) of the UNCLOS provides the doctrine of “constructive presence”.

“Hot pursuit is not deemed to have begun unless the pursuing ship has satisfied itself by such practicable means as may be available that the ship pursued or one of its boats or other craft working as a team and using the ship pursued as a mother ship is within the limits of the territorial sea, or, as the case may be, within the contiguous zone or the exclusive economic zone or above the continental shelf...”

The UNCLOS did not define the meaning of “working as a team” or “using the ship pursued as a mother ship”. In the case of fisheries, constructive presence can be understood as where small craft, including canoes and dories, operate inside the relevant jurisdiction while the mother ship is located outside. Examples can be seen in *The Araunah* case and *The Tenyu Maru* case.²⁷² In addition, “working as a team” can also be considered in cases where supply and bunkering vessels or other vessels are involved in the transshipment of IUU catches at sea.²⁷³ In this case, one of the boats need to be in the internal waters, the archipelagic waters, or in the territorial sea of the pursuing State.

Seventh, hot pursuit can only be exercised by warships or military aircraft, or other vessels or aircraft clearly marked and identifiable as being on government service and authorized to that effect.²⁷⁴ Here the other authorized vessels may cover vessels of other government agencies, including coast guard, customs, fisheries or police involved in the protection of a coastal State’s maritime zone.²⁷⁵

Article 111 (6) of the UNCLOS allows a vessel or an aircraft of the coastal State to take over the pursuit from another aircraft. Although the Convention does not expressly points out whether one vessel can take over the pursuit from another, the International Law Commission recognized this in 1957.

²⁷² Gullett and Schofield (2007), p. 570. *The Araunah* case, British and Foreign State Papers, Vol. 82, 1889-1890, p. 1058. *The Tenyu Maru* case, Alaska Reports, 1910, p. 136.

²⁷³ Walker R (2011) International law of the sea: applying the doctrine of hot pursuit in the 21st Century. *Auckland University Law Review* 17, p. 206.

²⁷⁴ The UNCLOS, Art. 111 (5).

²⁷⁵ Walker (2011), p. 208.

*“The ship finally arresting the ship pursued need not necessarily be the same as the one which began the pursuit, provided that it has joined in the pursuit and has not merely effected an interception.”*²⁷⁶

In practice, multilateral hot pursuit, which refers to “*hot pursuit involving pursuing vessels, aircraft or officials with different nationalities*”,²⁷⁷ contributes to the combat of IUU fishing through the cooperation of States. For example, the success of the pursuit of the *Viarsa 1* and the *South Tomi* is due to the cooperation between the authorities of Australia and other States.²⁷⁸

Hot pursuit is an extension of coastal States’ sovereignty and sovereign rights. However, the UNCLOS has imposed many limitations on the conditions of a lawful hot pursuit to prevent coastal States from abusing this right. In cases where a ship has been stopped or arrested outside the territorial sea in circumstances that do not justify the exercise of the right of hot pursuit, it shall be compensated for any loss or damage that may have been thereby sustained.²⁷⁹ In *The I’m Alone* case, the Arbitration did not answer the question whether the conditions of the commencement and the termination of the hot pursuit are legitimate.²⁸⁰ However, the act of sinking the ship by officers of the US Coast Guard was considered an unlawful act, so the Arbitration considered that the US ought to acknowledge its illegality, to apologize to the Canadian Government and to pay the sum of 25,000 USD to Canada.²⁸¹ It should be pointed out that the award to Canada was made after the rejection of Canada’s claims for compensation for material damage on behalf of the owners of the vessel. The rejection was made because the ownership was found to belong to nationals of the US rather than Canada. Therefore, the above award to Canada was on account of moral damage, which is one of the first cases in international law where substantial damages were awarded to a State on account of moral damage rather than material damage done to it.²⁸²

In practice, a coastal State must be able to enforce hot pursuit, including having pursuing vessels or aircraft with the necessary equipment and enforcing officers. Sometimes, the cooperation of other States is desired. With respect to most devel-

²⁷⁶ International Law Commission (1956) Yearbook of the International Law Commission, Vol. II. <http://legal.un.org/ilc/publications/yearbooks/1956.htm>. Accessed 14 December 2013, p. 285, para 2(c).

²⁷⁷ Molenaar EJ (2004) Multilateral hot pursuit and illegal fishing in the Southern Ocean: the pursuits of the *Viarsa 1* and the *South Tomi*. *The International Journal of Marine and Coastal Law* 19 (1), p. 40.

²⁷⁸ Details can be seen in: Molenaar (2004), pp. 19-23.

²⁷⁹ The UNCLOS, Art. 111 (8).

²⁸⁰ UN (2006) S.S. “*I’m alone*” (Canada, US), 30 June 1933 and 5 January 1935, p. 1614.

²⁸¹ UN (2006) S.S. “*I’m alone*” (Canada, US), 30 June 1933 and 5 January 1935, p. 1618.

²⁸² Poulantzas (2002), p. 67.

oping States where IUU fishing happens most frequently, they do not have the ability to enforce independently hot pursuit. Thus, there are limitations of coastal States to combat IUU fishing through enforcement at sea.

2.3.3 Head-to-head clashes between coastal States and flag States

Except for the cooperation discussed in Section 2.3.2.3, there are two situations that flag States and coastal States have to face each other in enforcing their conservation and management measures in the field of fisheries.

2.3.3.1 Investigation, boarding and inspection on the high seas

Article 20 (6) of the UN Fish Stocks Agreement provides that:

“Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to Article 111 of the Convention”.

Requesting a flag State to investigate its vessels on the high seas by a coastal State is in accordance with Article 94 (6) of the UNCLOS. However, the right of visit provided in Article 110 of the UNCLOS does not allow a warship to board a foreign vessel on the high seas for the reason that the latter has engaged in unauthorized fishing unless the vessel is without nationality or of the same nationality as the warship.²⁸³ Therefore, only by being authorized by the flag State or by conducting hot pursuit can a coastal State board or inspect a foreign vessel on the high seas due to unauthorized fishing within an area under its jurisdiction.

²⁸³ The UNCLOS, Art. 110 (1) (d) (e).

2.3.3.2 Prompt release

Arrested vessels and their crew shall be promptly released upon the posting of a reasonable bond or other security.²⁸⁴ Article 292 of the UNCLOS provides:

“1. Where the authorities of a State Party have detained a vessel flying the flag of another State Party and it is alleged that the detaining State has not complied with the provisions of this Convention for the prompt release of the vessel or its crew upon the posting of a reasonable bond or other financial security, the question of release from detention may be submitted to any court or tribunal agreed upon by the parties or, failing such agreement within 10 days from the time of detention, to a court or tribunal accepted by the detaining State under Article 287 or to the International Tribunal for the Law of the Sea, unless the parties otherwise agree.

2. The application for release may be made only by or on behalf of the flag State of the vessel.

3. The court or tribunal shall deal without delay with the application for release and shall deal only with the question of release, without prejudice to the merits of any case before the appropriate domestic forum against the vessel, its owner or its crew. The authorities of the detaining State remain competent to release the vessel or its crew at any time.

4. Upon the posting of the bond or other financial security determined by the court or tribunal, the authorities of the detaining State shall comply promptly with the decision of the court or tribunal concerning the release of the vessel or its crew.”

This Section mainly reviews cases of the ITLOS and elaborates on the interpretation and the application of Article 292 of the UNCLOS. The UNCLOS confers on the ITLOS compulsory jurisdiction in respect of the prompt release of vessels and crew. If the parties to the dispute have not agreed on a particular court or tribunal, or if the flag State does not submit the case to a court or tribunal accepted by the detaining State under Article 287 of the UNCLOS within ten days from the time of detention, the ITLOS may have compulsory jurisdiction. The UNCLOS has given the compulsory jurisdiction to the ITLOS rather than other pre-established bodies, such as the International Court of Justice. Therefore, the review of cases of the ITLOS concerning the prompt release is the best way to interpret the provisions of the UNCLOS in this respect. There are nine cases brought before the ITLOS referring to prompt release of vessels and crew, with the exception of the *M/V Saiga* case, all of them result from fisheries conflicts. Except for the *Chaisiri Reefer 2* case, which was removed from the ITLOS’s list of cases be-

²⁸⁴ The UNCLOS, Art. 73 (2).

cause the Applicant and the Respondent had reached an out-of-court agreement,²⁸⁵ the other cases mainly consider the following elements.

2.3.3.2.1 Jurisdiction

The ITLOS must examine whether it has jurisdiction to deal with an application. Three elements need to be considered. First, the flag State and the detaining State must both be State Parties to the UNCLOS. Second, the disputed Parties have not agreed to submit the question of release of the vessel to another court or tribunal within ten days from the time of detention. Last, the application for the prompt release must be submitted by the flag State or by a person or entity duly authorized to do so on behalf of the flag State.

There are two aspects to be specified for the last element. When an applicant is a State, it shall establish that it is the flag State of the vessel when an application is made. Otherwise, the ITLOS does not have jurisdiction to hear the application, which became clear in the *Grand Prince* case. Although the vessel was flying the flag of Belize when it was arrested, the de-registration of the vessel by Belize before the application made Belize no more the flag State of the detained vessel and resulted in no jurisdiction of the ITLOS to hear the application.²⁸⁶ The ITLOS in the *Juno Trader* case further stated that the flag State refers to the State whose flag the vessel is entitled to fly at the time that the application is submitted to the ITLOS.²⁸⁷ In addition, the Judgment of this case stressed that whatever may be the effect of a definitive change in the ownership of a vessel upon its nationality, there was no legal basis in the particular circumstances of the case for holding that there had been a definitive change in the nationality of such vessel.²⁸⁸ Therefore, the

²⁸⁵ ITLOS (2001) The “Chaisiri Reefer 2” Case (Panama v. Yemen), Prompt Release. ITLOS/Press 52: Case removed from Tribunal’s list. Available via International Tribunal for the Law of the Sea. http://www.itlos.org/fileadmin/itlos/documents/press_releases_english/PR_No.52.pdf. Accessed 19 September 2013.

²⁸⁶ ITLOS (2001) The “Grand Prince” Case (Belize v. France), Prompt Release, Judgment of 20 April 2001. Available via International Tribunal for the Law of the Sea. http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_8/Judgment.20.04.01.E.pdf. Accessed 17 September 2013, para. 93.

²⁸⁷ Mensah TA (2007) The Tribunal and the prompt release of vessels. *The International Journal of Marine and Coastal Law* 22 (3), p. 430.

²⁸⁸ ITLOS (2004) The “Juno Trader” Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release, Judgment of 18 December 2004. Available via International Tribunal for the Law of the Sea.

change in the ownership of a vessel does not influence the right of its flag State to bring an application of prompt release before the ITLOS.

With respect to an application submitted by another person or entity on behalf of the flag State of the detained vessel, Article 110 of the Rules of the ITLOS specifies the requirement that the person making an application on behalf of the flag State must be expressly authorized by the competent authorities that the ITLOS recognizes as able to act in the name of the State.²⁸⁹ In practice, the submission of applications by officials and agencies varies from case to case. For example, in the *Volga* case, the authorization to submit the application on behalf of Russia was given to the Deputy Director of the Legal Department of the Ministry of Foreign Affairs,²⁹⁰ while private attorneys were authorized on behalf of Panama in the *Camouco* case.²⁹¹

2.3.3.2 Admissibility

After dealing with the question of jurisdiction of the ITLOS, the ITLOS shall decide whether the application is admissible, that is, whether it falls within the scope of the other requirements set out in Article 292 (1) of the UNCLOS.²⁹² Precisely, an application is admissible when a flag State that is a State Party to the UNCLOS

http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_13/judgment_1812_04_eng.pdf. Accessed 19 September 2013, para. 63.

²⁸⁹ ITLOS (2009) Rules of the Tribunal (ITLOS/8), as amended on 17 March 2009.

http://www.itlos.org/fileadmin/itlos/documents/basic_texts/Itlos_8_E_17_03_09.pdf. Accessed 18 September 2013.

²⁹⁰ ITLOS (2002) The “Volga” Case (Russian Federation v. Australia), Prompt Release, Judgment of 23 December 2002. Available via International Tribunal for the Law of the Sea. http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_11/Judgment.Volga.E.pdf. Accessed 17 September 2013, para. 1.

²⁹¹ ITLOS (2000) The “Camouco” Case (Panama v. France), Prompt Release, Judgment of 7 February 2000. Available via International Tribunal for the Law of the Sea. http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_5/Judgment.07.02.00.E.pdf. Accessed 17 September 2013, para. 1.

²⁹² ITLOS (1997) The M/V “Saiga” case (Saint Vincent and the Grenadines v. Guinea), Prompt Release, Judgment of 4 December 1997. Available via International Tribunal for the Law of the Sea. http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_1/judgment_041297_eng.pdf. Accessed 22 September 2013, para. 46.

alleges that a vessel flying its flag has been detained by another State Party in violation of a provision of the UNCLOS that requires the prompt release of the vessel upon the posting of a reasonable bond or other financial security.²⁹³ For example, if the applicant declares that the respondent has violated Article 73 (3) and (4) of the UNCLOS, but does not indicate a violation of Article 73 (2) of the UNCLOS, the submissions concerning the alleged violation are not admissible. The reason is that Provision (3) and (4) of Article 73 do not concern the prompt release of a vessel or its crew upon the posting of a reasonable bond or other financial security. Mensah has further pointed out that “*an Application that does not indicate the particular provision that is alleged to have been violated will not be accepted as admissible*”.²⁹⁴ At this stage, the ITLOS does not deal with whether the allegation is “well-founded”.

As the Judgment of the *Camouco* case stated, Article 292 of the UNCLOS does not need the flag State to file an application at particular time after the detention of a vessel or its crew. The ten-day period referred to in Article 292 (1) of the UNCLOS is to enable the parties to submit the question of release from detention to an agreed court or tribunal.²⁹⁵ The Judgment of the *Hoshinmaru* case further indicated that the earliest date for initiating such procedure before the ITLOS is ten days from the time of detention.²⁹⁶ Therefore, it does not influence the admissibility if the application is not made to the ITLOS immediately after the 10-day period. Although Article 292 of the UNCLOS does not require a flag State to file an application at a particular time after the detention of a vessel or its crew, promptly applying for the prompt release by a flag State is still significant.

2.3.3.2.3 Whether the allegation is “well-founded”

After determining that the allegation is admissible, the ITLOS shall consider whether the allegation is well-founded. First, there must be a detention of the vessel or crew by the detaining State; moreover, the detaining State must have failed to release such vessel or crew. Second, the failure of the release constitutes a non-compliance of the provisions of the UNCLOS concerning prompt release of the vessel upon the posting of a bond or other financial security. If the ITLOS decides that the allegation is well-founded, the detaining State must promptly release the

²⁹³ Mensah (2007), p. 433.

²⁹⁴ Mensah (2007), p. 437.

²⁹⁵ ITLOS (2000) The “*Camouco*” Case (Panama v. France), Prompt Release, Judgment of 7 February 2000, para. 54.

²⁹⁶ ITLOS (2007) The “*Hoshinmaru*” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007. Available via International Tribunal for the Law of the Sea. <http://www.itlos.org/index.php?id=106&L=0>. Accessed 18 September 2013, para. 80.

vessel (or crew) and the ITLOS is required to determine the bond or other financial security to be posted for the release of the vessel or the crew.

As the ITLOS stated in the *Hoshinmaru* case, the UNCLOS and the ITLOS do not set a precise time limit for setting a bond, but the time required for setting a bond should be reasonable due to the object and purpose of Article 292 of the UNCLOS.²⁹⁷ However, in cases where the allegation is well-founded, whether the detaining State sets a bond or other financial security does not influence how the ITLOS determines the reasonableness of such a bond or other financial security.

At this stage, the reasonableness of the bond or other financial security set by the detaining State is mainly emphasised. Whether the applicant has posted a bond or another financial security is not necessarily a condition for filing an application under Article 292 of the UNCLOS.²⁹⁸ The Judgment in the *M/V Saiga* case established the criterion of “reasonableness”, including the amount, form and nature of the bond or financial security. In addition, the overall balance of the amount, form and nature must be reasonable.²⁹⁹ In the *Camouco* case, the ITLOS specified a number of factors to assess the reasonableness, including the gravity of the alleged offences, the penalties imposed or imposable under the laws of the detaining State, the value of the detained vessel and of the cargo seized, as well as the amount of the bond imposed by the detaining State and its form.³⁰⁰ The ITLOS further stated in the *Monte Confurco* case that the factors specified in the *Camouco* case, which complement the criterion of reasonableness specified by the ITLOS in the *M/V Saiga* case, are not complete.³⁰¹

The ITLOS in the *Volga* case confirmed that the expression “bond or other security” in Article 73 (2) of the UNCLOS should be interpreted as a bond or security of a financial nature, so non-financial conditions cannot be considered components of a bond or other financial security for the purpose of applying Article 292 of the UNCLOS in respect of an alleged violation of Article 73 (2) of the UNCLOS.³⁰²

²⁹⁷ ITLOS (2007) The “Hoshinmaru” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007, para. 80.

²⁹⁸ ITLOS (2000) The “Camouco” Case (Panama v. France), Prompt Release, Judgment of 7 February 2000, para. 63.

²⁹⁹ ITLOS (1997) The *M/V “Saiga”* case (Saint Vincent and the Grenadines v. Guinea), Prompt Release, Judgment of 4 December 1997, para. 82.

³⁰⁰ ITLOS (2000) The “Camouco” Case (Panama v. France), Prompt Release, Judgment of 7 February 2000, para. 67.

³⁰¹ ITLOS (2000) The “Monte Confurco” Case (Seychelles v. France), Prompt Release, Judgment of 18 December 2000. Available via International Tribunal for the Law of the Sea. http://www.itlos.org/fileadmin/itlos/documents/cases/case_no_6/Judgment.18.12.00.E.pdf. Accessed 17 September 2013, para. 76.

³⁰² ITLOS (2002) The “Volga” Case (Russian Federation v. Australia), Prompt Release, Judgment of 23 December 2002, para. 77.

2.3.3.2.4 The relationship between the prompt release and the merits of any case before a domestic forum

The Judgment in the *M/V Saiga* case confirms that when a domestic court of a State considers the merits of a case, the domestic court is not bound by any findings of fact that the ITLOS may have made in order to reach its conclusions.³⁰³ The Judgment of this case also indicated that the ITLOS cannot deal with any matters relating to the legality of the arrest and detention.³⁰⁴ The ITLOS in the *Camouco* case expressly pointed out “Article 292 provides for an independent remedy and not an appeal against a decision of a national court”.³⁰⁵

The Judgment of the *Tomimaru* case shows significant influences of the confiscation of a fishing vessel on the conclusion of a case of the prompt release before the ITLOS. First, a change in ownership of a confiscated vessel does not automatically lead to the change or loss of its flag.³⁰⁶ Thus, the decision to confiscate a vessel does not prevent the ITLOS from considering an application for prompt release of such vessel while proceedings are still pending before the domestic courts of the detaining State.³⁰⁷

Second, the decision of confiscation eliminates the provisional character of the detention of the vessel, rendering the procedure for the prompt release without legal object.³⁰⁸ However, the decision to confiscate a vessel is limited by the ITLOS:

“Such a decision should not be taken in such a way as to prevent the ship owner from having recourse to available domestic judicial remedies, or as to prevent the flag State from resorting to the prompt release procedure set forth in the Convention; nor should it be taken through proceedings inconsistent with international standards of due process of

³⁰³ ITLOS (1997) The *M/V “Saiga”* case (Saint Vincent and the Grenadines v. Guinea), Prompt Release, Judgment of 4 December 1997, para. 49.

³⁰⁴ ITLOS (1997) The *M/V “Saiga”* case (Saint Vincent and the Grenadines v. Guinea), Prompt Release, Judgment of 4 December 1997, para. 62.

³⁰⁵ ITLOS (2000) The “*Camouco*” Case (Panama v. France), Prompt Release, Judgment of 7 February 2000, para. 58.

³⁰⁶ ITLOS (2007) The “*Tomimaru*” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007. Available via International Tribunal for the Law of the Sea. <http://www.itlos.org/index.php?id=107&L=0>. Accessed 18 September 2013, para. 70.

³⁰⁷ ITLOS (2007) The “*Tomimaru*” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007, para. 78.

³⁰⁸ ITLOS (2007) The “*Tomimaru*” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007, para. 81.

*law. In particular, a confiscation decided in unjustified haste would jeopardize the operation of Article 292 of the Convention”.*³⁰⁹

In the *Tomimaru* case, the ITLOS did not decide to release the vessel because the vessel had been confiscated through the judgment of the domestic court of the respondent. Therefore, the *Tomimaru* case shows that the ship owner and the flag State shall take action within a reasonable time either to have recourse to the national judicial system of the detaining State or to initiate the prompt release procedure.³¹⁰

The elements discussed above are just major factors that the ITLOS has emphasized in its judgments in cases of prompt release. There is no doubt that in the future new cases will bring more elaboration on the interpretation and application of Article 292 of the UNCLOS. Although cases relating to IUU fishing have been repeatedly brought to the ITLOS for prompt release, the ITLOS is not allowed to assess the actions of a coastal State in the exercise of its sovereign rights.³¹¹

The prompt release is also used for the balance of the interests between coastal States and flag States. It imposes limitations on coastal States and prevents coastal States from abusing its rights. However, cases of the ITLOS have indicated that the prompt release does not deal with any matters relating to the legality of the arrest or detention. It is not an appeal against a decision of a national court. On the other hand, because the prompt release can only be asked by a flag State or on its behalf, submitting an application for prompt release indeed urges the flag State to control vessels flying its flag.

2.3.4 Port State measures against IUU fishing

Initially, port State control was used for inspecting foreign-flagged ships in the ports of coastal States and for verifying compliance with international standards, particularly with conventions of the IMO and the International Labour Organization.³¹² With the success in that field, port State control has also become an important means to combat IUU fishing. Port State measures are considered as “a

³⁰⁹ ITLOS (2007) The “Tomimaru” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007, para. 76.

³¹⁰ ITLOS (2007) The “Tomimaru” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007, para. 77.

³¹¹ Ndiaye TM (2011) Illegal, unreported and unregulated fishing: responses in general and in West Africa. *Chinese Journal of International Law* 10 (2), p. 395.

³¹² Goodman (2009), p. 160.

powerful and cost-effective tool” to combat IUU fishing.³¹³ All catches at sea must be landed and there are always fishing vessels or supporting vessels that tranship, refuel or re-supply in ports. In this case, port States, who have sovereignty over their ports, have rights to check, to refuse the port access, landing or using port services, as well as to detain or to punish vessels that have been engaged in IUU fishing. These actions can prohibit IUU catches from entering international markets and can deprive the motivation of IUU fishing.³¹⁴

2.3.4.1 Port State measures before the FAO Port State Measures Agreement

The UNCLOS provides for universal port State jurisdiction allowing the port State to take measures against illegal discharges outside the territorial sea or EEZ of that coastal State, which is not the case for IUU fishing.³¹⁵ The UNCLOS only mentions fisheries in connection to port State control in Article 62 (4) (h). Under this provision, a coastal State can require part or all of the catches harvested by nationals of other States fishing in the EEZ of the coastal State to land in the ports of the coastal State. However, the UNCLOS does not specify what port State measures can be taken to control the landing of fish nor does it provide for port State control in case of high seas fisheries.

However, the FAO Compliance Agreement complements port State control in case of high seas fisheries. Article V (2) of the FAO Compliance Agreement allows a port State to take arrangements for investigatory measures as may be considered necessary to establish whether a suspected fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures. Birnie has proposed that although the expression ‘may make arrangements’ leaves the port State’s power both optional and limited, the agreement is progressive to authorise national authorities to prohibit landings and transhipments if the catches had been taken illegally.³¹⁶

³¹³ This is confirmed in the preamble of the FAO Port State Measures Agreement. Similar discussion can also be found in: Fabra A, Gascón V and Werner R (2006) The use of port State measures to improve fisheries compliance. Available via [Illegal-fishing.info](http://www.illegal-fishing.info). <http://www.illegal-fishing.info>. Accessed 1 November 2011, p.1. Also see: Swan J (2006) Port state measures to combat IUU fishing: international and regional developments. *Sustainable Development Law & Policy* 7, p. 38.

³¹⁴ Fabra et al. (2006), p. 1.

³¹⁵ The UNCLOS, Art. 218.

³¹⁶ Birnie P (1999) New approaches to ensuring compliance at sea: the FAO Agreement to Promote Compliance with International Conservation and Manage-

The UN Fish Stocks Agreement specifies port State measures to control fishing vessels fishing for straddling fish stocks and highly migratory species. Port States are authorized to inspect documents, fishing gear and catches on board fishing vessels that are voluntary in their ports or at their offshore terminals, as long as these measures do not discriminate vessels of particular States.³¹⁷ Stringent measures to regulate transshipment, especially at-sea transshipment, are demanded.³¹⁸

The IPOA-IUU explicitly provides possible port State measures against IUU fishing. On the basis of the FAO Model Scheme and the FAO Port State Measures Agreement,³¹⁹ it reiterates the requirements codified in the UN Fish Stocks Agreement.³¹⁹ It also provides several new measures, such as requiring fishing vessels and vessels involved in fishing related activities to provide reasonable advanced notice of their entry into the port before allowing a vessel port access;³²⁰ publicizing ports to which foreign flagged vessels can access and ensuring these ports have the capacity to conduct inspections;³²¹ collecting certain information and remitting to the flag State and relevant RFMO when exercising inspection;³²² reporting suspected IUU matter to the flag State, the relevant coastal States and RFMO in case that the port State finds there are reasonable grounds to believe the vessel has engaged in or supported IUU fishing beyond the jurisdiction of the port State;³²³ as well as cooperating bilaterally, multilaterally and within relevant RFMOs to develop compatible measures for port State control and to exchange information.³²⁴

Paragraph 63 of the IPOA-IUU adds to port State measures.

“...fishing vessels entitled to fly the flag of States not parties to [a RFMO] and which have not agreed to cooperate with that [RFMO], which are identified as being engaged in IUU fishing. Such port State measures may prohibit landings and transshipment of catch unless the identified vessel can establish that the catch was taken in a manner consistent with those conservation and management measures. ...”

ment Measures by Fishing Vessels on the High Seas. Review of European Community & International Environmental Law 8, p. 53.

³¹⁷ The UN Fish Stocks Agreement, Art. 23 (1) (2).

³¹⁸ The Outcome of the 2006 UN Fish Stocks Agreement Review Conference, para. 43(c).

³¹⁹ IPOA-IUU, paras. 52, 53 and 56.

³²⁰ IPOA-IUU, para. 55.

³²¹ IPOA-IUU, para. 57.

³²² IPOA-IUU, para. 58.

³²³ IPOA-IUU, para. 59.

³²⁴ IPOA-IUU, para. 63.

This presumption first supposes a fishing vessel has been involved in IUU fishing if its flag State is not a party to a RFMO and has not agreed to cooperate with that RFMO. Then it requires the fishing vessel to prove it has not been engaged in IUU fishing. Thus, this provision introduces the reversal of the burden of proof.³²⁵

The FAO Model Scheme provides voluntary principles and guidelines for port States to take measures. Except for the requirements mentioned above,³²⁶ the FAO Model Scheme also emphasizes the following points:

First, it specifies that fishing vessels refer to “*any vessel used or intended for use for the purpose of fishing, including support ships, carrier vessels and any other vessels directly involved in such fishing operations*”.³²⁷

Then, the FAO Model Scheme specifies duties of port States for inspection and afterwards.³²⁸ In particular, the annexes contain details on required information to be provided in advance by foreign fishing vessels, port State inspection procedures of foreign fishing vessels, information contained in the results of the inspection, elements of training of port State inspectors, as well as information systems on port State inspections.³²⁹

To sum up, before the adoption of the FAO Port State Measures Agreement, specific port State measures against IUU fishing were mainly provided by two political documents – the IPOA-IUU and the FAO Model Scheme. However, the two instruments are non-legally binding, which cannot promise the integration of port State measures at sub-regional, regional or global level. On the one hand, not every port State has adopted and implemented port State measures against IUU fishing. On the other hand, port State measures that have been adopted by different States and RFMOs are based on different standards. IUU fishing vessels usually seek to land their catches or to use the port services in ports of States that have no or less stringent port State measures. Such ports are known as “ports of convenience”.³³⁰ Therefore, a legally-binding international agreement that provides the minimum standards for port State measures is desired.

³²⁵ Sung SO (2009) Port State measures as a political instrument to combat IUU fishing (Chinese). *International Fisheries Information* (Taiwan) 199, pp. 29-38.

³²⁶ FAO Model Scheme, paras. 2.3-2.7, 2.9, 9-12.

³²⁷ FAO Model Scheme, para. 1.2.

³²⁸ FAO Model Scheme, paras. 3-8.

³²⁹ FAO Model Scheme, Appendix A-E.

³³⁰ Stop Illegal Fishing (2008) Stop illegal fishing in Southern Africa. <http://www.stopillegalfishing.com/documents.php>. Accessed 27 January 2014, p. 73. Also see: Palma et al. (2010), p. 158.

2.3.4.2 Port State measures provided by the FAO Port State Measures Agreement

Based on the previous instruments, the FAO Port State Measures Agreement is the first legally binding international agreement which specifically applies to port States in addressing measures against IUU fishing, albeit not in force yet.

The purpose of this agreement is to inspect fishing vessels entering the ports of parties to the Agreement and to verify whether they have been engaged in IUU fishing.³³¹ The FAO Port State Measures Agreement only provides the minimum standards for port States. However, parties to this agreement can also adopt more stringent port States measures in accordance with international law due to the sovereignty they have over their ports.³³²

Under the FAO Port State Measures Agreement, port States enforce their jurisdiction over foreign vessels in their ports through controlling the entry of ports, the use of ports and the inspection of fishing vessels.

2.3.4.2.1 Entry into Ports

Article 7 of the FAO Port State Measures Agreement requires each Party to designate and publicize the ports to which vessels may request entry and ensure that it has adequate capacity to conduct inspections. Examples of States that have codified the designation of ports in their national legislation are the EU, New Zealand,³³³ South Africa,³³⁴ Turkey,³³⁵ Canada,³³⁶ and Mauritius.³³⁷

Each Party shall require the information requested in Annex A of the FAO Port State Measures Agreement to be provided before granting a vessel access to its port and then examine this information.³³⁸ According to Annex A, the minimum information required includes the purpose and information of access to port, vessel identification, fishing authorization(s), information of the master, transshipment au-

³³¹ Harrison (2011), p. 222.

³³² The FAO Port State Measures Agreement, preamble, Art. 4(1)(b).

³³³ New Zealand, Fisheries Act 1996, No. 88 of 1996, Sec. 110 (1) and (6).

³³⁴ South Africa, 1998 Marine Living Resources Regulations, Sec. 49 (4).

³³⁵ Turkey, Notification 1/1 Regulating Commercial Fishing (2007-43), Art. 12(4)(c).

³³⁶ Canada, Pacific Fishery Regulations, 1993 (SOR/93-54), Sec. 17 (1)-(4).

³³⁷ Mauritius, Fisheries and Marine Resources Act 2007 (Act No. 27 of 2007), Secs. 20 and 70 (1) (a).

³³⁸ The FAO Port State Measures Agreement, Art. 8.

thorization(s) as well as information about catches. Countries such as Australia,³³⁹ Norway³⁴⁰ and Ireland³⁴¹ have required advanced notice of port entry.

After examining the information received, the port State may determine whether the vessel has been engaged in IUU fishing or fishing related activities in support of such fishing. Then the port State can decide whether to authorize or deny the entry to its port and shall communicate this decision to the vessel or to its representative.³⁴²

In cases where there is sufficient evidence that a vessel seeking entry to a port has been engaged in IUU fishing or fishing related activities in support of such fishing, the vessel will be included in a blacklist adopted by a relevant RFMO according to international law. Additionally, the port State shall deny that vessel entry into its ports.³⁴³ Alternatively, exclusively for the purpose of inspecting the vessels, the port State may allow the suspected vessel to enter its port and take other appropriate actions in conforming to international law.³⁴⁴ The FAO Port State Measures Agreement does not specify what actions a port State can take in this case. Such actions must be consistent in international law and as effective as denial of port entry in combating IUU fishing and related activities.³⁴⁵

2.3.4.2.2 Use of Ports

In cases where a vessel involved in IUU fishing or related fishing activities is already in a port, the port State shall deny such vessel the use of its port for landing, transshipping, packaging, and processing of the fish that has not been previously landed and for other port services, including refuelling and resupplying, maintenance and drydocking.³⁴⁶ Landing and transshipment of fish needs authorization of a port State. Specifically, Gambia does not allow a fishing vessel engaged in drift-net fishing to tranship, land or process the fish or have access to its ports and port

³³⁹ Australia, Fisheries Management Act 1991. Act No. 162 of 1991, as amended by Act No. 96 of 2010, Sec. 94 (4).

³⁴⁰ Norway, Regulations of 30 August 2010 No. 1229 relating to reporting (position, catch and activity data) and control etc., during fishing and hunting operations in the Fisheries Protection Zone around Svalbard, Sec. 9.

³⁴¹ Ireland, Sea Fisheries (Technical Conservation Measures) Regulations 2009, Reg. 4.

³⁴² The FAO Port State Measures Agreement, Art. 9 (1).

³⁴³ The FAO Port State Measures Agreement, Art. 9 (4).

³⁴⁴ The FAO Port State Measures Agreement, Art. 9 (5).

³⁴⁵ The FAO Port State Measures Agreement, Art. 9 (5).

³⁴⁶ The FAO Port State Measures Agreement, Art. 11 (1).

services.³⁴⁷ As to Ghana, restrictions on landing and transshipment shall be imposed on vessels that have used prohibited fishing methods.³⁴⁸ In Nauru, the import of illegally caught fish shall also face restrictions on landing and transshipment.³⁴⁹ Tuvalu stipulates that restrictions on landing and transshipment may be imposed on fishing for endangered species.³⁵⁰ However, transshipment of fish at sea with authorization is still allowed by certain States, such as Ghana,³⁵¹ New Zealand³⁵² and Namibia.³⁵³

If a port State denies the use of its port, it shall promptly notify its decision to the flag State, relevant coastal States, RFMOs and other relevant international organizations.³⁵⁴ If there is sufficient proof that the grounds for denial are inadequate or such grounds no longer apply, the port State shall withdraw its denial and promptly notify those to whom the notification was issued.³⁵⁵

2.3.4.2.3 Inspections and follow-up actions

Each party shall inspect a number of vessels in its ports in order to reach an annual level of inspection sufficient to achieve the objectives of the FAO Port State Measures Agreement.³⁵⁶ The FAO Port State Measures Agreement does not provide a specific number or proportion of inspections. Port States shall agree on the minimum levels of inspection through, as appropriate, RFMOs, FAO or otherwise.³⁵⁷ Take the EU as an example. EU Member States are required to carry out inspections in their ports for at least 5 per cent of landings and transshipments operations by third country fishing vessels each year.³⁵⁸ Although many States have

³⁴⁷ Gambia, Fisheries Act 2007, Sec. 64 (3).

³⁴⁸ Ghana, Fisheries Act, 2002 (Act No. 625 of 2002), Sec. 88 (1) and (3).

³⁴⁹ Nauru, Fisheries Act (No. 18 of 1997), Sec. 26.

³⁵⁰ Tuvalu, Marine Resources Act (48.16), as amended, Sec. 11.

³⁵¹ Ghana, Fisheries Act, 2002 (Act No. 625 of 2002), Secs. 132 and 140.

³⁵² New Zealand, Fisheries (Commercial Fishing) regulations 2001, regulations 19 (1) and (2), 84 (3) and 85 (4).

³⁵³ Namibia, Marine Resources Act (Act No. 27 of 2000), Sec. 50.

³⁵⁴ The FAO Port State Measures Agreement, Art. 11 (3).

³⁵⁵ The FAO Port State Measures Agreement, Art. 11 (4) (5).

³⁵⁶ The FAO Port State Measures Agreement, Art. 12 (1).

³⁵⁷ The FAO Port State Measures Agreement, Art. 12 (2).

³⁵⁸ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999; OJ L286 of 29 October 2008, pp. 1-36, Art. 9 (1).

port inspections, there are only a few States that have codified port inspection of fishing vessels for the combat of IUU fishing, including Mauritius,³⁵⁹ Thailand,³⁶⁰ Vanuatu³⁶¹ and Canada.³⁶²

In determining which vessels to inspect, a Party shall give priority to vessels: (a) that have been denied entry or use of a port according to this Agreement; (b) requested by other relevant Parties, States or RFMOs, in particular where such requests are supported by evidence of IUU fishing or supporting activities; (c) for which there are clear grounds for suspecting that they have been engaged in IUU fishing or supporting activities.³⁶³ It should be pointed out that the priorities mainly work on illegal fishing, while unreported fishing can easily escape if the fishing vessels are not be inspected.³⁶⁴

During the inspection, inspectors shall: (a) verify the authenticity of vessel identification documents on board and information relating to the owner of the vessel; (b) verify the vessel's flag and markings are consistent with the information contained in the documents; (c) verify the consistency between the authorizations for fishing and related activities and the information provided by the vessel when requesting entry; (d) review all other relevant documentation and records onboard; (e) examine fishing gear onboard; (f) determine whether the fish on board has been harvested in accordance with the applicable authorizations; (g) examine the quantity and composition of fish; (h) evaluate whether there is clear evidence for believing that a vessel has been engaged in IUU fishing or fishing related activities in support of such fishing; (i) provide the master of the vessel with the report containing the result of the inspection, including possible measures that could be taken; (j) arrange, where necessary and possible, for translation of relevant documentation.³⁶⁵

Avoiding undue delay of a vessel to minimize interference and inconvenience is indeed a duty of care that is also required by port State control over the security of foreign vessels in ports.³⁶⁶ The FAO Port State Measures Agreement considers the duty of care as legally binding, but it does not provide any recourse when undue inspections happen. Although Article 292 of the UNCLOS provides the

³⁵⁹ Mauritius, Fisheries and Marine Resources Act 2007 (Act No. 27 of 2007), Secs. 57 and 70 (1) (c).

³⁶⁰ Thailand, Act Governing the Right to Fish in Thai Fishery Waters B. E. 2482 (1939), Sec. 9.

³⁶¹ Vanuatu, Fisheries Act (No. 55 of 2005), Sec. 5.

³⁶² Canada, Coastal Fisheries Protection Act 1985 (C-33), Sec. 7.

³⁶³ The FAO Port State Measures Agreement, Art. 12 (3).

³⁶⁴ Sasegbon D (2012) Assessing the strengths and weaknesses of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. *Southampton Student Law Review* 2, p. 80.

³⁶⁵ The FAO Port State Measures Agreement, Annex B.

³⁶⁶ For more information of undue detention, see: Kulchytsky A (2012) Legal aspects of port State control. Dissertation, Lund University, pp. 42-46.

prompt release procedure against undue detention, using such procedure against undue inspection is without merit. Therefore, avoiding undue inspection relies on whether a port State codifies the duty of care in its national legislation.

If there are clear grounds for believing that a vessel has been engaged in IUU fishing or supporting activities, the inspecting Party shall promptly notify the flag State, relevant coastal States, RFMOs, other international organizations, and the State of which the vessel's master is a national of its findings. Moreover, the port State can deny the vessel the use of its port for landing, transhipping, packaging and processing of fish that have not been previously landed and for other port services.³⁶⁷

Additionally, port States have the right to seek compensation according to their national laws and regulations concerning port State measures applied in any case of unlawful action, but need to inform the flag State, the owner, operator, master or representatives of the outcome of any such recourse as appropriate.³⁶⁸

2.3.4.2.4 Flag State duties in connection with port State measures

The FAO Port State Measures Agreement codifies port State measures concerning the entry into ports, the use of ports and inspections. However, it does not permit a port State to take enforcement action itself.³⁶⁹ A port State shall take enforcement action with the endeavour of the related flag State. The FAO Port State Measures Agreement repeatedly emphasizes the significance of cooperation between port States and flag States. Article 20 of the FAO Port State Measures Agreement especially indicates the role of flag States in the cooperation with port States.

Flag States shall encourage vessels flying their flag to land, tranship, pack and process fish, and use other port services in ports of States that act in a manner consistent with the FAO Port State Measures Agreement.³⁷⁰

In case that the flag State has clear grounds to believe that a vessel entitled to fly its flag has engaged in IUU fishing or supporting activities and is seeking entry to or is in the port of another State, it shall request that port State to inspect the vessel or take other appropriate actions.³⁷¹ After receiving an inspection report with clear grounds to believe that the vessel has been involved in IUU fishing or supporting activities, the flag State shall immediately and fully investigate the matter and take enforcement action without delay in accordance with its laws and

³⁶⁷ The FAO Port State Measures Agreement, Art. 18 (1) (b).

³⁶⁸ The FAO Port State Measures Agreement, Art. 19.

³⁶⁹ Harrison (2011), p. 223.

³⁷⁰ The FAO Port State Measures Agreement, Art. 20 (3).

³⁷¹ The FAO Port State Measures Agreement, Art. 20 (2).

regulations.³⁷² Then, the flag State shall report to other Parties, relevant port States and, as appropriate, other relevant States, RFMOs and FAO the actions it has taken for such vessels and the results.³⁷³ Those actions taken by flag States shall be as effective as the port State measures provided in the FAO Port State Measures Agreement.³⁷⁴

2.3.4.3 Effectiveness

As the FAO Port State Measures Agreement has not entered into force, the practical effect of this Agreement is still unknown. There is a concern that IUU fishing vessels rarely enter ports of countries that endeavour to combat IUU fishing through port State measures. Instead, IUU catches can be offloaded to reefer ships and landed in ports in order to be “white washed”.³⁷⁵ In order to understand the process of improving port State control, it is necessary to draw an analogy between port State measures against IUU fishing and port State security. Port State security control of foreign vessels mainly takes place in Europe, the US, Australia and other developed States and regions. As a result of this, there was a period that many vessels chose ports in other countries with less port State control. Currently, port State security control of foreign vessels is prevalent worldwide. Although port State control on IUU catches has not yet been considered as equally important as security measures, port State control on IUU catches gets increasing attention due to the enforcement by major port States. The transshipment at sea, which is not an issue that can be resolved only through port State control, relies on the cooperation of flag and coastal States, relevant RFMOs as well as trade market measures that are discussed below. At present, port State measures only function to a limited extent, but it is expected that together with other State measures, particularly trade measures, port State measures will play an important role in dealing with IUU fishing in the future.

³⁷² The FAO Port State Measures Agreement, Art. 20 (4).

³⁷³ The FAO Port State Measures Agreement, Art. 20 (5).

³⁷⁴ The FAO Port State Measures Agreement, Art. 20 (6).

³⁷⁵ Sasegbon (2012), pp. 75-76.

2.3.5 International agreed market-related measures against IUU fishing

2.3.5.1 The IPOA-IUU

The IPOA-IUU is the main international instrument that utilises market-related measures to combat IUU fishing. The purpose of such measures is to eliminate the economic incentives for vessels to engage in IUU fishing. The IPOA-IUU does not define what market-related measures are. Instead, it recommends possible measures, such as multilateral catch documentation and certification, the traceability of fish or fish products, the Harmonized Commodity Description and Coding System for fish and fisheries products and several other measures.³⁷⁶ The IPOA-IUU particularly indicates that a “*certification and documentation requirement should be standardized to the extent feasible, and electronic schemes should be developed where possible, to ensure their effectiveness, reduce opportunities for fraud, and avoid unnecessary burden on trade*”.³⁷⁷ The IPOA-IUU mainly focuses on certain administrative issues such as coordination between international fisheries legislation and multilateral trade law, cooperation at different level and cooperation of stakeholders rather than specifying such market-related measures.

It first stresses the coordination between international fisheries legislation and multilateral trade law. In order not to create unnecessary green barriers, market-related measures against IUU fishing should be consistent with the principles, rights and obligations codified by the WTO and implemented in a fair, transparent and non-discriminatory manner.³⁷⁸ Although there is no particular WTO agreement with respect to fisheries, the General Agreement on Tariffs and Trade 1994 (GATT 1994) has established two rules that can apply to fish trade. Those rules are the Most Favoured Nation clause and the National Treatment clause.³⁷⁹ Under these conditions, like products between foreign contracting parties enjoy the same treatment; also, the domestic and foreign like products should be treated equally. Nevertheless, Article XX of GATT allows for an exception to the above obligations in case of the conservation of exhaustible natural resources:

³⁷⁶ IPOA-IUU, paras. 66-76. Although prohibitions on foreign landing or transshipment of fish in ports are also related to trade of fish, they are considered as parts of port State measures by the IPOA-IUU and FAO guidelines. Therefore, this paper merely focuses on trade-market measures under the framework of the IPOA-IUU.

³⁷⁷ IPOA-IUU, para. 76.

³⁷⁸ The IPOA-IUU, para. 65.

³⁷⁹ General Agreement on Tariffs and Trade (GATT), 30 October 1947, signed in 1948, modified in 1994, 61 Stat. A-11, Arts. I and III. The GATT has been incorporated into the WTO Agreement.

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.”³⁸⁰

The Dolphin/Tuna I case (1991) indicated that a country is not allowed to introduce unilateral trade limitation measures in order to enforce its national legislation solely, even if this legislation aims to protect animals.³⁸¹ Furthermore, this prohibition equally applies in favour of countries that act as an intermediary (Dolphin/Tuna II case (1994)).³⁸² In the Shrimp/Turtle case (1998), the WTO-Panel came to the conclusion that a unilateral import prohibition is not compatible with GATT rules, unless the import prohibition is the result of the implementation of a cooperation agreement to serve global conservation strategies.³⁸³ On Appeal an equal reasoning was followed, albeit in less strong words towards the conclusion of a multilateral approach.³⁸⁴ Additionally, the Appellate Body established a framework to guide States in utilizing Article XX’s environmental exceptions while complying with GATT’s policy against unilateral trade restrictions.³⁸⁵ Environmental measures relating to the conservation of exhaustible natural resources and having trade effects have since the Shrimp/Turtle case not been challenged in the WTO. Thus, in order to combat IUU fishing, import restrictions can be applied as an exception to GATT rules, either to implement an international agreement or a multilateral decision. However, market-related measures should only be used where other measures have failed to combat IUU fishing and only after prior con-

³⁸⁰ GATT, Art. XX (g).

³⁸¹ GATT (1991) Dispute settlement panel report on United States restrictions on import of tuna. *International Legal Materials* 30, pp. 1594-1623.

³⁸² GATT (1994) Dispute settlement panel report on United States restrictions on import of tuna. *International Legal Materials* 33, pp. 839-903.

³⁸³ WTO (1998) Report of the panel on the United States - import prohibition of certain shrimp and shrimp products. *International Legal Materials* 37, pp. 832-857.

³⁸⁴ WTO (1999) Report of the appellate body on the United States - import prohibition of certain shrimp and shrimp products. *International Legal Materials* 38: 121-175.

³⁸⁵ Taylor CR (2010) Fishing with a Bulldozer: Options for unilateral action by the United States under domestic and international law to halt destructive bottom trawling practices on the high seas. *Environ Environmental Law and Policy Journal* 34 (1), p. 160.

sultation with interested States; while, unilateral measures should be avoided.³⁸⁶ Additionally, those measures need to be implemented in a fair, transparent and non-discriminatory manner.³⁸⁷

Secondly, international, regional and bilateral cooperation is strongly recommended.³⁸⁸ The functions of RFMOs in combating IUU fishing are especially emphasized. For example, States should take all necessary steps to prevent fish caught by vessels identified by the relevant RFMO to have been engaged in IUU fishing and fish traded or imported into their territories.³⁸⁹ The IPOA-IUU emphasizes that the identification of the vessels by the RFMO should take place through agreed procedures, which means unilateral action is not recommended. Normally, RFMOs use IUU vessel lists to identify illegal operating vessels.

In addition, assistance between States is also encouraged by the IPOA-IUU. When requested by another interested State, a State should assist the interested State to deter trade in fish and fish products illegally harvested in the latter's jurisdiction. The assistance should be given according to terms agreed by both States and fully respect the jurisdiction of the requesting State.³⁹⁰

Thirdly, at the national level, the cooperation of stakeholders is significant. The IPOA-IUU encourages States to ensure that their domestic stakeholders do not conduct business with those involved in IUU fishing.³⁹¹ Furthermore, States are expected to “*make it a violation to conduct such business or to trade in fish or fish products derived from IUU fishing*” under national law.³⁹² In cases where a State maintains a large part of the fish market, market-related measures can play a vital role in combating IUU fishing.³⁹³

2.3.5.2 Implementing instruments of the IPOA-IUU

As discussed previously, the FAO has developed a set of technical guidelines for responsible fisheries in order to implement the Code of Conduct and IPOA-IUU. Two of those technical guidelines are related to combat IUU fishing by making

³⁸⁶ IPOA-IUU, para. 66.

³⁸⁷ IPOA-IUU, para. 65.

³⁸⁸ IPOA-IUU, paras. 66, 68 and 72.

³⁸⁹ IPOA-IUU, para. 66.

³⁹⁰ IPOA-IUU, para. 72.

³⁹¹ IPOA-IUU, paras. 73 and 74.

³⁹² IPOA-IUU, para. 73.

³⁹³ Chaves LA (2000) Illegal, unreported and unregulated fishing: WTO consistent trade related measures to address IUU fishing. In: FAO (ed) Report of and papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing, FAO Fisheries Report No 666. FAO, Rome, pp. 268-281.

use of market-related measures: the IPOA-IUU Implementation Guidelines and the Responsible Fish Trade Guidelines.

The IPOA-IUU Implementation Guidelines elaborate the main market-related measures provided by the IPOA-IUU. For instance, the Guidelines distinguish between the catch certification and the trade documentation scheme. Catch certification is issued by national authorities in order to accompany all fish harvested and fish products, no matter whether such fish and fish products enter the international trade.³⁹⁴ While, the trade documentation scheme is “*established by RFMOs that require documentation to accompany particular fish and fish products through international trade, identifying the origin of fish for the purpose of ascertaining levels of unreported fishing*”.³⁹⁵ Thus, it can be seen that, in the context of the IPOA-IUU Implementation Guidelines, the trade documentation scheme is only utilized in international trade and under the framework of RFMOs.

Additionally, the IPOA-IUU Implementation Guidelines reiterate the role of traceability to combat IUU fishing, which is called upon by the IPOA-IUU. Traceability is initially developed to ensure food security and quality. In recent years, it has been considered as a trading approach to combat IUU fishing. Traceability of fish can allow fish or fish products to be traced back to the moment of harvest in order to identify whether the fish or fish product is derived from IUU fishing or not, although not every traceability system can make this distinction. This raises a question about the different roles catch certification and traceability in combating IUU fishing play. The IPOA-IUU Implementation Guidelines provide the concepts of traceability and certification. Certification, such as catch certification, records all information related to when and where the fish is harvested and by whom; while, traceability of fish allows a fish or fish product to be traced through the whole process from harvest to table, including the landing, transshipment and importation.³⁹⁶ It should be pointed out that not every traceability system guarantees the provenance of a product is traceable. Catch certification is particularly used for verifying that the fish has been caught in compliance with all applicable regulations. However, it is not necessary to pass the information to the supply chain.³⁹⁷ Thus, the catch certificate is the core of a traceability system that can be

³⁹⁴ The IPOA-IUU Implementation Guidelines, para. 7.1.

³⁹⁵ FAO (2002) Report of the expert consultation of regional fisheries management bodies on harmonization of catch certification, FAO Fisheries Report No. 697. FAO, Rome, para. 5.

³⁹⁶ The IPOA-IUU Implementation Guidelines, para. 7.2.

³⁹⁷ Clarke S (2009) Understanding China's fish trade and traceability systems - a TRAFFIC East Asia report. Available via TRAFFIC. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.traffic.org%2Ffisheries-reports%2Ftraffic_pub_fisheries9.pdf&ei=w29UUoeeNOWI0AWhlYCoAg&usg=AFQjCNHWjRcEEX7A-oRI4adwWg-y8ID0dw. Accessed 9 October 2013, p. 48.

used for combating IUU fishing. Various networks and standards of traceability result in a difficult coordination of measures adopted by different fish trading countries, creating the possibility of trade barriers.³⁹⁸ One excellent example is the certification program and the seafood ecolabel of the Marine Stewardship Council (MSC), which contains around 20,000 MSC certified products worldwide. In 2012-13, the MSC certified about 7 per cent of the global catch, among which fewer than 8 per cent were in developing countries.³⁹⁹

The Responsible Fish Trade Guidelines recommend developed States and relevant organizations to provide financial and technical assistance to developing States and States in transition to ensure sustainable fish trade. It also emphasizes “*such financial and technical assistance should aim at capacity building in areas such as improving fishery management, and developing and implementing catch documentation, trade certification and ecolabeling schemes*”.⁴⁰⁰ Catch certification and trade documentation are the most primary trade-related requirements for combating IUU fishing. Thus, the support to developing countries to fulfil those formal requirements can contribute to a fair and equal fish trade. Ecolabeling schemes are used for indicating sustainable fisheries.

In addition, the Responsible Fish Trade Guidelines focus on the issue of fishery subsidies. Paragraph 24 of the technical guidelines requires States to eliminate subsidies that disregard the conservation and management of fisheries resources, in particular those subsidies that result in IUU fishing. Global fisheries subsidies are estimated at 30-34 billion USD annually, resulting in overfishing.⁴⁰¹

Although the IPOA-IUU and its Implementing Guidelines are non-legally binding instruments, there are more and more RFMOs and States implementing them through regional and national plans or legislation. State practice has made trade-market measures legally binding in a regional or national context, for example, the electronic bluefin tuna Catch Document Programme (eBCD) established by the ICCAT with a central database at the ICCAT Secretariat to identify the origin of bluefin tuna. The eBCD tracks bluefin tuna from the point of capture throughout the trade cycle. In fact, it is a combination of a catch certification and trade documentation scheme. The eBCD requires that each step of the catching, farming, harvesting and trading sections be validated before the eBCD passes to the next stage.⁴⁰² Additionally, the system only allows fishermen or trap owners to insert a

³⁹⁸ Palma et al. (2010), p. 191.

³⁹⁹ Blackmore E (2014) Sustainable fisheries certification. Available via International Institute for Environment and Development. <http://pubs.iied.org/17204IIED.html>. Accessed 18 February 2014.

⁴⁰⁰ The Responsible Fish Trade Guidelines, Art. 11.2, para. 11.

⁴⁰¹ Mohammed EY (2014) Fisheries and the post-2015 development agenda. Available via International Institute for Environment and Development. <http://pubs.iied.org/17203IIED.html>. Accessed 18 February 2014.

⁴⁰² ICCAT (2010) Recommendation by ICCAT on an electronic Bluefin Tuna Catch Document Programmes, Rec. 10-11.

new quantity that results in a new eBCD rather than a combination with the previous one.⁴⁰³ The eBCD is expected not only to detect fraud but also improve the information exchange. Moreover, similar electronic catch documentation schemes have been gradually adopted by other major RFMOs, for instance, the CCAMLR already established electronic catch documentation schemes for toothfish.⁴⁰⁴

2.3.5.3 Possible embargo on major fishing States

Trade-market measures adopted by major market States have become significant in combating IUU fishing recently. An impressive case is an import ban that may be imposed on South Korea's fisheries products by the US due to the former's inadequate fisheries legislation and enforcement, which has pushed South Korea to adopt a more stringent amendment of Water Fisheries Act.

On 23 and 24 February 2011, the South Korean fishing vessel *Insung No. 7* set fishing gear in CCAMLR Division 58.4.2 Subarea E when the master knew the catch limit had already been exceeded. The illegal catch of 35.5 tons of toothfish amounted to 710,000 USD and exceeded the Division's catch limit by 339 per cent. Korea imposed a fine of appropriately 1,300 USD and a 30-day suspension of the vessel's distant water fishing authorization. However, at the 2011 CCAMLR meeting, many delegations, including the US, were of the view that Korea's sanctions were inadequate to punish this serious illegal fishing. CCAMLR's Standing Committee on Implementation and Compliance proposed placing the *Insung No. 7* on the Contracting Party IUU Vessel List, but South Korea blocked its inclusion.

Given the pressure from international society, the Government of Korea indicated that it was undertaking the amendment of the relevant law and would increase maximum fines to combat IUU fishing. In reviewing the text of Korea's proposed amendment, the National Maritime Fisheries Service (NMFS) of the US was concerned that the potential law sanctions were insufficient to deter IUU fishing activities. For example, although the pending amendment would raise the maximum fine for a third violation from approximately 4,660 USD to 18,450 USD, the NMFS believed that the fine would be not enough to prevent such profitable illegal fishing. Additionally, the pending amendment did not provide that the illegal catch or its proceeds could be seized, while a US vessel involved in a similar violation would be subject to more stringent sanctions. Therefore, the NMFS has identified South Korea as an illegal fishing country, which means

⁴⁰³ ICCAT (2010) Recommendation by ICCAT on an electronic Bluefin Tuna Catch Document Programmes, Rec. 10-11.

⁴⁰⁴ CCAMLR (2009) Catch Documentation Scheme for *Dissostichus* spp, Conservation Measure 10-05.

South Korean fishing vessels may be denied entry into US ports, and imports of certain fish or fish products from South Korea into the US may be prohibited too.⁴⁰⁵

The identification of the US is based on its national legislation: Pelly Amendment to the Fishermen's Protective Act of 1967⁴⁰⁶ and the Magnuson-Stevens Reauthorization Act of 2006 (MSRA).⁴⁰⁷ The former "*authorizes the President to embargo wildlife products (including all fish) whenever the Secretary of the Interior or the Secretary of Commerce certifies that nationals of a foreign country are engaging in trade or taking that diminishes the effectiveness of an international program in force with respect to the United States for the conservation of endangered or threatened species*".⁴⁰⁸ The latter authorizes the Secretary of Commerce to "*identify each nation whose nationals or vessels are conducting large-scale driftnet fishing or [IUU] fishing beyond the exclusive economic zone of any nation*" and notify the President of this identification.⁴⁰⁹ Within 30 days of this identification, the President "*shall enter consultations with the government of that nation for the purpose of obtaining an agreement that will effect the immediate termination of large-scale driftnet fishing or [IUU] fishing by the nationals or vessels of that nation beyond the exclusive economic zone of any nation*".⁴¹⁰ If the consultations with the government of the nation identified are not concluded satisfactorily, the President shall direct the Secretary of the Treasury to prohibit the importation of fish and fish products and sport fishing equipment within 45 days of the President's directive.⁴¹¹ After six months of identification, the Secretary shall determine whether the import prohibition is effective to make the nation ter-

⁴⁰⁵ NOAA Fisheries (2013) Improving international fisheries management, Report to Congress pursuant to Section 403 (a) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, January 2013. http://www.nmfs.noaa.gov/ia/iuu/msra_page/2013_biennial_report_to_congress_jan_11_2013_final.pdf. Accessed 25 September 2013, pp. 24-25. Also see: Currie D (2013) Reform of the Korean Ocean Industry Development Act. Presentation at the 2013 Greenpeace Parliamentary Workshop, National Assembly of South Korea, Seoul, 10 May 2013.

⁴⁰⁶ The Pelly Amendment was enacted by the Congress in 1971 and expanded in 1978. U.S. Fish & Wildlife Service International Affairs (2014) Pelly Amendment. <http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/pelly-amendment.html>. Accessed 4 February 2014.

⁴⁰⁷ The MSRA was signed on 12 January 2007. NOAA Fisheries (2014) Magnuson-Stevens Reauthorization Act. http://www.nmfs.noaa.gov/ia/iuu/msra_page/msra.html. Accessed 4 February 2014.

⁴⁰⁸ U.S. Fish & Wildlife Service International Affairs (2014) Pelly Amendment.

⁴⁰⁹ MSRA, 16 U.S.C. 1826a(b)(1)(A).

⁴¹⁰ MSRA, 16 U.S.C. 1826a(b)(2).

⁴¹¹ MSRA, 16 U.S.C. 1826a(b)(3)(A) and (B).

minate its IUU fishing behaviour.⁴¹² If the prohibition is not effective, the Secretary of Commerce shall certify that nation to the President under the Pelly Amendment.⁴¹³

On 2 July 2013, the South Korean National Assembly passed the amended Water Fisheries Act. The amendment “increases penalties for illegal fishing to a maximum of three times the value of the fish caught, up from the current fine of 5,000 USD”.⁴¹⁴ It also “includes provisions for imprisonment, while industries involved in IUU fishing, or mistreating their fishing crews, will lose their government subsidies under the new legislation”.⁴¹⁵ Greenpeace believes that this is a good first step for South Korea to combat IUU fishing, even though further legislation and stringent implementation are still desired to ensure a transparent traceability and the supervision of fisheries products from all South Korean vessels to the markets.⁴¹⁶

It can be seen from this example that countries holding a significant position in the fishing industry can also be recognized as illegal fishing countries by major fish markets. Trade-market measures can indeed promote fishing States to take their State duties to ensure sustainable fisheries.

2.4 Concluding remarks

Under the international legal framework for combating IUU fishing, measures against IUU fishing include flag State duties, coastal State measures, port States measures, market-related measures, RFMOs measures and measures applied to all States. The UNCLOS codifies the principle of exclusive flag state jurisdiction over vessels on the high seas as well as coastal States sovereignty in the territorial sea and sovereign rights in the EEZ. The FAO Compliance Agreement focuses on the duties of high seas fishing States over vessels entitled to fly their flag. The UN Fish Stocks Agreement also pays attention to high seas fishing but focuses on flag State duties especially in fishing straddling fish stocks and highly migratory spe-

⁴¹² MSRA, 16 U.S.C. 1826a(b)(4)(A)(i).

⁴¹³ MSRA, 16 U.S.C. 1826a(b)(4)(B) and (C).

⁴¹⁴ Greenpeace (2013) New South Korean fisheries law a good first step to curb illegal fishing. Greenpeace. <http://www.greenpeace.org/international/en/press/releases/New-South-Korean-fisheries-law-a-good-first-step-to-curb-illegal-fishing-/>. Accessed 2 July 2013.

⁴¹⁵ Greenpeace (2013) New South Korean fisheries law a good first step to curb illegal fishing. Greenpeace.

⁴¹⁶ Greenpeace (2013) New South Korean fisheries law a good first step to curb illegal fishing. Greenpeace.

cies. In particular it indicates the significant role of RFMOs in the management and conservation of straddling fish stocks and highly migratory species. Minimum requirements for port State measures and relevant flag State duties are provided by the FAO Port State Measures Agreement, which is the first international legally binding agreement specifically dealing with IUU fishing. However, the FAO Port State Measures Agreement has not entered into force yet.

The Code of Conduct is the most comprehensive instrument in the field of international fisheries, which intends to establish principles and criteria for the elaboration of national and international policies for responsible fisheries. A number of concepts and provisions of the Code of Conduct are overlapping with the FAO Compliance Agreement and the UN Fish Stocks Agreement. Under the framework of the Code of Conduct, the IPOA-IUU was adopted as the most comprehensive international instrument that deals with IUU fishing in particular. It provides comprehensive State measures that can be applied to all fisheries rather than to high seas fishing alone and fishing under the jurisdiction of RFMOs. It reiterates and further specifies flag State duties, coastal State measures, port State measures and RFMOs measures provided by previous international fisheries instruments. Additionally, the IPOA-IUU is the first international fisheries instrument that refers to utilizing market-related measures to combat IUU fishing at international level. Later, the FAO Model Scheme was established based on the port State measures in the IPOA-IUU and creates a basis for the FAO Port State Measures Agreement.

To sum up, at the international level, flag State duties are the core problem in combating IUU fishing. Other measures are used for pressuring flag States to take their duties when flag State measures have failed. Therefore, measures that can be taken by different States are not isolated but interact with each other. Cooperation is needed particularly between high seas fishing States and coastal States. It is significant to coordinate benefits of coastal States and States fishing in the jurisdiction of such coastal States. Furthermore, the interaction between port States and flag States, as well as the effective function of market measures in forcing other States to take their coastal, flag, port and market State duties, have been significant in combating IUU fishing.

The following chapters focus on the adoption and ratification of the international fisheries instruments by the EU and China as well as how they implement those measures to deal with IUU fishing.

Chapter 3 EU law against IUU fishing

3.1 Introduction

The European Union (EU) has 28 Member States that now comprise more than 7,044,342 km² exclusive economic zones (EEZs), covering areas of the Atlantic Ocean, the Baltic Sea, the North Sea, the Black Sea and the Mediterranean Sea.⁴¹⁷ However, the fisheries sector represents a relatively small portion of EU's economy. It only makes up 0.06 per cent of the total EU Gross Domestic Product in 2009.⁴¹⁸ Five of the most notable countries, France, Italy, Spain, Greece and the UK, generate 81 per cent of the total EU fisheries income.⁴¹⁹ The EU adopted the Common Fisheries Policies (CFP) to reduce overcapacity in its fishing fleets. During the last two decades, the EU fishing fleet capacity has been reduced in both tonnage and engine power. According to the latest FAO report on the state of world fisheries and aquaculture, the combined EU-15 motorized fishing fleet was reduced by 8 per cent in the number of vessels and 11 per cent in engine power between 2005 and 2010.⁴²⁰ Despite the EU enlargements in 2004 and 2007, the num-

⁴¹⁷ Compiled by Suárez de Vivero JL from National Legislation – DOALOS/OLA – United Nations and Sea around us Project, University of British Columbia. See: Suárez de Vivero JL (2013) EEZs in Europe. In: European information. Available via EurOcean. <http://www.eurocean.org/np4/80.html>. Accessed 1 February 2013. Also see: European Commission (2013) European atlas of the seas. http://ec.europa.eu/maritimeaffairs/atlas/index_en.htm. Accessed 7 January 2013.

⁴¹⁸ Institute for European Environmental Policy (IEEP), Lutchman I, Des Clers S et al (2011) Perspectives for the new European Fisheries Fund. Available via IEEP. http://www.ieep.eu/assets/849/Perspectives_on_the_new_European_Fisheries_Fund_en.pdf. Accessed 17 October 2013, p. 17.

⁴¹⁹ Institute for European Environmental Policy (IEEP), Lutchman et al. (2011), p. 17.

⁴²⁰ The EU-15 comprised the following 15 Member States: Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden and UK. See: FAO (2012) The state of world fisheries and aquaculture 2012. FAO, Rome, p. 11.

ber of vessels from 1995 to September 2011 decreased by 23715.⁴²¹ The total catches of the EU decreased by 40 per cent between 1995 and 2010.⁴²²

The reduction of fleet capacity and catches contributes to an increasing domestic demand for fish and fisheries products. On the one hand, the EU actively develops distant water fisheries through fisheries partnership agreements and northern agreements.⁴²³ On the other hand, the EU highly relies on imports of fish and fisheries products. Except for intraregional trade in the EU, fish and fisheries products imported from outside of the EU reached 23.7 billion USD in 2010 and increased by 11 per cent from 2009.⁴²⁴ 65 per cent of fish consumed in the EU is imported.⁴²⁵ As the EU has become the largest fish and fisheries market, it has also attracted over 1.1 billion EUR of illegal catches annually before 2010, representing almost 16 per cent of the EU's imports of fish.⁴²⁶ Except for destroying fish stocks, such illegal catches have gained a competitive price advantage in the EU market, which is believed to undermine conservation measures and discourage law-abiding fishermen.⁴²⁷ Therefore, the EU has been dedicated to combat IUU fishing. The most outstanding endeavour of the EU was the adoption and implementation of The Council Regulation (EC) No 1005/2008 of 29 September 2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulation (EC) No 1093/94 and (EC) No 1447/1999 (IUU Regulation).⁴²⁸ The IUU Regulation deals with IUU

⁴²¹ European Commission (2012) Facts and figures on the Common Fisheries Policy. Publications Office of the European Union, Luxembourg, p. 12.

⁴²² European Greens Congress (2011) Congress resolution on the reform of the Common Fisheries Policy – green priorities. Available via European Green Party. <http://europeangreens.eu/content/reform-common-fisheries-policy-%E2%80%93-green-priorities>. Accessed 1 February 2013.

⁴²³ The EU has two types of fishing agreements with non-EU countries. Fisheries partnership agreements allow the EU to give financial and technical support in exchange for fishing rights, while the northern agreements are established with Norway, Iceland and the Faeroe Islands to manage jointly shared stocks.

⁴²⁴ FAO (2012) The state of world fisheries and aquaculture 2012, p. 16.

⁴²⁵ European Commission (2013) Maria Damanaki's speech at the European Parliament plenary debate on IUU fishing. http://ec.europa.eu/commission_2010-2014/damanaki/headlines/speeches/2013/06/20130611_speech_iuu_en.htm. Accessed 13 June 2013.

⁴²⁶ Damanaki M (2011) Zero tolerance on illegal fishing. Speech presented at the 6th International Forum on Illegal, Unreported and Unregulated (IUU) Fishing, Chatham House, London, 13-14 January 2011.

⁴²⁷ Damanaki (2011) Zero tolerance on illegal fishing. Speech presented at the 6th International Forum on Illegal, Unreported and Unregulated (IUU) Fishing.

⁴²⁸ Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and un-

fishing mainly through port State measures and market measures. Thus, the EU's implementation of the IUU Regulation has a significant impact on its fish trade partners, such as the US, Japan and China. Chapter 4 will address fisheries legislation and implementation in China, which is EU's second exporter of fish and fisheries products,⁴²⁹ and the influence of the EU IUU Regulation on China.

This chapter first discusses the competences of the EU and its Member States in the field of fisheries. The functions of the EU's institutions in this aspect are also generally introduced. Then the focus turns to the legal framework of EU's fisheries law against IUU fishing, including the adoption and ratification of international fisheries instruments and the laws adopted at Community level. Finally, this chapter examines various duties, rights and measures against IUU fishing as well as their implementations to analyse whether they are effective. This sets the scene for comparison in Chapter 5. The Chinese regime differs in terms of competences between the Central Government and local governments, institutions, the attitude towards international fisheries instruments as well as the different measures it adopts.

3.2 Legal framework

3.2.1 Institutions

3.2.1.1 Decision-making

Under the pre-Lisbon institutional framework, the European Commission (Commission) exclusively initiated legislative and policy proposals, while the European Council (Council) adopted those proposals by simple or qualified majority voting, in association with the European Parliament (Parliament).⁴³⁰ As the Lisbon Treaty entered into force, the Parliament has been involved in co-deciding on the recent

regulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999; OJ L286 of 29 October 2008, pp. 1-36.

⁴²⁹ European Commission (2012) Facts and figures on the Common Fisheries Policy, p. 37.

⁴³⁰ Pech L (2012) The institutional development of the EU post Lisbon: a case of plus ça change ...? In: Ashiagbor D, Countouris N and Lianos I (eds) The EU after the Treaty of Lisbon: a legal assessment. Cambridge University Press, p. 14.

reformed Common Fisheries Policy (CFP) with the Council.⁴³¹ Except for the adoption of the Total Allowable Catches and the Total Allowable Efforts where the Council decides on its own, all CFP measures need an agreement between the Parliament and the Council according to the ordinary legislative procedure.⁴³² The Committee on Fisheries of the Parliament and the Agriculture and Fisheries Council are responsible for negotiating and adopting fisheries legislation. The participation of the Parliament in the fisheries legislation can help to “*reconcile a variety of interests with the aim of securing the long term sustainability of the marine environment, fish stocks, fishermen, related industries and coastal communities*”.⁴³³ However, the participation of the Parliament extends the time of decision-making and even delayed the adoption of the recent reformed CFP.

3.2.1.2 Enforcement

In order to implement the CFP, the Directorate-General for Maritime Affairs and Fisheries (DG MARE), as a department of the Commission, is responsible for the implementation of the CFP.

The Commission is responsible for ensuring Member States to comply with fisheries legislation adopted by the EU. Article 258 of the Treaty on the Functioning of the European Union (TFEU) codifies that “*if the Commission considers that a Member State has failed to fulfil an obligation under the Treaties [Treaty on European Union (TEU) and TFEU], it shall deliver a reasoned opinion on the matter after giving the State concerned the opportunity to submit its observations. If the State concerned does not comply with the opinion..., [the Commission] may bring the matter before the Court of Justice of the European Union*”. This provision indicates that when a Member State does not comply with the EU’s legal acts adopted under the TEU and the TFEU, the Commission can bring a case against a Member State before the Court of Justice of the European Union (ECJ). For example, the Commission instituted court actions against Italy and France respectively because they failed to comply with the Community legislation against drift nets as well as lacked appropriate measures against those responsible for infringements of such legislation.⁴³⁴ In both cases, the ECJ supported the Commis-

⁴³¹ TFEU, Arts. 293 and 294. Also see: Pech (2012), pp. 22-23.

⁴³² Markus T, Salomon M (2012) The law and policy behind the upcoming reform of the Common Fisheries Policy. *Journal for European Environmental & Planning Law* 9 (3-4), p. 261.

⁴³³ European Parliament (2013) PECH Committee. <http://www.europarl.europa.eu/committees/en/pech/home.html>. Accessed 17 February 2013.

⁴³⁴ ECJ (2009) *Commission of the European Communities v French Republic*, Case 556/07, Judgment of the Court (Third Chamber) of 5 March 2009. Available

sion's claims. The ECJ as an independent institution plays a significant role in treaty interpretation and the European integration process.⁴³⁵ The ECJ is also a driver mechanism to promote coordination in legislation between the EU and its Member States.

The Commission can also coordinate the conflicts between Member States when implementing fisheries legislation adopted by the EU. According to Article 259 of the TFEU, "*A Member State which considers that another Member State has failed to fulfil an obligation under the Treaties may bring the matter before the [ECJ]. Before a Member State brings an action against another Member State ..., it shall bring the matter before the Commission. The Commission shall deliver a reasoned opinion ... If the Commission has not delivered an opinion ..., the absence of such opinion shall not prevent the matter from being brought before the Court*". This provision indicates that bringing the matter before the Commission is an essential prerequisite when a Member State brings another Member State before the ECJ, no matter whether the Commission delivers its opinion.

The Commission and the ECJ both are responsible for ensuring compliance with judgments of the ECJ. On the one hand, if the ECJ finds that a Member State has failed to fulfil an obligation under the TEU or the TFEU, the ECJ shall require the State to take necessary measures to comply with its judgment.⁴³⁶ On the other hand, if the Commission considers that a Member State concerned has not taken the necessary measures to comply with the judgment of the ECJ, after giving the State the opportunity to submit its observations, the Commission can bring the case before the ECJ with the aim of penalizing that Member State by asking a fine. The Commission shall specify the amount of the lump sum or penalty payment to be paid by the Member State concerned. If the ECJ finds that the Member State has not complied with its judgment, it may impose a lump sum or penalty payment on the State concerned. According to the judgment of the Case C-304/02 between the Commission and France, the imposition of a penalty payment is particularly to induce a Member State to put an end as soon as possible to a breach of obligations.⁴³⁷ The imposition of a lump sum is based on the assessment of the effects on public and private interests of the failure of the Member State concerned to com-

via CURIA. <http://curia.europa.eu>. Accessed 19 October 2013. ECJ (2009) Commission of the European Communities v Italian Republic, Case 249/08, Judgment of the Court (Seventh Chamber) of 29 October 2009. Available via CURIA. <http://curia.europa.eu>. Accessed 19 October 2013.

⁴³⁵ Babayev RR (2007) Legal autonomy vs. political power: what is the role of the European Court of Justice in the European Integration? *Romanian Journal of European Affairs* 7 (1), p. 34.

⁴³⁶ The Treaty on the Functioning of the European Union (TFEU), Art. 260 (1).

⁴³⁷ ECJ (2005) Commission of the European Communities v French Republic, Case 304/02, Judgment of the Court (Grand Chamber) of 12 July 2005. Available via CURIA. <http://curia.europa.eu/juris/liste.jsf?language=en&jur=C,T,F&num=304/02&td=ALL>. Accessed 21 October 2013, para. 81.

ply with its obligations, in particular where the breach has persisted for a long period since the judgment initially established it.⁴³⁸ The judgment also states, “*the imposition of both a penalty payment and a lump sum cannot infringe the principle non bis in idem*”.⁴³⁹ Thus, in this case, the ECJ ordered France to pay to the Commission both a penalty payment and a lump sum because France had not implemented all the necessary measures to comply with a previous judgment of the ECJ.

The newly adopted Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (2013 CFP Regulation) requires that EU financial assistance to be made conditional upon compliance by Member States and operators, including vessel owners.⁴⁴⁰ Non-compliance by Member States with the CFP rules may result in the interruption or suspension of payments or in the application of a financial correction to the EU financial assistance under the CFP.⁴⁴¹

3.2.2 EU's competence

The Treaty of Lisbon (Treaty on European Union (TEU) and Treaty on the Functioning of the European Union (TFEU))⁴⁴² confirms that the EU has exclusive,

⁴³⁸ Judgment of the Court (Grand Chamber) of 12 July 2005, Commission of the European Communities v French Republic, Case 304/02, para. 81.

⁴³⁹ Judgment of the Court (Grand Chamber) of 12 July 2005, Commission of the European Communities v French Republic, Case 304/02, para. 84.

⁴⁴⁰ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (2013 CFP Regulation); OJ L 354 of 28 December 2013, pp. 22-60, para. 64.

⁴⁴¹ Regulation (EU) No 1380/2013 of the European Parliament and of the Council, Art. 41(2).

⁴⁴² The Treaty of Lisbon amending the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC), renamed as the Treaty on the Functioning of the European Union (TFEU), signed on 13 December 2007, entered into force on 1 December 2009; OJ C 306 of 17 December 2007.

shared and supporting competence,⁴⁴³ but the classification of competence as exclusive or shared is relative.⁴⁴⁴

3.2.2.1 Exclusive competence

Article 2(2) of the TFEU provides: “*When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of acts of the Union*”. This provision raises the question whether Member States can adopt measures in cases where the EU has not adopted any measures belonging to its exclusive competence. According to the Judgment of the ECJ in the Case 804/79 between the Commission and the United Kingdom, which concerns the compatibility with Community law of the fisheries conservation measures adopted by the UK, “...*the transfer to the Community of powers in this matter being total and definitive, such a failure to act could not in any case restore to the Member States the power and freedom to act unilaterally in this field*”.⁴⁴⁵ Thus, even though the Union has not adopted any measures belonging to the EU’s exclusive competence, Member States cannot adopt measures in this field with the exception of being empowered by the Union or for the purpose of implementing the EU’s law.

Moreover, Article 3 (2) of the TFEU stipulates that the EU has exclusive competence to conclude an international agreement when its conclusion is provided in a legislative act of the EU or is necessary to enable the EU to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope. In the case of external competences, the ECJ is likely to interpret in favour of EU competences rather than shared competences, which is specified in the following sections.⁴⁴⁶

In the Joined cases 3, 4 and 6/76 Kramer, the ECJ stipulated that the Community’s competence to enter into international commitments arose not only from an express attribution by the EC Treaty but might equally flow implicitly from other provisions of the Treaty, from the act of accession and from measures adopted by

⁴⁴³ TFEU, Art. 2

⁴⁴⁴ Tridimas T (2012) Competence after Lisbon – the elusive search for bright lines. In: Ashiagbor D, Countouris N and Lianos I (eds) *The EU after the Treaty of Lisbon: a legal assessment*. Cambridge University Press, p. 77.

⁴⁴⁵ ECJ (1981) *Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland*, Case 804/79, Judgment of the Court of 5 May 1981. Available via CURIA. <http://curia.europa.eu>. Accessed 22 October 2013, para. 20.

⁴⁴⁶ Tridimas (2012), p. 63.

the Community institutions within the framework of those provisions.⁴⁴⁷ According to the Judgment in the AETR case, if the Community adopted provisions laying down common rules to implement a common policy envisaged by the Treaty, the Member States no longer have the right, acting individually or even collectively, to undertake obligations with third countries which affect those rules.⁴⁴⁸ As pointed out by Paragraphs 25 and 26 of the ECJ Opinion 2/91, in cases where an international agreement is already covered to a large extent by Community rules, the commitments arising from such an international agreement are considered falling within the areas covered by Community measures, so Member States cannot undertake such commitments outside the framework of the Community institutions.⁴⁴⁹ For example, in the field of port State measures against IUU fishing, the EU has ratified the FAO Port State Measures Agreement and adopted comprehensive port State measures in its IUU Regulation, making the EU exclusive competent for adopting port State measures against IUU fishing. The endorsement of the IPOA-IUU and the adoption of trade-related measures against IUU fishing in the IUU Regulation also make the EU exclusive competent in this field.

It has to be pointed out that the EU's exclusive competence is only related to legislative competence; while, the EU is endowed very limited enforcement competence and not exclusive.⁴⁵⁰

⁴⁴⁷ ECJ (1976) *Cornelis Kramer and others*, Joined cases 3/76, 4/76 and 6/76, Judgment of the Court of 14 July 1976. Available via EUR-Lex. http://eur-lex.europa.eu/Result.do?T1=1976&T2=1279&T3=V1&RechType=RECH_reueil&Submit=Search. Accessed 22 October 2013, paras. 19-20.

⁴⁴⁸ ECJ (1971) *Commission v Council*, Case 22/70, AETR, Judgment of the Court of 25 November 1971, Judgment of the Court of 25 November 1971. Available via EUR-Lex. <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:61971CJ0022&rid=1>. Accessed 8 April 2014, para. 17.

⁴⁴⁹ European Court of Justice (1993) Opinion 2/91 of the Court of 19 March 1993, delivered pursuant to the second subparagraph of Article 228 (1) of the EEC Treaty – Convention No 170 of the International Labour Organization concerning safety in the use of chemicals at work. Available via EUR-Lex. <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:61991CV0002>. Accessed 8 April 2014; Zijlmans JMIJ (1995) The (exclusive) external competence of the European Community. *Maastricht Journal of European and Comparative Law* 2 (4), p. 408.

⁴⁵⁰ Churchill R, Owen D (2010) *The EU Common Fisheries Policy*. Oxford University Press, Oxford, p. 130.

3.2.2.2 Shared competence

According to Article 2 (2) of the TFEU, when the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the EU has not exercised its competence or decided to cease exercising its competence. In the case of shared competence, the EU's legislation in a specific area does not automatically make Member States excluded from adopting any measures, while Member States are still free to adopt legislation that does not conflict with EU law in this field.⁴⁵¹

3.2.2.3 Supporting competence

In addition, the EU only has supporting competence in cases where Member States have exclusive competence. Article 2 (5) of the TFEU provides that the EU is competent to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas.⁴⁵²

3.2.2.4 EU's competence in the field of fisheries

In the field of fisheries, exclusive competence is conferred on the EU in the area of "*the conservation of marine biological resources under the common fisheries policy*".⁴⁵³ On the other hand, the EU has shared competence with Member States in the field of fisheries excluding the conservation of marine biological resources.⁴⁵⁴ The Treaty of Lisbon does not elaborate on which area the Member States have exclusive competence over fisheries. However it can be seen in the Judgments of the ECJ. For example, the Judgment of the *Commission v Council*

⁴⁵¹ Tridimas (2012), p. 65.

⁴⁵² TFEU, Art. 6.

⁴⁵³ TFEU, Art. 3 (1) (d).

⁴⁵⁴ TFEU, Art. 4 (2) (d).

case indicates that vessel registration lies within the Member States' competence.⁴⁵⁵

Combating IUU fishing aims to deal with fishing activities that infringe conservation and management measures applied to a particular fishery. The Treaty of Lisbon does not define the scope of "conservation". Therefore, the terminology used by the ECJ judgements and the Treaty of Lisbon shows that the EU's exclusive competence is only related to "fisheries conservation" and not to "fisheries conservation and management".⁴⁵⁶ As to some matters of fisheries "management" that go beyond "conservation", the EU may have shared competence with its Member States.⁴⁵⁷ However it can be inferred from the judgments of the ECJ. For example, the judgment in the Joined Cases 3, 4 and 6/76 explicitly include the fixing of catch quotas and their allocation between the different Member States into an exclusive EU competence.⁴⁵⁸ In the Case 25/94 between the Commission and the Council, the ECJ confirms that most of the provisions in the Food and Agriculture Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (the FAO Compliance Agreement),⁴⁵⁹ including flag State duties such as fishing authorization, belong to the exclusive competence of the EU.⁴⁶⁰ It seems that "conservation" applies in a broad scope, which is also illustrated below. The EU has exclusive competence to regulate the conservation of marine biological resources and shared competence in structural policies and the market organization, while Member States have primarily executive powers in implementing and enforcing EU law.⁴⁶¹

The adoption of the 2013 CFP Regulation shows a decentralising trend of decision-making. The 2013 CFP Regulation reiterates the decentralization of the competence of the EU in adopting conservation and management measures. Member States are empowered to adopt those measures for stocks in EU waters applicable solely to fishing vessels flying their flag according to the requirements of Article 19 of the 2013 CFP Regulation.⁴⁶² In addition, Member States are also empowered to adopt non-discriminatory conservation and management measures applicable to

⁴⁵⁵ ECJ (1996) *Commission v Council*, Case 25/94, Judgment of the Court of 19 March 1996. Available via CURIA. <http://curia.europa.eu>. Accessed 22 October 2013, paras. 9, 40-47.

⁴⁵⁶ Churchill and Owen (2010), p. 130.

⁴⁵⁷ Churchill and Owen (2010), p. 130.

⁴⁵⁸ ECJ (1976) *Cornelis Kramer and others*, Joined cases 3/76, 4/76 and 6/76, Judgment of the Court of 14 July 1976, paras. 30-33.

⁴⁵⁹ The FAO Compliance Agreement was adopted at Rome on 24 November 1993 and came into force on 24 April 2003, UNTS 2221, p. 91.

⁴⁶⁰ Judgment of the Court of 19 March 1996, *Commission v Council*, Case 25/94, paras. 40-47.

⁴⁶¹ Markus and Salomon (2012), p. 259.

⁴⁶² The Parliament and Council Regulation No 1380/2013, para. 40 and Art. 19.

all EU fishing vessels in their 12 nautical mile zones, if the EU has not adopted conservation and management measures concerned.⁴⁶³

The 2013 CFP Regulation also reiterates the decentralization of the adoption of emergency measures. On the basis of evidence of a serious threat to the conservation of marine biological resources or to the marine ecosystem, the Commission, at the reasoned request of a Member State or on its own initiative, may adopt immediately implementing acts.⁴⁶⁴ A Member State may also adopt emergency measures on the basis of evidence of a serious threat to the conservation of marine biological resources or to the marine ecosystem relating to fishing activities in waters falling under the sovereignty or jurisdiction of that Member State.⁴⁶⁵ Where emergency measures to be adopted by a member State are liable to affect fishing vessels of other Member States, such measures can only be adopted after consulting the Commission, the relevant Member States and the relevant Advisory Councils.⁴⁶⁶

The 2013 CFP Regulation has further decentralized fisheries competences. It allows Member States to adopt conservation measures necessary for compliance with obligations under EU environmental legislation, including Article 13(4) of Directive 2008/56/EC, Article 4 of Directive 2009/147/EC or Article 6 of Directive 92/43/EEC.⁴⁶⁷ In cases where other Member States have direct fisheries management interests to be affected by such measures, the Commission shall be empowered to adopt such measures, upon request, by means of delegated acts.⁴⁶⁸

In specific cases, particularly with regard to the Mediterranean region, Member States may be empowered to adopt legally binding acts in the area of the CFP, including conservation measures, and to adopt measures specifying an EU conservation measure that applies to a relevant geographical area.⁴⁶⁹

Moreover, the Commission may be empowered in a multiannual plan to establish biologically sensitive protected areas, but the Commission needs to report regularly to the Parliament and to the Council on protected areas.⁴⁷⁰ The Commission may also be empowered in the adoption of delegated acts for implementing

⁴⁶³ Parliament and Council Regulation No 1380/2013, para. 41 and Art. 20.

⁴⁶⁴ Parliament and Council Regulation No 1380/2013, Art. 12(1).

⁴⁶⁵ Parliament and Council Regulation No 1380/2013, Art. 13(1).

⁴⁶⁶ Parliament and Council Regulation No 1380/2013, Art. 13(2).

⁴⁶⁷ Parliament and Council Regulation No 1380/2013, Art. 11(1). Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive); OJ L 164 of 25 June 2008, pp. 19-40. Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds; OJ L 20 of 26 January 2010, pp. 7-25. Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; OJ L 206 of 22 July 1992, pp. 7-92.

⁴⁶⁸ The Parliament and Council Regulation No 1380/2013, Art. 11(2).

⁴⁶⁹ The Parliament and Council Regulation No 1380/2013, Arts. 6(5) and 18(8).

⁴⁷⁰ The Parliament and Council Regulation No 1380/2013, Art. 8 (3).

international obligations concerning landings into the EU and derogations from the landing obligation, as well as the adoption of delegated acts laying down a temporary discard plan in case of the absence of a multiannual plan or management plan.⁴⁷¹

Besides the competences provided by legislation and case law, the different fisheries competences between the EU and its Member States can also be found in the adoption and implementation of conventions and agreements by the EU and its Member States. In the following sections, this specific division of competences between the EU and its Member States will be discussed in more detail.

3.2.3 EU and international fisheries law

3.2.3.1 EU's participation in the UNCLOS

As discussed in Chapter 2, the United Nations Convention on the Law of the Sea (UNCLOS) provides the basis for international fisheries management and conservation. The Community signed the UNCLOS on 7 December 1984 and became an official party to the Convention on 1 April 1998.⁴⁷² Additionally, all 28 Member States of the EU are contracting Parties to the UNCLOS. According to Article 5 (1) of Annex IX of the UNCLOS, when an international organization formally confirms its accession to the UNCLOS, the organization shall make a declaration specifying which competence has been transferred to the organization by its member States that are Parties to the UNCLOS. Article 4 (2) of Annex IX of the UNCLOS states that member States of the international organization shall not exercise competence that they have transferred to the organization.

When the EU signed the UNCLOS, it made a declaration to specify which competence had been transferred to it by its Member States.⁴⁷³ On the one hand,

⁴⁷¹ The Parliament and Council Regulation No 1380/2013, Arts. 15(2) and (6).

⁴⁷² Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof; OJ L 179 of 23 June 1998, pp. 1-2.

⁴⁷³ Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention. Available via Oceans & Law of the Sea.

http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm

EU Member States have transferred competence to the EU with regard to the conservation and management of sea fishing resources. The EU has exclusive competence to adopt the relevant rules and regulations in this respect and enter into external undertakings with third States or competent international organizations. Nevertheless, it is for the EU Member States to enforce those rules and regulations. According to the declaration, EU Member States also have exclusive competence in respect of measures concerning the exercise of jurisdiction over vessels, flagging and registration of vessels and the enforcement of penal and administrative sanctions. However, the variety of sanctions across Member States encouraged illegal operators to operate in waters of the Member States where sanctions were lowest.⁴⁷⁴ In response to this practice the Member States were asked to adopt sanctions in their national legislation in proportion to the seriousness of those infringements and taking into account the economic benefit of the infringements, with the aim to discourage further offences of the same kind.⁴⁷⁵ The choice of implementation, by means of administrative sanctions or criminal proceedings, was left to the Member States. On the other hand, the EU shares competence with its Member States in the field of fisheries when matters are not directly related to the conservation and management of sea fishing resources, such as research, technological development and development cooperation.

As to the dispute settlement provided by Article 287 of the UNCLOS, the EU initially maintained a “wait and see” attitude towards the ITLOS. The Commission even proposed to the Council of Ministers in 1999 to take a decision not to express a preference for any of the three dispute settlement procedures provided for in this provision.⁴⁷⁶ Therefore, disputes between the EU and third States that are Party to the UNCLOS must be submitted to arbitration in accordance with the procedure set down in Annex VII of the UNCLOS.⁴⁷⁷ Despite the 1999 proposal, the EU was positively disposed towards the ITLOS in the 2000 fisheries dispute between the EU and Chile.⁴⁷⁸ The latter requested the ITLOS to constitute an arbitral tribunal under Article 287 of the UNCLOS, while the EU agreed that the case should be

#European Community Declaration made upon formal confirmation. Accessed 25 March 2014.

⁴⁷⁴ Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, repealed by Council Regulation (EC) No 1224/2009; OJ L 261 of 20 October 1993, pp. 1-16.

⁴⁷⁵ Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, repealed by Regulation (EU) No 1380/2013 of the Parliament and of the Council; OJ L 358 of 31 December 2002, pp. 59-80, Art. 25

⁴⁷⁶ Europa (2005) Speech by EU Commissioner Borg on Oceans and the Law of the Sea (2 September 2005: Hamburg). http://www.eu-un.europa.eu/articles/es/article_5001_es.htm. Accessed 10 January 2014.

⁴⁷⁷ The UNCLOS, Art. 287 (3).

⁴⁷⁸ Europa (2005) Speech by EU Commissioner Borg on Oceans and the Law of the Sea (2 September 2005: Hamburg).

heard by a special Chamber of the ITLOS. Chile alleged that fishing activities of Spanish vessels on the high seas in the Southeast Pacific adjacent to Chile's 200-nautical-mile EEZ had infringed Chile's conservation measures on swordfish (a highly migratory species conserved under the framework of the UNCLOS).⁴⁷⁹ The dispute focused on two aspects. One is whether the Community had performed the obligations of the UNCLOS, such as cooperation on conservation and management of highly migratory species between the high seas fishing State and the coastal State and the conservation of living resources on the high seas. The other is whether Chile's unilateral conservation measures had breached these provisions and infringed the Community's freedom of high seas fishing.⁴⁸⁰ With the involvement of the proceedings before the World Trade Organization (WTO), the ITLOS proceedings were suspended because Chile and the EC reached a provisional arrangement concerning the dispute.⁴⁸¹ On the one hand, the compromise reveals gaps and potential inconsistencies among different aspects of international law.⁴⁸² On the other hand, the bilateral negotiation between the EC and Chile also reflects the UNCLOS's spirit that requires the cooperation between coastal States and high seas fishing States.

As to a dispute concerning the interpretation or application of the UNCLOS between EU Member States, Article 282 of the UNCLOS allows the dispute to be submitted to the EU's dispute settlement procedure in lieu of the procedures provided for in Part XV of the UNCLOS, which indeed preserves the autonomy of the Community legal system.⁴⁸³ The ECJ has declared in Case 459/03 that Ireland has failed to fulfil its obligations of sincere cooperation under the European Trea-

⁴⁷⁹ The UNCLOS, Annex I.

⁴⁸⁰ ITLOS (2000) Case concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean (Chile/European Union), Order 2000/3 of 20 December 2000. <http://www.itlos.org/index.php?id=99&L=0%20%255Co%20Opens%20internal%20link%20in%20current%20window>. Accessed 24 October 2013. For more discussion on the case, see Orellana MA (2002) The swordfish dispute between the EU and Chile at the ITLOS and the WTO. *Nordic Journal of International Law* 71: 55-81; and Tang Q (2007) New trends in trade-environment conflict seen from the swordfish dispute (Chinese). *Wuhan University Journal (Philosophy & Social Sciences)* 60 (1): 57-63.

⁴⁸¹ ITLOS (2001) Case concerning the conservation and sustainable exploitation of swordfish stocks in the South-Eastern Pacific Ocean (Chile/European Union), Order 2001/1 of 15 March 2001. <http://www.itlos.org/index.php?id=99&L=0%20%255Co%20Opens%20internal%20link%20in%20current%20window>. Accessed 24 October 2013.

⁴⁸² Orellana (2002), p. 80.

⁴⁸³ ECJ (2006) *Commission of the European Communities v Ireland*, Case 459/03, Judgment of the Court (Grand Chamber) of 30 May 2006. Available via CURIA. <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-459/03>. Accessed 11 January 2014, para. 132.

ties by instituting a dispute-settlement procedure under the UNCLOS on matters falling within the EC's shared competence and that were regulated by EC measures to a large extent.⁴⁸⁴ The Judgment in the Case 459/03 also states, "*the system for the resolution of disputes set out in the EC Treaty must in principle take precedence over that contained in Part XV of the Convention*".⁴⁸⁵

The EC has not adopted specific legislation that directly reflects the terminology of the UNCLOS, but it has adopted conservation and management measures to implement the rights and duties of coastal and flag States codified by the UNCLOS. In order to explore, exploit, conserve and manage the living resources in a sustainable manner within the jurisdiction of its Member States, the EU establishes total allowable catches for most significant commercial fish stocks annually and permits foreign vessels to fish its surplus through fisheries agreements with neighbouring countries. The EU has signed "northern agreements" with Norway, Iceland and the Faeroe Islands for shared stocks travelling within their EEZs. In order to get fishing rights in other countries EEZs, the EU also signed fisheries partnership agreements with several southern partner countries, including Cape Verde, Seychelles and Senegal.

Additionally, States are required by the UNCLOS to cooperate directly or through appropriate regional fisheries management organizations and arrangements (RFMOs) to adopt applicable measures to conserve and manage shared stocks, straddling fish stocks and highly migratory species.⁴⁸⁶

The EU, represented by the Commission, plays an active role in five RFMOs that manage highly migratory species, including:

- the Commission for the Conservation of Southern Bluefin Tuna (CCSBT),⁴⁸⁷
- the Inter-American Tropical Tuna Commission (IATTC),⁴⁸⁸

⁴⁸⁴ Judgment of the Court (Grand Chamber) of 30 May 2006, *Commission of the European Communities v Ireland*, Case 459/03, p. 718.

⁴⁸⁵ Judgment of the Court (Grand Chamber) of 30 May 2006, *Commission of the European Communities v Ireland*, Case 459/03, para. 125.

⁴⁸⁶ The UNCLOS, Arts. 63 and 64.

⁴⁸⁷ The EU is a cooperating non-member of the CCSBT, which was created by the Convention of Southern Bluefin Tuna. The Convention was signed in May 1993 and entered into force on 20 May 1994. CCSBT (1994) Text of the Convention for the Conservation of Southern Bluefin Tuna. http://www.ccsbt.org/userfiles/file/docs_english/basic_documents/convention.pdf. Accessed 24 October 2013.

⁴⁸⁸ The IATTC was established by the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission between the United States of America and the Republic of Costa Rica, signed at Washington on 31 May 1949, UNTS 1041, p. 3. The 1949 Convention was replaced by the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), which was signed at Washington on 13 December 2004 and entered into force on 10 October 2008. Available via IATTC.

- the International Commission for the Conservation of Atlantic Tunas (ICCAT),⁴⁸⁹
- the Western and central Pacific Fisheries Commission (WCPFC),⁴⁹⁰
- the Indian Ocean Tuna Commission (IOTC).⁴⁹¹

The EU also actively takes part in nine RFMOs that manage fish stocks by geographical area, including:

- the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),⁴⁹²
- the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea (CCBSP),⁴⁹³
- the General Fisheries Commission for the Mediterranean (GFCM),⁴⁹⁴

<http://www.iattc.org/IATTCdocumentationENG.htm>. Accessed 6 March 2014. The IATTC is responsible for the conservation and management of tuna and other marine resources in the eastern Pacific Ocean.

⁴⁸⁹ The ICCAT is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas. It was established by the International Convention for the Conservation of Atlantic, which was concluded at Rio de Janeiro on 14 May 1966 and entered into force on 21 March 1969, UNTS 673, p. 63.

⁴⁹⁰ The WCPFC was established by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which was concluded at Honolulu on 5 September 2000 and entered into force on 19 June 2004, UNTS 2275, p. 43.

⁴⁹¹ The IOTC was established by the Agreement for the Establishment of the Indian Ocean Tuna Commission, which was concluded at Rome on 25 November 1993, UNTS 1927, p. 329.

⁴⁹² The CCAMLR was established in 1982 with the objective of conserving Antarctic marine life under the Convention on the Conservation of Antarctic Marine Living Resources, which was concluded at Canberra on 20 May 1980, UNTS 1329, p. 47.

⁴⁹³ The EU is a cooperating non-Party to the CCSBT, which was adopted on 16 June 1994 and entered into force on 8 December 1995. NOAA Fisheries (2013) The Convention on the Conservation and Management of the Pollock Resources in the Central Bering Sea. http://www.afsc.noaa.gov/refm/cbs/convention_description.htm. Accessed 24 October 2013.

⁴⁹⁴ The GFCM was established by the Agreement for the Establishment of the General Fisheries Commission for the Mediterranean, which was adopted on 24 September 1949 and entered into force on 20 February 1952. Amendments to this Agreement were approved in 1963, 1976 and 1997. The new obligations came into force on 29 April 2004. GFCM (2013) General Fisheries Commission for the Mediterranean. <http://www.gfcm.org/gfcm/about/en>. Accessed 24 October 2013.

- the North-East Atlantic Fisheries Commission (NEAFC),⁴⁹⁵
- the North Atlantic Salmon Conservation Organization (NASCO),⁴⁹⁶
- the Northwest Atlantic Fisheries Organization (NAFO),⁴⁹⁷
- the South East Atlantic Fisheries Organization (SEAFO),⁴⁹⁸
- the South Pacific Regional Fisheries Management Organization (SPRFMO),⁴⁹⁹ and
- the Southern Indian Ocean Fisheries Agreement (SIOFA).⁵⁰⁰

The EU is also a member of two advisory regional fisheries organizations: the Western Central Atlantic Fishery Commission (WECAFC)⁵⁰¹ and the Fishery Committee for the Eastern Central Atlantic (CECAF).⁵⁰²

⁴⁹⁵ The NEAFC was established by the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, which was concluded at London on 18 November 1980, UNTS 1285, p. 129.

⁴⁹⁶ The NASCO was established under the Convention of Salmon in the North Atlantic Ocean, which was entered into force on 1 October 1983. NASCO (2013) North Atlantic Salmon Conservation Organization. <http://www.nasco.int/documents.html>. Accessed 24 October 2013.

⁴⁹⁷ The NAFO, replaced the International Commission for the Northwest Atlantic Fisheries, was established by the Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, which was concluded at Ottawa on 24 October 1978, UNTS 1135, p. 369.

⁴⁹⁸ The SEAFO was established under the framework of the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, which was adopted at Windhoek on 20 April 2001 and entered into force on 13 April 2003, UNTS 2221, p. 189.

⁴⁹⁹ The SPRFMO was established under the framework of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, which entered into force on 24 August 2012. SPRFMO (2013) About the SPRFMO. <http://www.southpacificrfmo.org/about-the-sprfmo/>. Accessed 24 October 2013.

⁵⁰⁰ The SIOFA was adopted on 12 June 2006 and entered into force on 21 June 2012. SIOFA (2013) The Southern Indian Ocean Fisheries Agreement – text. <http://www.siodfa.org/the-sio/the-southern-indian-ocean-fisheries-agreement-text/>. Accessed 24 October 2013.

⁵⁰¹ FAO Fisheries and Aquaculture (2013) Western Central Atlantic Fishery Commission. <http://www.fao.org/fishery/rfb/wecafc/en>. Accessed 24 October 2013.

⁵⁰² FAO Fisheries and Aquaculture (2013) Fishery Committee for the Eastern Central Atlantic. <http://www.fao.org/fishery/rfb/cecaf/en>. Accessed 24 October 2013.

3.2.3.2 EU's participation in the UN Fish Stocks Agreement

The Council decided to ratify the United Nations 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 (UN Fish Stocks Agreement) in June 1998.⁵⁰³ However, due to the shared competence of the EU and its Member States in concluding this Agreement, it is necessary for both the EU and Member States simultaneously to become Parties.⁵⁰⁴ So the ratification was not finished until December 2003. Now all Member States of the EU are Parties to the UN Fish Stocks Agreement.

When ratifying the Agreement, the EU made a declaration concerning the competence between the Community and its Member States.⁵⁰⁵ It confirms that EU Member States have transferred competences concerning the conservation and management of living marine resources, no matter under national jurisdiction or on the high seas, to the EU.⁵⁰⁶ Although “management” and “conservation” in the field of fisheries are usually overlapping, the ECJ judgments in the joined cases 3/76, 4/76, 6/76 and Case 25/94 explicitly pointed out that the Community has the internal power to take measures for the conservation of the biological resources of the sea, including the fixing of catch quotas and their allocation between the different Member States.⁵⁰⁷ Therefore, the utilization of “management” in this context is not unintentional, aiming to broaden the EU's exclusive competence, which can be seen from EU enforcement of the UN Fish Stocks Agreement.

Because the UN Fish Stocks Agreement mainly concerns flag State duties concerning fishing for straddling fish stocks and highly migratory species, the Decla-

⁵⁰³ The UN Fish Stocks Agreement was concluded at New York on 4 August 1995 and entered into force on 11 December 2001, UNTS 2167, p. 88.

⁵⁰⁴ Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing 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 stocks and highly migratory fish stocks; OJ L 189 of 3 July 1998, pp.14-41.

⁵⁰⁵ Available via Ocean & Law of the Sea. http://www.un.org/Depts/los/convention_agreements/fish_stocks_agreement_declarations.htm#EC. Accessed 25 March 2014.

⁵⁰⁶ Agreement on 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 - Declaration concerning the competence of the European Community - Interpretative declarations; OJ L 189 of 3 July 1998, Annex B, para. 5.

⁵⁰⁷ Judgment of the Court of 14 July 1976, Cornelis Kramer and others, Joined cases 3/76, 4/76 and 6/76, paras. 30-33. Also see: Judgment of the Court of 19 March 1996, Commission v Council, Case 25/94, para. 41.

ration concerning the competence of the Community for the UN Fish Stocks Agreement focuses on the division of competence between the Community and its Member States for determining flag State duties in this respect. The declaration states “*the Community enjoys the regulatory competence granted under international law to the flag State of a vessel to determine the conservation and management measures for marine fisheries resources applicable to vessels flying the flag of Member States and to ensure that Member States adopt provisions allowing for the implementation of the said measures*”.⁵⁰⁸ This demonstrates that the EU has exclusive competence to determine flag State duties as to the conservation and management of marine fisheries resources, while Member States can only adopt implementing provisions to enforce those measures. The following aspects are within the exclusive competence of Member States: the registration of vessels,⁵⁰⁹ measures applicable to masters and other officers of fishing vessels, measures concerning the exercise of jurisdiction by the flag State over its vessels on the high seas, international cooperation for enforcement and the recovery of the control of their vessels.⁵¹⁰ Additionally, the EU and its Member States share competence on requirements of developing States, scientific research, port State measures and measures adopted in respect of non-members of RFMOs and non-Parties to the Agreement.⁵¹¹ These aspects within the shared competence of the EU and its Member States are mainly not related to flag State duties against IUU fishing. The Declaration on the competences of the Community concerning the UN Fish Stocks Agreement indicates shared competence between the EU and its Member States. The following flag State duties provided by the UN Fish Stocks Agreement can be considered as within the EU’s exclusive competence: fishing authorization; requirements for marking fishing vessels and fishing gear; requirements for recording and timely reporting of vessel position; catch of target and non-target species; fishing effort and other relevant fisheries data; requirements for verifying the catch of target and non-target species through such means as observer programmes, inspection schemes, unloading reports, supervision of transshipment and monitoring of landed catches and market statistics; as well as monitoring, control and surveillance of such vessels, their fishing operations and related activities. Although the Declaration indicated that the EU and its Member States had shared competence on port State measures concerning the conservation and management of straddling fish stocks and highly migratory species, the ratification of the FAO Port State Measures Agreement and the adoption of the IUU Regulation made the

⁵⁰⁸ UN Fish Stocks Agreement - Interpretative declarations; OJ L 189 of 3 July 1998, Annex B, para. 6.

⁵⁰⁹ Judgment of the Court of 19 March 1996, Commission v Council, Case 25/94, para. 9.

⁵¹⁰ UN Fish Stocks Agreement - Interpretative declarations; OJ L 189 of 3 July 1998, Annex B, para. 7.

⁵¹¹ UN Fish Stocks Agreement - Interpretative declarations; OJ L 189 of 3 July 1998, Annex B, para. 8.

EU exclusively competent for adopting port States measures against IUU fishing.⁵¹²

In practice, the EU's competence over these matters is broader than expressed in the Declaration concerning the competence of the Community for the UN Fish Stocks Agreement. As mentioned previously, the EU has concluded many bilateral fisheries access agreements to the exclusion of its Member States with non-EU countries. Among those agreements, northern agreements aim at conservation and management of shared stocks travelling between EEZs. Thus, there is no doubt that the EU has exclusive competence over such agreements. The situation of fisheries partnership agreements is complicated. For the EU, fisheries partnership agreements offer surplus resources and require assistance to developing countries. Although requirements of developing countries are considered under shared competence, in practice, the EU has signed all bilateral fisheries agreement to the exclusion of its Member States.

Additionally, the EU has partaken, with the exclusion of its Member States, in RFMOs except the GFCM and the CCAMLR. The EU shares competence with its Member States in the CCAMLR because the CCAMLR concerns not only fisheries conservation but also environmental issues that are belonging to shared competence.⁵¹³ The reason why the EU does not have exclusive competence in GFCM may be that the Agreement for the Establishment of the General Fisheries Commission for the Mediterranean entered into force before the Treaty of Rome did. However, for those RFMOs in which the EU has exclusive competence, they also provide some measures that should belong to the exclusive competence of Member States of the EU according to the Declaration concerning the competence of the Community for the UN Fish Stocks Agreement. For example, NAFO, NEAFC, WCPFC and SEAFO all provide international inspection schemes over vessels on the high seas.⁵¹⁴ At the time of ratifying the UN Fish Stocks Agreement, even though the Community's competence was limited, it has been broadened in later practice.

Provisions concerning flag State duties in managing and conserving straddling fish stocks and highly migratory species are mainly reflected in following regulation, viz. the 2013 CFP Regulation,⁵¹⁵ the Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No

⁵¹² The EU ratified the UN Fish Stocks Agreement earlier than the FAO Port State Measures Agreement and adopted the IUU Regulation later.

⁵¹³ Churchill and Owen (2010), p. 360.

⁵¹⁴ Detailed discussion see: Churchill and Owen (2010), pp. 311-312.

⁵¹⁵ The Parliament and Council Regulation (EU) 1380/2013, Art. 31(4).

1966/2006 (Control Regulation),⁵¹⁶ Council Regulation (EC) 1006/2008 of 29 September 2008 concerning authorizations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community waters (Regulation 1006/2008)⁵¹⁷ and the IUU Regulation,⁵¹⁸ which will be discussed in following sections. Additionally, in accordance with Port State measures required by the UN Fish Stocks Agreement, the Control Regulation requires Member States to inspect vessels in their ports.⁵¹⁹

3.2.3.3 EU's participation in the FAO Compliance Agreement

Although some matters in the FAO Compliance Agreement lie in the shared competence between the EU and its Member States, the Community has been a Party to the agreement to the exclusion of its Member States since 6 August 1996.⁵²⁰ Why the EU has exclusive competence to conclude this agreement can be found in the Judgment of the Case 25/94 between the Commission and the Council.⁵²¹ The Judgement states that the main provisions of the FAO Compliance Agreement lie

⁵¹⁶ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006; OJ L 343 of 22 December 2009, pp. 1-50, Arts. 2, 6-16, 55, 62, 72, 80, 111.

⁵¹⁷ Council Regulation (EC) 1006/2008 of 29 September 2008 concerning authorizations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community water, amending Regulation (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94; OJ L 286 of 29 October 2008, pp. 33-44, Arts. 1(a), 3, 11, and 16.

⁵¹⁸ Council Regulation (EC) No 1005/2008, Arts. 37 (1) and (2), 41-47.

⁵¹⁹ Council Regulation (EC) No 1224/2009, Arts 18 and 19.

⁵²⁰ Council Decision 96/428/EC of 25 June 1996 on acceptance by the Community of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas; OJ L 177 of 16 July 1996, pp. 24-25.

⁵²¹ Judgment of the Court of 19 March 1996, Commission v Council, Case 25/94.

in the exclusive competence of the Community, so the Community enjoys exclusive competence to conclude this agreement.⁵²²

Similar to the UN Fish Stocks Agreement, the FAO Compliance Agreement also provides flag State duties and port State measures for high seas fishing activities. According to the requirements of the FAO Compliance Agreement concerning submitting information to the High Seas Vessel Authorization Record (HSVAR), twenty two EU Member States have submitted data on vessels authorized to operate on the high seas.⁵²³ All of the reported vessels of twenty one Member States are authorized. Although the HSVAR is far from a universal implementation, EU Member States have well implemented the HSVAR.

3.2.3.4 EU's participation in the FAO Port State Measures Agreement

The EU played an active role in the development of the FAO Port State Measures Agreement. It not only took the lead in signing and approving this Agreement,⁵²⁴ but also encourages other countries to sign it in order to make the Agreement enter into force as soon as possible.

The competence of the EU over adopting port State measures has changed from shared to exclusive. As discussed above, the Declaration concerning the competence of the Community for the UN Fish Stocks Agreement states that the Community and its Member States shared competence on port State measures. However, the EU has participated in the exclusion of its Member States in several RFMOs which have adopted port State measures, for example, the NEAFC and ICCAT. Then the EU has exclusive competence in ratifying the FAO Port State Measures Agreement, which is specifically concerning port State measures against IUU fishing. The trend in the EU's exclusive competence in adopting port State measures has been expanded.

Although this Agreement has not come into effect, the EU has already adopted and implemented comprehensive port State measures in its IUU Regulation.⁵²⁵ In

⁵²² Judgment of the Court of 19 March 1996, *Commission v Council*, Case 25/94, para. 40.

⁵²³ FAO Fisheries and Aquaculture (2013) HSVAR: High Seas Vessels Authorization Record. <http://www.fao.org/fishery/collection/hsvar/2/en#table1>. Accessed 31 October 2013.

⁵²⁴ The EU signed the FAO Port State Measures Agreement on 22 November 2009 and approved it on 7 July 2011. Council Decision 2011/443/EU of 20 June 2011 on the approval, on behalf of the European Union, of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; OJ L 191 of 22 July 2011, pp. 1-2.

⁵²⁵ Council Regulation (EC) No 1005/2008, Arts. 4-11, 37 (5) and (6), and 56.

this Regulation Member States have exclusive competence in respect of measures concerning the enforcement of sanctions.⁵²⁶

3.2.3.5 EU's participation in international non-legally binding instruments

Article 1 (4) of the 1995 Code of Conduct for Responsible Fisheries (Code of Conduct)⁵²⁷ and paragraph 6 (a) of the 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)⁵²⁸ both refer that the EU can adopt those measures indicated in such instruments as a regional economic integration organization in matters within its competence. Although the two instruments are soft law, the EU adopted management and conservation measures in Community law and policies in accordance with the Code of Conduct and the IPOA-IUU. As discussed in Chapter 2, there is overlapping content between the 1995 Code of Conduct, the 1993 FAO Compliance Agreement and the 1995 UN Fish Stocks Agreement in respect of combating IUU fishing. Such measures are also expressed in Community law as mentioned previously. Additionally, the EU adopted its own code - the European Code of Sustainable and Responsible Fisheries Practices (European Code). However, the European Code does not directly implement the Code of Conduct; instead, it “[is built] on the framework that the Code of Conduct provides for fisheries authorities [and] refers more relevantly to EU fishing activities and is fundamentally at fishing operators”.⁵²⁹

The Community also endorsed the IPOA-IUU and afterwards established its Community Action Plan.⁵³⁰ This Community Action Plan divides measures

⁵²⁶ Council Regulation (EC) No 1005/2008, Art. 11 (4).

⁵²⁷ The Code of Conduct was unanimously adopted by the Conference of the FAO in Rome on 31 October 1995. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/005/v9878e/v9878e00.HTM>. Accessed on 22 October 2013.

⁵²⁸ The IPOA-IUU was adopted by consensus at the 24th Session of Committee on Fisheries (COFI) in Rome on 2 March 2001 and endorsed by the 120th Session of the FAO Council on 23 June 2001. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/003/y1224e/y1224e00.HTM>. Accessed 22 October 2013.

⁵²⁹ EU Book shop (2004) European Code of Sustainable and Responsible Fisheries Practices. <http://bookshop.europa.eu/en/european-code-of-sustainable-and-responsible-fisheries-practices-pbKL5703443/>. Accessed 4 November 2013, p. 5.

⁵³⁰ European Commission (2002) Community action plan for the eradication of illegal, unreported and unregulated fishing, (Community Action Plan), Communication from the Commission, COM(2002) 180 final, Brussels, 2002.

against IUU fishing into four categories, including measures taken at the Community level, at the RFMOs level, at the international level and in partnership with developing countries. In 2007, the Community adopted a strategy for the Community to prevent, deter and eliminate Illegal, Unreported and Unregulated fishing (Community Strategy on IUU Fishing), which mainly focuses on removing the incentives and profits of conducting IUU fishing.⁵³¹ EU's measures combating IUU fishing are mainly reflected in the IUU Regulation which provides port State control of third States' fishing vessels, catch certification, IUU vessel listing, identification of non-cooperating third countries, and control of nationals and the Community Alert System. The integration of port State measures into the IUU Regulation is also a reflection that the EU complies with the measures of the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing (FAO Model Scheme).⁵³² As discussed in Section 3.2.2.1, the EU has exclusive competence in adopting trade-related measures against IUU fishing. However, in cases where the importation of fishery products is refused, Member States may confiscate and destroy, dispose of or sell such fishery products in accordance with their national law.⁵³³

The EU is not a member of the UN. Although the UNGA resolutions are not legally binding, the EU has adopted some measures according to such resolutions. Since 1991, the UNGA Resolution 46/215 has required a global moratorium on large-scale pelagic driftnet fishing. From June 1992, no vessel can be allowed to keep on board, or use fishing driftnets of more than 2.5 km in the EU waters, with the exception of the Baltic Sea, the Belts and the Sound, and for all EU vessels outside EU waters.⁵³⁴ Since 1 January 2008 it has been prohibited to keep on board or use for fishing any kind of driftnets in the Baltic Sea, the Belts and the Sound.⁵³⁵ Moreover, the EU has taken further action than the UNGA Resolution. It

⁵³¹ European Commission (2007) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – on a new strategy for the Community to prevent, deter and eliminate Illegal, Unreported and Unregulated fishing (Community Strategy on IUU Fishing). Available via Europa. http://europa.eu/legislation_summaries/maritime_affairs_and_fisheries/fisheries_resources_and_environment/l66052_en.htm. Accessed 26 February 2014.

⁵³² The FAO Model Scheme was endorsed by the 26th Session of the FAO COFI in Rome in 2005. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/010/a0985t/a0985t00.HTM>. Accessed 22 October 2013.

⁵³³ Council Regulation (EC) No 1005/2008, Art. 18 (3).

⁵³⁴ Council Regulation (EEC) No 345/92 of 27 January 1992 amending for the eleventh time Regulation (EEC) No 3094/86 laying down certain technical measures for the conservation of fishery resources; OJ L 42 of 18 February 1992, pp. 15-23, Art. 1 (8).

⁵³⁵ Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the

prohibits all driftnets, no matter their size, when capturing particular species, including some tuna, swordfish, sharks since 1 January 2002.⁵³⁶ The Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulations (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 concerning driftnets, has given a full definition of a “driftnet” for the first time.⁵³⁷ The judgments of ECJ Case 556/07 and Case 479/07 show that the ECJ has taken a wide view of the type of driftnets, including driftnets derived fishing gear, such as thonailles.⁵³⁸

UNGA resolutions also reiterate the issue of discards as introduced in Chapter 2.⁵³⁹ The new CFP has introduced a landing obligation to prevent the wasteful practice of discarding. In order to allow fishermen to adapt to the change, the landing obligation will be introduced gradually, between 2015 and 2019 for all commercial fisheries (species under TACs, or under minimum sizes) in European waters.⁵⁴⁰

IUU fishing is particularly emphasized in UNGA resolutions. These resolutions call upon many measures against IUU fishing. The EU has also actively adopted such measures. One issue needs to be mentioned. As the UNGA Resolution 61/105 requires vessels to cease bottom fishing in areas where vulnerable marine ecosystems are encountered, the EU adopted Council Regulation No 734/2008 for the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears in 2008.⁵⁴¹ The Regulation stipulates the conditions under which Community fishing vessels can obtain special fishing permits to

Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98; OJ L 349 of 31 December 2005, pp. 1-23, Art. 9.

⁵³⁶ Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources; OJ L 171 of 17 June 1998, pp. 1-4, Art. 1.

⁵³⁷ Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulation (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns driftnets; OJ L 182 of 12 July 2007, pp. 1-2, Art. 1. Caddell R (2010) Caught in the net: driftnet fishing restrictions and the European Court of Justice. *Journal of Environmental Law* 22 (2), p. 309.

⁵³⁸ ECJ (2009) *French Republic v Council of the European Union*, Case 479/07, Judgment of the Court (Third Chamber) of 5 March 2009. Available via CURIA. <http://curia.europa.eu/juris/celex.jsf?celex=62007CJ0479&lang1=en&type=NOT&ancre=>. Accessed 14 January 2014.

⁵³⁹ See UNGA Resolutions 49/118, 50/25, 51/36, 52/29, 53/33, 55/8 and 57/142.

⁵⁴⁰ European Commission Fisheries (2014) Discarding and the landing obligation. http://ec.europa.eu/fisheries/cfp/fishing_rules/discards/index_en.htm. Accessed 27 March 2014.

⁵⁴¹ Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears; OJ L 201 of 30 July 2008, pp. 8-13.

carry out fishing activities with bottom gears in the high seas.⁵⁴² It also provides that actions may be taken when encountering an unforeseen vulnerable marine ecosystem.⁵⁴³ In addition, the Regulation pays attention to the determination of area closures, Vessel Monitoring Systems, serious infringements as well as arranging observers on board.⁵⁴⁴

3.2.4 *The internal legal acts*

As discussed previously, the EU has exclusive competence in concluding most international fisheries agreements, so studying the EU's internal legal acts is the best way to know what measures the EU and its Member States have taken to combat IUU fishing.

There are three categories of internal legal sources on fisheries under the EU's legal framework, including provisions in primary law, secondary fisheries laws and case law referring to fisheries.⁵⁴⁵ This section mainly introduces the categories of EU's secondary fisheries laws, including regulations, directives, decisions, recommendations and opinions. According to Article 288 of the TFEU,

“A regulation shall have general application. It shall be binding in its entirety and directly applicable in all Member States.

A directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.

A decision shall be binding in its entirety. A decision which specifies those to whom it is addressed shall be binding only on them.

Recommendations and opinions shall have no binding force.”

Most legal acts in the field of fisheries are adopted in the form of regulations. Therefore, in fighting against IUU fishing, most of the EU legal acts are binding in their entirety and directly applicable in all Member States. The European fisheries law against IUU fishing is within the framework of the CFP and is based on the 2013 CFP Regulation, the IUU Regulation, Council Regulation 1006/2008, the Control Regulation and implementing regulations.

⁵⁴² Council Regulation (EC) No 734/2008, Art. 3.

⁵⁴³ Council Regulation (EC) No 734/2008, Art. 7.

⁵⁴⁴ Council Regulation (EC) No 734/2008, Arts. 8-11.

⁵⁴⁵ Liu X (2007) A case review of France being fined for violating EU fishery law (in Chinese). *Journal of Ocean University of China (Social Science Edition)* 3, p. 45.

3.2.4.1 2013 CFP Regulation

The 2013 CFP Regulation codifies the framework of the EU's fisheries management and conservation system, which was first adopted in 1983, reformed in 1992, 2002 and 2013 respectively. The 2013 CFP Regulation applied in the EU waters from 1st January 2014 on. The Regulation applies to activities carried out “*on the territory of Member States to which the Treaty applies*” or in the EU waters or by EU fishing vessels outside EU waters or by nationals of Member States.⁵⁴⁶ Therefore, provisions in this Regulation mainly focus on the internal fisheries conservation and management by the EU. A major progress of the 2013 CFP Regulation is the adoption of measures to avoid and minimize unwanted catches and the landing obligation of these catches.⁵⁴⁷

The 2013 CFP Regulation explicitly indicates that fighting against IUU fishing activities constitutes an effective system of control, inspection and enforcement, which ensures compliance with the rules of the CFP.⁵⁴⁸ Therefore, the 2013 CFP Regulation made progress in not only internal EU fisheries policy but also in the external EU fisheries policy. In particular, the EU shall ensure that EU fishing activities outside EU waters are based on the same principles and standards as those applicable under EU law, which shows that the EU aims to take responsibility in foreign waters.⁵⁴⁹ The 2013 CFP Regulation further points out that the EU shall promote and support action necessary to eradicate IUU fishing in all international spheres, through supporting and contributing to the activities of international organizations dealing with fisheries, including RFMOs, as well as cooperating with third countries.⁵⁵⁰ With regard to sustainable fisheries partnership agreements, which have not been implemented sustainably before, the 2013 CFP Regulation particularly imposes restrictions on fishing authorization when an EU fishing fleet registers to a State recognized under EU law as a non-cooperating State concerning combating IUU fishing or as a State allowing for non-sustainable exploitation of living marine resources.⁵⁵¹ In this case, the fishing authorization can only be granted if it is established that the vessel's fishing operations ceased and the owner took immediate action to remove the vessel from the register of that State.⁵⁵²

⁵⁴⁶ The 2013 CFP Regulation, Art. 1 (2). According to Article 4 (1) of the 2013 CFP Regulation, Union waters means “the waters under the sovereignty or jurisdiction of the Member States, with the exception of waters adjacent to the territories listed in Annex II to the Treaty”.

⁵⁴⁷ The Parliament and Council Regulation No 1380/2013, Arts. 2(5)(a), 14 and 15.

⁵⁴⁸ The Parliament and Council Regulation No 1380/2013, para. 59.

⁵⁴⁹ The Parliament and Council Regulation No 1380/2013, Art. 28(2)(d).

⁵⁵⁰ The Parliament and Council Regulation No 1380/2013, Arts. 28(2)(e), 29(1) and 30.

⁵⁵¹ The Parliament and Council Regulation No 1380/2013, Art. 31(9).

⁵⁵² The Parliament and Council Regulation No 1380/2013, Art. 31(9).

3.2.4.2 IUU regulation and its implementing regulations

The Council Regulation (EC) No 1005/2008 of 29 September 2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulation (EC) No 1093/94 and (EC) No 1447/1999 (IUU Regulation)⁵⁵³ is a significant outcome of the EU in combating IUU fishing. The policies of this regulation can be traced back to the 2002 Community Action Plan,⁵⁵⁴ which consistently transformed the provisions of the IPOA-IUU, and ideas of the 2007 Community Strategy for IUU Fishing. The IUU Regulation entered into force on 1 January 2010, which is a breakthrough of EU law.

The IUU Regulation applies to “*all IUU fishing and associated activities carried out within the territory of Member States to which the Treaty applies, within Community waters, within maritime waters under the jurisdiction or sovereignty of third countries and on the high seas*”.⁵⁵⁵ Unlike the Control Regulation, the IUU Regulation can apply to IUU fishing and associated activities conducted by fishing vessels flying the flag of a third country outside the territories of EU Member States and the Community waters. The main difference is that the Control Regulation focuses on controlling fisheries activities in the Community waters or conducting by Community fishing vessels or nationals of Member States; while, the IUU Regulation also pays attention to combat IUU fishing activities outside the Community. Around two thirds of the fish consumed in the EU comes from importation and half of this is wild fish.⁵⁵⁶ Therefore, the EU intends to combat IUU fishing activities outside the Community through prohibiting IUU fishing products from entering the Community market. Specifically, this is deemed to be achieved through the monitoring, control and surveillance of all landings and transshipments of EU and third country fishing vessels in EU ports and all trade of marine fisheries products to and from the EU.

This Regulation adopts the definitions of IUU fishing defined by the IPOA-IUU.⁵⁵⁷ It further specifies conditions for fishing vessels engaged in IUU fishing, including the infringements of fishing authorization, records, reporting, closed areas, closed seasons, prohibited stocks, fishing gear, markings, identification, registration and other management and conservation measures.⁵⁵⁸

In order to implement the IUU Regulation, the Commission adopted Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed

⁵⁵³ Council Regulation (EC) No 1005/2008, pp. 1-36.

⁵⁵⁴ European Commission (2002) Community action plan for the eradication of illegal, unreported and unregulated fishing, (Community Action Plan).

⁵⁵⁵ Council Regulation (EC) No 1005/2008, Art. 1 (3).

⁵⁵⁶ Europa (2013) Intervention in the European Parliament plenary session on Illegal, Unregulated and Unreported (IUU) fishing. http://europa.eu/rapid/press-release_SPEECH-13-519_en.htm. Accessed 29 November 2013.

⁵⁵⁷ Council Regulation (EC) No 1005/2008, Art. 2 (2)-(4).

⁵⁵⁸ Council Regulation (EC) No 1005/2008, Art. 3.

rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing,⁵⁵⁹ which lies down detailed rules to implement the IUU Regulation, and other detailed implementing regulations and decisions.⁵⁶⁰

⁵⁵⁹ Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing; OJ L 280 of 27 October 2009, pp. 5-41.

⁵⁶⁰ EU implementing regulations and decisions on combating IUU fishing include, viz. Council Implementing Decision 2014/170/EU of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ L 91 of 27 March 2014, pp. 43-47; Commission Decision 2013/C 346/03 of 26 November 2013 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ C 346 of 27 November 2013, pp. 26-49; Commission Implementing Decision 2013/C 346/02 of 26 November 2013 identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ C 346 of 27 November 2013, pp. 2-25; Commission Decision 2012/C 354/01 of 15 November 2012 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ C 354 of 17 November 2012, pp. 1-47; Commission Implementing Regulation (EU) No 137/2014 of 12 February 2014 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing, OJ L 43 of 13 February 2014, pp. 47-54; Commission Implementing Regulation (EU) No 672/2013 of 15 July 2013 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing, OJ L 193 of 16 July 2013, pp. 6-11; Commission Implementing Regulation (EU) No 1234/2012 of 19 December 2012 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing, L 350 of 20 December 2012, pp. 38-43; Commission Implementing Regulation (EU) No 724/2011 of 25 July 2011 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing, OJ L 194 of 26 July 2011, pp. 14-18; Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing, OJ L 131 of 29 May 2010, pp. 22-26; Commission Implementing Regulation (EU) No

3.2.4.3 Council Regulation 1006/2008

The Council Regulation No 1006/2008 foresees fishing authorization in two specific situations: one is authorization for fishing activities of Community fishing vessels outside Community waters; the other is authorization for fishing activities of third country vessels in Community waters. This Regulation provides flag State duties and coastal State rights of Member States through specifying the criteria of issuing fishing licenses and fishing authorization, control of catches and fishing effort, closure of fisheries and the suspension of fishing authorization.⁵⁶¹ Further allocation of fishing opportunities is provided by annual regulations in this respect, such as the Council Regulation 40/2013.⁵⁶²

865/2013 of 9 September 2013 amending Regulation (EC) No 1010/2009 as regards administrative arrangements with third countries on catch certificates for marine fisheries products, OJ L 241 of 10 September 2013, pp. 1-3; Commission Implementing Regulation (EU) No 336/2013 of 12 April 2013 amending Regulation (EC) No 1010/2009 as regards administrative arrangements with third countries on catch certificates for marine fisheries products, OJ L 105 of 13 April 2013, pp. 4-6; Commission Implementing Regulation (EU) No 1222/2011 of 28 November 2011 amending Regulation (EC) No 1010/2009 as regards administrative arrangements with third countries on catch certificates for marine fisheries products, OJ L 314 of 29 November 2011, pp. 2-11; Commission Regulation (EU) No 395/2010 of 7 May 2010 amending Commission Regulation (EC) No 1010/2009 as regards administrative arrangements on catch certificates, OJ L 115 of 8 May 2010, pp. 1-22; Commission Regulation (EU) No 86/2010 of 29 January 2010 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Commission Regulation (EC) No 1010/2009 as regards exchange of information on inspections of third country vessels and administrative arrangements on catch certificates, OJ L 26 of 30 January 2010, pp. 1-16; Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Regulation (EC) No 1010/2009 as regards prior notification templates, benchmarks for port inspections and recognized catch documentation schemes adopted by regional fisheries management organizations, OJ L 57 of 2 March 2011, pp. 10-18.

⁵⁶¹ Council Regulation (EC) No 1006/2008, Arts. 5, 14-16, 20-24.

⁵⁶² Council Regulation (EU) No 40/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements; OJ L 23 of 25 January 2013, pp. 54-153.

3.2.4.4 Control Regulation and its implementing regulation

In 2009, a new Control Regulation was adopted to apply to all fishing and fishing related activities on the territory of Member States or in Community waters or to activities of Community fishing vessels, as well as to nationals of Member States outside Community waters.⁵⁶³ It is complementary to the IUU Regulation and to the Council Regulation No 1006/2008 to form a control system. The Control Regulation specifies the issuing of fishing license and authorization,⁵⁶⁴ marking of fishing vessels and gears,⁵⁶⁵ Vessel Monitoring Systems,⁵⁶⁶ Automatic Identification System,⁵⁶⁷ Vessel Detection System,⁵⁶⁸ submitting fishing logbook,⁵⁶⁹ prior notification of landing,⁵⁷⁰ completing transshipment declarations and landing declarations,⁵⁷¹ transshipment and landing in Member States' port,⁵⁷² control of marketing,⁵⁷³ surveillance,⁵⁷⁴ inspection and proceedings,⁵⁷⁵ enforcement,⁵⁷⁶ and measures to ensure compliance by Member States with CFP objectives.⁵⁷⁷ In this Regulation, port Member State duties are incorporated in the duties of coastal Member States. Under many control schemes, cooperation between flag Member States and coastal Member States are emphasized.

⁵⁶³ Council Regulation (EC) No 1224/2009, Art. 2.

⁵⁶⁴ Council Regulation (EC) No 1224/2009, Arts. 6 (3), (4) and 7 (4).

⁵⁶⁵ Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy; OJ L 112 of 30 April 2011, pp. 1-153, Arts. 6-17.

⁵⁶⁶ Council Regulation (EC) No 1224/2009, Art. 9.

⁵⁶⁷ Council Regulation (EC) No 1224/2009, Art. 10.

⁵⁶⁸ Council Regulation (EC) No 1224/2009, Art. 11.

⁵⁶⁹ Council Regulation (EC) No 1224/2009, Arts. 14-16.

⁵⁷⁰ Council Regulation (EC) No 1224/2009, Arts. 17-18.

⁵⁷¹ Council Regulation (EC) No 1224/2009, Arts. 20-25.

⁵⁷² Council Regulation (EC) No 1224/2009, Arts. 42-43.

⁵⁷³ Council Regulation (EC) No 1224/2009, Arts. 56-70.

⁵⁷⁴ Council Regulation (EC) No 1224/2009, Arts. 71-73.

⁵⁷⁵ Council Regulation (EC) No 1224/2009, Arts. 74-88.

⁵⁷⁶ Council Regulation (EC) No 1224/2009, Arts. 89-93.

⁵⁷⁷ Council Regulation (EC) No 1224/2009, Arts. 103-108.

3.2.4.5 Balance between internal and external effects

The EU's State measures are in accordance with the international fisheries instruments. The IUU Regulation mainly represents the external impacts of the CFP; while the Council Regulation No 1006/2008 and the Control Regulation complements the internal impacts of the CFP in combating IUU fishing. The Council Regulation No 1006/2008 and the Control Regulation both apply to fishing activities conducted on the territory of Member States or in Community waters or by Community fishing vessels as well as by nationals of Member States. The Control Regulation mainly provide the duties of Member States as flag, coastal, port and market States against non-compliance of Community fishing vessels, Member States and other non-compliant fishing activities under the CFP.

On the other hand, the IUU Regulation pays more attention to port State measures and trade-market measures against third countries fishing vessels and fisheries products; as well as, the control of nationals of the EU also partly lies within the IUU Regulation. Therefore, the IUU Regulation pays less attention to the flag Member States control over their fishing vessels, port State measures concerning Member States flagged fishing vessels as well as trade-market measures for internal fish trade.

Only when the EU take sufficient measures to deal with the internal IUU fishing issue, the EU's endeavour to combat IUU fishing conducted by fishing vessels of third countries can be recognized at the international level. Therefore, the balance between internal and external effects of the EU fisheries law is significant to the success of the EU's endeavour in this respect.

3.2.5 Concluding remarks

The EU's decision-making emphasizes the balance of power among decision-making institutions. In the field of fisheries, the Commission exclusively initiates legislative and policy proposals, while most fisheries legislation needs an agreement between the Council and the Parliament. However, the need of an agreement between the Council and the Parliament has resulted in the delay of the recent reformed CFP.

The TFEU confers exclusive competence in decision-making to the EU in the area of conservation of marine biological resources under the CFP. Although the TFEU does not define the scope of "conservation", it can be inferred from the judgments of the ECJ, as well as the external and internal effect of the CFP, that "conservation" has been applied in a broader scope. The EU has exclusive competence to fix catch quotas and to allocate them between the Member States. As to flag State duties, most of the provisions in the FAO Compliance Agreement, including fishing authorizations, belong to the EU exclusive competence. The ratification of the FAO Port State Measures Agreement and the adoption of the IUU

Regulation made the EU exclusive competent for adopting port State measures against IUU fishing. The endorsement of the IPOA-IUU and the adoption of trade-related measures against IUU fishing in the IUU Regulation also make the EU exclusive competent in this respect. On the other hand, flagging and registration of vessels, measures concerning the exercise of jurisdiction over vessels, measures applicable to masters and other officers of fishing vessels, international enforcement cooperation, the recovery of the control of their vessels and the enforcement of penal and administrative sanctions lie within the Member States' exclusive competence. Additionally, the EU and its Member States share competence on requirements for developing States, scientific research and measures adopted in respect of non-members of RFMOs and non-Parties to the UN Fish Stocks Agreement. At regional level, the EU has concluded many bilateral fisheries agreements to the exclusion of its Member States with non-EU countries. In addition, the EU has also partaken, with the exclusion of its Member States, in many RFMOs. However, the recent adoption of the 2013 CFP Regulation shows a decentralising trend of decision-making. Member States are empowered to adopt conservation measures under certain conditions.

The Commission, in particular DG MARE, is responsible for the implementation of the CFP. Together with the ECJ, the Commission also ensures Member States to comply with fisheries legislation adopted by the EU.

The EU has actively adopted management and conservation measures in Community law and policies in accordance with all major international fisheries instruments, including legally binding and non-legally binding instruments. It also actively participates in regional fisheries management and conservation organizations and arrangements. Because the EU's fish market mainly relies on the import, the EU plays an active role in prohibiting IUU fishing products entering the EU market. At the Community level, the EU particularly adopted the IUU Regulation, the Council Regulation No 1006/2008 and the Control Regulation within the framework of the CFP.

3.3 Internal implementation of the CFP

The CFP has authorized the EU to regulate fisheries in Member States' EEZs, which has promoted a closer cooperation between the EU Member States in the field of fisheries and alleviated IUU fishing in the EU's water. According to the 2013 CFP Regulation, existing CFP rules that restrict access to resources within the 12 nautical mile zones of Member States have operated satisfactorily.⁵⁷⁸ The 2013 CFP Regulation also addresses IUU fishing conducted by EU fishing vessels

⁵⁷⁸ The Parliament and Council Regulation No 1380/2013, para. 19.

outside EU. Therefore, the following discussion mainly focuses on the EU's responsibility outside EU waters.

3.3.1 Implementation in the EU's major fishing area

According to the data of Eurostat, from 1995 to 2011, the catch of the EU-27 decreased by 43 per cent even with the enlargement of the EU.⁵⁷⁹ This is mainly because of the decline of fishing vessels, in particular in gross tonnage and engine power.⁵⁸⁰ In fact, the EU's fish market relies on imports more than fishing by EU fishing vessels. In order to conserve fisheries resources within the Community waters, the EU allocates fewer quotas to third countries now. The most important fishing areas for the EU are Area 27 (Northeast Atlantic), Area 34 (Eastern and Central Atlantic) and Area 37 (Mediterranean and Black Sea), accounting for around three quarters of all catches.⁵⁸¹ Therefore, this part mainly focuses on the flag State duties of EU fishing vessels in those areas.

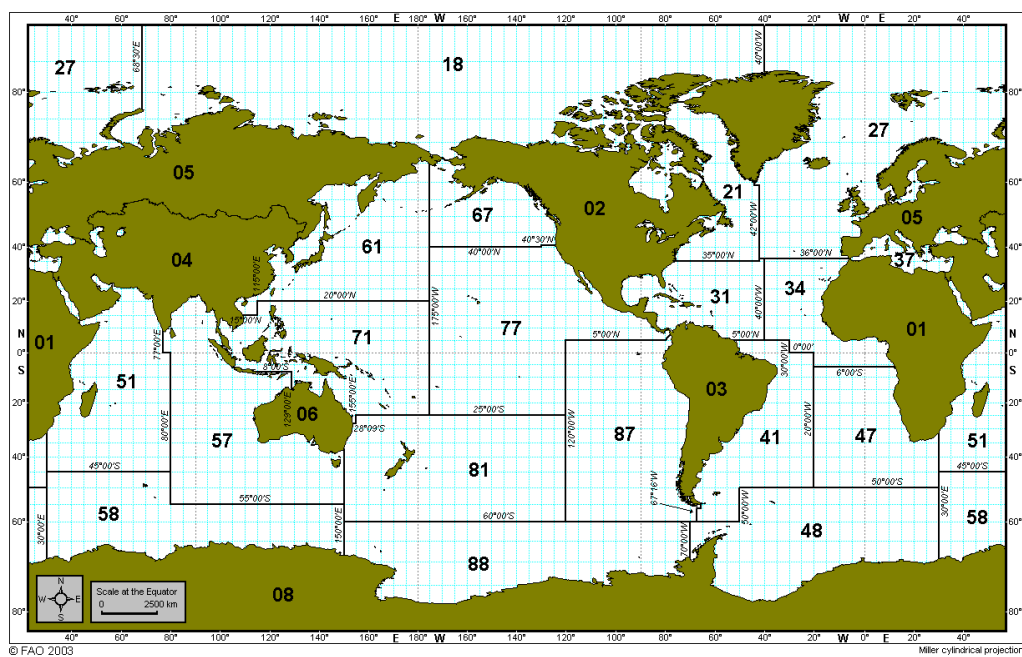
It should be pointed out that the three areas are all located in the regulatory area of the ICCAT of which the measures against IUU fishing have been discussed in Chapter 2.

⁵⁷⁹ European Commission Eurostat (2012) Agriculture, fishery and forestry statistics – main results – 2010-11. Publications Office of the European Union, Luxembourg, pp. 153-157.

⁵⁸⁰ European Commission Eurostat (2012) Agriculture, fishery and forestry statistics – main results – 2010-11, p. 162.

⁵⁸¹ European Commission Eurostat (2012) Agriculture, fishery and forestry statistics – main results – 2010-11, p. 153.

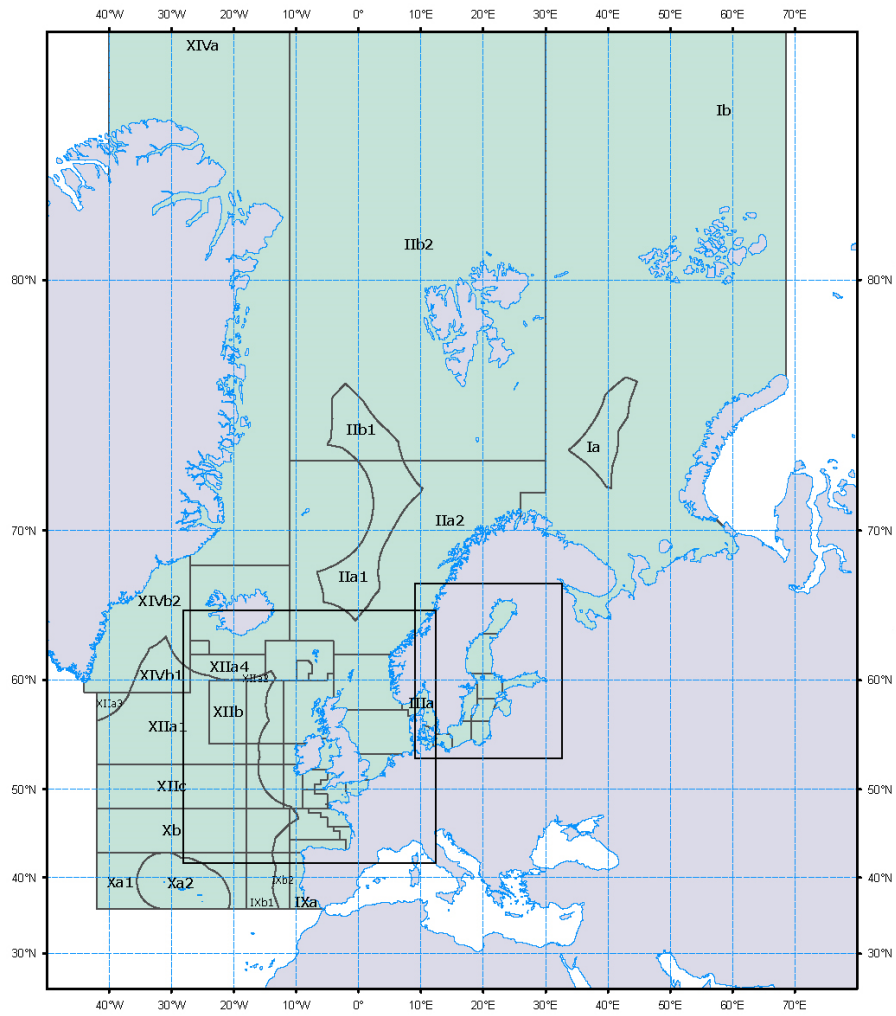
Figure 3.1 FAO major fishing areas



FAO Fisheries and Aquaculture (2003) FAO major fishing areas.
<http://www.fao.org/fishery/area/search/en>.

3.3.1.1 In Area 27

Figure 3.2 FAO fishing area 27



FAO Fisheries and Aquaculture (2013) FAO major fishing areas – Atlantic, Northeast (Major Fishing Area 27). <http://www.fao.org/fishery/area/Area27/en>

Among the three fishing areas, catches from Area 27 account for the most. Figure 3.2 shows that the NEAFC regulatory area, the waters of Iceland, Norway, Greenland and Russia, and the waters of the EU Member States are located in this area. The EU has signed fisheries agreements with Norway, Iceland and the Faeroe Islands to exchange fisheries resources. On the one hand, through the annual arrangements, the EU allocates quotas of certain species within the jurisdiction of its Member States and issues fishing authorizations to third countries. On the other hand, the EU gets quotas and fishing authorizations from third countries RFMOs and allocates the quotas to its Member States. Therefore, the major flag and coastal State duty in this Area is fishing authorization. The fisheries agreements with Norway and Iceland are lasting for 34 and 21 years respectively. It can be seen that the EU and the northern countries both satisfy the fisheries cooperation.

The agreement with Norway is the most significant one among northern agreements. Norway has closely cooperated with the EU in combating IUU fishing. However, such cooperation mainly pays attention to port and trade measures rather than flag and coastal State measures. For example, the arrangement for 2008 between the EU and Norway emphasized the necessity of strengthening the combat of IUU fishing and the significance of port State measures.⁵⁸² Additionally, the EU and Norway have signed an agreement formalizing the Norwegian implementation of the catch certificate requirement of the IUU Regulation, allowing a new and simplified Norwegian catch certificate for all Norwegian landings and export shipments to the EU.⁵⁸³ This agreement encourages Norway to require a catch certificate for landings and imports to Norway of catches taken by fishing vessels flying the flag of a Member State of the EU. However, the catch certificate requirement for imports into Norway has not been implemented yet.⁵⁸⁴

Additionally, the EU has also signed a new Protocol to the fisheries partnership agreement with Greenland for the period from 1 January 2013 to 31 December 2015. This is the only fisheries partnership agreement the EU has signed with northern countries. Like other partnership agreements, the EU gives financial and technical support in exchange for fishing opportunities in the waters off Greenland.

Except for signing bilateral fisheries agreements, countries including the EU in this area also join the NEAFC to manage and conserve fisheries resources beyond

⁵⁸² European Commission Fisheries (2012) Bilateral agreements with countries outside the EU – Fact sheet on EU's northern fisheries agreements. <http://ec.europa.eu>. Accessed 16 November 2012.

⁵⁸³ Agreed record between the EU and Norway on implementation of Council Regulation (EC) No 1005/2008, signed 3 September 2009, entered into force 1 January 2010, amended and signed in May 2011. See: Fisheries.no (2014) Catch certificates. http://www.fisheries.no/resource_management/control_monitoring_surveillance/Catch-Certificate/. Accessed 15 January 2014.

⁵⁸⁴ Fisheries.no (2014) Catch certificates.

their jurisdictions. The major measures taken by the NEAFC against IUU fishing are NEAFC A and B lists as well as port State control. The NEAFC A and B lists are used for identifying non-contracting parties' fishing vessels engaged in IUU fishing in the Convention Area. When such a vessel is identified, it will be immediately put on the A list, which is a provisional list. A vessel on the A-list entering a port will not be authorized to land or tranship and will be thoroughly inspected.⁵⁸⁵ If the flag State cannot provide satisfactory explanations or information after requesting, the vessel will be put on the confirmed B list and will not be authorized to enter into port or fish in waters under the jurisdiction of contracting parties of the NEAFC.⁵⁸⁶ Non-contracting parties' vessels authorized to engage in fishing activities within waters under national jurisdiction should not be contained in the NEAFC A and B lists. For example, the EU identified the vessels "Franziska" and "Enterprise" as non-contracting parties' vessels in July 2011 because such vessels were flying the flag of Peru. However, the two vessels were finally removed from the A list because they had been authorized by a Contracting Party to operate within its jurisdiction.⁵⁸⁷ Obviously, vessels of contracting parties involved in IUU fishing should not be contained in the NEAFC A and B lists. Due to the NEAFC and NAFO port State control and the close cooperation between NEAFC contracting parties, there are very few IUU activities in the North Atlantic ocean.⁵⁸⁸

As to high seas bottom fisheries, the North Atlantic is an area where such fisheries are the largest in the world as measured by volume of catch.⁵⁸⁹ In 2006 over one third of fishing vessels engaged in high seas bottom fisheries were flagged to the EU Member States and the EU fleet took one-half or more of the total high seas catch, mostly through bottom trawling.⁵⁹⁰ The EU fleet is responsible for approximately 80 per cent of the catch in high seas bottom fisheries in the Northwest Atlantic and 95 per cent of the catch in the Northeast Atlantic.⁵⁹¹ The Parliament agreed on 10 December 2013 to several deep-sea conservation measures but nar-

⁵⁸⁵ NEAFC (2014) Guide to the NEAFC IUU A and B List System. <http://www.neafc.org/mcs/iuu/guide>, Accessed 15 January 2014.

⁵⁸⁶ NEAFC (2014) Guide to the NEAFC IUU A and B List System.

⁵⁸⁷ NEAFC (2011) Report of the 30th annual meeting of the NEAFC. http://www.neafc.org/past_meetings. Accessed 16 January 2014, pp. 30-31.

⁵⁸⁸ Geirsson (2010) A speech at the Conference for the Head of the Coast Guards of the EU Member States and Schengen Associated Countries in Mijas on 7-8 April 2010. Available via European Coast Guard Functions Forum. www.ecgff.eu/spain-2010/minites. Accessed 8 April 2014.

⁵⁸⁹ Rogers AD, Gianni M (2010) The implementation of UNGA resolutions 61/105 and 64/72 in the management of deep-sea fisheries on the high seas. Available via Deep Sea Conservation Coalition. <http://www.savethehighseas.org/publicdocs/61105-Implementation-finalreport.pdf>. Accessed 3 February 2014, p. 10.

⁵⁹⁰ Rogers and Gianni (2010), P. 10.

⁵⁹¹ Rogers and Gianni (2010), P. 10.

rowly rejected elimination of deep-sea bottom trawling in the Northeast Atlantic.⁵⁹² Although 20 Parliament members declared they has mistakenly voted against the ban and corrected their votes, European parliamentary procedures do not allow the result of the vote to be changed.⁵⁹³ Instead, the Parliament adopted the following measures: strengthening the scientific basis for setting fishing quotas, reducing bycatch of deep-sea species, protecting vulnerable deep-sea marine ecosystems by requiring prior environmental impact assessments, and establishing areas closed to bottom fishing where such ecosystems are known or are likely to exist.⁵⁹⁴ The measures adopted can limit both unregulated fishing in the Northeast Atlantic and the harm of deep-sea bottom fisheries if they are effectively implemented.

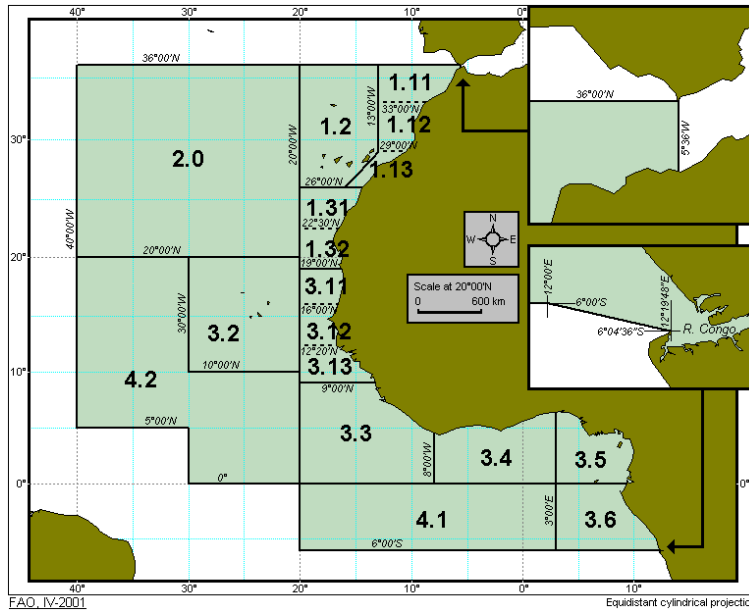
⁵⁹² The PEW Charitable Trusts (2014) European Parliament rejects ban on deep-sea bottom trawling. <http://www.pewenvironment.org/news-room/other-resources/european-parliament-rejects-ban-on-deep-sea-bottom-trawling-85899532969>. Accessed 3 February 2014.

⁵⁹³ The PEW Charitable Trusts (2014) European Parliament rejects ban on deep-sea bottom trawling.

⁵⁹⁴ The PEW Charitable Trusts (2014) European Parliament rejects ban on deep-sea bottom trawling.

3.3.1.2 In Area 34

Figure 3.3 FAO fishing area 34



FAO Fisheries and Aquaculture (2001) FAO major fishing areas – Atlantic, Eastern Central (Major Fishing Area 34). <http://www.fao.org/fishery/area/Area34/en>

The Area 34 covers Eastern Central Atlantic and the coastal waters of certain western and northern African countries and regions from Morocco to the Republic of the Congo. Area 34 is estimated to have suffered the highest levels of IUU fishing in the world, representing up to 37 per cent of the regions' catch.⁵⁹⁵

In this Area, the EU has fisheries partnership agreements with Cape Verde, Côte d'Ivoire, Morocco, Guinea, Guinea-Bissau, Senegal, Gambia, Mauritania, Gabon and Equatorial Guinea. Protocols agreed by parties of agreements set out specific fishing opportunities and financial contributions for a period of time. However, there is no new protocol between the EU and those countries, except with Cape Verde and Côte d'Ivoire. Guinea has even withdrawn from the agreement and protocol with the EU. Therefore, the implementation of partnership

⁵⁹⁵ EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU. EJF, London, p. 4.

agreements in the Area 34 cannot satisfy either the EU or West African countries, which mainly is caused by the following reasons.

Fisheries partnership agreements between the EU and West African countries are not sufficiently equal. Since the reformed CFP in 2002, the EU has renegotiated almost all of its fisheries agreements with the purpose of sustainable fishing in third countries' EEZs and providing financial contributions to promote sustainable development of fisheries in the partner countries.⁵⁹⁶ Although those agreements only provide rights and obligations for both parties and contain some specific duties for the EU, they do not establish a system of responsibility for possible violations.⁵⁹⁷ In this case, the general rules of international law governing the flag State responsibility for its vessels apply in the EEZ of a coastal State.⁵⁹⁸ Therefore, it is believed that most agreements are still disadvantageous to coastal States. Taking the agreement between the EU and Cape Verde as an example, the price the EU paid for fish is at 40 per cent below market value.⁵⁹⁹ Additionally, in cases where an EU longliner fishes more than it should, the price merely increases by 65 Euros per ton, which indeed encourages operators to overfish.⁶⁰⁰ Unfortunately, poor and developing States cannot easily refuse the agreements with the superpowers due to the financial incentives.⁶⁰¹

West African coastal States lack capacity to combat IUU fishing. First, although the UNCLOS authorizes coastal States to board, inspect, arrest and take judicial proceedings to ensure the compliance with their national laws and regulation, many West African countries lack the capability to monitor vast marine areas at sea. In the case of Cape Verde, a couple of boats have to monitor an area of at

⁵⁹⁶ European Commission Fisheries (2012) Bilateral agreements with countries outside the EU.

⁵⁹⁷ European Commission (2013) Written Statement by the European Commission on behalf of the European Union. Available via ITLOS (2013) Request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC). <http://www.itlos.org/index.php?id=252&L=0>. Accessed 18 January 2013, para. 84.

⁵⁹⁸ European Commission (2013) Written Statement by the European Commission on behalf of the European Union, para. 92.

⁵⁹⁹ Sandgrains (2012) Sandgrains – background. <http://sandgrains.org/film/background.html>. Accessed 26 November 2012.

⁶⁰⁰ Protocol agreed between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force; OJ L 181 of 9 July 2011, p. 2, Art. 2 (4).

⁶⁰¹ Kalaidjian W (2010) Fishing for solutions: the European Union's fisheries partnership agreements with West African coastal States and the call for effective regional oversight in an exploited ocean. *Emory International Law Review* 24, p. 408.

least 734,265 km².⁶⁰² Although the agreement between Cape Verde and the EU particularly contains provisions referring to regional oversight, especially the observer regime, the surveillance of fisheries activities in the EEZ of Cape Verde remains inadequate.⁶⁰³ Second, many of those countries allow transshipment at sea, for instance Gambia, Guinea-Bissau, Guinea, Sierra Leone, Liberia and Gabon. Without port inspection, transshipment at sea facilitates the laundering of IUU catches because the authorities of coastal and flag States are not capable of monitoring how, by whom and where transferred fish were caught.⁶⁰⁴ Third, the lack of port inspection by West African countries also facilitates the use of port services by IUU catches and the access of markets. Last but not least, in the West African waters, cooperative fisheries enforcement has been limited and inconsistent.⁶⁰⁵

The control of the EU over fishing vessels flying the flag of its Member States is imperative. In cases where vessels fail to comply with the laws and regulations of a coastal State, the flag Member State of the EU must take effective measures to prosecute and impose sanctions on vessels that are engaged in illegal fishing activities.⁶⁰⁶ In fact, as discussed in Chapter 2, flag State duties are very weak if they are not accompanied by other State measures, especially under conditions that the coastal State concerned has not taken sufficient and active State actions. It is not uncommon that the EU Member States take insufficient flag State duties in Area 34, unlike in Areas 27 and 37 where EU Member States' waters are. It is revealed that the EU has been paying subsidies to the fishing companies based in its Member States that have been fishing illegally in African waters.⁶⁰⁷ Therefore, the Parliament calls upon the Commission to amend the requirements for any financial support.⁶⁰⁸ In addition, the EU has recently started to pay attention to fight against illegal fishing in West Africa mainly through port and trade-market measures, which is discussed in following sections.

⁶⁰² Mundt M (2012) The effects of EU fisheries partnership agreements on fish stocks and fishermen: the case of Cape Verde. In: Evans T et al (eds) *International Political Economy Working Papers*, No. 12/2012. Berlin School of Economic and Law, p. 19.

⁶⁰³ Kalaidjian (2010), p. 416.

⁶⁰⁴ EJF (2013) *Transshipment at sea: the need for a ban in West Africa*. EJF, London, p. 2.

⁶⁰⁵ Dzidzornu DM (2011) Ocean policy in Africa and treaty aspects of marine fisheries exploitation, management, and environmental protection. In: Chircop A et al (eds) *Ocean Yearbook 25*, Martinus Nijhoff, Leiden, p. 98.

⁶⁰⁶ Kalaidjian (2010), p. 413.

⁶⁰⁷ Godoy J (2010) Africa: "EU subsidies companies guilty of illegal fishing". Available via Inter Press Service. <http://www.ipsnews.net/2010/05/africa-eu-subsidises-companies-guilty-of-illegal-fishing/>. Accessed 24 May 2010.

⁶⁰⁸ European Parliament Resolution P7_TA(2011)0516 of 17 November 2011 on Combating Illegal Fishing at the Global Level – the Role of the EU, paras. 22 and 23

Additionally, bargaining collectively by West African States with the EU has been recommended in recent years. States along the West African coast share many common problems and interests. Therefore, bargaining collectively can “*ensure that countries share the same long-term goals regarding coastal community cooperation and assistance, compensation, marine protection, and sustainable utilization of living resources within the EEZ*”.⁶⁰⁹ One option is to negotiate together their fisheries partnership agreements with the EU, while there might be heavy administrative work.⁶¹⁰ An alternative option is to negotiate together through a particular organization, either establishing a new organization or through the existing regional fisheries body – Sub-regional Fisheries Commission (SRFC).⁶¹¹ The SRFC is the major regional fisheries organization that is established to harmonize the fishing conservation and exploitation of fisheries resources among coastal States in West Africa. Members of the SRFC include Cape Verde, Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal and Sierra Leone.⁶¹² However, it is doubtful whether the States are reluctant to abandon part of their national sovereignty to such a body.⁶¹³ If the second solution is acceptable, more funding obtained from such fisheries partnership agreements should be directed to such organization for the purpose of improving monitoring and enforcement.⁶¹⁴

⁶⁰⁹ Kalaidjian (2010), pp. 416-430.

⁶¹⁰ Nagel P, Gray T (2012) Is the EU's fisheries partnership agreement (FPA) with Mauritania a genuine partnership or exploitation by the EU? *Ocean & Coastal Management* 56, p. 33. Also see: Cullberg M, Lövin I (2009) To draw the line: EU fisheries agreements in West Africa. Swedish Society for Nature Conservation, Stockholm.

⁶¹¹ Convention of 29 March 1985 on the establishment of the SRFC, amended on 14 July 1993 in Praia, Cape Verde. FAO Fisheries and Aquaculture (2014) Sub Regional Fisheries Commission (SRFC). <http://www.fao.org/fishery/rfb/srhc/en>. Accessed 19 January 2014.

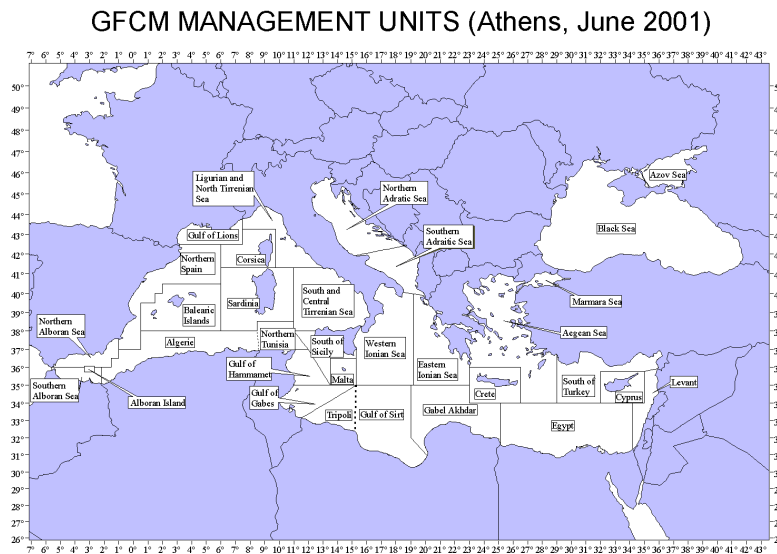
⁶¹² FAO Fisheries and Aquaculture (2013) Sub Regional Fisheries Commission (SRFC). <http://www.fao.org/fishery/rfb/srhc/en>. Accessed 12 June 2013.

⁶¹³ Nagel and Gray (2012), p. 33.

⁶¹⁴ Kalaidjian (2010), p. 427.

3.3.1.3 In Area 37

Figure 3.3 Fishing Area 37



FAO (2001) GFCM report of the fourth session of the scientific advisory committee. <http://www.fao.org/docrep/meeting/003/y1333e.htm>. Accessed 7 June 2001

The Area 37, which covers the waters of the Mediterranean and Black Sea, coincides with the regulatory area of the GFCM which most coastal States in this area have joined. In addition, the EU and Japan are also contracting to the GFCM. The EU takes an active role in the fight against IUU in this area. For example, the Commission funded the Joint GFCM-BSC Workshop on IUU Fishing in the Black Sea in Istanbul in February 2013. On the other hand, the CFP of the EU has provided financial incentives that contribute to overfishing and increased IUU fishing by EU Member States and the Mediterranean regional partners.⁶¹⁵ The GFCM has adopted several recommendations to implement measures against IUU fishing, concerning port State measures, the list of IUU fishing vessels, the

⁶¹⁵ Gavouneli M (2008) Mediterranean challenges: between old problems and new solutions. *The International Journal of Marine and Coastal Law* 23, p. 494.

minimum standards for the establishment of a Vessel Monitoring System and the identification of non-compliance.⁶¹⁶

In 2008 Bulgaria and Romania became Member States of the EU. The CFP and its relevant regulations, particularly the IUU Regulation, the Control Regulation and the Council Regulation 1006/2008, apply to the Black Sea through those countries. Since then, they have been fishing sprat and turbot under a quota system.⁶¹⁷ According to the 2013 final report of the joint GFCM BSC workshop on IUU fishing in the Black Sea, IUU fishing happens frequently in Bulgarian waters. In 2012, 254 infringements were reported. So Bulgaria has developed and implemented three information systems according to the EU Regulations, including an Information Statistical system, a Vessel Monitoring System and a Fishing Fleet Register for the commercial and recreational fishing fleet. In addition, a particular database has been created within the Vessel Monitoring System, which allows faster identification of fishing vessels and contributes a lot to the fighting against IUU fishing in Bulgarian waters.⁶¹⁸

This report also shows that there were eight Turkish boats and one Bulgarian fishing boat that had been caught while practicing illegal fishing of dogfish in Romanian waters between 2007 and 2011. In recent years, the reports of illegal fishing in Romanian waters is minimal due to “*better frontier control and implementation of security measures since Romania has joined the EU*”. Romania has taken monitoring or controlling systems for fishing fleets in its waters, including track records on length categories, the Coastal Fishing Logbook and the Black Sea Fishing Logbook. In addition, vessels licensed for commercial fishing in the Black Sea must be assigned to the Landing Point and First Sale Center/Point. When landing the fish, it is required to fill in a Landing Statement. Romania has also approved closed seasons for two main target species of IUU fishing, including turbot and dogfish.⁶¹⁹

⁶¹⁶ See: Res. GFCM/2008/1 on a regional scheme on port State measures to combat illegal, unreported and unregulated fishing in the GFCM area; Rec. GFCM/33/2009/8 on the establishment of a list of vessels presumed to have carried out IUU fishing in the GFCM Area, amending Recommendation GFCM/2006/4; Rec. GFCM/33/2009/7 concerning minimum standards for the establishment of a Vessel Monitoring System in the GFCM area; Rec. GFCM/34/2010/3 concerning the identification of the non-compliance.

⁶¹⁷ GFCM (2013) Final report of joint GFCM BSC workshop on IUU fishing in the Black Sea. <http://151.1.154.86/GfcmWebSite/MeetingsReportsRepository.html>. Accessed 27 February 2013, p. 29.

⁶¹⁸ GFCM (2013) Final report of joint GFCM BSC workshop on IUU fishing in the Black Sea, para. 19.

⁶¹⁹ GFCM (2013) Final report of joint GFCM BSC workshop on IUU fishing in the Black Sea, para. 20, pp. 33-34.

Bulgaria and Romania have been working together on implementing a protocol on controls and surveys under the relevant EU regulations. For example, they have a joint inspection scheme which “enables to carry out inspections by nationals of one country on fishing vessels of the other in EU waters”.⁶²⁰ Therefore, Bulgaria and Romania have taken certain measures to combat IUU fishing since they joined the EU, which is expected to promote responsible fisheries in the Black Sea.

There is not sufficient information about IUU fishing in the Mediterranean Sea. According to a speech of Commissioner Damanaki, Italian authorities and the Commission have closely cooperated and verified that no new illegal driftnet activity has been found in the Mediterranean Sea.⁶²¹ The EU also actively promotes Vessel Monitoring Systems as a tool for a possible joint inspection scheme in the Mediterranean Sea and provides technical assistance to GFCM Members.⁶²²

3.3.2 The monitoring, control and surveillance over EU fishing vessels and waters

Since January 2005, all EU fishing vessels above 15 meters length overall have installed a Vessel Monitoring System.⁶²³ The system is also compulsory for EU fishing vessels above 12 meters since 1 January 2012.⁶²⁴ However, the Vessel Monitoring System cannot achieve the expected effect if the Vessel Monitoring System installed on a particular vessel is switched off or malfunctioning.⁶²⁵ Unlike Vessel Monitoring Systems, the Vessel Detection System does not need the cooperation of fishermen. The Joint Research Centre of the European Commission (JRC) has been running Vessel Detection System campaigns for several years.

⁶²⁰ GFCM (2013) Final report of joint GFCM BSC workshop on IUU fishing in the Black Sea, paras. 19 and 44.

⁶²¹ GFCM (2012) Driftnets, international fisheries and GFCM reform. Available via GFCM. <http://www.gfcm.org/gfcm/topic/16084/en>. Accessed 8 November 2012.

⁶²² GFCM (2012) Report of the thirty-sixth session. Marrakech, Morocco, 14-19 May 2012. GFCM Report No 36. FAO, Rome, p. 55.

⁶²³ Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems; OJ L 333 of 20 December 2003, pp. 17-27, Art. 2.

⁶²⁴ Council Regulation (EC) No 1224/2009, Art. 9 (2).

⁶²⁵ Alvarez M, Barbas T (2010) The Vessel Detection System – satellite technology for fisheries monitoring, control and surveillance. Available via European Commission JRC. ipsc.jrc.ec.europa.eu/fileadmin/docs/JRC58358.pdf. Accessed April 2010.

According to the study of the JRC, the Vessel Detection System can provide an image of almost any area on the earth every one to three days and to detect nearly all vessels subject to a Vessel Monitoring System under most weather conditions. Thus, the Vessel Detection System has been proven an established technological instrument to monitor fishing vessels.⁶²⁶

The Parliament issued Resolution P7_TA(2011)0516 of 17 November 2011 on Combating Illegal Fishing at the Global Level - the Role of the EU.⁶²⁷ The Resolution calls on the Commission and EU Member States to cooperate to establish a “European coastguard” for improving common monitoring and inspection capacity, as well as combating the problems at sea, such as terrorism, piracy, IUU fishing, trafficking and marine pollution.⁶²⁸ Although the European coastguard has not been established yet, the European Coast Guard Functions Forum has been created as a non-binding, voluntary, independent and non-political forum. Membership of the European Coast Guard Functions Forum includes the Heads of the Coast Guards or equivalent of each EU maritime State and associated Schengen countries, the European Commission and its institutions and agencies with related competencies in Coast Guard Functions.⁶²⁹ The European Coast Guard Functions Forum aims to study, contribute to and promote understanding and development of maritime issues of importance and of common interest related to Coast Guard Functions across borders and sectors, both civil and military, and to contribute to the progress of various Coast Guard Function activities.⁶³⁰

3.3.3 Sightings at sea and followed investigation

In order to implement the provisions of fishing vessel sighting at sea adopted by several RFMOs that the EU participates in, a Member State’s authority responsible for inspection at sea when it sights a fishing vessel engaged in IUU fishing

⁶²⁶ Alvarez and Barbas (2010) The Vessel Detection System – satellite technology for fisheries monitoring, control and surveillance.

⁶²⁷ European Parliament (2011) European Parliament Resolution P7_TA(2011)0516 of 17 November 2011 on Combating Illegal Fishing at the Global Level – the Role of the EU. Available via European Parliament. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2011-0516+0+DOC+XML+V0//EN>. Accessed 2 March 2014.

⁶²⁸ European Parliament Resolution P7_TA(2011)0516, para. 12.

⁶²⁹ European Coast Guard Functions Forum (2014) Mission & Tasks. www.ecgff.eu/mission-tasks. Accessed 8 April 2014.

⁶³⁰ European Coast Guard Functions Forum (2014) Mission & Tasks.

shall issue a report of the sighting.⁶³¹ The flag Member State shall start an investigation into the vessel as well as notify the results and actions taken to the Commission. Except for the flag Member States, other concerned Member States “shall... verify whether the sighted fishing vessels reported have carried out activities in maritime waters under their jurisdiction or if fisheries products stemming from those vessels have been landed or imported into their territory and shall investigate their record of compliance with relevant conservation and management measures”.⁶³²

3.3.4 Control of EU nationals and legal persons

The IUU Regulation requires Member States to identify nationals who support or are engaged in IUU fishing, including “by engagement on board or as operators or beneficial owners of fishing vessels included in the Community IUU vessel list” and to take appropriate actions.⁶³³ In order to prevent nationals being engaged in IUU fishing, Member States shall “encourage nationals to notify information pertaining to legal, beneficial, or financial interests in, or control of, fishing vessels flagged to a third country which they hold and the names of the vessels concerned”. In addition, nationals are required “not to sell or export any fishing vessel to operators involved in the operation, management or ownership of fishing vessels included in the Community IUU vessel list”.⁶³⁴ Member States shall not grant any public aid under national aid regimes or under Community funds to such operators.⁶³⁵ Furthermore, Member States shall obtain information of the arrangements between nationals and third countries allowing reflagging of fishing vessels flying Member States' flag to such third countries and inform such information to the Commission.⁶³⁶ Nevertheless, the control of nationals by Member States should not prejudice the primary responsibilities of the flag State.⁶³⁷

According to the investigations into flags of convenience (FOC) by the Environmental Justice Foundation in 2012, 12 per cent (100 vessels) of 841 large-scale fisheries vessels in 2011 flagged to the top 13 FOC registries that were owned by EU companies.⁶³⁸ Trygg Mat has conducted an analysis of the fishing vessels flagged to the first eight countries that have been identified as potential non-

⁶³¹ Council Regulation (EC) No 1005/2008, Art. 48.

⁶³² Council Regulation (EC) No 1005/2008, Art. 50 (2).

⁶³³ Council Regulation (EC) No 1005/2008, Art. 39 (1)(2)(3).

⁶³⁴ Council Regulation (EC) No 1005/2008, Art. 40 (1) (2).

⁶³⁵ Council Regulation (EC) No 1005/2008, Art. 40 (3).

⁶³⁶ Council Regulation (EC) No 1005/2008, Art. 40 (4).

⁶³⁷ Council Regulation (EC) No 1005/2008, Art. 39 (2).

⁶³⁸ EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU, p. 31.

cooperating third countries by the Commission and what companies have been involved as owners or operators of them. According to the research, 27 per cent of the vessels with known owners and 24 per cent of the vessels with foreign operators are operated by EU based companies from 14 EU Member States.⁶³⁹ There are more vessels controlled by EU based companies than by any other single State.⁶⁴⁰

The European Maritime Affairs and Fisheries Commissioner, Maria Damanaki, has stated that the Commission has requested Member States to carry out enquiries to identify European beneficial owners of vessels flagged to FOC countries according to the requirement of Article 40 of the IUU Regulation.⁶⁴¹ However, Member States have not submitted relevant information to the Commission in this respect.⁶⁴²

3.4 External implementation

3.4.1 Implementation of port State measures

3.4.1.1 Port access and transshipment

Port State measures adopted by the IUU Regulation are mainly consistent with the provisions of the FAO Port State Measures Agreement, including designating ports, prior notice, authorization, recording of landing or transshipment operations.⁶⁴³ More practically, Commission Regulation No 202/2011 provides forms for prior notification for third country fishing vessels.⁶⁴⁴ The Implementing Regu-

⁶³⁹ Trygg Mat (2012) A brief analysis of EU IUU listed countries fishing vessels. <http://tryggmat.no/archives/357>. Accessed 15 November 2012.

⁶⁴⁰ Trygg Mat (2012) A brief analysis of EU IUU listed countries fishing vessels.

⁶⁴¹ European Parliament (2011) Answer given by Ms Damanaki on behalf of the Commission to question on increasing transparency regarding European fishing vessels using flags of convenience by Kriton Arsenis. <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-9839&language=EN>. Accessed 14 January 2011.

⁶⁴² EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU, p. 31.

⁶⁴³ Council Regulation (EC) No 1005/2008, Arts. 5-8.

⁶⁴⁴ Commission Regulation (EU) No 202/2011, Annex II.

lation of the IUU Regulation enumerates forms for pre-landing declarations and pre-transshipment declarations.⁶⁴⁵ EU's port State measures concentrate on not only fishing vessels flying the flag of third countries but also EU fishing vessels. IUU fishing vessels flying the flag of a Member State shall only be authorized access to their home ports and to no other Community port.⁶⁴⁶

With the implementation of the IUU Regulation, the visit of IUU listed vessels to EU ports has been decreasing. From January 2004 to December 2009, there were 97 visits by RFMOs IUU listed vessels to ports in 15 Member States of the EU, among which five were made to Estonia, four to Malta, eight to Lithuania, 16 to Germany, two to the UK and one to Sweden.⁶⁴⁷ According to an independent review of the IUU Regulation made by the Institute for European Environmental Policy (IEEP) in 2011, no vessel on the Community IUU vessel list had been found in the ports of those six EU countries after the IUU Regulation entered into force.⁶⁴⁸ The independent review does not reveal the situation of the other Member States because they did not respond to the questionnaires, in particular Spain, which had the most port visits by IUU listed vessels from the beginning of 2004 till the end of 2009. The data of the above mentioned 6 countries refers to the strict port control and inspection prohibiting for IUU listed vessels from entering the EU's ports. However, the catches from these IUU listed vessels still can access Member States ports by reefers. Therefore, the strict control on transshipment should be a priority too.

The IUU Regulation has made stricter restrictions on the transshipments than the FAO Port State Measures Agreement. On the one hand, when a third country's fishing vessel is a part of the transshipment, it is prohibited to tranship in Community waters. The transshipment can only take place in the port. On the other hand, fishing vessels flying the flag of a Member State are prohibited to tranship catches from third country fishing vessels at sea outside Community waters, unless the

⁶⁴⁵ Commission Regulation (EC) No 1010/2009, Annex IIA, IIB, IIIA, IIIB.

⁶⁴⁶ Council Regulation (EC) No 1005/2008, Art. 37 (5).

⁶⁴⁷ The PEW Environment Group (2010) Port State performance – European Union.

http://www.portstateperformance.org/index.php/_countries/country/europe/. Accessed 21 May 2010. Further information can also be found from online databases maintained by Lloyd's Register – Fairplay (SeaWeb), Lloyd's MIU and Shipspotting.com.

⁶⁴⁸ This result is based on questionnaires answered by Member States including the UK, Estonia, Malta, Lithuania, Germany and Sweden. Lutchman I, Newman S and Monsanto M (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations. Available via IEEP. <http://www.ieep.eu/publications/2011/12/independent-review-of-the-eu-illegal-unreported-and-unregulated-regulations>. Accessed 2 December 2011.

fishing vessels are registered as carrier vessels under the auspices of a RFMO.⁶⁴⁹ Therefore, transshipment at sea is mainly prohibited by the IUU Regulation.

As to the transshipments between third countries' fishing vessels outside Community waters, it may be authorized to tranship at sea, for instance, in countries like Gambia, Guinea Bissau, Guinea, Sierra Leone, Liberia, Ghana and Gabon.⁶⁵⁰ Lack of a ban on transshipments at sea in certain developing countries is mainly because their ports cannot accommodate large reefers.⁶⁵¹ However, their authorization to tranship at sea cannot guarantee sufficient monitoring by their authorities, which leaves a large loophole to transport such IUU catches to the EU market and launder fish under a different identity.⁶⁵² For example, illegal transshipments at sea by Korean flagged vessels in violation of coastal States laws and regulations were taking place along the West African coast from Angola to Guinea Bissau during four years.⁶⁵³ Thus, it is recommended that the EU only authorize consignments that are positively confirmed that the transshipment has been monitored by coastal States and the flag States of both the fishing vessel and the reefer.⁶⁵⁴

3.4.1.2 Port inspection

The IUU Regulation and its implementing regulations specify the general principles and procedures of inspection. EU Member States are required to carry out inspections in their ports on at least 5 per cent of landing and transshipment operations by third country fishing vessels each year.⁶⁵⁵ The Implementing Regulation of the IUU Regulation and the Commission Regulation No 202/2011 elaborate on the benchmarks for sampling.⁶⁵⁶ In addition, the following fishing vessels shall be inspected in all cases: fishing vessels that have been sighted and suspected to have conducted IUU fishing, fishing vessels reported in the framework of a notification made under the Community Alert System, fishing vessels listed on the Community IUU vessel list, and fishing vessels contained in the IUU vessel lists of RFMOs in which the EU has participated.⁶⁵⁷ If the results of the inspection provides evidence and shows that a fishing vessel has been engaged in IUU fishing, the com-

⁶⁴⁹ Council Regulation (EC) No 1005/2008, Art. 4 (3)(4).

⁶⁵⁰ EJF (2013) Transshipment at sea: the need for a ban in West Africa, p. 3.

⁶⁵¹ EJF (2013) Transshipment at sea: the need for a ban in West Africa, p. 2.

⁶⁵² EJF (2013) Transshipment at sea: the need for a ban in West Africa, p. 7.

⁶⁵³ The Commission Decision of 2013/C 346/03, para. 27.

⁶⁵⁴ EJF (2013) Transshipment at sea: the need for a ban in West Africa, p. 8.

⁶⁵⁵ Council Regulation (EC) No 1005/2008, Art. 9 (1).

⁶⁵⁶ Commission Regulation (EC) No 1010/2009, Art. 4. And: Commission Regulation (EU) No 202/2011, Art. 2 (1).

⁶⁵⁷ Council Regulation (EC) No 1005/2008, Art. 9 (2).

petent authority of the port Member State shall not authorize the landing or transshipment of catches.⁶⁵⁸ In cases where the infringements have occurred on the high seas, the port Member State is required to cooperate with the flag State in conducting an investigation.⁶⁵⁹ Where the breach happened in the maritime waters of a third country, the port Member State is required to cooperate with the coastal State to carry out the investigation.⁶⁶⁰ However, critics assert that the IUU Regulation does not provide for the prevention of unnecessary delay of inspection and does not create a system for compensation and complaint if unnecessary delay happens.⁶⁶¹

From 1 January 2010 till the end of 2012, the Commission investigated more than 200 cases with vessels from 27 countries. Consequently, certain flag States (Comoros, Lithuania, Republic of Korea and Spain among others) and coastal States (Liberia, Sierra Leone, and Guinea Bissau) have imposed sanctions against a large number of vessels.⁶⁶² The aim of the EU's endeavour is to persuade flag and/or coastal States to sanction the infringements committed. For example, EU's investigations lead to sanctions of 4.2 million EUR in a case involving 16 Korean vessels and a Panamanian vessel fishing off West Africa. Although these vessels are not included in the Community IUU vessel list, "*the culture of compliance continues spreading*".⁶⁶³ Additionally, the Commission has also conducted audits and verification missions in four EU Member States to encourage them to reinforce port inspection since the IUU Regulation entered into force.⁶⁶⁴

However, the enforcement of port State control in the EU still needs to be improved. Due to the lack of customs control, inspectors and resources, as well as more important priorities such as terrorism and human trafficking, certain big ports are a paradise for IUU fishing to enter the EU's market.⁶⁶⁵ For example, Las Palmas in Spain is the most notorious port of convenience in the EU through

⁶⁵⁸ Council Regulation (EC) No 1005/2008, Art. 11 (2).

⁶⁵⁹ Council Regulation (EC) No 1005/2008, Art. 11 (4).

⁶⁶⁰ Council Regulation (EC) No 1005/2008, Art. 11 (4).

⁶⁶¹ Tsamenyi M, Palma MA, Milligan B and Mfodwo K (2009) The new EC regulation on illegal fishing: implications for ACP countries. Available via Commonwealth Secretariat. http://www.secretariat.thecommonwealth.org/document/190628/159719/159720/187911/tht56_the_new_ec_regulation_on_illegal_fishing.htm. Accessed 29 January 2014, p. 4.

⁶⁶² European Commission (2012) Question and answers on the EU's fight against illegal fishing. Available via Europa. http://europa.eu/rapid/press-release_MEMO-12-859_en.htm. Accessed 15 November 2012, p. 2.

⁶⁶³ Europa (2013) Intervention in the European Parliament plenary session on Illegal, Unregulated and Unreported (IUU) fishing.

⁶⁶⁴ European Commission (2012) Question and answers on the EU's fight against illegal fishing, p. 3

⁶⁶⁵ Lutchman et al. (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations, p. 18.

which millions of euros worth of illegal catches enter Europe. Las Palmas had five inspectors in 2011.⁶⁶⁶ A vessel inspection of one container can take hours, so it is unsurprising that illegal catches can enter the port. The situation leads to increasing personnel to conduct vessel inspections in certain Member States, such as Germany and the UK.⁶⁶⁷

Nevertheless, even if Member States increase personnel to inspect vessels, in practice it is impossible to inspect each vessel that visits ports. So attention should be paid to fish caught from certain “high risk areas” and to certain species with high commercial value. West African waters suffer the most from IUU fishing in the world.⁶⁶⁸ Most illegal catches from that area are exported to the EU market. From the IUU Regulation entered into force till 31 July 2012, the Environmental Justice Foundation recorded ten vessels conducting illegal fishing in southern Sierra Leone, among which nine vessels exported their catches to Europe.⁶⁶⁹ Thus, the Environmental Justice Foundation recommended Member States of the EU to adopt “*a proactive risk-based approach to port controls and verifications, ensuring that consignments from high risk areas, such as West Africa, are prioritized*”.⁶⁷⁰ In February 2013, the Department for Environment Food & Rural Affairs of the UK (DEFRA) issued a letter to stakeholders informing them that the port health officers would pay more attention to consignments of tuna coming from the coast of West Africa.⁶⁷¹ This is a sign that the Member States of the EU have started to focus more on port inspections of vessels operating in the waters of West Africa.

⁶⁶⁶ Lutchman et al. (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations, p. 18. And: EJF (2011) Impacts of IUU fishing. <http://www.ejfoundation.org/page163.html>. Accessed 18 November 2011.

⁶⁶⁷ Lutchman et al. (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations, table 2.

⁶⁶⁸ Agnew DJ, Pearce J, Pramod G et al (2009) Estimating the worldwide extent of illegal fishing. Available via Plos One. <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0004570>. Accessed 25 February 2009

⁶⁶⁹ EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU, p. 4.

⁶⁷⁰ EJF (2012) Through the net. The implementation of the EU Regulation to Prevent, Deter and Eliminate IUU Fishing. EJF, London, p. 13.

⁶⁷¹ DEFRA (2013) Important information regarding the import of West African fish products into EU and UK markets. Available via Seafish. <http://www.seafish.org/processors/legislation/legislation-news/iuu-heightened-monitoring-of-west-african-fish>. Accessed 28 February 2013.

3.4.2 Trade-market measures

3.4.2.1 Catch Certification Scheme

The Catch Certification Scheme is the heart of the IUU Regulation. The core of the Catch Certification Scheme is the certification of fish caught according to applicable laws, regulations and international conservation and management measures.⁶⁷² Any fish imported in the EU's market must be accompanied with a catch certificate, containing detailed information about the fishing vessel, the catches, transshipments, importation and other required information. It should be validated by the flag State of the fishing vessel. However, if the importing Member State has doubts about the authenticity of a catch certificate or suspects non-compliance of a fishing vessel, a fishing company or any fishing operator, competent authorities of the Member State may carry out verifications.⁶⁷³ If the catch certificate cannot fulfil the requirements of the IUU Regulation, fish and fish products cannot be imported in the EU.

As to the importation of fish products processed in a third country other than the flag State, the importer is required to submit to the authorities of the importing Member State a statement established by the processing plant in that third country. The statement should contain a description of the unprocessed and processed products and their respective quantities.⁶⁷⁴ It also needs to indicate that the processed products have been processed in that third country from catches accompanied by catch certificate(s) validated by the flag State.⁶⁷⁵ The statement must be accompanied by the original catch certificate(s) or a copy of the original catch certificate(s).⁶⁷⁶

The requirements of catch certificates and related documents are consistent with the main international and regional fisheries agreements. Catch documents as well as re-export certificates validated by the catch documentation scheme of a RFMO in which the EU participates, can be accepted as the catch certificate and the statement of the processing plant.

As of 26 April 2013, there were 93 States that had decided to implement the IUU Regulation, including many EU's major fish suppliers, such as Norway, China and the US.⁶⁷⁷ This shows that most of the EU's fisheries partners would like to

⁶⁷² Council Regulation (EC) No 1005/2008, Art. 12 (3).

⁶⁷³ Council Regulation (EC) No 1005/2008, Art. 17(1)(4)(a)(b)(c).

⁶⁷⁴ Council Regulation (EC) No 1005/2008, Art. 14(2)(a).

⁶⁷⁵ Council Regulation (EC) No 1005/2008, Art. 14(2)(b).

⁶⁷⁶ Council Regulation (EC) No 1005/2008, Art. 14(2)(c).

⁶⁷⁷ Desquiens D (2013) The IUU Regulation: illustration of the potentialities of the EU legal instrument to fight against IUU fishing. Presentation presented in the round-table on current international legal issues in the field of fisheries, the Catholic University of Louvain, Louvain-la-Neuve, 26 April 2013.

comply with the EU's Catch Certification Scheme. As mentioned previously, almost 16 per cent of the EU's imports of fish are from IUU fishing. Data from the State of World Fisheries and Aquaculture 2010 and 2012 of the FAO showed that the EU's fish imports from third countries had been increasing since 2009.⁶⁷⁸

On the one hand, IUU catches have been prohibited from the EU market and have been transferred to other markets that have fewer restrictions. On the other hand, fraud has weakened the role of Catch Certification Scheme. According to Carlos Dominguez Diaz, the Secretary General of Fisheries of the Ministry of Agriculture, Food and Environment in Spain, there were only 7 consignments that were rejected among 42,000 requests for import of fishing products in 2011; however, the number of rejection was even higher than that of other Member States.⁶⁷⁹

Compared with the percentage of IUU imports, the number of rejections is very small. It is unknown how much IUU catches have been transferred to other markets, but it is pretty unquestionable that the validation by certain flag States is a big issue that hinders the effectiveness of the Catch Documentation Scheme. Ghana is an example that has validated catch certificates without real verifications and checks of information submitted, so that several importations of fishery products caught illegally by Ghanaian vessels have been rejected by several EU Member States.⁶⁸⁰ However, it is indisputable that there are still importations with unverified catch certificates that have not been found by EU Member States.

Falsified documents also make the verification difficult. Korean-flagged vessels have used falsified coastal State administrative documents to import into the EU fisheries products caught under illegal conditions in the coastal State jurisdictional waters.⁶⁸¹ Moreover, they have also used falsified or invalid documents for obtaining validation of catch certificates from the Korean authorities and importation of the products into the EU.⁶⁸²

The case of Seta No. 73 is an example that fraud exists in the validation of flag States. A large consignment of fish illegally caught by Korean-flagged trawlers in waters of several West African countries was transported by the Panama-flagged Seta No 73 refrigerated cargo vessel to the Spanish port of Las Palmas. After receiving the alert of the Environmental Justice Foundation, which investigated these activities, the Commission worked with Spain's Ministry of Environment, Rural and Marine Affairs (MARM) to seize the fish. The MARM carried out veri-

⁶⁷⁸ From 2008 to 2011, the EU respectively imported 23.9 billion USD, 21.4 billion USD, 23.7 billion USD, 26.5 billion USD. See: FAO (2010) The state of world fisheries and aquaculture 2010. FAO, Rome, p. 53; and FAO (2012) The state of world fisheries and aquaculture 2012, p. 72.

⁶⁷⁹ Dominguez Diaz C (2013) Objective in the fight against IUU fishing. Available via European Bureau for Conservation & Development. www.ebcd.org/pdf/presentation/283-Dominguez_Diaz_EN.pdf. Accessed 20 March 2013.

⁶⁸⁰ The Commission Decision 2013/C 346/03, para. 100.

⁶⁸¹ The Commission Decision 2013/C 346/03, para. 22.

⁶⁸² The Commission Decision 2013/C 346/03, para. 22.

fication under Article 17 of the IUU Regulation and requested the assistance from Korea as the flag State, which accredited the catches were legal. In addition, the Commission also conducted investigations and contacted Panama as the flag State of the Seta No. 73 and the West African coastal States. However, although receiving information from the Commission that Sierra Leone, Liberia, Guinea and Guinea Bissau had confirmed the vessels concerned had breached their laws, the MARM ignored the information of these coastal States and released the fish. The MARM made this decision based on the validation of catch certificates by Korea as the flag State. In fact, even though such vessels did not install Vessel Monitoring Systems, the catch certificates were still validated by the flag State. Therefore, when there was evidence that shows the possibility of IUU fishing and lack of effective flag State control, the MARM should have suspected the authenticity of those catch certificates.

Thus, in order to implement effectively the Catch Certification Scheme, authorities of Member States should not only rely on the validation of flag States. Except for the validation of flag States, a robust Vessel Monitoring System and an electronic logbook should be accompanied with required information.⁶⁸³ Other authors have called upon the compulsory utilization of electronic catch certificates in order to reduce the possibilities of fraud brought by paper certifications.⁶⁸⁴ Until March 2013, Norway, the US, New Zealand, South Africa, Canada, Faroe Islands respectively used their own electronic system to replace the EU's catch certificate and re-export certificate; and, Iceland uses the Icelandic catch certificate and the European Community re-export certificate.⁶⁸⁵ On the other hand, EU Member States should improve their communication with coastal States from where the fish is caught.

The functioning of the EU's Catch Certification Scheme is limited, even if it is effective. The European Parliament encourages the Commission to develop a global catch documentation scheme.⁶⁸⁶ Maria Damanaki also believes, "*a world-wide catch certification system remains...the best solution to ensure traceability and transparency*".⁶⁸⁷ The EU's plan is very ambitious, which aims to implement the catch certification system both at global level and for all species entering international trade. At present, the CCAMLR *Dissostichus* spp. Catch documentation scheme and the ICCAT bluefin tuna Catch Documentation Programme have

⁶⁸³ EJF (2012) *Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU*, p. 32.

⁶⁸⁴ Lutchman et al. (2011) *Independent review of the EU Illegal Unreported and Unregulated Regulations*, p. 21.

⁶⁸⁵ Commission Regulation (EU) No 86/2010, Annex II; Commission Implementing Regulation (EU) No 1222/2011, Annex I and II; Commission Regulation (EU) No 395/2010, Annex.

⁶⁸⁶ European Parliament Resolution P7_TA(2011)0516, para. 56.

⁶⁸⁷ Damanaki D (2013) keynote. Speech presented at the 8th international forum on illegal, unreported and unregulated (IUU) fishing, Chatham House, London, 11-12 February 2013.

been recognized as complying with the requirements of the IUU Regulation.⁶⁸⁸ Additionally, the CCBST Catch Documentation Scheme is also recognized by the EU subject to additional conditions.⁶⁸⁹ As mentioned previously, several States also have their own electronic traceability system. It seems that the first step to establish a global catch documentation system should start with the coordination and integration of existing catch documentation schemes and electronic traceability systems. In addition, the success of the global catch documentation system needs a strict port control; otherwise illegal catches still enter international trade easily through ports of convenience. Therefore, the coordination between trade-market measures and port State measures is imperative for the success of those measures.

3.4.2.2 IUU vessels lists

If the information obtained according to Article 25 of the IUU Regulation shows that a fishing vessel may be engaged in IUU fishing, the Commission shall notify the flag State by an official request and the flag State should make an enquiry into the alleged IUU fishing of its flagged vessel.⁶⁹⁰ If the flag State does not comply with the official requests, the fishing vessel will be included in the Community IUU vessel list.⁶⁹¹ As to fishing vessels included in the Community IUU vessel list, Member States shall refuse or withdraw fishing authorization, not provide assistance to fish processing operations or transshipments or joint operations, refuse port services, refuse the granting of the flag, prohibit the importation, exportation and re-exportation.⁶⁹² After achieving conditions provided in Article 28 of the IUU Regulation, identified IUU fishing vessels can be removed from the Community IUU vessel list.⁶⁹³

After the IUU Regulation entered into force, the Commission has adopted Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (2010) to establish the EU IUU vessel list.⁶⁹⁴ Each year, the Commission adopts an implementing Regulation to amend the Annex of the Commission Regulation No 468/2010, which contains an annual update of IUU vessels. At present, Commission Implementing Regulation No 724/2011,⁶⁹⁵ Commission Implementing Regu-

⁶⁸⁸ Commission Regulation (EC) No 1010/2009, Annex V. Also see: Commission Regulation (EU) No 202/2011, Art. 2 (3).

⁶⁸⁹ Commission Regulation (EC) No 1010/2009, Annex V.

⁶⁹⁰ Council Regulation (EC) No 1005/2008, Art. 26(1)(2).

⁶⁹¹ Council Regulation (EC) No 1005/2008, Art. 27(1).

⁶⁹² Council Regulation (EC) No 1005/2008, Art. 37.

⁶⁹³ Council Regulation (EC) No 1005/2008, Art. 28.

⁶⁹⁴ Commission Regulation (EU) No 468/2010, p 22.

⁶⁹⁵ Commission Implementing Regulation (EU) No 724/2011, p. 14.

lation No 1234/2012,⁶⁹⁶ and Commission Implementing regulation No 672/2013⁶⁹⁷ have been adopted.

According to the recent Community IUU vessel list published by the Commission, vessels listed on the Community IUU vessel list are all from IUU vessel lists adopted by RFMOs in which the EU participates.⁶⁹⁸ Like most RFMOs, the Commission updates its Community IUU vessel list annually. On one hand, the close cooperation with RFMOs on IUU vessel lists reduces the opportunities for IUU fishing vessels to get port services. Sunny Jane, a Belize flagged fishing vessel owned by a UK-registered company, encountered a series of port State actions in the EU Member States' ports, such as being refused to fuel at Las Palmas in Spain, being denied to land frozen tuna at Puebla del Caraminal, and being included in the NEAFC lists.⁶⁹⁹ This vessel was finally removed from the NEAFC B-list until it had been immobilized and scrapped in a Spanish port.⁷⁰⁰

However, the effectiveness of current RFMOs IUU vessel lists has been criticized because those lists are too slowly updated and the containing or removal of a vessel is utilized as a bargaining chip during negotiations in RFMOs.⁷⁰¹ In facing this situation, it is recommended to establish the EU's own list according to Article 27 of the IUU Regulation and to update the list more frequently.⁷⁰² However, the EU has not established its own IUU vessel list yet. According to Mr. Damien Desquiens, a policy officer of DG MARE of the Commission, only when identified vessels do not pay for imposed sanctions will they be put on the EU IUU vessel list. Currently, adequate sanctions have been imposed on identified vessels, so it is not necessary to include such vessels on the EU IUU vessel list because the listing of those vessels would be a double sanction.⁷⁰³ Therefore, the EU IUU vessel list played more a role of threat than an actual enforcement.

RFMOs' IUU vessel lists are based on multilateral negotiations, accepted according to WTO provisions and encouraged by the IPOA-IUU. The establishment of the EU's own IUU vessel list should avoid unilateral action. Before the EU includes a vessel in its own IUU vessel list, it shall provide the owner and the opera-

⁶⁹⁶ Commission Implementing Regulation (EU) No 1234/2012, p. 38.

⁶⁹⁷ Commission Implementing Regulation (EU) No 672/2013, p. 6.

⁶⁹⁸ Commission Implementing Regulation (EU) No 1234/2012, Annex.

⁶⁹⁹ NEAFC (2006) Performance review panel report of the north East Atlantic Fisheries Commission. <http://www.neafc.org/system/files/performance-review-final-edited.pdf>. Accessed in 2006. pp. 71-71.

⁷⁰⁰ NEAFC (2010) Report of the 29th annual meeting of the NEAFC. http://www.neafc.org/past_meetings. Accessed 12 November 2010, p. 16.

⁷⁰¹ Lutchman et al. (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations, p. 14.

⁷⁰² Lutchman et al. (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations, p. 20.

⁷⁰³ Interview with Mr. Damien Desquiens in the round-table on current international legal issues in the field of fisheries, the Catholic University of Louvain, Louvain-la-Neuve, 26 April 2013.

tor of the fishing vessel the opportunity of being heard and being able to defend. In addition, the EU needs to request the flag State to enquire the alleged IUU fishing of their flagged vessels. When the flag State does not comply with the EU's official requests, the EU can include vessels concerned in the EU's own IUU vessel list.

However, the scheme of IUU vessel list still has disadvantages. When looking at the Community IUU vessel list, it can be seen that most of the vessels on the list do not have an International Maritime Organization ship identification number. Without unique vessel identification, vessels can avoid being identified through changing names or flags.⁷⁰⁴ Thus, the effectiveness of the Community IUU vessel list must be ensured by the unique vessel identification number. Given there is no Global Record of fishing vessels, which assigns each industrial fishing vessel a unique vessel identification, the Environmental Justice Foundation recommended that the EU requires all large-scale industrial vessels exporting to its market to obtain an International Maritime Organization number.⁷⁰⁵

3.4.2.3 Non-cooperating third countries

Chapter VI of the IUU Regulation provides the procedures for identifying, including and removing non-cooperating third countries and measures in respect of non-cooperating third countries.

Under Article 31(3) of the IUU Regulation, “*any third country may be identified as a non-cooperating third country if it fails to discharge the duties incumbent upon it under international law as flag, port, coastal, or market State, to take action to prevent, deter and eliminate IUU fishing*”. The list of non-cooperating third countries aims to utilize trade-market measures to encourage coastal, flag, port, processing or marketing States to take their duties in the fight against IUU fishing. The IPOA-IUU and its implementing instruments do not have any provision for the list of non-cooperating third countries against IUU fishing. However RFMOs, such as ICCAT, have implemented such measures already.⁷⁰⁶ Such a measure may be challenged as WTO-incompatible if a non-party to the RFMO complains that another member implementing such a measure is infringing its WTO rights, although this has not happened yet.⁷⁰⁷

⁷⁰⁴ The PEW Environment Group (2010) Port State performance – European Union.

⁷⁰⁵ EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU, p. 34.

⁷⁰⁶ See Section 2.3.1.1.

⁷⁰⁷ Tarasofsky R (2007) Enhancing the effectiveness of regional fisheries management organizations through trade and market measures. Available via Chatham

The EU list of non-cooperating third countries goes further because it is an unilateral action outside RFMO processes.⁷⁰⁸ Although Paragraph 66 of the IPOA-IUU explicitly recommends “*unilateral trade-related measures should be avoided*”, unilateral measures might be “*justified*”.⁷⁰⁹ The IUU Regulation implicitly stipulates the consistency with WTO obligations.⁷¹⁰ However, in order not to be challenged to the WTO, the EU should avoid implementing this measure in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries or a disguised restriction on international trade. Through a review of the implementation of the EU list of non-cooperating third countries, the consistency between EU trade-market measures and WTO obligations can be extrapolated.

EU decision-making process concerning the list of non-cooperating third countries is transparent and the decisions to apply trade measures were taken after other alternative measures have failed. A Decision on notifying Belize, Cambodia, Fiji, Guinea, Panama, Sri Lanka, Togo and Vanuatu of the possibility of being identified as non-cooperating third countries was issued on 15 November 2012.⁷¹¹ On 26 November 2013, the Commission communicated the same kind of notification to Curaçao, the Republic of Ghana and the Republic of Korea.⁷¹² This review mainly uses the first eight countries as examples to demonstrate under what conditions the EU considers identifying a country as a non-cooperating third country because the identification of the first eight countries has already had specific results.

The notifications mentioned above were of a preliminary nature and were based on the criteria laid down in Article 31 of the IUU Regulation. Third countries concerned were given the opportunity to submit evidence in order to refute or complete that facts invoked in the notifications and to take a plan of action to improve.⁷¹³ Fiji, Panama, Sri Lanka, Togo and Vanuatu made credible progress in close cooperation with the Commission, including motioning new legislation and improving their monitoring, control and inspection systems, so the EU extended

House. www.chathamhouse.org/publications/papers/view/108484. Accessed 9 April 2014, p. 4.

⁷⁰⁸ Tsamenyi M, Palma MA, Milligan B and Mfodwo K (2010) The European Council Regulation on Illegal, Unreported and Unregulated Fishing: an international fisheries law perspective. *The International Journal of Marine and Coastal Law* 25, p. 31.

⁷⁰⁹ Birnie P, Boyle A and Redgwell C (2009) *International law & the environment*, third edition. Oxford University Press, Oxford; New York, p. 776.

⁷¹⁰ Council Regulation (EC) No 1005/2008, para. 31. Also see: Takei Y (2013) International legal responses to the flag State in breach of its duties: possibilities for other States to take action against the flag State. *Nordic Journal of International Law* 82, p. 307.

⁷¹¹ Commission Decision 2012/C 354/01, p. 1

⁷¹² Commission Decision 2013/C 346/03, p. 26.

⁷¹³ Council Implementing Decision 2014/170/EU, para. 8.

the dialogue with these countries.⁷¹⁴ For Belize, Cambodia and Guinea, progress was not satisfactory, so the Commission identified them as non-cooperating third countries on 26 November 2013.⁷¹⁵ The three countries were officially included in the list of non-cooperating third countries on 28 March 2014.⁷¹⁶

The identification usually begins with a mission carried out by the Commission to the concerned third State in the context of administrative cooperation provided by Article 20 (4) of the IUU Regulation. The Commission mainly examined four aspects. The first aspect is the recurrence of IUU vessels and IUU trade flows. Belize, Cambodia, Guinea, Panama, Sri Lanka, Togo and Vanuatu all failed to take the duties incumbent upon them under international law as flag States over IUU vessels and IUU fishing conducted or supported by fishing vessels flying their flag or by their nationals. They did not take sufficient measures to deal with documented and recurring IUU fishing by vessels previously flying their flag.⁷¹⁷ Moreover, Guinea did not fulfil its duties as a coastal State.⁷¹⁸ Ghana failed to discharge the duties incumbent upon it under international law as market State to prevent access of fisheries products stemming from IUU fishing to its market, which was also one of the reasons why Ghana was notified.⁷¹⁹ It should be pointed out that there was no evidence showing that Fiji flagged fishing vessels were contained in any IUU lists, and there was no evidence of past infringements of Fiji flagged IUU vessels.⁷²⁰ The Commission therefore concluded “*it is not necessary to evaluate compliance of Fiji’s action to prevent, deter, and eliminate IUU fishing, with its duties under international law as a flag State in respect of IUU vessels and IUU fishing carried out or supported by fishing vessels flying its flag or by its nationals*”.⁷²¹ This is because a third State may be included in the non-cooperating third countries list due to the failure of discharging other flag State duties.

The second aspect taken into account is whether the IUU fishing activities mentioned in the first aspect violate the obligations incumbent on the relevant State according to international law. Fiji neither had fishing vessels listed on IUU lists nor was there past infringement of Fiji flagged vessels. Attention was paid to the lack of national legal provisions against IUU fishing or over Fiji flagged fishing vessels on high seas, which was considered as failing to discharge the duties as a

⁷¹⁴ Europa (2013) European Commission intensifies the fight against illegal fishing. http://europa.eu/rapid/press-release_IP-13-1162_en.htm. Accessed 6 February 2014.

⁷¹⁵ Commission Implementing Decision 2013/C 346/02, p. 2.

⁷¹⁶ Council Implementing Decision 2014/170/EU, para. 36. Council Implementing Decision 2014/170/EU is a result of investigation and dialogue procedures.

⁷¹⁷ Commission Decision 2012/C 354/01, paras. 29, 81, 164, 240, 300, 356, 398.

⁷¹⁸ Commission Decision 2012/C 354/01, para. 164.

⁷¹⁹ Commission Decision 2013/C 346/03, para. 92.

⁷²⁰ Commission Decision 2012/C 354/01, para. 111.

⁷²¹ Commission Decision 2012/C 354/01, para. 112.

flag State in respect of cooperation and enforcement.⁷²² Without the found infringements of RFMO measures, the EU could not consider Fiji as a non-cooperating third country only relying on the lack of legislation, because domestic legislation belongs to a country's national jurisdiction. Although Cambodia has not signed or ratified any international fisheries agreements, the Commission still maintained that Cambodia had infringed the obligations as a flag State on the high seas as codified by Article 91, 94, 117 and 118 of the UNCLOS because those provisions were already customary international law.⁷²³

Furthermore, when the Commission identifies whether the third countries discharge their duties in cooperating and enforcing their duties in combating IUU fishing, it examines the participation of such third countries in international fisheries instruments according to the Article 31 (6) (a) of the IUU Regulation. Normally, the Commission analyses whether the third countries have complied with international fisheries instruments ratified or accessed to as flag, coastal, port and market States. Additionally, the Commission also examines the implementation of IPOA-IUU by such third countries. However, the IPOA-IUU is a non-legally binding instrument, so implementation is not mandatory. Therefore, it is disputable that the EU considers the implementation of IPOA-IUU as a criterion to decide whether to identify countries as non-cooperating third countries. Consequently, the EU stated in the Commission Implementing Decision 2013/C 346/02 "*the lack of compliance with non-binding recommendations and resolutions has been considered only as supporting evidence and not as a basis for the identification*".⁷²⁴

The third aspect that needs to be considered is the failure to implement international rules by third countries. The Commission examines whether third countries comply with management and conservation measures adopted by RFMOs that the third countries participate in or whether their fishing vessels operate in accordance with RFMOs measures under the conventional areas of RFMOs of which they are not parties. Except for existing IUU fishing activities, failing to submit or delaying submitting necessary information and reports to concerned RFMOs is a major reason that those countries are believed to have not discharged flag State duties. This is mainly why Fiji was considered to not comply with its flag State duties. The Commission is not satisfied with these countries because: they have failed to establish a rebuilding programme for particular species; they have not complied with Vessel Monitoring System standards; they have not complied with the requirement for non-national observers; they have overharvested their quotas for particular species; the transshipping at sea; being FOC; they have not developed national plans of action against IUU fishing.⁷²⁵

The last element that the Commission takes into consideration is the constraints of developing countries, which is compatible with the WTO. Belize, Fiji, Panama, Sri Lanka are lower or upper middle income countries. The EU has provided specific technical assistance to Fiji, Panama and Sri Lanka. The EU held that the four

⁷²² Commission Decision 2012/C 354/01, paras. 114-116.

⁷²³ Commission Decision 2012/C 354/01, para. 72.

⁷²⁴ Commission Implementing Decision 2013/C 346/02, para. 21.

⁷²⁵ Commission Decision 2012/C 354/01, paras. 41, 43, 91, 96, 97, 128.

countries could not be considered to have constraints directly due to the level of their development. The remaining countries are all belonging to lesser developed countries. Cambodia, Togo and Vanuatu all lack specific provisions in their national legal framework referring to international instruments to combat IUU fishing. The three countries also failed to establish a sanction system for infringements of international management and conservation measures in respect of high seas fishing. The EU deemed that this absence and failure was not directly due to the level of their development.⁷²⁶ Despite financial or technical assistance the EU has provided to Guinea, Togo and Vanuatu, those countries failed to take concrete corrective actions or to make progress in combating IUU fishing.

Although some criteria are open for questions, three countries are identified as non-cooperating third countries because they have failed to submit sufficient evidence and their plans of action have not been fully implemented. As a result, actions in respect of Belize, Cambodia and Guinea are listed in Article 38 of the IUU Regulation, mainly including the prohibition of importation.

3.4.2.4 Traceability and the Community Alert System

As early as in 2000, the Commission launched the “TraceFish” project, short for “Traceability of Fish Products”, which established a set of international standards to ensure the traceability of seafood products from catcher to retailer.

In recent years, the role of techniques in traceability is emphasized by the EU. The Parliament calls on the Commission and Member States to support the utilization of techniques in traceability, such as “*satellite tracking of fishing and support vessels and electronic tags to track fish, as well as the establishment of global fish DNA and other genetic databases to identify the fish products and their geographical origin*”.⁷²⁷

If the information obtained refers to the non-compliance by fishing vessels or fishery products from certain third countries, the Commission shall publish an alert notice on its website and the Official Journal of the European Union to warn operators and to ensure that Member States take appropriate measures in respect of such third countries.⁷²⁸ This regulation also provides specific actions to be followed by Member States, such as the verification of the catch certificate, enquiries, investigations or inspections at sea, in ports or any other landing places, as well as the actions taken by the Commission in case of the annulment of an alert or ensuring non-compliance.⁷²⁹ At present, the Community Alert System has not been established and the reason for the delay is not clear.

⁷²⁶ Commission Decision 2012/C 354/01, paras. 100, 356 and 436.

⁷²⁷ European Parliament Resolution P7_TA(2011)0516, para. 57.

⁷²⁸ Council Regulation (EC) No 1005/2008, Art. 23.

⁷²⁹ Council Regulation (EC) No 1005/2008, Art. 24.

3.4.2.5 Cooperation with other fish markets

Cooperation plays a significant role in combating IUU fishing. For the EU, its cooperation mechanism is to verify the compliance of countries and evaluate the obligations of flag, port, coastal or market State under international law and RFMOs, and their implementation of the EU's Catch Documentation Scheme.⁷³⁰ In addition, the Commission carried out on the spot evaluations in a number of countries and regions in 2012, including Philippines, Taiwan, Thailand, Ivory Coast, Vietnam, Vanuatu, Fiji, Indonesia and Korea.⁷³¹ The EU's examination is aimed at calling upon these countries to solve problems when implementing the international and regional law, as well as the IUU Regulation. Until the end of 2012, 15 evaluation missions had been carried out in third countries. Such evaluation missions not only ensure a reliable traceability system from fishing to the EU's market, but also impel the reform in legislation and administration in third countries, for instance, by amending their national law to combat IUU fishing or involving in the compliance of international and regional fisheries instruments.⁷³²

The EU does not consider combating IUU fishing as its own work, but creates a wider network with major seafood importers, such as the US and Japan, which are the third and second seafood importers in the world. In 2011 and 2012, the EU issued two bilateral statements with the US and Japan respectively.⁷³³ The EU, the US and Japan have promised that they will not import seafood coming from illegal fishing.⁷³⁴ However, the two statements do not specifically mention the prohibition of exporting illegal fishing. It deems that these statements are only focusing on the

⁷³⁰ Stylianos M (2013) Update on the implementation of the EU IUU fishing regulation. Presented at the 8th International Forum on Illegal, Unreported and Unregulated Fishing, Chatham House, London, 11-12 February 2013.

⁷³¹ Stylianos M (2013) Update on the implementation of the EU IUU fishing regulation.

⁷³² European Commission (2012) Question and answers on the EU's fight against illegal fishing, p. 3.

⁷³³ On 7th September 2011, Maria Damanaki, European Commissioner for Maritime Affairs and Fisheries, and Dr. Jane Lubchenco, under Secretary of Commerce for Oceans and Atmosphere signed a Joint Statement to combat IUU fishing in Washington. On 11th July, Maria Damanaki, European Commissioner for Maritime Affairs and Fisheries, and Akira Gunji, minister of Agriculture, Forestry and Fisheries signed a Joint Statement on mutual cooperation in the fight against IUU fishing in Tokyo.

⁷³⁴ European Commission Website, 'EU and US join efforts against illegal fishing', http://ec.europa.eu/commission_2010-2014/damanaki/headlines/press-releases/2011/08/20110907_en.htm. Also see: European Commission Website, 'European Union and Japan join forces against illegal fishing', http://ec.europa.eu/commission_2010-2014/damanaki/headlines/press-releases/2012/07/20120711_en.htm.

importation, rather than the exportation. The bilateral cooperation has already taken effects. The US identified six States whose fishing vessels engaged in IUU fishing in 2011. According to the Magnuson-Stevens Fishery Conservation and Management Act of 2006, if a nation fails to address the illegal fishing or bycatch, this nation's fishing vessels may be prohibited from entering the US ports and imports of fish and fish products from that nation into the US may be denied.⁷³⁵ After two-year consultations and corrective actions, all the six States received positive certification in the 2013 Report to Congress.⁷³⁶ This is a progress made by the US as a port and market State in combating IUU fishing.

As China is one of the EU's main fisheries products suppliers, the Parliament has expressed the urgency of a discussion between the EU and China on using trade-market measures to prohibit IUU fish from entering their markets. At the 8th International Forum on Illegal, Unreported and Unregulated Fishing, Mr. Stylianos Mitolidis from the Directorate General for Maritime Affairs and Fisheries of the Commission, mentioned that the Commission had visited China two times for examining the situation of IUU fishing in China.⁷³⁷ Maria Damanaki, the Commissioner for Maritime Affairs and Fisheries, has also stated that the EU has reached out to the US, Canada, Russia, Norway and the focus will be on China and Asia in general.⁷³⁸ What the Commission and the Ministry of Agriculture of China will discuss is not publicly accessible now. As the largest fish and fisheries products producer, it can be foreseen that if China joins the EU policy, it will boost the combat of IUU fishing.

⁷³⁵ The Magnuson-Stevens Fishery Conservation and Management Act was first enacted in 1976 and amended in 1996. Available via NOAA Fisheries. www.nmfs.noaa.gov/msa2005/.

⁷³⁶ NOAA Fisheries (2013) Improving international fisheries management, Report to Congress pursuant to Section 403 (a) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, January 2013. http://www.nmfs.noaa.gov/ia/iuu/msra_page/2013_biennial_report_to_congress__jan_11__2013__final.pdf. Accessed 25 September 2013.

⁷³⁷ Interview with Mr. Stylianos Mitolidis at the 8th International Forum on Illegal, Unreported and Unregulated Fishing.

⁷³⁸ Damanaki M (2013) Sailing on Europe's seas. Available via Horizon 2020 Projects. <http://horizon2020projects.com/sc-bioeconomy-interviews/sailing-on-europes-seas/>. Accessed 9 February 2014.

3.5 Other issues

3.5.1 Information publicity, transparency and exchange

The Commission states that most information concerning the combating of IUU fishing can be found on the DG Mare website or in the Official Journal of the European Union (OJ). Except for legislation and documents in this respect already published in the OJ, activities of the Commissioner, as well as meetings and events, are also publicly available on the DG Mare website. The communication between Member States and the Commission is through internet.

However, information about implementation is not publicly accessible to a large extent. The DG Mare states that all documents about the Community IUU vessel list are published in the OJ and internet; while, information about investigations into countries that may be considered as non-cooperating third countries is confidential.⁷³⁹

Article 55 of the IUU Regulation requires Member States to transmit a report to the Commission on the application of this Regulation every two years, not later than 30 April of the following calendar year. However, such reports are still not available on the DG Mare website. This Article also addresses that the Commission shall submit a report that is based on the Member States reports to the Parliament and to the Council every three years, which means that the Commission should have reported on the implementation of the IUU Regulation by the end of 2013. However, together with an evaluation of the impact of this Regulation, the Commission report has yet to be published.

3.5.2 Sanctions

The Control Regulation and the IUU Regulation mainly provide administrative sanctions, not only for legal persons but also for natural persons. Most of those sanctions are temporary measures.

Article 42 (1) of the IUU Regulation describes three situations of serious infringements. They include conducting activities prescribed in Article 3 of the IUU Regulation,⁷⁴⁰ conducting business directly connected to IUU fishing, and the falsification of documents or the use of false or invalid documents.

⁷³⁹ Lutchman et al. (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations, table 1.

⁷⁴⁰ Article 3 of Council Regulation (EC) No 1005/2008 provides: “1. A fishing vessel ... has: (a) fished without a valid license, authorization or permit issued by

In order to stop serious infringements conducted by a natural person or a legal person and to allow the authorities to complete an investigation, Member States can take the following immediate enforcement measures: “(a) the immediate cessation of fishing activities; (b) the rerouting to port of the fishing vessel; (c) the rerouting of the transport vehicle to another location for inspection; (d) the ordering of a bond; (e) the seizure of fishing gear, catches or fisheries products; (f) the temporary immobilization of the fishing vessel or transport vehicle concerned; (g) the suspension of the authorization to fish”.⁷⁴¹ All those immediate enforcement measures are administrative measures that immediately stop IUU fishing and prevent the infringements from continuing.

Sanctions for serious infringements include administrative sanctions and criminal sanctions. The fine as sanction is to multiply the value of fishery products obtained by committing such serious infringements. The maximum administrative sanctions are at least eight times the value of such fishery products.⁷⁴² In addition, other sanctions can be applied, including “(a) the sequestration of the fishing vessel involved in the infringement; (b) the temporary immobilization of the fishing vessel;⁷⁴³ (c) the confiscation of prohibited fishing gear, catches or fishery products; (d) the suspension or withdraw of authorization to fish; (e) the reduction or withdraw of fishing rights; (f) the temporary or permanent exclusion from the right to obtain new fishing rights; (g) the temporary or permanent ban on access

the flag State or the relevant coastal State; or (b) not fulfilled its obligations to record and report catch or catch-related data...; or (c) fished in a closed area, during a closed season, without or after attainment of a quota or beyond a closed depth; or (d) engaged in directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited; or (e) used prohibited or non-compliant fishing gear; or (f) falsified or concealed its marking, identity or registration; or (g) concealed, tampered with or disposed of evidence relating to an investigation; or (h) obstructed the work of officials... or observers... in the exercise of their duties; or (i) taken on board, transhipped or landed undersized fish in contravention of the legislation in force; (j) transhipped or participated in joint fishing operations with, supported or re-supplied other fishing vessels identified as having engaged in IUU fishing under this Regulation, in particular those included in the Community IUU vessel list of a [RFMO]; or (k) carried out fishing activities in the area of a [RFMO] in a manner inconsistent with or in contravention of the conservation and management measures of that [RFMO] and is flagged to a State not party to that [RFMO], or not cooperating with the [RFMO]...; or (l) no nationality.... 2. The activities set out in paragraph 1 shall be considered as serious infringements in accordance with Article 42 depending on the gravity of the infringement in question which shall be determined by the competent authority of the Member State, taking into account the criteria such as the damage done, its value, the extent of the infringement or its repetition”.

⁷⁴¹ Council Regulation (EC) No 1005/2008, Article 43.

⁷⁴² Council Regulation (EC) No 1005/2008, Art. 44.

⁷⁴³ This includes detention or inspection of fishing vessels.

*to public assistance or subsidies; (h) the suspension or withdraw of the status of approved economic operator... ”.*⁷⁴⁴

In addition, legal persons have liabilities for serious infringements that have been committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, and having a determining position within the legal person.⁷⁴⁵ Liability of a legal person does not exclude proceedings against natural persons who are perpetrators, instigators or accessories in the infringements concerned.⁷⁴⁶ In the worst case, an EU importing company’s top management can face criminal charges and even jail sentencing.⁷⁴⁷ In addition, permanent sanctions such as withdrawal of licenses and denial of access to port facilities are also called upon in case of serious infringements.⁷⁴⁸ The Environmental Justice Foundation suggests the EU to establish a blacklist of companies that have repeatedly conducted illegal fishing.⁷⁴⁹

3.6 Conclusion

The EU has clearly divided the role of decision-making and enforcement in fisheries management and conservation among its institutions. The Treaty of Lisbon confirms the EU’s competence over fisheries. Although the Treaty of Lisbon states that the EU has exclusive competence to ratify treaties only in the area of conservation of marine biological resources under the Common Fisheries Policy, the EU indeed enjoys a broader exclusive competence to ratify treaties beyond conservation of marine biological resources with third States. Conversely, the power of an individual Member State to conclude treaties has been reduced in recent years.

The EU’s increasing exclusive competence is reflected in the EU’s active role in major international fisheries instruments, no matter whether they are legally binding or non-legally binding. The EU’s legal framework in this respect is mainly based on the international legal framework. It has transposed major FAO measures against IUU fishing into its Community law and policies, such as the IUU Regulation, the Council Regulation No 1006/2008 and the Control Regulation.

⁷⁴⁴ Council Regulation (EC) No 1005/2008, Art. 45.

⁷⁴⁵ Council Regulation (EC) No 1005/2008, Art. 47 (1).

⁷⁴⁶ Council Regulation (EC) No 1005/2008, Art. 47 (3).

⁷⁴⁷ Atuna (2013) West African canned tuna now a major risk for importers. <http://www.atuna.com/NewsArchive/ViewArticle.asp?ID=12561>. Accessed 21 February 2014.

⁷⁴⁸ European Parliament Resolution P7_TA(2011)0516, para. 21.

⁷⁴⁹ EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU, p. 32.

As to the combating of IUU fishing, adopting flag State measures to conserve and manage marine biological resources mainly lie within the EU's exclusive competence. However, fishing vessel registration, flag State duties over masters and other officers of fishing vessels, as well as the exercise of jurisdiction over its vessels on the high seas, belong to the competence of the Member States. In the beginning, adopting port State measures lied within the shared competence of the EU and Member States. Nevertheless, adopting port State measures has become the exclusive competence of the EU, particularly reflected in ratifying the FAO Port State Measures Agreement. Therefore, port State measures are mostly promoted in the international society by the EU for the purpose of combating IUU fishing. This is because not only port State measures are efficient and cost-effective, but also the EU can adopt comprehensive and uniform measures for its Member States. As to coastal State measures and trade-market measures, there is no official document showing the divisions of competence between the EU and its Member States. However, the EU has adopted regulations on those measures that are directly applicable in all Member States and entirely binding.

The EU has adopted ambitious port and trade-market measures to combat IUU fishing. Since the IUU Regulation entered into force, the implementation of such measures has achieved certain progress. However, several important measures have not been implemented or completely implemented, which weakens the effectiveness of those measures. The role of the EU in combating IUU fishing is becoming critical not only at the regional level but also at the international level. The EU is using its port State measures and trade-market measures to influence third countries to conserve and manage fisheries resources. The EU also actively encourages major fish markets to join in its work. It can be anticipated that EU's port and trade-market measures will be more effective with the suggested improvements.

The EU also provides strict coastal and flag State measures to control fishing activities within the waters of the Community or conducted by EU fishing vessels. However, the implementation of such measures in waters of the EU' Member States is much better than that in waters of third countries. The EU needs urgently to implement further measures to control the nationals of its Member States engaged in IUU fishing in third country waters.

It takes time for the EU's various measures to take effect. As a pioneer in combating IUU fishing in the international society, the EU's endeavour is also an example whether international fisheries law is applicable and effective because the EU's measures are mostly in accordance with international fisheries law. In addition, the EU's implementation will immensely influence other countries, especially those with fisheries relationship with the EU. In the next Chapter, China's legislation and implementation in this respect will be discussed.

Chapter 4 Chinese Law

4.1 Introduction

Map 4.1 The China Sea



Howstuffworks: <http://geography.howstuffworks.com/oceans-and-seas/the-china-sea.htm>

China is a coastal State with 18,000 km coastline off its mainland and 6,536 islands with a surface larger than 500 m².⁷⁵⁰ The total area claimed under China's jurisdiction is almost 3,000,000 km², covering an internal sea - the Bohai Sea - and three semi-enclosed seas - the Yellow Sea, the East China Sea and the South China Sea (hereinafter called the China Sea) (cf. Map. 4.1). The wide sea area has provided China with abundant marine living resources and has promoted the rapid development of marine fisheries. China has become one of the major fishing countries with more than 9 million people engaged as fishermen, accounting for 24 per cent of the world's total.⁷⁵¹ However, due to heavy overfishing, IUU fishing and the deteriorating of the marine environment, fisheries resources in China's marine area are continuously declining. In order to conserve and to manage fisheries resources, China adopted a marine fishing vessel reduction plan for 2003-2010, which did achieve a reduction by 2008 close to the target, but after that both the number of vessels and the total combined power has started to increase again.⁷⁵² The resource shortage intensified due to the implementation of the United Nations Convention on the Law of the Sea (UNCLOS) and the establishment of 200-nautical-mile exclusive economic zones (EEZs), which has resulted in fishing conflicts between China and its neighbouring States and many incidents of IUU fishing. In China, IUU fishing is generally called illegal fishing. IUU fishing takes various forms like: fishing without a license, fishing with a license but in a manner that violates national fisheries laws and regulations.

In order to alleviate the scarcity of resources, China actively promotes the development of its distant water fisheries. China's distant water fisheries began in 1985. Now China has the largest number of distant water fishing vessels in the world, although its production capacity and industrial scale is much smaller than that of developed countries.⁷⁵³ As a consequence of the implementation of the UNCLOS and certain post-UNCLOS international fisheries agreements, China's high seas fisheries are all under the management of regional fisheries bodies while fishing in waters within the jurisdiction of other countries are also under fisheries agreements with relevant countries. The international legal framework for combating IUU fishing requires China to be a responsible fishing State.

⁷⁵⁰ Wikipedia (2013) China coastline (in Chinese). http://en.wikipedia.org/wiki/China_coastline. Accessed 16 October 2013; Baidu Encyclopedia (2013) China's islands. <http://baike.baidu.com/view/1106813.htm>. Accessed 16 October 2013.

⁷⁵¹ FAO (2012) The state of world fisheries and aquaculture 2012. FAO, Rome, p. 43.

⁷⁵² FAO (2012) The state of world fisheries and aquaculture 2012, p. 11.

⁷⁵³ Research group on "Supporting and strengthening distant water fisheries" (2010) Supporting distant water fisheries as a strategic industry (in Chinese). Available via National Bureau of Statistics of China. http://www.stats.gov.cn/tjsujia/zggqgl/t20101018_402676860.htm. Accessed 18 October 2010.

Additionally, China puts a lot of emphasis on aquaculture and its fisheries processing industry. China is the world's largest fish processor and exporter. In 2010, China contributed to almost 12 per cent of the world's exports of fish and fisheries products that were worth about 13.3 billion USD, and increased further to 17.1 billion USD in 2011.⁷⁵⁴ Additionally, China became the third-largest importer of fish and fisheries products in the world in 2011.⁷⁵⁵ Thus, China plays a significant role in combating IUU fishing as a fish market.

This Chapter aims to study the Chinese performance in combating IUU fishing and how China transforms international fisheries laws into domestic fisheries laws. The implementation of such laws is discussed as well. First, the Chapter introduces China's legislative bodies and administrative bodies in the field of fisheries law. Then we discuss the adoption and ratification of international fisheries instruments, particularly the reasons why China has not ratified certain instruments. After that, the Chapter focuses on China's domestic legislation and policies on the issue of combating IUU fishing. Finally, measures adopted and implemented by China against IUU fishing are analysed.

4.2 Legal framework

4.2.1 Institutions

4.2.1.1 Lawmaking institutions

In order to ensure a high level of centralization and to maintain the unity of the entire legal system, the Law on Legislation of the People's Republic of China codifies that the National People's Congress (NPC) and its Standing Committee have legislative authority to make law (*falü*) according to the Constitution.⁷⁵⁶ In the field of fisheries-related law, the Fisheries Law of the People's Republic of China is the fundamental law that was adopted by the Standing Committee of the NPC in 1986.⁷⁵⁷

⁷⁵⁴ FAO (2012) The state of world fisheries and aquaculture 2012, p. 70.

⁷⁵⁵ FAO (2012) The state of world fisheries and aquaculture 2012, p. 16.

⁷⁵⁶ The Law on Legislation of the PRC, Art. 7, adopted at the third Session of the Ninth National People's Congress and promulgated by Decree 31 of the President of the PRC on 15 March 2000, and entered into force on 1 July 2000.

⁷⁵⁷ Adopted at the 14th Meeting of the Standing Committee of the NPC and promulgated by Decree No 34 of the President of the PRC on 20 January 1986,

Additionally, the State Council, which is the highest administrative authority, can adopt administrative rules and regulations (*xingzheng fagui*) in accordance with the Constitution and laws,⁷⁵⁸ such as the Detailed Rule of Implementing Fisheries Law of the People's Republic of China and the Regulation of the PRC on the Administration of Traffic Safety on Fishing Port Waters.

The ministries and commissions of the State Council can issue rules (*bumen guizhang*) within the limits of their power in accordance with laws as well as administrative regulations, decisions and orders of the State Council,⁷⁵⁹ such as the Provisions on the Administration of Fishery Licensing adopted by the Ministry of Agriculture and Notices on Prohibiting the Use of Large-scale Drift Fishing on High Sea enacted by the Ministry of Agriculture in 1993. Administrative rules and regulations adopted by the State Council as well as the rules issued by the Ministry of Agriculture occupy a predominant position in China's fisheries legislation. This is because laws adopted by the NPC or its Standing Committee are general and to certain extent vague; while local government and its agencies know more specific information and consider more practical issues than legislatures, which ensures higher effectiveness of the lawmaking.⁷⁶⁰ However, the involvement of the State Council as well as its ministries and commissions, especially its departments at the local level, results in "departmentalism" (*bumenzhuyi*), which means government and its agencies expand on organizational interests and avoid responsibilities through lawmaking.⁷⁶¹ However, the purpose of lawmaking should be the fulfilment of common interests. Although the achievement of common interests needs the government and its agencies, the interests of the government does not always represent common interests.⁷⁶² For example, certain fisheries departments control loosely the closed fishing season or region in order to temporarily increase the economic interests of local governments.⁷⁶³ Another disputed issue is that the

revised by Decree No 38 of the President of the PRC on 31 October 2000, by Decree No 25 of the President of the PRC on 28 August 2004, by Decree No 18 of the President of the PRC on 28 August 2009 and by Decree No 8 of the President of the PRC on 28 December 2013 respectively. All amendments are available via Pkulaw.cn. <http://en.pkulaw.cn.epoxy1.lib.hku.hk/>. Accessed 10 April 2014.

⁷⁵⁸ The Law on Legislation of the PRC, Art. 56.

⁷⁵⁹ The Law on Legislation of the PRC, Art. 71.

⁷⁶⁰ Tang Y, Zhu Y (2007) Surmounting departmental legislation (in Chinese). Outlook Weekly 4, p. 47.

⁷⁶¹ Cho YN (2006) The politic of lawmaking in Chinese local people's congresses. The China Quarterly 187, p. 596; Paler L (2005) China's Legislation Law and the making of a more orderly and representative legislative system. The China Quarterly 182, p. 309.

⁷⁶² Xu Y, Han L (2007) Departmental interests – non-erasable trace departmental legislation (in Chinese). Journal of Shan Xi Police Academy 15 (3), p. 30.

⁷⁶³ Yan X, Huang S (2009) Preliminary study of China's fishery administrative system reformation (in Chinese). Journal of Shanghai Ocean University 18 (2),

government is both a lawmaking institution and an administrative body. This allows the government and its agencies to make laws with few limitations. Avoiding the abuse of power by the government and its agencies is the big challenge in China's lawmaking.

Because China's fisheries legislation system is a hierarchical system, the people's congresses or their standing committees of the provinces, autonomous regions and municipalities directly under the Central Government can establish local regulations that do not contradict the Constitution, the laws and the administrative regulations.⁷⁶⁴ In cases where contradiction happens, certain State and local organs, including the State Council, the Central Military Commission, the Supreme People's Court, the Supreme People's Procuratorate and the standing committees of the people's congresses of the provinces, autonomous regions and municipalities directly under the Central Government, may submit to the Standing Committee of the NPC written requests for examination and suggestions.⁷⁶⁵ Local governments can establish rules to implement the provisions of law, administrative regulations and local regulation or to govern special administrative matters pertaining to their respective administrative areas.⁷⁶⁶

4.2.1.2 Administrative bodies

The Chinese fisheries administration system is a decentralized system. Article 6 of the Fisheries Law of the PRC provides the general principle for this system:

“The department of fishery administration under the State Council shall be in charge of the administration of fisheries throughout the State. Departments of fishery administration under people's governments at or above the country level shall be in charge of fisheries in their respective areas. These departments shall be authorized to set up fishery superintendence agencies in important fishing areas and fishing ports”.

The Ministry of Agriculture is the major central governmental agency in charge of the fisheries administration in China. It determines the total allowances for sea catches in areas within the jurisdiction of China, approves Chinese vessels, nationals and enterprises fishing in sea waters of other countries and manages issues

p.219. Also see: Zhang J (2002) On reformation of fishery administration in new position (in Chinese). Chinese Fisheries Economics (5), p. 20.

⁷⁶⁴ The Law on Legislation of the PRC, Art. 63.

⁷⁶⁵ The Law on Legislation of the PRC, Art. 90.

⁷⁶⁶ The Law on Legislation of the PRC, Art. 73.

referring to fishing licenses at national level.⁷⁶⁷ The Fisheries Bureau of the Ministry of Agriculture (Fisheries Bureau) represents the State when it exercises administrative and supervisory authority over internal affairs and external relationships pertaining to fisheries and fishing ports. Its specific roles include the registration and superintendence of fishing vessels at national level, permitting foreigners and foreign fishing vessels to fish in China's jurisdictional waters⁷⁶⁸ as well as issuing catch certificates and endorsing statements of the processing plant.

At the First Session of the 12th NPC, a report was delivered by the State Councillor Kai Ma concerning restructuring of the National Oceanic Administration. The plan for institutional reform and functional transformation of the State Council was approved by a decision of the First Session of the 12th NPC on 14 March 2013. The restructured National Oceanic Administration of the Ministry of Land and Resources, which is also called the National Maritime Police Administration, integrates the Marine Surveillance of the Ministry of Land and Resources, the Coast Guard Forces of the Public Security Ministry, the Fisheries Law Enforcement Command of the Ministry of Agriculture, and the Maritime Anti-smuggling Police of the General Administration of Customs (cf. Fig. 4.1). The purpose of the move is to enhance the efficiency in maritime law enforcement, to improve conservation and management of marine resources, and to safeguard the country's maritime rights and interests.⁷⁶⁹

The Fisheries Law Enforcement Command, which was an organ of the Fisheries Bureau, was established to enforce law under China's national jurisdiction, including "*protecting Chinese fishing vessels and personnel, resolving disputes in fishing activities, preventing illegal fishing and protecting maritime resources*".⁷⁷⁰ At regional level, the Ministry of Agriculture set up three bureaus of fisheries administration for the Yellow and Bohai Seas, the East China Sea and the South China Sea. The three bureaus of fisheries administration are also integrated into three branches of the National Oceanic Administration in three marine areas respectively.⁷⁷¹ Thus China's maritime law enforcement is highly concentrated in the hands

⁷⁶⁷ Fisheries Law of the PRC, Arts. 8, 22 and 23; Administrative Provisions for Distant Water Fisheries, Art. 3; and Provisions on the Administration of Fishery Licensing, Art. 5.

⁷⁶⁸ Fisheries Law of the PRC, Art. 8. Also see: Measures of the PRC on the Registration of Fishing Vessels, Art. 3.

⁷⁶⁹ Deng S (2013) China to restructure oceanic administration, enhance maritime law enforcement. Available via English.news.cn. http://news.xinhuanet.com/english/china/2013-03/10/c_132221768.htm. Accessed 10 March 2013.

⁷⁷⁰ Sinodefence (2009) China Fisheries Law Enforcement Command (FLEC). <http://www.sinodefence.com/navy/fisheries/fisheries-law-enforcement.asp>. Accessed 14 March 2009.

⁷⁷¹ Email communication with Mr. Shuxian Sun, the Chief Engineer of China's National Oceanic Administration.

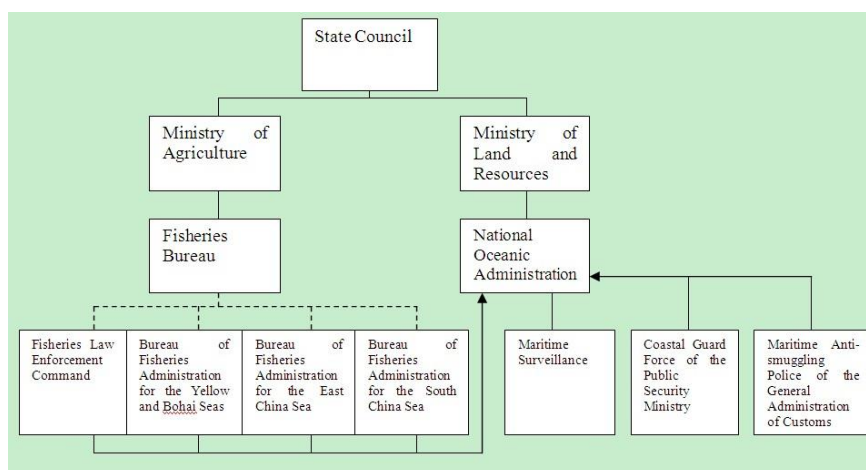
of the National Oceanic Administration, which is supposed to resolve conflicts of administrative functions among different administrative bodies. It can be expected that integrating the Fisheries Law Enforcement Command into the National Oceanic Administration will also enhance the ability to combat IUU fishing in China's maritime waters. According to Article 5 of the Provisions on the Administration of Fishery Licensing,⁷⁷² the three bureaus are also in charge of the management and implementation of fishing licenses in their respective areas. However, it is still unknown whether this function of the three bureaus will be transferred to the National Oceanic Administration.

Except for the fisheries administrative functions discussed above, departments of fishery administration under governments of coastal provinces, autonomous regions and centrally-administered municipalities remain in charge of marine fisheries administration in their respective administrative divisions.

In addition, fisheries organizations and associations also engage in fisheries management through authorization of law and regulations. For example, the China Aquatic Products Processing and Marketing Association (CAPPMA) and the China Distant Water Fisheries Association (CDWFA) are commissioned by the Fisheries Bureau to examine preliminarily catch certificates and statements by the processing plant, including coordination, contact, receiving and sending documents and other relevant issues.

⁷⁷² Adopted at the ninth executive meeting of the Ministry of Agriculture on 9 May 2002, promulgated by Decree No 19 of the Ministry of Agriculture on 23 August 2002 and entered into force on 1 December 2002, revised by Decree No 38 of the Ministry of Agriculture on 1 July 2004, by Decree No 6 of the Ministry of Agriculture on 8 November 2007 and by Decree No 5 of the Ministry of Agriculture on 31 December 2013. Available via Pkulaw.cn. <http://222.178.216.125/rewriter/BDFB/http/dm9ojtk-v9bm/display.aspx?cgid=216559&lib=law>. Accessed 13 April 2014.

Fig. 4.1 Major administrative bodies of fisheries management in China



4.2.2 China and international law

Article 3 of the Law of the People's Republic of China on the Procedure of the Conclusion of Treaties⁷⁷³ provides for the treaty-making capacity of entities in China. The State Council concludes treaties and agreements with foreign States. But the ratification and abrogation of treaties and important agreements can only be decided by the Standing Committee of the NPC. Then, the President of the People's Republic of China ratifies or abrogates treaties and important agreements in accordance with decisions of the Standing Committee of the NPC, which is merely a procedure without any substantive or procedural review.⁷⁷⁴

⁷⁷³ Adopted at the 17th Meeting of the Standing Committee of the Seventh NPC on 28 December 1990, promulgated by Decree No 37 of the President of the PRC and entered into force on 28 December 1990. Available via Pkulaw.cn. <http://www.lawinfochina.com/display.aspx?lib=law&id=1213&CGid=>. Accessed 14 April 2014.

⁷⁷⁴ Xie X (2012) China's procedure of the conclusion of treaties and the treaty capacity – the review of China's Law of the Procedure of the Conclusion of Treaties (in Chinese). *Journal of the East China University of Politics Science and Law* (1), p. 48.

4.2.2.1 China's participation in the UNCLOS

China signed the UNCLOS on 10 December 1982 when the Convention was opened for signature and ratified it on 6 June 1996. However, bordering three semi-enclosed seas puts China at a disadvantage under the Convention because China has to deal with overlapping boundaries with its neighbours opposite or adjacent to its own coast and within 400 nautical miles.⁷⁷⁵ For example, no distance between opposing coastlines in the Yellow Sea exceeds 400 nautical miles; and most of the East China Sea is less than 400-nautical-mile width. In the South China Sea, the situation is more complicated. China (including Taiwan) is adjacent to or opposite five neighbouring countries, including Vietnam, Malaysia, the Philippines, Brunei Darussalam and Indonesia. Most of them have contested sovereignty or sovereign rights to different parts in this area.⁷⁷⁶

Fisheries issues within national jurisdiction cannot be separated from the agreement on the boundary delimitation. China has merely signed one maritime delimitation agreement with its neighbouring States. It is the Agreement on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves in the Gulf of Tonkin between the People's Republic of China and Vietnam.⁷⁷⁷ Meanwhile, China and Vietnam have signed the Agreement of fisheries cooperation in the Gulf of Tonkin between the People's Republic of China and Vietnam (Sino-Vietnamese Fisheries Agreement).⁷⁷⁸ The difficult achievement of the boundary delimitation in other areas in the China Sea results in obstacles for responsible fisheries. China and its neighbouring countries, including Japan⁷⁷⁹ and South Korea,⁷⁸⁰ have signed joint fishery management agreements instead of reaching a compromise on boundary delimitation. Those agreements not only

⁷⁷⁵ Xue G (2008) China and the Law of the Sea: an update. In: Carsten MD (ed) International law and military operations. International law studies, vol 84. Naval War College, Newport, Rhode Island, p. 98.

⁷⁷⁶ Xue (2008), p. 99.

⁷⁷⁷ Signed on 25 December 2000 in Beijing and entered into force on 30 June 2004. Authentic texts are in Chinese and Vietnamese. Law of the Sea Bulletin 56, p. 137; 63, p. 72.

⁷⁷⁸ Signed on 25 December 2000, entered into force on 30 June 2004. An unofficial translation see: Zou K (2005) Law of the Sea in East Asia. Routledge, London and New York, Appendix II.

⁷⁷⁹ Fisheries Agreement between the People's Republic of China and Japan (Sino-Japanese Fisheries Agreement), ratified in November 1997, entered into force on 1 June 2000. For an unofficial translation of the Sino-Japanese Fishery Agreement, see: Zou (2005) Law of the Sea in East Asia, Appendix I.

⁷⁸⁰ Fisheries Agreement between the People's Republic of China and Republic of Korea (Sino-Korean Fisheries Agreement), ratified on 3 August 2000, entered into force on 30 June 2001. Available via China Fisheries 2001 (5): 5-7.

govern the joint fishery management but also function as provisional arrangements for the future delimitation of the EEZs and continental shelves between China and its two neighbours.⁷⁸¹ Nevertheless, when implementing these fisheries management agreements, fisheries conflicts and illegal fishing usually happen due to the unclear delimitation. In marine areas where there is no fisheries management agreement, such as most areas of the South China Sea, conflicts are more intense.

In order to implement the UNCLOS, China adopted the Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China⁷⁸² in 1998 and then amended the Fisheries Law of the PRC two times in 2000 and 2004 respectively in accordance with the UNCLOS.⁷⁸³ With regard to the boundary delimitation of EEZ, the UNCLOS does not provide specific standards. Alternatively, Article 74 (1) of the Convention vaguely requires that "*the delimitation of the EEZ between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution*".⁷⁸⁴ Given the vague provisions, the Law on the EEZ and the Continental Shelf of the PRC maintains that the delimitation of its EEZ should be determined by China with respect to the overlapping claims by agreement with the States with opposite or adjacent coasts in accordance with the equitable principle and on the basis of international law.⁷⁸⁵ This Law also codifies China's sovereign rights over its 200-nautical-mile EEZ for the purpose of exploring, exploiting, conserving and managing the natural resources.⁷⁸⁶ In addition, Article 14 of this Law provides that "*provisions in this Law shall not affect the rights that China has been enjoying ever since the days of the past*". Although the Law does not specify what provisions might affect what rights, the disputes between China and its neighbours in the South China Sea show that these rights refer to traditional fishing rights in the South China Sea.⁷⁸⁷ According to Xue (2008), China's attitude towards the

⁷⁸¹ Zou K (2005) Implementing the United Nations Convention on the Law of the Sea in East Asia: issues and trends. Singapore Year Book of International Law and Contributors 9, p. 40.

⁷⁸² Adopted at the 3rd Meeting of the Standing Committee of the 9th NPC, promulgated by Decree No 6 of the President of the PRC and entered into force on 26 June 1998. Available via LawinfoChina. <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=20220>. Accessed 2 December 2013.

⁷⁸³ Qu B (2009) On the application of the UNCLOS in China (in Chinese). Public Administration & Law (1), p. 92.

⁷⁸⁴ Liu Z (2008) The negative influence of the United Nations Convention on the Law of the Sea (UNCLOS) (in Chinese). Foreign Affairs Review 103, p. 84.

⁷⁸⁵ The Law on the EEZ and the Continental Shelf of the PRC, Art. 2.

⁷⁸⁶ The Law on the EEZ and the Continental Shelf of the PRC, Art. 3.

⁷⁸⁷ Li J, Li D (2003) The dotted line on the Chinese map of the South China Sea: a note. Ocean Development & International Law 34, p. 292.

UNCLOS is to ensure its national interests with accompanying commitments at the same time.

Additionally, China actively participates in four RFMOs that manage highly migratory species, including:

- the International Commission for the Conservation of Atlantic Tunas (ICCAT),⁷⁸⁸
- the Indian Ocean Tuna Commission (IOTC),⁷⁸⁹
- the Western and central Pacific Fisheries Commission (WCPFC),⁷⁹⁰ and
- the Inter-American Tropical Tuna Commission (IATTC).⁷⁹¹

China also participates in two RFMOs that manage fish stocks by geographical area, including:

- the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR),⁷⁹²

⁷⁸⁸ The ICCAT is responsible for the conservation of tunas and tuna-like species in the Atlantic Ocean and its adjacent seas. It was established by the International Convention for the Conservation of Atlantic, which was concluded at Rio de Janeiro on 14 May 1966 and entered into force on 21 March 1969, UNTS 673, p. 63.

⁷⁸⁹ The IOTC was established by the Agreement for the Establishment of the Indian Ocean Tuna Commission, which was concluded at Rome on 25 November 1993, UNTS 1927, p. 329.

⁷⁹⁰ The WCPFC was established by the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, which was concluded at Honolulu on 5 September 2000 and entered into force on 19 June 2004, UNTS 2275, p. 43.

⁷⁹¹ The IATTC was established by the 1949 Convention for the Establishment of an Inter-American Tropical Tuna Commission between the United States of America and the Republic of Costa Rica, signed at Washington on 31 May 1949, UNTS 1041, p. 3. The 1949 Convention was replaced by the Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention between the United States of America and the Republic of Costa Rica (Antigua Convention), which was signed at Washington on 13 December 2004 and entered into force on 10 October 2008. Available via IATTC. <http://www.iattc.org/IATTCdocumentationENG.htm>. Accessed 6 March 2014. The IATTC is responsible for the conservation and management of tuna and other marine resources in the eastern Pacific Ocean.

⁷⁹² The CCAMLR was established in 1982 with the objective of conserving Antarctic marine life under the Convention on the Conservation of Antarctic Marine Living Resources, which was concluded at Canberra on 20 May 1980, UNTS 1329, p. 47.

- the Asia-Pacific Fishery Commission (APFIC).⁷⁹³

In addition, China takes an active role in many other RFMOs, such as:

- the South Pacific Regional Fisheries Management Organization (SPRFMO);
- and
- the Commission for the Conservation of Southern Bluefin Tuna (CCBSP).

With regard to means of conflict settlement codified by the UNCLOS, China has shown little interest in utilizing international adjudication and prefers political negotiation.⁷⁹⁴ China has not made any declaration to choose the means of settlement of disputes concerning the interpretation or application of the UNCLOS according to Article 287 of the UNCLOS. So China shall be deemed to have accepted arbitration in accordance with Annex VII. In addition, on 25 August 2006, China made an announcement that: “*The Government of the People’s Republic of China does not accept any of the procedure provided for in Section 2 of Part XV of the Convention with respect to all the categories of disputes referred to in paragraph 1 (a) (b) and (c) of Article 298 of the United Nations Convention on the Law of the Sea*”.⁷⁹⁵ This means China does not accept the compulsory dispute settlement for disputes over the sovereign rights with respect to the living resources in China’s EEZ provided by Article 297 (3) (a) of the UNCLOS nor the law enforcement activities in regard to the exercise of such sovereign rights.⁷⁹⁶ China consistently and expressly maintains that conflicts should be resolved through friendly consultation and direct negotiation between the countries concerned; while, concerned countries may also have recourse to other dispute settlement means if they agree.⁷⁹⁷

⁷⁹³ The APFIC was established under the APFIC Agreement, which entered into force on 9 November 1948. Available via APFIC. Text of the APFIC Agreement. <http://www.apfic.org/apfic-agreement.html>. Accessed 25 October 2013.

⁷⁹⁴ Xue (2008), p. 101.

⁷⁹⁵ Ministry of Foreign Affairs of the People’s Republic of China (2013) China made an announcement with regard to Article 298 of the United Nations Convention on the Law of the Sea (in Chinese). <http://www.fmprc.gov.cn/chn/gxh/zlb/tyfg/t270754.htm>. Accessed 10 July 2013.

⁷⁹⁶ More discussion on exceptions to compulsory dispute settlement can be found in Section 2.2.1.1.

⁷⁹⁷ Chen D (2009) Recent international law of the sea (in Chinese). Ocean Press, Beijing, p. 541.

4.2.2.2 Major international legally-binding fisheries agreements not ratified by China and possible reasons

As discussed in Chapter 2, the 1995 United Nations 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 (UN Fish Stocks Agreement)⁷⁹⁸ and the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (FAO Compliance Agreement)⁷⁹⁹ are the major legally-binding fisheries agreements that regulate high seas fishing, particularly providing for flag State duties over high seas fishing vessels. China participated in the negotiation that contributed to the conclusion of the FAO Compliance Agreement; and, from 1993 to 1995 it attended all six conferences during the negotiation of the UN Fish Stocks Agreement.⁸⁰⁰ China stated that “*the UN Fish Stocks Agreement, which is an important development of the UNCLOS, will significantly influence the conservation and management of marine living resources, in particular high seas fisheries resources, and promote international fisheries cooperation*”.⁸⁰¹ As China maintained positive attitudes towards the UN Fish Stocks Agreement during the negotiation, it signed the Agreement on 6 November 1996.⁸⁰² However, China has not ratified this Agreement yet. Additionally, China is not a Party to the FAO Compliance Agreement. This section tries to provide possible reasons why China has changed its attitude towards the UN Fish Stocks Agreement and why China has not officially adopted the FAO Compliance Agreement.

Firstly, participating in the UN Fish Stocks Agreement cannot guarantee that State Parties get quotas of fish stocks under the management of certain RFMOs. Given the exhausted inshore fisheries resources, China’s policy encourages the development of distant water fisheries. However, China did not start its distant water fisheries until 1985, which is much later than other developed distant-water-

⁷⁹⁸ The UN Fish Stocks Agreement was concluded at New York on 4 August 1995 and entered into force on 11 December 2001, UNTS 2167, p. 88.

⁷⁹⁹ The FAO Compliance Agreement was adopted at Rome on 24 November 1993 and came into force on 24 April 2003, UNTS 2221, p. 91.

⁸⁰⁰ Fisheries Bureau of China (1998) The development of international cooperation on fisheries (in Chinese). China Fisheries 10, p. 1.

⁸⁰¹ The Statement of PRC on Relevant Provisions of the UN Fish Stocks Agreement (in Chinese), promulgated and entered into force on 4 August 1995. Available via [Chinalawedu.com. http://www.chinalawedu.com/news/1200/23155/23156/23170/2006/4/zl0032181820152460026642-0.htm](http://www.chinalawedu.com/news/1200/23155/23156/23170/2006/4/zl0032181820152460026642-0.htm). Accessed 14 April 2014.

⁸⁰² Ocean & Law of the Sea (2014) Table recapitulating the status of the Convention and of the related Agreements.

fishing States did, such as certain EU Member States, the US, the former Soviet Union, Japan and South Korea.⁸⁰³ Some developed distant-water-fishing States wanted to protect their interests and prevented new Parties from joining relevant RFMOs for quotas.⁸⁰⁴ China's State interest lies in joining RFMOs to obtain quotas for certain species. However, quotas cannot be automatically granted upon participating in the UN Fish Stocks Agreement. Thus, directly joining RFMOs brings distant-water-fishing States more benefits than participating in the UN Fish Stocks Agreement.

China's other concern regards certain provisions for the high seas enforcement by non-flag States codified by the UN Fish Stocks Agreement. In the Statement of the People's Republic of China on Relevant Provisions of the UN Fish Stocks Agreement (China's Statement on Relevant Provisions of the UN Fish Stocks Agreement), China imposes limitations on the application of Article 21 (7) of this Agreement.⁸⁰⁵ The Chinese government maintains that, because the inspection authorized by a flag State involves the sovereignty and domestic legislation of the flag State, the inspecting State can merely investigate an alleged violation in such a way and within the scope as specified by the concerned flag State.⁸⁰⁶ In addition, this Statement also reflects China's dissatisfaction with the use of force in high seas enforcement by non-flag States. China states that only when it is justified by the dangers to the safety of inspectors and when the execution of their duties may become obstructed, can authorized inspectors use reasonable force against crew or fishermen who act violently.⁸⁰⁷

Unlike the UN Fish Stocks Agreement, which not only limits high seas fishing States but also provides coastal States with benefits, the FAO Compliance Agreement mainly focuses on flag State duties towards fishing activities on the high seas, rather than providing them with any rights. The narrow acceptance of the FAO Compliance Agreement at a global level shows that the FAO Compliance

⁸⁰³ Bonfil R, Munro G, Sumaila UR et al (1998) Impacts of distant water fleets: an ecological, economic and social assessment. In: The footprint of distant water fleets on world fisheries. WWF's Endangered Seas Campaign, WWF International, Godalming, Surrey, pp. 11-111.

⁸⁰⁴ Cui L (2012) Adapting to new marine regime and promoting sustainable fisheries – the UN Law of the Sea Convention at 30 (in Chinese). *China Fisheries* 10, p. 4.

⁸⁰⁵ The Statement of PRC on Relevant Provisions of the UN Fish Stocks Agreement (in Chinese), promulgated and entered into force on 4 August 1995. Available via [Chinalawedu.com](http://www.chinalawedu.com). <http://www.chinalawedu.com/news/1200/23155/23156/23170/2006/4/zl0032181820152460026642-0.htm>. Accessed 14 April 2014.

⁸⁰⁶ China's Statement on Relevant Provisions of the UN Fish Stocks Agreement, Art. 1.

⁸⁰⁷ China's Statement on Relevant Provisions of the UN Fish Stocks Agreement, Art. 2.

Agreement is much less acceptable than the UN Fish Stocks Agreement. These are the major reasons why China has not participated in the FAO Compliance Agreement.

Nevertheless, the implementation of the UN Fish Stocks Agreement and the FAO Compliance Agreement indeed influence China's distant water fisheries. With the increasing emphasis on flag State duties at a global level, many RFMOs have established stricter measures and have required flag States to take responsibility over fishing vessels that fish in conventional areas of relevant RFMOs. For example, according to China's Report on the Implementation of the 2012 Interim Measures for Pelagic Fisheries for the year 2012 to the SPRFMO for the Chilean jack mackerel fishery in conventional areas of the SPRFMO: China managed its fishing effort in accordance with its level of total gross tonnage adopted in the 2012 Interim Measures. It controlled the catch of its fishing vessels within the total catch adopted in the 2012 revised Interim Measures. It provided verified data such as active fishing vessels in 2012, authorized fishing vessels in 2013, a monthly catch report, a quarterly Vessel Monitoring System and transshipment data and a national report to the SPRFMO in accordance with the 2012 Interim Measures and SPRFMO data standard. Finally it also monitored Chinese vessels through observers and vessels monitoring systems.⁸⁰⁸ Under the regime of RFMOs of which China is a member or cooperating non-Party, China has indeed taken flag State duties even through it is not a Party to the UN Fish Stocks Agreement or the FAO Compliance Agreement. More specific discussions can be found in the Section 4.3.1.

Additionally, Mr. Xiaobing Liu, who is the Director of the Division of International Cooperation of Fisheries Bureau of China, affirmed the significant role of RFMOs during a European Commission Conference - RFMOs 'Fit for the Future' held in Brussels on 1 June 2012.⁸⁰⁹ He particularly emphasized the achievement of IUU vessel lists and Catch Documentation Schemes in the substantial reduction of IUU fishing vessels and vessels with FOC. He further suggested RFMOs to expand the application of Catch Documentation Schemes to other species. China's positive attitudes towards RFMOs prove that China actively participates in the conservation and management of fisheries resources at regional level.

China has also been expanding fisheries cooperation with coastal States. The most official cooperation is between governments, in the form of fisheries agreements signed by both governments. Examples can be found in the fisheries agree-

⁸⁰⁸ SPRFMO (2013) China's Report on the implementation of the 2012 Interim Measures for Pelagic Fisheries for the year 2012. http://www.southpacificfmo.org/home/SearchForm?Search=China&action_result=Search. Accessed 10 January 2013.

⁸⁰⁹ European Commission (2012) RFMOs 'Fit for the Future'. <http://webcast.ec.europa.eu/eutv/portal/archive.html?viewConference=15690>. Accessed 1 June 2012.

ments between China and Seychelles⁸¹⁰ as well as that between China and Mauritania.⁸¹¹ Cooperation can also involve private associations: for instance, together with China Distant Water Fisheries Association, the Fisheries Bureau in China has signed an exploratory fishing agreement with the Ministry of Marine Resources of Cook Islands, allowing 17 Chinese vessels to fish in the EEZ of the Cook Islands for three years from 2012 on.⁸¹²

China's distant water fishing vessels have been fishing in 37 countries.⁸¹³ However, unlike the EU, which has published all current fisheries agreements with third countries on its official website or in the official journal, there is no publicly consultable database of access agreements between China and coastal States in whose EEZs Chinese fishing vessels have been fishing.⁸¹⁴ Thus, to the public, the activities of Chinese distant water fishing vessels and their catches may be undocumented and unreported to some extent, even though such fishing is totally legitimate.⁸¹⁵

Neither the UN Fish Stocks Agreement nor the FAO Compliance Agreement is legally binding to China, but China has indeed taken its flag State duties through adjusting and enacting its domestic legislation with regard to distant water fisheries.⁸¹⁶ Examples can be found in the Administrative Provisions on Distant Water Fisheries adopted by the Ministry of Agriculture, including provisions referring to the registration of fishing vessels, the authorization to fish on the high seas or within other States' EEZs and the mark of vessels.⁸¹⁷ As Hosch has indicated that *“ratification per se is not necessarily the best indicator to establish in how far binding international provisions have been integrated into national legal frame-*

⁸¹⁰ Republic of Seychelles Website (2006) China and Seychelles signed fisheries agreement. <http://sc.mofcom.gov.cn>. Accessed 18 May 2006.

⁸¹¹ Zhang X (2011) Mauritania hails cooperation agreement with China in fishing sector. Available via China View. http://news.xinhuanet.com/english2010/indepth/2011-08/15/c_131050906.htm. Accessed 14 April 2014.

⁸¹² Baird Maritime (2011) Cook Islands sign exploratory fishing agreement with China. <http://www.bairdmaritime.com>. Accessed 5 December 2011.

⁸¹³ European Commission (2012) RFMOs 'Fit for the Future'.

⁸¹⁴ Pauly D, Belhabib D, Blomeyer R et al (2013) China's distant-water fisheries in the 21st century. *Fish and Fisheries*. doi: 10.1111/faf.12032, p. 2.

⁸¹⁵ Pauly et al. (2013), p. 2.

⁸¹⁶ Xue G (2006) China's distant water fisheries and its response to flag state responsibilities. *Marine Policy* 30, p. 655.

⁸¹⁷ Adopted at the eighth executive meeting of the Ministry of Agriculture on 14 April 2003, promulgated by Decree No 27 of the Ministry of Agriculture on 18 April 2004, entered into force on 1 June 2003 and revised by Decree No 38 of the Ministry of Agriculture on 1 July 2004. Available via Pkulaw.cn. <http://www.lawinfochina.com/display.aspx?lib=law&id=4527&CGid=>. Accessed 5 November 2013.

works”,⁸¹⁸ China has put flag State measures in place although it has not ratified the two agreements concerning flag State duties.

China has actively participated in the development of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO Port State Measures Agreement) as well.⁸¹⁹ For example, China participated in the FAO/APFIC/SEAFDEC regional workshop on port State measures to combat IUU fishing in Bangkok in 2008. The Workshop’s aim was to develop national capacity and to promote bilateral, sub regional and/or regional coordination so that countries would be better placed to strengthen and harmonize port State measures and, as a result, to implement the 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU)⁸²⁰ and the 2005 FAO Model Scheme on Port State Measures to Combat IUU Fishing (FAO Model Scheme).⁸²¹ One of the goals of this Workshop was to contribute to the development of the FAO Port State Measures Agreement.⁸²² This Workshop indicated that China has inadequate specific port inspection measures and regulations, so China should develop these measures and regulations by using related international law and management measures.⁸²³ However, the Agreement has not entered into force. China has not signed this Agreement.

⁸¹⁸ Hosch G (2009) Analysis of the implementation and impact of the FAO Code of Conduct for Responsible Fisheries since 1995, FAO Fisheries and Aquaculture Circular No 1038. FAO, Rome, p. 28.

⁸¹⁹ The FAO Port State Measures Agreement was adopted by the FAO Conference at its 36th Session in Rome on 22 November 2009. Available via FAO. www.fao.org/fileadmin/user_upload/legal/docs/2_037t-e.pdf. Accessed 22 October 2013.

⁸²⁰ The IPOA-IUU was adopted by consensus at the 24th Session of Committee on Fisheries (COFI) in Rome on 2 March 2001 and endorsed by the 120th Session of the FAO Council on 23 June 2001. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/003/y1224e/y1224e00.HTM>. Accessed 22 October 2013.

⁸²¹ The FAO Model Scheme was endorsed by the 26th Session of the FAO COFI in Rome in 2005. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/010/a0985t/a0985t00.HTM>. Accessed 22 October 2013.

⁸²² Doulman DJ, Swan J (2012) A guide to the background and implementation of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, FAO Fisheries and Aquaculture Circular No 1074. FAO, Rome p. 100.

⁸²³ FAO (2008) Report of the FAO/APFIC/SEAFDEC Regional Workshop on Port State Measures to Combat IUU Fishing, Bangkok, Thailand, 31 March – 4 April 2008. FAO Fisheries and Aquaculture Report No 868. FAO, Rome, p. 58, Annex B.

4.2.2.3 China and non-legally binding fisheries instruments

Compared to legally binding fisheries agreements, non-legally binding fisheries instruments are more acceptable to China. One obvious example is that China's domestic fisheries legislation is mainly consistent with the 1995 Code of Conduct for Responsible Fisheries (Code of Conduct)⁸²⁴ even though China has not accepted the FAO Compliance Agreement,⁸²⁵ which is a part of the Code of Conduct. China has incorporated certain provisions of the Code of Conduct and its implementing instrument – IPOA-IUU into its fisheries legislation. For example, according to the requirements of the Code of Conduct about fisheries management, the Fisheries Law of the PRC established a total allowable catches system and limitations to fishing methods, gears, period and areas, which is in accordance with the requirements of the Code of Conduct.⁸²⁶

The FAO has been requested by the Committee on Fisheries (COFI) to provide biennial progress reports on the implementation of the Code of Conduct and its implementing instruments, including the IPOA-IUU. These progress reports are based on the analysis of self-assessment questionnaires completed by FAO Members. China responded to the questionnaires in 2000, 2006, 2010 and 2011 respectively.⁸²⁷ The responses of individual countries are not publicly available. However, China's implementation of the Code of Conduct can be gauged from previous research that shows China's fisheries legislation is largely consistent with the Code of Conduct.⁸²⁸ With regard to stopping illegal fishing, China's domestic

⁸²⁴ The Code of Conduct was unanimously adopted by the Conference of the FAO in Rome on 31 October 1995. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/005/v9878e/v9878e00.HTM>. Accessed on 22 October 2013.

⁸²⁵ The FAO Compliance Agreement was negotiated under Article XIV of the FAO Constitution. Article XIV Agreements are first approved by the Conference (which is broadly equivalent to signature) and then open for "acceptance", which has the same function as ratification or accession.

⁸²⁶ Fisheries Law of the PRC, Art. 22 and 30.

⁸²⁷ FAO COFI Documents (2012) Regional statistical analysis of responses by FAO Members to the 2011 questionnaire on the Code of Conduct for Responsible Fisheries implementation, COFI/2012/SBD.1. <http://www.fao.org/cofi/33132-0abf8a3d0457871b8f80814b0f8963dbf.pdf>. Accessed 5 November 2013.

⁸²⁸ Discussions see: Cheng J, Cai W, Cheung W et al (2006) An estimation of compliance of the fisheries of China with Article 7 (Fisheries Management) of the UN Code of Conduct for Responsible Fishing. 19 pages in: Pitcher TJ, Kalikoski D and Pramod G (eds) (2006) Evaluations of compliance with the FAO (UN) Code of Conduct for Responsible Fisheries. Fisheries Centre Research Reports, vol 14 (2). University of British Columbia, Vancouver, p. 24. Also see: Hosch G,

fisheries legislation has introduced the fishing licensing system,⁸²⁹ has regulated the minimum mesh size and fishing gear limits, has limited the proportion of young fish in the catch and has prohibited trade illegal catch in the banned fishing areas and seasons.⁸³⁰ According to the self-assessment questionnaires developed by Hosch et al and answered by the Chinese national fisheries sector, China has adopted and formally implemented a national plan of action to prevent, deter and eliminate IUU fishing (NPOA-IUU).⁸³¹ However, China has not adopted a particular instrument as its NPOA-IUU. With regard to measures against IUU fishing, China pays more attention to the management of fishing vessels and fishing gears than catches, port State measures or trade-market measures. China's interests are its sovereignty and sovereign rights as well as its distant water fisheries, rather than preventing IUU fishing entering its fish markets. This is why China has not yet adopted port State measures against IUU fishing. China's attitudes towards the IPOA-IUU can also be seen from China's participation in international meetings: viz. the Expert Consultation on IUU Fishing in Sydney in May 2000, which preliminary drafted the IPOA-IUU;⁸³² the Technical Consultation on IUU Fishing in Rome in October 2000, which revised the draft of IPOA-IUU;⁸³³ the Second Technical Consultation on IUU Fishing in February 2001, which resulted in the IPOA-IUU;⁸³⁴ and the FAO Regional Workshop on the elaboration of NPOA-IUU for the Southeast Asia Subregion in Penang in Malaysia in October 2004, which assisted countries to develop capacity in order to be better placed to elaborate NPOA-IUU.⁸³⁵

Ferraro G and Failler P (2011) The 1995 FAO Code of Conduct for Responsible Fisheries: adopting, implementing or scoring results? *Marine Policy* 35:189-200.

⁸²⁹ Fisheries Law of the PRC, Art. 23.

⁸³⁰ Fisheries Law of the PRC, Art. 30.

⁸³¹ Hosch et al. (2011), pp.192-195.

⁸³² The Expert Consultation on IUU Fishing, organized by the Government of Australia in cooperation with FAO, was held in Sydney, Australia, 15-19 May 2000.

⁸³³ FAO Fisheries and Aquaculture (2000) Report of the technical consultation on illegal, unreported and unregulated fishing. <http://www.fao.org/docrep/meeting/005/x8623e.htm>. Accessed 5 November 2013.

⁸³⁴ FAO Fisheries and Aquaculture (2001) Report of the second technical consultation on illegal, unreported and unregulated fishing. <http://www.fao.org/docrep/meeting/003/Y0772E.htm>. Accessed 5 November 2013.

⁸³⁵ FAO Fisheries and Aquaculture (2005) Report of the FAO regional workshop on the elaboration of national plans of action to prevent, deter and eliminate illegal, unreported and unregulated fishing for Southeast Asia subregion. <http://www.fao.org/docrep/009/a0211e/a0211e00.htm>. Accessed 5 November 2013.

4.2.3 Domestic legal acts and policies

For long time China has focused on inland interests and has therefore paid less attention to its marine interests. Due to conflicts between China and its neighbouring countries, coastal sovereignty and sovereign rights have become China's priority. In addition, China also promotes the development of distant water fisheries to alleviate the pressure on coastal fisheries. As China has not officially adopted most international fisheries instruments, China has not endorsed any special national legislation for the combat of IUU fishing. Domestically, IUU fishing is generally called illegal fishing. Measures that are used for dealing with IUU fishing are located in numerous instruments. Based on the Fisheries Law of the PRC, the Ministry of Agriculture and the Fisheries Bureau have adopted many implementing rules, measures and provisions in managing fisheries. In addition, the Standing Committee of the NPC also adopted two laws to establish the framework of China's sovereignty and sovereign rights, including the 1992 Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone⁸³⁶ and the 1998 Law on the EEZ and the Continental Shelf of the PRC.

4.2.3.1 The Fisheries law of the PRC and its detailed implementing rule

The Fisheries Law of the PRC is the fundamental law in the field of fisheries. It was adopted at the 14th Meeting of the Standing Committee of the NPC in 1986 and was revised in 2000, 2004, 2009 and 2013 respectively.⁸³⁷ This Law does not specifically codify provisions for combating IUU fishing. The Fisheries Law of the PRC is a general law concerned with marine and inland fisheries, aquaculture as well as the increase and protection of fisheries resources.

⁸³⁶ Adopted at the 24th Meeting of the Standing Committee of the Seventh NPC, promulgated by Decree 55 of the President of the PRC and entered into force on 25 February 1992. Available via LawinfoChina. <http://www.lawinfochina.com/display.aspx?lib=law&id=670&CGid=>. Accessed 2 December 2013.

⁸³⁷ Adopted at the 14th Meeting of the Standing Committee of the NPC and promulgated by Decree No 34 of the President of the PRC on 20 January 1986, revised by Decree No 38 of the President of the PRC on 31 October 2000, by Decree No 25 of the President of the PRC on 28 August 2004, by Decree No 18 of the President of the PRC on 28 August 2009 and by Decree No 8 of the President of the PRC on 28 December 2013 respectively. All amendments are available via Pkulaw.cn. <http://en.pkulaw.cn.epoxy1.lib.hku.hk/>. Accessed 10 April 2014.

Although Article 22 of the Fisheries Law of the PRC states that China determines the total catch allowance and implements a fishing quota system in accordance with the principle that the fishing amount shall be lower than the increasing amount of fisheries resources, China has not implemented its total allowable catches and its fishing quota system for its inshore fisheries.⁸³⁸ Alternatively, China has been using banned fishing periods and the control of fishing vessels to manage its inshore fisheries. Lack of available total catch allowance and a fishing quota system for its inshore fisheries is the major reason for overfishing in China.

The Fisheries Law of the PRC mainly relies on the management of a fishing license system. Fishing activities must be operated in accordance with requirements of the fishing license as to type of operation, location, time limit, quantity of fishing facilities and fishing quota.⁸³⁹ The 1986 Fisheries Law merely requires the fishing license system to be applied to inland fisheries and marine fisheries in waters under China's national jurisdiction. Due to the development of China's fisheries relationship with its neighbouring States and China's distant water fisheries, as well as the influence of the UNCLOS, it is imperative to implement international fisheries instruments that China has accepted, management and conservation measures of RFMOs in which China has participated, as well as fisheries agreements China has signed with other States.⁸⁴⁰ This resulted in the 2000 Fisheries Law making the fishing license system also applicable to fishing operation on the high seas, on the mutually administered fishing areas determined by agreements concluded between China and a neighbouring country, and fisheries within other countries' EEZs.

In general, in the field of marine fishing, the Fisheries Law of the PRC provides general requirements concerning the bodies of fisheries administration and superintendence, a fishing quota system, a fishing license system as well as the administrative and criminal liabilities when violation of this Law occurs. This Law mainly lays down certain general flag and coastal State duties according to the in-

⁸³⁸ Bai Y (2012) Inspiration for China fisheries provided by fishing quota system of New Zealand (in Chinese). *World Agriculture* 8, p. 87.

⁸³⁹ Fisheries Law of the PRC, Art. 25. Although China has not implemented a quota system for its inshore fisheries, quota systems apply to fishing activities in areas within the jurisdiction of RFMOs and waters of other countries.

⁸⁴⁰ According to Article 2 of the Administrative Provisions for Distant Water Fisheries adopted by the Ministry of Agriculture, distant water fisheries refer to fishing activities such as marine fishing and the auxiliary processing, supplementary supply and product transport, which are carried out by the citizens, legal persons and other organizations of China on the high seas and in the sea areas under the jurisdiction of any other country, excluding the fishery activities carried out in the Yellow Sea, the East China Sea and the South China Sea. Fishing activities in the Yellow Sea, the East China Sea and the South China Sea are excluded from distant water fisheries due to unresolved boundary delimitation in those areas.

ternational fisheries instruments, which is not comprehensive. Port State measures and trade-market measures are not mentioned in this Law.

In order to implement the Fisheries Law of the PRC, the 1987 Detailed Rule of Implementing the Fisheries Law of the People's Republic of China was adopted by the State Council.⁸⁴¹ Except for the Fisheries Law of the PRC, the Detailed Rule of Implementing the Fisheries Law of the PRC is the highest in China's fisheries legislation hierarchy. This Rule details the procedures for applying for different fishing licenses as well as the conditions under which it is forbidden to issue a fishing license.⁸⁴² It also provides for inspectors of the Fisheries Law Enforcement Command to have the power to inspect the identifications of a fishing vessel, the fishing vessel itself, fishing facilities, catches and fishing method.⁸⁴³ However, although the Fisheries Law of the PRC has been revised four times, this Rule has never been revised since it was promulgated in 1987. Moreover, some provisions are no longer in accordance with the requirements of the Fisheries Law of the PRC. For example the sanctions in case of violation provided by the Rule are much lower than those provided in the Fisheries Law of the PRC. However, in terms of hierarchy, the Fisheries Law of the PRC is higher than the Detailed Rule of Implementing the Fisheries Law of the PRC. Fines provided by the Fisheries Law of the PRC should be applied. Thus, the Fisheries Law of the PRC and its detailed Rule need to be amended in accordance with the international law and the reality of China's fisheries.

4.2.3.2 Rules of administrative sanctions on fisheries

Except for the Fisheries Law of the PRC and its Detailed Implementing Rule, the 1998 Rules of Administrative Sanctions on Fisheries, which were adopted by the Ministry of Agriculture, are the major rules that provide administrative sanctions on illegal fishing in China.⁸⁴⁴

⁸⁴¹ Adopted by the State Council on 14 October 1987, promulgated and entered into force on 19 October 1987. Available via Chinalawinfo (in Chinese). <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/newlaw2002/slc/slc.asp?db=chl&gid=3139>. Accessed 3 December 2013.

⁸⁴² The Detailed Rule of Implementing Fisheries Law of the PRC, Arts. 15 and 17.

⁸⁴³ The Detailed Rule of Implementing Fisheries Law of the PRC, Art. 7.

⁸⁴⁴ Adopted on 23 December 1997, promulgated by Decree No 36 of the Ministry of Agriculture and entered into force on 5 January 1998. Available via Chinalawinfo (in Chinese). <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/newlaw2002/slc/slc.asp?db=chl&gid=19871>. Accessed 3 December 2013.

The Rules of Administrative Sanctions on Fisheries provide various categories of administrative sanctions on fisheries. However, they have not been revised since they were adopted in 1998, while the Fisheries Law of the PRC has been revised four times. The severity of the Rules of Administrative Sanctions on Fisheries is not consistent with the Fisheries Law of the PRC and the current situation. For example, in order to punish any fisherman who violates the provisions of the fishing license as to type of operation, location, time limit, quantity of fishing facilities, Article 9 of the Rules imposes a maximum fine of 20,000 Yuan and other sanctions, while Article 42 of the Fisheries Law of the PRC imposes a maximum fine of 50,000 Yuan. Additionally, the maximum administrative sanctions are fixed rather than set according to value of IUU catches, which may indirectly encourage IUU fishing activities. Since the Fisheries Law of the PRC is higher in hierarchy than the Rules of Administrative Sanctions on Fisheries, and the Fisheries Law of the PRC is more recent, provisions in the Rules of Administrative Sanctions on Fisheries that are inconsistent with the Fisheries Law of the PRC should be regarded as redundant.

4.2.3.3 Measures of the PRC on the registration of fishing vessels

In 2012, the Ministry of Agriculture adopted new Measures of the PRC on the Registration of Fishing Vessels, which was revised in 2013.⁸⁴⁵ They mainly focus on issues of the ownership, the nationality and the port of registry of fishing vessels and other related legal relationship.⁸⁴⁶ The registration is aimed at fishing vessels owned by Chinese citizens or Chinese legal persons as well as fishing vessels bareboat chartered overseas by Chinese citizens or Chinese legal persons.⁸⁴⁷ Specifically it includes: the checking and approval of the name of a fishing vessel, the registration of the ownership and nationality of a fishing vessel, the registration of a ship's mortgage, the registration of the bareboat charter, alteration and deletion registration.

Although the Measures of the PRC on the Registration of Fishing Vessels do not mention any terminology of "IUU fishing", they indeed closely connect to the

⁸⁴⁵ Adopted at the tenth executive meeting of the Ministry of Agriculture in 2012, promulgated by Decree No 8 of the Ministry of Agriculture on 22 October 2012 and entered into force on 1 January 2013, revised by Decree No 5 of the Ministry of Agriculture on 31 December 2013. Available via Chinalawinfo (in Chinese).

<http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=217228>. Accessed 14 April 2014.

⁸⁴⁶ Measures of the PRC on the Registration of Fishing Vessels, Art. 1.

⁸⁴⁷ Measures of the PRC on the Registration of Fishing Vessels, Art. 2.

ownership of a vessel with the Chinese nationality, providing a principal standard of a genuine link, which is discussed in detail below.

4.2.3.4 Provisions on the administration of fishery licensing

In order to conserve and reasonably utilize fisheries resources, control fishing intensity, maintain the fishery production order and safeguard the legitimate rights and interests of fishery producers, the Provisions on the Administration of Fishery Licensing was adopted.⁸⁴⁸

The Provisions on the Administration of Fishery Licensing apply to Chinese citizens, Chinese legal persons and other Chinese organizations that engage in fishery activities as well as foreigners engaging in fishery activities within the waters under the national jurisdiction of China.⁸⁴⁹ This instrument contains six chapters, including the general provisions, the classification of fishing vessels and operating places, control quotas for vessel and net devices, the management of fishing licenses, the issuer system and supplementary provisions. The management of fishing licenses mainly deals with the combat of IUU fishing, which is specifically discussed below.

4.2.3.5 Chinese law concerning general coastal State sovereignty and sovereign rights

4.2.3.5.1 The law of the PRC on the territorial sea and the contiguous zone

China ratified the UNCLOS in 1996 and adjusted its territorial sea regime to comply with the UNCLOS framework. China adopted the 1992 Law of the PRC on the

⁸⁴⁸ Promulgated by Decree No 19 of Ministry of Agriculture on 23 August 2002 and entered into force on 1 December 2002, amended by Decree No 38 in 2004, by Decree No 6 in 2007 and by Decree No 5 in 2013. Available via Pkulaw.cn. <http://222.178.216.125/rewriter/BDFB/http/dm9ojtk-v9bm/display.aspx?cgid=216559&lib=law>. Accessed 13 April 2014.

⁸⁴⁹ Provisions on the Administration of Fishery Licensing, Art. 2.

Territorial Sea and the Contiguous Zone,⁸⁵⁰ which does not have any provisions for fisheries. According to the spirit of the UNCLOS, coastal States have absolute sovereignty with respect to the fishing activities in their territorial seas. Thus, fishing activities in China's territorial seas are subject to China's domestic legislation.

4.2.3.5.2 The law on the EEZ and the Continental Shelf of the PRC

After it ratified the UNCLOS in 1996, China proclaimed its EEZ in the same year. Then in 1998 China adopted the Law on the EEZ and the Continental Shelf of the PRC to ensure that China may exercise its sovereign rights and jurisdiction over its EEZ and its continental shelf and to safeguard its national marine rights and interests.⁸⁵¹

Article 2 of the Law on the EEZ and the Continental Shelf of the PRC expressly proclaims that China has a 200-nautical-mile EEZ. In case of overlapping claims by States with opposite or adjacent coasts, China always maintains that the delimitation of such claims adheres to the equitable principle and is based on international law. This assertion constitutes the basis of China's fisheries agreements with its neighbouring States.

4.2.3.5.3 Provisions on the Administration of Fishery Administrative Cruising within Exclusive Economic Zones

The amended Provisions on the Administration of Fishery Administrative Cruising within Exclusive Economic Zones was promulgated by the Fisheries Bureau

⁸⁵⁰ Adopted at the 24th Meeting of the Standing Committee of the Seventh NPC, promulgated by Decree 55 of the President of the PRC and entered into force on 25 February 1992. Available via LawinfoChina. <http://www.lawinfochina.com/display.aspx?lib=law&id=670&CGid=>. Accessed 2 December 2013.

⁸⁵¹ Adopted at the 3rd Meeting of the Standing Committee of the 9th NPC, promulgated by Decree No 6 of the President of the PRC and entered into force on 26 June 1998. Available via LawinfoChina. <http://vip.chinalawinfo.com/newlaw2002/slc/slc.asp?db=chl&gid=20220>. Accessed 2 December 2013, Art. 1.

and entered into force on 14 November 2005.⁸⁵² According to Article 2 of the Provisions, Fishery Administrative Cruising within EEZ refers to “*the law enforcement acts whereby the fishery law enforcement organs, according to the relevant laws and regulations of the State, send out fishery administrative ships for carrying out supervision and inspection over and impose administrative penalties upon Chinese and foreign ships and persons that engage in fishery production or survey of biological materials or any other fishery activities within the exclusive economic zones of China*”.⁸⁵³ The instrument mainly stipulates China’s coastal enforcement measures, such as supervision, inspection as well as imposing administrative penalties.

4.2.3.5.4 Interim provisions for the fishery activities of foreigners or foreign vessels in the sea areas under the jurisdiction of the People’s Republic of China

In order to manage fishing activities or activities for the investigation of fishery resources by foreigners or foreign vessels in sea areas under China’s jurisdiction, the Ministry of Agriculture adopted the Interim Provisions for the Fishery Activities of Foreigners or Foreign Vessels in the Sea Areas under the Jurisdiction of the People’s Republic of China in 1999 and revised it in 2004.⁸⁵⁴ This instrument stipulates China’s coastal State measures to control foreign fishing.

In order to implement this instrument, the Ministry of Agriculture promulgated an Announcement of the Ministry of Agriculture on the Procedure in Dealing with Illegal Activities of Foreigners or Foreign Vessels on 3 September 1999.⁸⁵⁵ The

⁸⁵² Promulgated by Decree No 85 of Fisheries Bureau of the Ministry of Agriculture of the PRC and entered into force on 14 November 2005. Available via www.lawinfochina.com/display.aspx?lib=law&id=4855&CGid=. Accessed 4 December 2013.

⁸⁵³ Provisions for the Administration of Fishery Administrative Cruising within Exclusive Economic Zones, Art. 2.

⁸⁵⁴ Adopted at the executive meeting of the Ministry of Agriculture on 21 June 1999, promulgated by Decree No 18 of the Ministry of Agriculture and entered into force on 24 June 1999, revised by Decree No 38 of the Ministry of Agriculture on 1 July 2004. Available via Chinalawinfo (in Chinese). <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/newlaw2002/slc/slc.asp?db=chl&gid=26701>. Accessed 4 December 2013.

⁸⁵⁵ Promulgated by the Ministry of Agriculture and entered into force on 3 September 1999. Available via [110.com](http://www.110.com/fagui/law_141491.html) (in Chinese). http://www.110.com/fagui/law_141491.html. Accessed 4 December 2013.

Announcement mainly details the specific procedures in dealing with illegal activities of foreigners or foreign vessels in the waters within China's jurisdiction, such as: the legal documents that need to be filled out; the information required to deal with issues that should be reported to the Ministry of Agriculture; reporting procedures before illegal activities are dealt with by fisheries bureaus below the provincial level, reporting procedures after illegal activities have been dealt with; and reporting procedures after cases have been settled.

4.2.3.6 Chinese port State control over fisheries

China adopted the following regulations and measures regarding port State control:

- the 2011 Regulation of the People's Republic of China on the Administration of Traffic Safety on Fishing Port Waters adopted by the State Council;⁸⁵⁶
- the 1997 Measures for the Visas for the Vessels of the People's Republic of China to Enter and Exit Fishery Ports by the Ministry of Agriculture;⁸⁵⁷ and
- the 2000 Provisions for the People's Republic of China on Superintendence and Administrative Sanctions of the Navigation in Fishery Ports adopted by the Ministry of Agriculture.⁸⁵⁸

The Regulation of the PRC on the Administration of Traffic Safety on Fishing Port Waters has a higher legal order than the other two instruments. However, the

⁸⁵⁶ Adopted at the 40th executive meeting of the State Council on 5 May 1989, promulgated by Decree No 38 of the State Council on 3 July 1989, came into force on 1 August 1989 and revised by Decree No 588 of the State Council on 8 January 2011. Available via Chinalawinfo. <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/newlaw2002/slc/slc.asp?db=chl&gid=4341>. Accessed 5 December 2013.

⁸⁵⁷ Promulgated by Decree No 11 of the Ministry of Agriculture and entered into force on 26 January 1990, revised by Decree No 39 of the Ministry of Agriculture on 25 December 1997. Available via Chinalawinfo (in Chinese). <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/newlaw2002/slc/slc.asp?db=chl&gid=72315>. Accessed 5 December 2013.

⁸⁵⁸ Adopted at the sixth executive meeting of the Ministry of Agriculture on 9 May 2000, promulgated by Decree No 34 of the Ministry of Agriculture and entered into force on 13 June 2000. Available via the Central People's Government of the People's Republic of China (in Chinese). http://www.gov.cn/gongbao/content/2001/content_61250.htm. Accessed 5 December 2013.

Regulation does not refer to IUU fishing related issues. Although the Measures for the Visas for the Vessels of the PRC to Enter and Exit Fishery Ports require safety checks after a vessel enters port,⁸⁵⁹ it does not require the checking of fishing facilities, catches, fishing methods and other elements that may prove IUU fishing. This is mainly because vessel security and marine pollution have been China's priorities in the field of maritime issues.

The Provisions for the PRC on Superintendence and Administrative Sanctions of the Navigation in Fishery Ports applies to fishing vessels with Chinese nationality and their crew, owners and operators as well as other vessels, crew, operators and facilities that navigate, berth or operate in China's ports or in fishing port waters and owners.⁸⁶⁰ This instrument is aimed at the safety management of fishing vessels and the sanctioning of pollution of fishery ports and fishing port waters. Article 10 (3) of the Provisions for the PRC on Superintendence and Administrative Sanctions of the Navigation in Fishery Ports prohibit fishing activities within passages, harbour basins, anchorages or berths of harbours that endanger maritime traffic safety. In addition, they stipulate administrative sanctions by the port management against transgressions such as not holding vessels certificates according to legal rules and regulations or not having a valid vessel name, number or vessel certificates.⁸⁶¹ However, such port management is only aimed at vessels and vessel certificates rather than at fishing facilities, catches or fishing methods that may prove IUU fishing.

Clearly the instruments introduced above authorize fisheries bureaus to check vessels and vessel certificates rather than fishing related factors. The absence of port inspections of fishing catches result in weak monitoring and enforcement of transshipments in ports. Although Article 9 of the Interim Provisions for the Fishery Activities of Foreigners or Foreign Vessels in the Sea Areas under the Jurisdiction of the PRC prohibits foreigners or foreign vessels from transshipping catches and fish products or supplies between vessels at sea in waters within China's jurisdiction, unless permitted by the Fisheries Bureau. It is difficult to monitor transshipment at sea without port inspection. Additionally, there is no RFMO in the China Sea to share data between China and its neighbouring countries.⁸⁶²

⁸⁵⁹ The Regulation of the PRC on the Administration of Traffic Safety in Fishing Port Waters, Art. 6.

⁸⁶⁰ The Provisions for the PRC on Superintendence and Administrative Sanctions of the Navigation in Fishery Ports, Art. 2.

⁸⁶¹ The Provisions for the PRC on Superintendence and Administrative Sanctions of the Navigation in Fishery Ports, Arts. 15-20.

⁸⁶² Xu H (2009) Measures against IUU fishing and Fisheries Law of the PRC (in Chinese). *Ocean Development and Management* 26 (8), p. 27.

4.2.3.7 Chinese legislation for distant water fisheries

The Fisheries Law of the PRC expressly encourages the development of distant water fisheries.⁸⁶³ Even though it has neither ratified the Compliance Agreement nor the Fish Stocks Agreement, China indeed has legislation to manage and control its distant water fisheries and to exercise its responsibility over its fishing vessels, viz.:

- the 1993 Notices on Prohibiting the Use of Large-scale Drift Fishing on High Sea promulgated by the Ministry of Agriculture;⁸⁶⁴
- the 1997 Circular of the Ministry of Agriculture on the Issues of Nationality Certificates to Distant Water Fishing Vessels;⁸⁶⁵
- the 2003 Administrative Provisions for Distant Water Fisheries adopted by the Ministry of Agriculture;⁸⁶⁶ and
- the 2010 Circular of the General Office of the Ministry of Agriculture on Implementing Vessel Monitoring System over Distant Water Fishing Vessels.⁸⁶⁷

In the field of distant water fisheries (with the exception of the Administrative Provisions for Distant Water Fisheries, which is a rule of ministries), all are normative legal documents that have the lowest legal effect among national legislation. The Administrative Provisions for Distant Water Fisheries is the major document that deals with IUU fishing. The Administrative Provisions apply to all

⁸⁶³ Fisheries Law of the PRC, Art. 21.

⁸⁶⁴ Promulgated by the Ministry of Agriculture and entered into force on 12 February 1993. Available via Findlaw (in Chinese). http://china.findlaw.cn/fagui/p_1/289207.html. Accessed 5 December 2013.

⁸⁶⁵ Promulgated by Decree No 30 of the Ministry of Agriculture and entered into force on 5 July 1993, revised by Decree No 39 of the Ministry of Agriculture on 25 December 1997. Available via Chinalawinfo (in Chinese). <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/newlaw2002/slc/slc.asp?db=chl&gid=66170>. Accessed 5 December 2013.

⁸⁶⁶ Adopted at the eighth executive meeting of the Ministry of Agriculture on 14 April 2003, promulgated by Decree No 27 of the Ministry of Agriculture on 18 April 2004, entered into force on 1 June 2003 and revised by Decree No 38 of the Ministry of Agriculture on 1 July 2004. Available via Chinalawinfo <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/NewLaw2002/SLC/SLC.asp?Db=chl&Gid=45795>. Accessed 5 December 2013.

⁸⁶⁷ Promulgated by the General Office of the Ministry of Agriculture concerning Fisheries on 20 April 2010, entered into force on 1 January 2011. Available via Chinalawinfo (in Chinese). <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/NewLaw2002/SLC/SLC.asp?Db=chl&Gid=129314>. Accessed 5 December 2013.

Chinese nationals and vessels conducting fishing or fisheries-related activities on the high seas or in waters within the national jurisdiction of other States. But the instrument does not apply to fishing or fisheries-related activities in the Yellow Sea, the East China Sea or the South China Sea because fisheries in these areas are managed under bilateral fisheries agreements with China's neighbouring countries. It should be mentioned that excluding the fishing activities in the Yellow Sea, the East China Sea and the South China Sea is a major reason why China's published quantity of catches of distant water fisheries is much lower than certain scientists have estimated.⁸⁶⁸

The Administrative Provisions for Distant Water Fisheries manage distant water fisheries mainly through the management of the following aspects: the application for and the examination and approval of distant water fishery projects, the accreditation of distant water fishery enterprises' qualifications, the confirmation of projects as well as the management of distant water fishing vessels and crew.

4.2.3.8 The latest development in China's fisheries law

In 2013, China's State Council promulgated *Several Opinions on Promoting the Sustainable and Healthy Development of Marine Fisheries*, which deal with marine fisheries in particular.⁸⁶⁹ This instrument expressly indicates that China shall strictly combat IUU fishing to ensure the conservation of fisheries resources.⁸⁷⁰ On the one hand, China shall stimulate the enforcement of its fisheries law, including strictly combating fishing without fishing license, vessel registration certificate or vessel inspection certificate, paying special attention if the actual power of a vessel is higher than that indicated as well as combating various illegal fishing.⁸⁷¹ On the other hand, China shall stimulate the management of foreign-related fishing. Specifically, China shall promote bilateral and multilateral fishery cooperation, and participate in the conclusion of international fishery treaties, agreements and

⁸⁶⁸ China has been found over-reported its domestic catch, substantially under-reported its distant water catch. In: Pauly et al. (2013), p. 10.

⁸⁶⁹ Promulgated by the State Council and entered into force on 8 March 2013. Available via the Central Peoples' Government of the People's Republic of China (in Chinese). http://www.gov.cn/zwggk/2013-06/25/content_2433577.htm. Accessed 3 December 2013.

⁸⁷⁰ *Several Opinions of the State Council on Promoting the Sustainable and Healthy Development of Marine Fishery*, para. 5.

⁸⁷¹ *Several Opinions of the State Council on Promoting the Sustainable and Healthy Development of Marine Fishery*, para. 16.

standard regulations.⁸⁷² China shall also establish and improve the distant water fishery management system in accordance with international fishery management rules.⁸⁷³ Additionally, China shall improve the education and management of fishermen and fishery enterprises as well as strictly adhere to relevant laws, regulations and international treaties.⁸⁷⁴ This instrument reflects the development trend in China's fisheries laws in the near future. It shows that China still focuses on its coastal State sovereignty and sovereign rights but will also take responsibility over its fishing vessels.

4.2.4 Concluding remarks

China's legal system is highly centralized. In the field of fisheries, the Fisheries Law of the PRC, which was adopted by the Standing Committee of the NPC, is the fundamental law. The State Council, which is the highest administrative authority, can adopt fisheries administrative rules and regulations. The ministries and commissions of the State Council can issue fisheries rules within the limits of their powers in accordance with the law as well as the administrative regulations, decisions and orders of the State Council. The Fisheries Law, fisheries administrative rules and regulations, as well as fisheries rules of ministries and commissions and other normative documents constitute China's legal framework for fisheries. Fisheries administrative rules and regulations adopted by the State Council as well as Fisheries rules issued by the Ministry of Agriculture occupy a predominant position in China's fisheries legislation, which results in "departmentalism".

Together with its Fisheries Bureau, the Ministry of Agriculture is the major central governmental agency in charge of the fisheries administration in China. Since 2013, the Fisheries Law Enforcement Command, which was a department of the Fisheries Bureau, has been transferred to the National Oceanic Administration. Therefore, the National Oceanic Administration is now in charge of protecting Chinese fishing vessels and personnel, resolving disputes in fishing activities, preventing illegal fishing and protecting marine resources under China's national jurisdiction. The transfer of these functions is still in process so that it is unknown which ministry has certain specific responsibility.

⁸⁷² Several Opinions of the State Council on Promoting the Sustainable and Healthy Development of Marine Fishery, para. 17.

⁸⁷³ Several Opinions of the State Council on Promoting the Sustainable and Healthy Development of Marine Fishery, para. 17.

⁸⁷⁴ Several Opinions of the State Council on Promoting the Sustainable and Healthy Development of Marine Fishery, para. 17. See Section 4.2.2.1 for international treaty and RFMOs in which China has participated.

Among all the legally binding international fisheries agreements introduced in Chapter 2, China has only signed and ratified the UNCLOS. On the one hand, the UNCLOS authorizes States to establish a 200-nautical-mile EEZ, while on the other hand the EEZ create for States, like China and its neighbours, complicated boundary issues which result in fisheries conflicts in the China Sea.

Without explicitly defining the maritime boundaries in most areas of the China Sea, China has signed several bilateral fisheries agreements with its neighbouring States. However, these undefined maritime boundaries usually result in fisheries conflicts and illegal fishing. In marine areas where there are no fisheries agreements, conflicts are more intense. Besides bilateral cooperation, China has also played an active role in regional fisheries management and conservation according to requirements of the UNCLOS. But in cases where conflicts happen, China prefers bilateral political negotiations over international adjudication.

China has actively participated in the negotiations of other international fisheries agreements. Although it has not ratified the UN Fish Stocks Agreement nor the FAO Compliance Agreement, China has legislation with flag State measures for its fishing vessels and has actively participated in regional fisheries management and conservation initiatives, as well as cooperated with coastal States. However, the information exchange on fisheries agreements between China and coastal States in whose EEZs Chinese fishing vessels have been fishing is not sufficiently transparent, which may aggravate unreported fishing even through such fishing is totally legitimate. With regard to the FAO Port State Measures Agreement, this Agreement has not yet entered into force. This, however, does not exclude the possibility that China will join this Agreement or adopt new port State measures in future. China's attitude towards non-legally binding fisheries instruments with regard to combating IUU fishing is more positive. China has implemented part of the Code of Conduct and the IPOA-IUU, while it has not yet adopted the FAO Model Scheme.

China has not specifically established any national legislation pertaining to the combat of IUU fishing. Measures used to deal with IUU fishing are located in numerous instruments. Based on the Fisheries Law of the PRC, the Ministry of Agriculture and the Fisheries Bureau have adopted many implementing rules, measures and provisions in managing fisheries, covering such aspects as the administrative sanctions on fisheries, the registration of fishing vessels, the administration of fishery licensing, coastal State sovereignty and sovereign rights, and responsibilities over distant water fishing vessels. Although China has established several regulations and measures for port control, these instruments merely authorize fisheries bureaus to check vessels and vessel certificates rather than fishing related factors. China pays more attention to fishing activities in waters within its national jurisdiction and its fishing vessels rather than to port State measures or trade-market measures. This is mainly due to China's interest in its sovereignty and sovereign rights as well as its distant water fisheries, rather than in preventing IUU fishing catches entering its fish markets. Additionally, China's current Fisheries Law and its implementing rules, measures and provisions need to be amend-

ed to make them more consistent and to accord them with the development of fisheries.

4.3 Flag State duties and coastal State measures

4.3.1 Flag State duties and coastal State rights in implementing fisheries agreements with Japan and South Korea

4.3.1.1 Background

Historically, China shares marine fisheries resources with its neighbouring countries Japan and South Korea in the Yellow Sea and the East China Sea. In 1996, all three countries officially ratified the UNCLOS.

The UNCLOS allows a State to establish a 200-nautical-mile EEZ. However, the Yellow Sea and most of the East China Sea is nowhere more than 400 nautical miles in width. This means that there are overlapping areas in the EEZs claimed by China, Japan and South Korea. The ambiguity of the provisions of the UNCLOS pertaining to boundary delimitation cannot help resolve the boundary problems in the East Asian region.⁸⁷⁵ Therefore, regional cooperation in the East Asian region is crucial for the development of fisheries. But, due to the Diaoyu/Senkaku dispute between China and Japan, the Dok-do/Takeshima dispute between South Korea and Japan, as well as the complicated situation on the Korean Peninsula and the relationships across the Taiwan Straits, regional cooperation is difficult.⁸⁷⁶

According to Article 297 (3) of the UNCLOS, disputes concerning the interpretation or application of the provisions of the UNCLOS with regard to fisheries shall be excluded from compulsory procedures provided by Section 2 of the Part XV of the UNCLOS. The complexity of fisheries relationships in the East Asia results in negotiations rather than resorting to compulsory dispute settlements. In order to maintain and develop its marine fisheries under these complicated circumstances, States in this Area have cooperated bilaterally. China reached interim

⁸⁷⁵ Paik JH (1996) UNCLOS and boundary delimitation in East Asia. In: Kim D, Park C, Lee SH et al (eds) UN Convention on the Law of the Sea and East Asia. The Institute of East and West Studies, Yonsei University, Seoul, p 183-203.

⁸⁷⁶ Xue G (2004) China's response to international fisheries law and policy: national action and regional cooperation. Dissertation, University of Wollongong, pp. 182-184.

fishery agreements with Japan in 1997 and with South Korea in 2000, viz. the Fishery Agreement between the People's Republic of China and Japan (Sino-Japanese Fishery Agreement)⁸⁷⁷ and the Fishery Agreement between the People's Republic of China and South Korea (Sino-South Korean Fishery Agreement) respectively.⁸⁷⁸ These provisional arrangements are believed to allow the peaceful development of fisheries resources in disputed waters.⁸⁷⁹ Whether these fishery agreements function as expected is analysed below.

4.3.1.2 States' duties under fisheries agreements

The aims of the two fishery agreements are to resolve fishery issues in the EEZ even if boundary delimitations are still in question. The provisions for the prompt release in the two fishery agreements are in accordance with Article 73 of the UNCLOS.⁸⁸⁰ In addition, the parties of the two agreements have agreed not to impose imprisonment or other forms of corporal punishment. Thus, any form of corporal punishment is expressly prohibited when implementing these agreements.

The Sino-Japanese Fishery Agreement establishes a "Provisional Measures Zone" in the East China Sea where the EEZ claims of China and Japan overlap (cf. Map 4.2). Additionally, this Agreement also indicates that the sea area south of 27° N and west of 125°30' E (with exception of the EEZ of China in the South China Sea) is excluded from the scope of the regulation of the Agreement (cf. Map 4.3).⁸⁸¹ Due to the Diaoyu (Senkaku) Islands dispute and the relation with Taiwan, the current fishing pattern is maintained in this sea area. In addition, Chinese traditional squid fishing has been allowed in a squid fishing zone in Japanese waters for five years.⁸⁸²

The Sino-South Korean Fishery Agreement has also adopted a similar Provisional Measures Zone in the Yellow Sea and expressly provided a Current Fishing Pattern Zone. The Agreement has established two Transitional Zones located on the eastern and western sides of the Provisional Measures Zone (cf. Map 4.2). Ad-

⁸⁷⁷ Signed on 11 November 1997 and entered into force on 1 June 2000. For an unofficial translation of the Sino-Japanese Fishery Agreement, see: Zou (2005) *Law of the Sea in East Asia*, Appendix I.

⁸⁷⁸ Signed on 3 August 2000 and entered into force on 30 June 2001. Available via China Fisheries (5): 5-7.

⁸⁷⁹ Wu H, Zhang D (2010) Territorial issues on the East China Sea: a Chinese position. *Journal of East Asia & International Law* 1, p. 144.

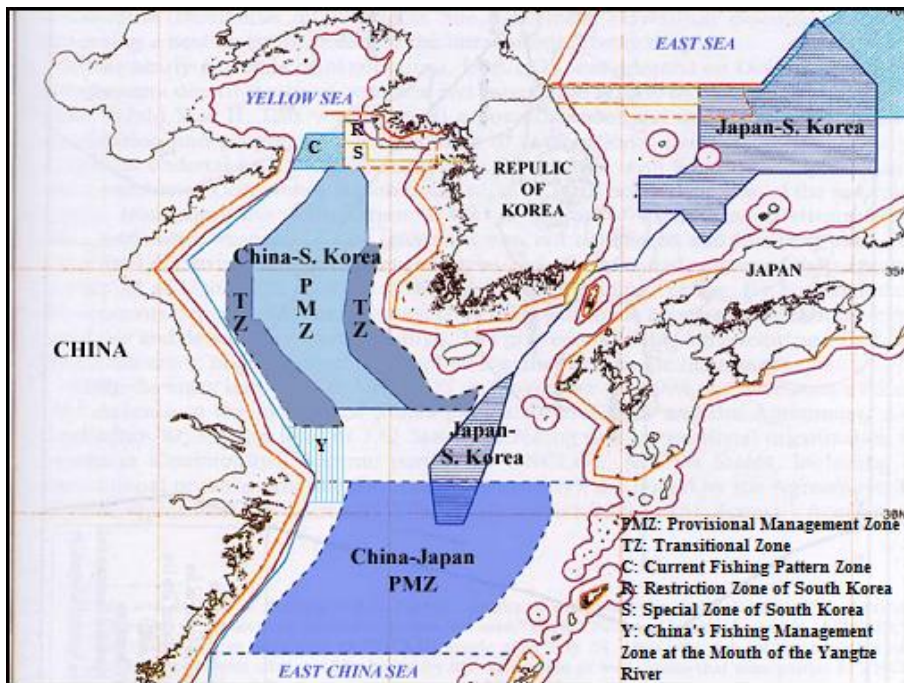
⁸⁸⁰ Sino-Japanese Fishery Agreement, Art. 5. And Sino-South Korean Fishery Agreement, Art. 5.

⁸⁸¹ Sino-Japanese Fishery Agreement, Art. 6.

⁸⁸² Huang S, Tang Y (2010) *Fisheries regulation and fisheries management (in Chinese)*. China Agriculture Press, Beijing, p. 84.

ditionally, the Sino-South Korean Fishery Agreement regulates other zones that are not officially mentioned in the Agreement, including the Restriction Zone of South Korea, the Special Zone of South Korea and the Fishery Management Zone at the Mouth of the Yangtze River (cf. Map 4.2).

Map 4.2 Agreed zones of Sino-Japanese / Sino-South Korean Fishery Agreements



Source: adapted from Xue G (2004) China's response to international fisheries law and policy: national action and regional cooperation, Map 6.1.

Committee, it may call the said national or fishing vessel's attention to the transgression and notify the other Party of the facts. The other Party, with due regard to the notification, shall inform the former of the result after necessary measures have been taken.⁸⁸³ This means that in cases where illegal fishing occurs within the Provisional Measures Zones, the flag State jurisdiction applies rather than the coastal State jurisdiction.⁸⁸⁴

The Transitional Zones in the Sino-South Korean Fishery Agreement were established to transform the management and conservation measures into those under EEZ regime within four years. Fishery activities within the Transitional Zones fell under the EEZ regime after 2005. The two parties agreed to take management and conservation measures in the Transitional Zones similar to those applied to the Provisional Measures Zone, which means flag State jurisdiction applies to the Transitional Zones. The Sino-South Korean Fishery Agreement allows the two parties to jointly supervise and inspect, viz. taking the same patrol vessel, ordering vessels to stop and doing joint boarding and inspection.⁸⁸⁵ In addition, each party provides fishing licenses to its vessels for operating in the other party's Transitional Zone and provides a list of such vessels to the other party.⁸⁸⁶

Additionally, since the Sino-South Korean Fishery Agreement entered into force, Chinese fishing vessels shall not enter the Restriction Zone of South Korea and the Special Zone of South Korea to conduct fishing operations; while fishing vessels of South Korea shall not enter China's Fishing Management Zone at the Mouth of the Yangtze River.⁸⁸⁷

In order to strengthen the management of fishery activities in the Provisional Measures Zone and the Transitional Zones, the Ministry of Agriculture in China promulgated Interim Measures for the Administration of the Provisional Measures Zone in the Sino-Japanese Fishery Agreement in 1999 (revised in 2004) and Measures for the Administration of the Provisional Measures Zone and the Transitional Zone in the Sino-South Korean Agreement in 2001 respectively. Both Measures stipulate the administrative authorities with regard to fishing activities in the Provisional Measures Zones, fishing capacity, conditions of access for fishing, procedures of application for fishing in the Provisional Zones and requirements of fishing logs.

It should be pointed out that the two fishery agreements do not have particular provisions for dispute settlement. As China, Japan and South Korea are all parties to the UNCLOS, the dispute settlement mechanism of the UNCLOS may apply to

⁸⁸³ Sino-Japanese Fishery Agreement, Art. 7 (3); Sino-South Korean Fishery Agreement, Art. 7 (3).

⁸⁸⁴ Zou K (2003) Sino-Japanese joint fishery management in the East China Sea. *Marine Policy* 27, p. 134.

⁸⁸⁵ Sino-South Korean Fishery Agreement, Art. 8 (3).

⁸⁸⁶ Sino-South Korean Fishery Agreement, Art. 8 (4).

⁸⁸⁷ Huang and Tang (2010), p. 88.

such fisheries disputes where the fishery agreements apply.⁸⁸⁸ Particularly, in cases where a vessel and its crew are detained by a coastal State, the dispute of prompt release may be submitted to the compulsory dispute settlement mechanism by the flag State. China, South Korea and Japan have chosen not to take recourse to the provided settlement of disputes mechanism under Article 287 of the UNCLOS.⁸⁸⁹ Disputes of the prompt release between China and South Korea or between China and Japan that cannot be resolved by diplomatic means may be submitted to the ITLOS in accordance with Article 291 of the UNCLOS.

4.3.1.3 Fisheries conflicts and IUU fishing

In the Yellow Sea and the East China Sea, Chinese fishing vessels have conducted more IUU fishing in Japanese waters and South Korean waters than its neighbours' fishing vessels have done in Chinese waters. This is partly because fisheries resources near South Korea and Japan are more abundant, and because Chinese fishing vessels have historically been more used to operating in the waters of China's neighbours than fishing vessels of Japan and South Korea have in Chinese waters. The illegal fishing conducted by Chinese vessels in South Korean waters is particularly serious. Between 2002 and 2011, there were 4,175 Chinese fishing vessels seized due to illegal fishing in South Korean waters, while only two South Korean fishing vessels were seized in Chinese waters for infringements of Chinese fisheries laws.⁸⁹⁰ Compared to South Korean waters, illegal fishing has happened much less frequently in Japan's waters. Although the exact number of seized Chinese fishing vessels by the Coast Guard of Japan is not made public, the total number of all foreign illegal fishing vessels in Japanese waters is 7 in 2012 and 11 in 2011.⁸⁹¹ It is therefore safe to assume that there is much less Chinese illegal fishing in Japanese waters.

There are three reasons why Chinese fishing vessels have conducted more illegal fishing in South Korean waters than in Japanese waters. Firstly, most Chinese fishing vessels fishing in the East China Sea operate in the Provisional Measures

⁸⁸⁸ See: Chapter 2, 2.2.1.1.

⁸⁸⁹ Oceans & Law of the Sea (2014) Settlement of disputes mechanism.

⁸⁹⁰ Kim SK (2012) Illegal Chinese fishing in the Yellow Sea: a Korean officer's perspective. *Journal of East Asia & International Law* 5 (2), 466.

⁸⁹¹ Japan Coast Guard (2013) The situation of the combat of maritime crimes in 2012 (in Japanese). <http://www.kaiho.mlit.go.jp/info/kouhou/h25/k20130319/k130319-2.pdf>. Accessed 19 March 2013. Also see: Japan Coast Guard (2012) The situation of the combat of maritime crimes in 2011 (in Japanese). <http://www.kaiho.mlit.go.jp/info/kouhou/h24/k20120302/k120302-1.pdf>. Accessed 2 March 2012.

Zone of the Sino-Japanese Fishery Agreement. They rarely venture into the Japanese waters due to the long distance. Secondly, the physical closeness of the Chinese and South Korean coasts makes reaching South Korean fishing grounds and transporting catch back easy.⁸⁹² Thirdly, the zones established by the Sino-South Korean Fishery Agreement are more complicated than those established by the Sino-Japanese Fishery Agreement.

This section mainly uses the illegal fishing conducted by Chinese fishing vessels in South Korean waters as an example to explain the reasons for IUU fishing in this area and the possible measures to deal with it.

The major reasons why South Korean Coast Guard seizes and punishes Chinese fishing vessels are: a. entry without fishing license; b. cross-border fishing in the Restriction Zone of South Korea; c. entry without notification; d. entry before the informed time; e. not having capacity plans or not having a capacity plan with the stamp or seal of the applicant; f. the mesh size of the cod-end of the trawl does not meet the requirements; g. not having filled in the fishing logs or having filled in the fishing logs incorrectly.⁸⁹³

The conflicts have intensified in recent years. Both Chinese crew and the Korean Coast Guard have had resorted to violence. For example, conflicts took a very serious turn on 12 December 2011. After the coast guard threw flash bombs at the Chinese fishing vessel, Lu Wen Yu, its Captain Dawei Cheng wielded a knife and killed a Korean Coast Guard officer. Later on 17 January 2012, the Korean Coast Guard forcefully boarded the Chinese fishing vessel, Zhe Tai Yu Yun, and gave the crew a serious beating. Another tragedy happened on 16 October 2012: a Chinese fisherman was fatally shot by the Korean Coast Guard. With more and more serious conflicts, the illegal fishing issue between China and South Korea has become a diplomatic problem.

The current fisheries problems between China and South Korea are inseparably related to the implementation of the Sino-South Korean Fishery Agreement. This Agreement has not taken into account China's traditional fishing rights in South Korean waters as the South Korean-Japan Fishery Agreement has done for South Korean traditional fishing in Japanese waters.⁸⁹⁴ After the Sino-South Korean Fishery Agreement entered into force, more than 18,100 Chinese fishing vessels that used to fish in the Provisional Measures Zone, the Transitional Zone and South Korean waters had to leave those waters.⁸⁹⁵ However, Chinese crew do not

⁸⁹² Kim (2012), p. 473.

⁸⁹³ Yu X (2002) Implementation of the Sino-South Korean Fishery Agreement: an interview with Niu Yushan who is the Director of the Bureau of Fisheries Administration for the Yellow and Bohai Seas (in Chinese). *China Fisheries* (8): p. 31.

⁸⁹⁴ Kang JS (2003) The United Nation convention on the law of the sea and fishery relations between Korea, Japan and China. *Marine Policy* 27, p. 122.

⁸⁹⁵ Xiong T, Che B (2009) Discussion on reasons of the fisheries disputes between China and South Korea and the solutions (in Chinese). *Journal of Anhui Agricultural Sciences* 37 (19), p. 9165.

really understand why the Sino-South Korean Fishery Agreement can deprive them of their traditional fishing rights. Additionally, the design of the various zones and the different laws applied in each case has also increased the difficulty for Chinese crew to understand. Chinese government have disseminated the Sino-South Korea Fishery Agreement and its relevant laws to Chinese fishermen, particularly China's Measures for the Administration of the Provisional Measures Zone and the Transitional Zone in the Sino-South Korean Agreement as well as other fisheries laws of South Korea. China should also educate its crew as to the severity of illegal fishing infraction in South Korean waters and the possible punishment Chinese crew might be exposed to in case of violations. For example, although almost two thirds of illegal Chinese fishing vessels have fishing authorization, they still undermine South Korean fisheries law.⁸⁹⁶ The most common non-compliance phenomena include: the mesh size of the fishing vessel does not meet the requirements; and the fishing logs have not or not correctly been filled in. As the concept of IUU fishing does not exist in China, unreported fishing is generally called illegal fishing, which particularly confuses fishermen that cannot understand why they are being punished while holding proper fishing authorization.

There are two reasons why the Sino-South Korean fisheries conflicts are so abundant. One is that Chinese crew violently resist the Korean Coast Guard in the Korean EEZ. South Korea used to impose a maximum fine of 100 million KRW (89,956 USD) on foreign illegal fishing vessels in its EEZ. Once a Chinese fishing vessel and its crew are detained by the Korean Coast Guard, the fine may leave the owner of the vessel bankrupt. On 14 May 2012, South Korea revised its Act on the Exercise of Sovereign Rights on Foreigners Fishing, etc., within the Exclusive Economic Zone to double the existing 100 million KRW fine to 200 million KRW (179,912 USD). Additionally, if Chinese crew do not follow the instructions from the Korean Coast Guard to stop, they might be subjected to 100 million KRW fine, again a doubling.⁸⁹⁷ Together with higher investments in enforcement equipment and stricter enforcement, the substantial increase of the fines is believed by South Korea to discourage illegal Chinese fishing vessels from entering its waters. In 2012, 467 illegal Chinese fishing vessels were detained by South Korea, which is a decrease by 13 per cent compared to 2011. Among those vessels, 32 fishing vessels entered the territorial sea of South Korea, 119 were not authorized to fish, while the rest had fishing authorization but undermined the relevant laws and regulations of South Korea.⁸⁹⁸ According to Suk Kyoong Kim, the Commissioner General of the Korean Coast Guard, "*even with this decrease in the number of illegal*

⁸⁹⁶ Xiong and Che (2009), p. 9166.

⁸⁹⁷ Kim TG (2012) Will higher fines deter Chinese fishing boats? Available via The Korea Times. http://www.koreatimes.co.kr/www/news/biz/2013/07/123_111057.html. Accessed 15 May 2012.

⁸⁹⁸ Li D (2013) South Korea announces that it will combat illegal Chinese fishing vessels thoroughly (in Chinese). Available via Huanqiu Website. <http://mil.huanqiu.com/world/2013-01/3563300.html>. Accessed 21 January 2013.

*fishing vessels, the rate of unpaid fine had increased by 10.5 per cent where the number of crew arrested had also more than doubled. In other words, the increased fine had discouraged Chinese fishing vessels from engaging in illegal fisheries. However, even though the fine itself has actually increased, because most of the crew is unable to pay such high amounts cases which fail to pay the fine and the number of people getting arrested has also gone up.*⁸⁹⁹ Thus South Korean measures have only played a limit role in preventing illegal fishing by Chinese fishing vessels. There were still many Chinese fishing vessels detained and crew arrested due to illegal fishing. The increased fine and stricter enforcement may result in more resistance by Chinese crew.

Another factor intensifying the fisheries conflicts between China and South Korea is the violence used in enforcement measures by Korean Coast Guard. Since the death of a Korean Coast Guard officer on 25 August 2008, the Korean Coast Guard has begun to undertake stronger measures against illegal Chinese fishing vessels, particularly allowing coast guard officers to use firearms.⁹⁰⁰ As introduced in Chapter 2, Article 73 (3) of the UNCLOS, in the absence of agreements to the contrary by the States concerned, does not permit coastal State penalties for violations of fisheries laws and regulations in the EEZ to include imprisonment or any other forms of corporal punishment. So South Korea should not unilaterally allow its coast guard officers to use firearms against Chinese crew. The language obstacle between Chinese crew and Korean Coast Guard officers usually causes further misunderstanding. In order to reduce the possibilities of fisheries conflict resulting from misunderstanding, to prevent Chinese fishing vessels illegally operating in the EEZ of South Korea and to prevent the abuse of enforcement by Korean Coast Guard officers, China and South Korea have decided to jointly patrol the Provisional Measures Zone to combat illegal fishing.⁹⁰¹

Joint patrols play an important role in fishery cooperation between China and other countries. Since 1994, China and the US are cooperating in the North Pacific. The Chinese coast guards' management of nearly 300 squid fishing boats in the North Pacific has clearly achieved positive results.⁹⁰² Although the joint enforcement between China and South Korea has not been implemented, it is expected to ease the fisheries conflicts.

⁸⁹⁹ Email communication with Mr. Suk Kyoong Kim.

⁹⁰⁰ Yang Z (2012) The present and future of the Sino-South Korean fisheries dispute: a Chinese lawyer's perspective. *Journal of East Asia & International Law* 5 (2), p. 483. Also see: Xiong and Che (2009), p. 9165.

⁹⁰¹ Li X (2013) A top government official of South Korea: China and South Korea will jointly combat illegal fishing (in Chinese). Available via Huanqiu Website. <http://world.huanqiu.com/exclusive/2013-07/4092908.html>. Accessed 4 July 2013.

⁹⁰² Yu Z (2011) Joint enforcement plausible solution to fishing disputes. Via *Global Times*. <http://www.globaltimes.cn/DesktopModules/DnnForge%20-%20NewsArticles/Print.aspx?tabid=99&tabmoduleid=94&articleId=690441&moduleId=405&PortalID=0>. Accessed 29 December 2011.

In addition, China should also exercise its flag State duties to monitor the fishing activities of vessels flying its flag. As the zones covered by the Sino-South Korean Fishery Agreement are complicated, sometimes Chinese fishermen may not be aware that they have crossed the boundary without the use of a GPS. Therefore, China and South Korea have made progress by deciding in 2012 that Chinese fishing vessels operating in the EEZ of South Korea shall install GPS, the Fishing Vessel Identification System, Vessel Monitoring Systems and the Automatic Identification System.⁹⁰³

Whether to keep the Sino-South Korean Fishery Agreement is also disputed in both China and South Korea. As the Agreement has passed its first five-year term, either party may terminate this Agreement at any time by giving the other party six months' written notice.⁹⁰⁴ Currently, this Agreement brings more benefits to South Korea than to China. Because the number of fishing vessels in South Korea is much lower than that in China, reducing fishing vessels is easier for South Korea. With the problem of overfishing and pollution in China's coastal waters, fisheries conflicts may not be halted if China cannot successfully resolve the reduction of fishing vessels. China installed a marine fishing vessel reduction plan for 2003-2010, which did achieve a reduction by 2008 close to the target, but after that both the number of vessels and the total combined power has started to increase again.⁹⁰⁵ So China has indeed to put another fishing vessel reduction plan into place.

In order to help vessels and fishermen that have had to leave the South Korean waters due to the Agreement, China can on the one hand relocate those vessels and fishermen to fish overseas; on the other hand, China should focus more on marine aquaculture and seafood processing and other fisheries industries.⁹⁰⁶ If one of the parties terminates the Agreement, the Provisional Measures Zone and the previous Transitional Zone will become heavily disputed areas again. Chinese fishing vessels entering the Provisional Measures Zone and the previous Transitional Zone on South Korea's side may have a higher chance of becoming impeded by South Korea because the latter also claims sovereign rights over such waters. Although Chinese fishing vessels historically were accustomed to fishing in waters beyond the territorial sea of South Korea, since the application of the EEZ regime Chinese vessels cannot fish in South Korea's EEZ without the latter's authorization. Thus, even though China terminates the Agreement, Chinese fishing vessels cannot freely enter the EEZ of South Korea anymore. To end its disadvantageous fishery relationship with South Korea, the solution for China is to first

⁹⁰³ Phoenix Television (2012) China and South Korea will jointly enforce to combat IUU fishing and improve the management of fishing vessels (in Chinese). Available <http://dailynews.sina.com/gb/chn/chnpolitics/phoenixtv/20120415/10153315785.htm> via Sina. Accessed 15 April 2012.

⁹⁰⁴ Sino-South Korea Fishery Agreement, Art. 14 (2).

⁹⁰⁵ FAO (2012) The state of world fisheries and aquaculture 2012, p. 11.

⁹⁰⁶ Yang (2012), pp. 491-492.

clearly delineate its boundaries, before negotiating with South Korea again in order to achieve a more reasonable agreement.

4.3.1.4 A broader view on fisheries disputes among China, Japan and South Korea

States prefer to cooperate bilaterally instead of multilaterally in the field of fisheries in the Yellow Sea and the South East Sea. Such bilateral arrangements usually undermine the rights of third countries. For example, the EEZ claimed by South Korea overlaps with the Provisional Measures Zone of the Sino-Japanese Fishery Agreement (cf. Map 4.2). So vessels of South Korea still fish in such waters. As the Middle Waters of the South Korean- Japanese Fishery Agreement overlap with the Provisional Measures Zone of the Sino-Japanese Fishery Agreement, there is no agreement between South Korea and China in those waters. Chinese fishing vessels can also fish in the Middle Waters of the East China Sea under the South Korean-Japanese Fishery Agreement (cf. Map 4.2).⁹⁰⁷

In practice, those bilateral fisheries agreements make the situation in the Yellow Sea and the East China Sea more complicated. Firstly, various zones established by those fishery agreements means that different laws and regulations apply. When there are boundary disputes among States, it is impossible to avoid boundary crossings by fishermen. Secondly, bilateral agreements cannot influence the interests of a third State. If there is another State involved in the fisheries relationship, why do concerned States not negotiate multilaterally? As the boundary delimitation cannot be resolved in a short period, it is highly recommended to establish a multilateral fishery regime in those waters. Compared to the situation of the South China Sea as will be discussed below, it is much easier to establish a multilateral fishery regime in the Yellow Sea and the East China Sea as only China, Japan and South Korea are involved. As certain RFMOs have played an effective role in combating IUU fishing in other waters, establishing a RFMO only for conservation and management of fisheries resources in the Yellow Sea and the East China Sea can make the fisheries relationships easier among those States. On the one hand, rules and regulations under a RFMO are less complicated to understand and easier to enforce. Boundary disputes may be temporarily put aside. On the other hand, patrolling under the legal framework of a RFMO can reduce the possibility of abuse of enforcement rights. However, in the Yellow Sea and East China Sea, fisheries issues are not the main concern. Security is the priority, thus it will be a daring attempt to put part of the sovereign rights under joint management. Although there is no joint development in the field of fisheries in the Yellow Sea or the East China Sea, the 2008 China-Japan Principled Consensus on the East China Sea Issue is an example for concerned States to temporarily ease the

⁹⁰⁷ Kang (2003), p. 122.

maritime disputes and to jointly develop resources, particularly oil and gas, in a part of the East China Sea.⁹⁰⁸

4.3.2 China's coastal State measures and flag State responsibility in the South China Sea

4.3.2.1 Fisheries conflicts in the South China Sea

The fisheries conflicts in the South China Sea are much more complicated than that in the East China Sea and the Yellow Sea. There are six countries bordering this sea area, viz. Brunei Darussalam, China (including the People's Republic of China and Taiwan), Indonesia, Malaysia, the Philippines and Vietnam. It should be pointed out that all of the States bordering the South China Sea have a one-China policy and Taiwan maintains similar claims to the Beijing government so that we do not refer to Taiwan's policy and claims separately. However, many of the States have disputes over sovereignty or sovereign rights to different parts of the South China Sea. Disputes mainly focus on the Paracel Islands and the Spratly Islands. The Paracel Islands (*Xisha Qundao*) are under China's control. Although they are contested by the Vietnamese, China does not consider the Paracel Islands under dispute. More complicated is the dispute over the Spratly Islands (*Nansha Qundao*) that already lasts for a long time and involves five States (China (including Taiwan), Malaysia, Vietnam, the Philippines and Brunei), which could result in security issues that may influence the peace in the East Asian region and even in the world.⁹⁰⁹

China has dispatched fishery administration vessels to patrol the waters around the Paracel and Spratly Islands for illegal fishing. However, other countries involved in both disputes suspect that China uses "*the fisheries as an excuse to assert control over the South China Sea through civilian instead of direct military*

⁹⁰⁸ Announced on 18 June 2008. The text is available via China View. http://news.xinhuanet.com/english/2008-06/18/content_8394206.htm. Accessed 10 April 2014. More discussion on the 2008 China-Japan Principled Consensus on the East China Sea Issue, see: Gao J (2009) A note on the 2008 Cooperation Consensus between China and Japan in the East China Sea. *Ocean Development & International Law* 40 (3): 291-303.

⁹⁰⁹ Zou K (2006) Joint development in the South China Sea: a new approach. *The International Journal of Marine and Coastal Law* 21 (1), p. 86.

means”.⁹¹⁰ In fact, most of the fisheries conflicts in the South China Sea are indeed disputes over islands and sovereign rights over fisheries resources. For example, on 10 April 2012, two Chinese maritime surveillance vessels prevented an attempt by Philippine officials to arrest Chinese fishermen for “fishing illegally” in the area of the Scarborough Shoal, which resulted in a serious standoff between the two States in the South China Sea.⁹¹¹

Map 4.4 shows that the U-shape line (*Nine-Dash Line*) of China covers most of the disputed islands and overlaps with the EEZ claims of Vietnam, Malaysia, Brunei and the Philippines.⁹¹² Compared with the military fields or boundary delimitation, fisheries are more “neutral” areas and therefore easier to cooperate in.⁹¹³ However, China’s attitudes towards fisheries and other issues related to sovereignty and sovereign rights are unshakable. China signed the Declaration on the Conduct of Parties in the South China Sea with the Association of Southeast Asian Nations in 2002. This Declaration mainly emphasizes resolving the territorial and jurisdictional disputes by peaceful means.⁹¹⁴ It specifically mentions cooperation in the fields of marine environmental protection, marine scientific research, safety of navigation and communication at sea, search and rescue operations, and com-

⁹¹⁰ Mallory TG (2012) *The Sea’s Harvest: China and Global Fisheries*. Available via Saisphere. <http://media.sais-jhu.edu/saisphere2011/article/sea%E2%80%99s-harvest-china-and-global-fisheries>. Accessed 8 January 2012.

⁹¹¹ CNN Wire Staff (2012) China, Philippines locked in naval standoff. Available via CNN. <http://edition.cnn.com/2012/04/11/world/asia/philippines-china-naval-standoff>. Accessed 11 April 2012.

⁹¹² More discussion on the U-shape line see: Gao Z, Jia B (2013) The Nine-dash line in the South China Sea: history, status, and implications. *The American Journal of International Law* 107 (1): 98-124. The authors prove that the U-shape line has three meanings. “*First, it represents the title to the island groups that it encloses. In other words, within the nine-dash line in the South China Sea, China has sovereignty over the islands and other insular features, and has sovereignty, sovereign rights, and jurisdiction – in accordance with UNCLOS – over the waters and seabed and subsoil adjacent to those islands and insular features. Second, it preserve Chinese historic rights in fishing, navigation, and such other marine activities and oil and gas development in the waters and on the continental shelf surrounded by the line. Third, it is likely to allow for such residual functionality as to serve as potential maritime delimitation lines.*”

⁹¹³ Franckx E (2012) Fisheries in the South China Sea: a centrifugal or centripetal force? *Chinese Journal of International Law* 11 (4), 728.

⁹¹⁴ Declaration on the Conduct of Parties in the South China Sea was signed on 4 November 2002 in Phnom Penh, the Kingdom of Cambodia. Available via Association of Southeast Asian Nations. <http://www.asean.org/asean/external-relations/china/item/declaration-on-the-conduct-of-parties-in-the-south-china-sea>. Accessed 28 August 2013.

bating transnational crime. However, it does not mention fisheries, gas and oil or other issues closely related to sovereignty and sovereign rights. China maintains that the Declaration is aimed at keeping the South China Sea peaceful rather than resolving the disputes over territory and sovereign rights.⁹¹⁵ In the next section, fisheries cooperation between China and Vietnam is discussed to demonstrate a successful example of cooperation in the South China Sea, which may provide a possibility for cooperation in the South China Sea between China and other States.

Map 4.4 Territorial claims in the South China Sea



Source: X (2012) China's nine-dashed line in South China Sea. Via China Daily Mail. <http://chinadailymail.com/2012/05/25/chinas-nine-dashed-line-in-south-china-sea/>. Accessed 25 May 2012.

⁹¹⁵ X (2012) Foreign Ministry Spokesperson: Establishing the Code of Conduct in the South China Sea is a part of the implementation of the Declaration on the Conduct of Parties in the South China Sea. Available via China View. http://news.xinhuanet.com/world/2012-04/05/c_111741057.htm. Accessed 5 April 2012.

4.3.2.2 State's duties under fisheries agreements between China and Vietnam

The fisheries relationship between China and Vietnam in the Gulf of Tonkin (*the Beibu Gulf in Chinese, and the Bac Bo Gulf in Vietnamese*) is different from that between China and the other two States in the Yellow Sea and East China Sea. The fisheries cooperation between China and Vietnam in the Gulf of Tonkin is based on the resolved demarcation in that marine area. Together with the Agreement between the People's Republic of China and the Socialist Republic of Vietnam on the Delimitation of the Territorial Seas, Exclusive Economic Zones and Continental Shelves of the two countries in the Gulf of Tonkin (the Sino-Vietnamese Agreement on Maritime Boundary Delimitation in the Gulf of Tonkin),⁹¹⁶ the Fishery Cooperation Agreement between the People's Republic of China and the Socialist Republic of Vietnam in Gulf of Tonkin (the Sino-Vietnamese Fishery Agreement in the Gulf of Tonkin) was signed on 25 December 2000.⁹¹⁷ The two agreements were not ratified until the conclusion of subsequent resolutions of remaining issues respecting fisheries management. On 29 April 2004, the Additional Protocol of the Sino-Vietnamese Fishery Agreement in the Gulf of Tonkin⁹¹⁸ and the Provisions for Fisheries Conservation and Management in the Common Fishery Zone of Gulf of Tonkin⁹¹⁹ were signed. Then all four documents entered into force at the same time on 30 June 2004. Clear delimitation of marine boundaries and long-term negotiation of fisheries issues ensure that the smallest possibility of any fishing conflict in the Gulf of Tonkin is easily resolved.

Like the two fisheries agreements China signed with Japan and South Korea, the Sino-Vietnamese Fishery Agreement also establishing different management zones, including a Common Fishery Zone, a Transitional Fishery Zone and a Buffer Zone (cf Map 4.5). Unlike the two fisheries agreements, the management zones established by the Sino-Vietnamese Fishery Agreement are based on a clear delimitation. The three zones are all divided by delimitation lines.

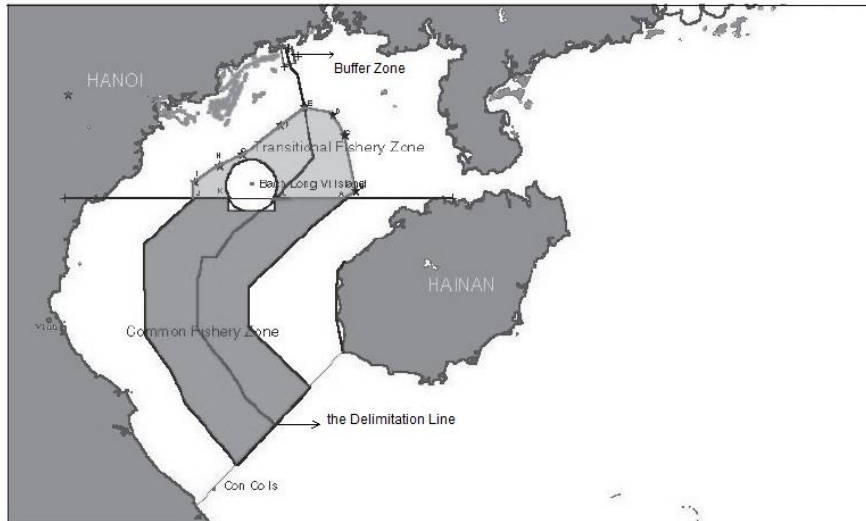
⁹¹⁶ Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs (2005) Law of the Sea Bulletin No 56. United Nations, New York, p 137-138.

⁹¹⁷ An unofficial translation see: Zou (2005) Law of the Sea in East Asia, Appendix II.

⁹¹⁸ Available via China Fisheries 2004 (7): 6-10.

⁹¹⁹ Available via China Oceans Law Review 2005 (1): 219-223.

Map 4.5 Delimitation line and joint fishing zones in the Gulf of Tonkin



Source: Adapted from Thao NH (2005) Maritime Delimitation and Fishery Cooperation in the Tonkin Gulf. *Ocean Development & International Law* 36, Figure 1.

The Common Fishery Zone lasts for twelve years and afterwards it automatically extends for another three years. China and Vietnam jointly take measures for the conservation, management and sustainable utilization of the living resources in the Common Fishery Zone.⁹²⁰ Each Party carries out a licensing system for fishing activities conducted by its own fishing vessels and notifies the other Party of the names of the fishing vessels with fishing licenses.⁹²¹ In addition, the Agreement requires fishing vessels entering the Common Fishery Zone to be appropriately marked and to correctly fill in the fishing logs.⁹²²

Based on the determined EEZ, coastal State control rather than flag State control applies in the Common Fishery Zone.⁹²³ According to Article 9 of the Agreement, each Party shall monitor and inspect the nationals and fishing vessels of both Parties in their own water areas of the Common Fishery Zone. In cases where

⁹²⁰ The Sino-Vietnamese Fishery Agreement, Art. 5.

⁹²¹ The Sino-Vietnamese Fishery Agreement, Art. 7 (1).

⁹²² The Sino-Vietnamese Fishery Agreement, Arts. 7 (2) and 8.

⁹²³ Xue G (2006) Improved fisheries co-operation: Sino-Vietnamese Fisheries Agreement for the Gulf of Tonkin. *The International Journal of Marine and Coastal Law* 21 (2), p. 228.

the competent authorities of one Party finds any breach of the regulations agreed on by the Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin in its own water area of the Common Fishery Zone, the competent authorities shall have the right to deal with such breach according to the regulations laid down by the Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin and shall promptly notify the other Party of the relevant circumstances and the outcome. The detained fishing vessels or crew shall be released promptly after the appropriate bond or other kind of security has been posted. Article 20 of the Provisions for Fisheries Conservation and Management in the Common Fishery Zone of Gulf of Tonkin defines illegal fishing in the Common Fishery Zone and specifies the penalties. Furthermore, each Party can penalize fishing activities without fishing authorization in their own water areas of the Common Fishery Zone according to its domestic legislation.⁹²⁴

The function of the Transitional Fishery Zone is similar to the Transitional Zone established in the Sino-South Korean Fishery Agreement. Since the Transitional Fishery Zone in the Gulf of Tonkin expired in 2008, fishing vessels of each Party have left the waters of the other Party. In order to manage the fisheries in this area, the Additional Protocol of the Sino-Vietnamese Fishery Agreement in the Gulf of Tonkin was adopted in 2004. Within four years, coastal State control was applied in the Transitional Zone as well. Article 4 of the Additional Protocol provides that a Party has the right to penalize fishing vessels without fishing authorization that fish in its own waters of the Transitional Fishery Zone according to its domestic law. However, coastal State control in the Transitional Zone is limited. For example, Article 3 of this Additional Protocol requires a Party to inform the other Party in cases where fishermen of the other Party do not fill in the fishing logs according to requirements, but the Party may not penalize such fishermen merely on the grounds that they have not filled in the fishing logs.

A Buffer Zone is established to avoid conflicts due to incautious entering of the territorial sea of the other Party. Once a Party finds that small fishing vessels of the other Party conduct fishing activities in its waters in the Buffer Zone, the Party may send a warning and take necessary measures to order them to leave the area. But the Party shall not detain the fishing vessels, arrest the crew, penalize or resort to force. In cases where fishing conflicts happen in the Buffer Zone, the Party shall report to the Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin for settlement.⁹²⁵

China has issued several documents to implement the Sino-Vietnamese Fishery Agreement and its related documents, including an Urgent Circular on the Preparation for the Implementation of the Sino-Vietnamese Fishery Agreement for the

⁹²⁴ Provisions for Fisheries Conservation and Management in the Common Fishery Zone of Gulf of Tonkin, Art. 16.

⁹²⁵ The Sino-Vietnamese Fishery Agreement, Art. 12 (2).

Gulf of Tonkin⁹²⁶ and Twelve New Rules for Vessels Fishing in the Agreed Zones of Sino-Vietnamese Agreement in the Gulf of Tonkin.⁹²⁷ The Circular confirms that the Bureau of Fisheries Administration for the South China Sea and the fishing administration vessels from Guangdong, Guangxi and Hainan, together with the border defence and the navy, are in charge of monitoring at sea. The Twelve New Rules provide requirements for fishing in the Common Fishery Zone and the Transitional Fishery Zone, viz. procedures for applying for a fishing permit; installation of GPS or devices for vessel monitoring; carrying the required documents on board; vessel flagging and marking; prohibition of destructive fishing operations; filling-in and submitting of fishing logbooks; prohibition against catching endangered species; maintenance of orderly fishing operation and avoidance of fishing conflicts; settlement of fishing disputes and vessel collision; compliance and assistance with authorized boarding inspections; and procedures for emergency port calls.

The Agreement also establishes joint monitoring and inspection which aims to deal with any breach of the regulations laid down by the Sino-Vietnamese Joint Committee for Fishery in the Gulf of Tonkin. Since 2006, China and Vietnam have conducted joint monitoring and inspection in the Common Fishery Zone once a year. The joint management, monitoring and inspection in the Common Fishery Zone promotes the coordination and cooperation between the two Parties.⁹²⁸ More importantly, the patrol of fisheries administration vessels has indeed effectively combated illegal fishing in the agreed water area. From the moment the Sino-Vietnamese Fishery Agreement entered into force till June 2009, the Bureau of Fisheries Administration for the South China Sea commissioned 238 fisheries administration vessels to patrol in the Common Fishery Zone, the Transitional Fishery Zone and the Buffer Zone for 2,379 days and also investigated 728 Chinese illegal fishing vessels, expelled 445 foreign illegal fishing vessels and investigated 46 foreign illegal fishing vessels.⁹²⁹

⁹²⁶ The Circular was promulgated by Ministry of Agriculture on 14 June 2004 (in Chinese). Available via People Website. <http://law.people.com.cn/showdetail.action?id=2585114>. Accessed 23 January 2014.

⁹²⁷ Available via China View (in Chinese). http://news.xinhuanet.com/newscenter/2004-06/30/content_1557387.htm. Accessed 23 January 2014.

⁹²⁸ Chen Y (2013) The 8th Joint Monitoring and Inspection in the Common Fishery Zone of the Gulf of Tonkin by China and Vietnam goes smoothly (in Chinese). Available via the South China Sea Fishery Information Website. http://www.nhyzchina.gov.cn/Html/2013_08_09/2_1459_2013_08_09_3507.html. Accessed 9 August 2013.

⁹²⁹ Jin W (2009) Scarce fisheries resources and new games between China and Vietnam in the Gulf of Tonkin (in Chinese). Available via People Website. <http://world.people.com.cn/GB/9582376.html>. Accessed 2 July 2009.

Illegal fishing in the Gulf of Tonkin has been reduced year after year since the Sino-Vietnamese Fishery Agreement came into force. Before that, illegal fishing frequently happened in the Gulf of Tonkin due to the unclear delimitation. Whether one side could tolerate the illegal fishing conducted by fishing vessels or fishermen of the other side depended on the relationship between China and Vietnam.⁹³⁰ Together with its related implementing instruments, the Sino-Vietnamese Fishery Agreement ensures a comprehensive legal framework for fisheries in the Gulf of Tonkin, effectively reducing illegal fishing in this area.

Finally, the settlement of the boundary delimitation and fisheries conflicts between China and Vietnam in the Gulf of Tonkin provides an inspiration for the settlement of conflicts in the South China Sea. Fully analysed, most of the conflicts over resources in the South China Sea are finally disputes over boundary delimitation and sovereignty of islands. Simultaneous negotiations over the delimitation and fisheries can reduce fisheries conflicts to the greatest extent. Before the conclusion of any agreement, both sides should maintain a peaceful settlement in order not to complicate or escalate a dispute. In June 2013, China and Vietnam agreed to establish a hotline to deal with fishery incidents in the South China Sea,⁹³¹ which is a good start for the improvement of the relationship between China and Vietnam in the South China Sea.

4.3.2.3 Current and future developments

The cases discussed in previous sections show that bilateral fisheries agreements are merely effective when maritime boundary delimitation is defined. Although China is not reluctant to agree, the trend “*from bilateralism to multilateralism or regionalism*” is not evitable in the China Sea, especially for the fisheries in the South China Sea.⁹³²

The cooperation in the South China Sea is difficult but not impossible. Unlike oil and gas, which are relatively stationary resources, the mobility of fisheries resources requires more cooperation. This thesis does not deeply discuss the disputed sovereignty or sovereign rights pertaining offshore features in the South China

⁹³⁰ Zou K (2002) Gulf of Tonkin. *The International Journal of Marine and Coastal Law* 17 (1), p. 140.

⁹³¹ An (2013) China, Vietnam ink agreement on fishery hotline. Available via China View. http://news.xinhuanet.com/english/china/2013-06/21/c_132475771.htm. Accessed 21 June 2013.

⁹³² Zou K (2005) Implementing the United Nations Convention on the Law of the Sea in East Asia, pp. 40 and 53.

Sea or the historic rights claimed by China.⁹³³ Instead, the author will use the potential cooperation between China and the Philippines for the Scarborough Shoal as an example to show a possible compromise and cooperation model in South China Sea.

According to Article 121 of the UNCLOS, as the Scarborough Shoal is a submerged reef with four to six rocks above water at high tide that cannot sustain human habitation or economic life, it can be entitled a territorial sea but not an EEZ or continental shelf. With regard to sovereignty disputes, the late Deng Xiaoping of China advised to set aside the sovereignty disputes and pursue joint development.⁹³⁴ It is suggested that China and the Philippines set aside the sovereignty disputes and should jointly develop the fisheries resources in the 12-nautical-mile territorial sea, which will be much easier than disputes over the Spratly or the Paracels since these disputes involve more States.⁹³⁵

Although it seems that States bordering the South China Sea have preferred to resolve the sovereignty disputes and boundary delimitation through political negotiation rather than legal litigation, the Philippines informed China, through a note verbale, that it was submitting its disputes with China concerning the South China Sea to the compulsory dispute settlement procedures under the UNCLOS on 22 January 2013. On 30 March 2014, the Philippines submitted to the arbitral tribunal constituted in accordance with Annex VII of the UNCLOS for the invalidation of the “nine-dash line” that China includes on maps to justify its claim to the South China Sea. As introduced in Section 4.2.2.1, China has made a declaration pursuant to Article 298 of the UNCLOS to be excluded from the compulsory procedures entailing binding decisions for all of the categories of disputes in Article 298, including disputes concerning sea boundary delimitations or those involving historic bays or titles and disputes that necessarily involves the concurrent consideration of any unsettled dispute concerning sovereignty or other rights over continental or insular land territory. Thus, the Philippines’ submission is unjustified.

As Beckman has indicated, certain legal disputes pertaining the interpretation or application of UNCLOS provisions in the South China Sea are not within the exclusion under Article 298 of the UNCLOS. For example, a coastal State may submit a dispute to challenge the right of Chinese fishermen to fish within the EEZ of the coastal State because they have “historic fishing rights” that must be recog-

⁹³³ More discussion for disputed sovereignty or sovereign rights pertaining offshore features in the South China Sea and the historic rights claimed by China see: Gao and Jia (2013), pp 98-124. Also see: Beckman R (2013) *The UN Convention on the Law of the Sea and the maritime disputes in the South China Sea*. *The American Journal of International Law* 107 (1): 142-163.

⁹³⁴ Ministry of Foreign Affairs of the People’s Republic of China (2014) *Setting aside the sovereignty disputes and pursuing joint development* (in Chinese). <http://www.mfa.gov.cn/chn//gxh/xsb/wjzs/t8958.htm>. Accessed 24 January 2014.

⁹³⁵ Beckman (2013), pp. 159-160.

nized by the coastal State.⁹³⁶ In addition, requests of prompt release of vessels and crew are also within the exclusion under Article 298. However, China has never submitted any request of prompt release when its vessels and crew have been detained by other States. This is mainly because China always states that it prefers to resolve international disputes through negotiation. The dispute with the Philippines shows that China is in a passive position due to lack of experience in legal litigation. China is also opposed to the advisory competence of ITLOS in Case 21.⁹³⁷ China maintains that no provision in the UNCLOS authorizes the full bench of the advisory competence of the ITLOS.⁹³⁸

Therefore, it is suggested that China should take a more active attitude towards the international litigation for fisheries disputes (such as prompt release, which is a less sensitive issue than boundary conflicts) in order to train litigators and gain much needed experience in international litigation.

⁹³⁶ Beckman (2013), pp. 161-162.

⁹³⁷ Case No 21 of the ITLOS concerns the request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC), which refers to the following questions: 1. What are the obligations of the flag State in cases where IUU fishing activities are conducted within the EEZ of third party States? 2. To what extent shall the flag State be held liable for IUU fishing activities conducted by vessels sailing under its flag? 3. Where a fishing license is issued to a vessel within the framework of an international agreement with the flag State or with an international agency, shall the State or international agency be held liable for the violation of the fisheries legislation of the coastal State by the vessel in question? 4. What are the rights and obligations of the coastal State in ensuring the sustainable management of shared stocks and stocks of common interest, especially the small pelagic species and tuna?

⁹³⁸ Huang H (2013) Written statement of the People's Republic of China regarding the request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC). Available via ITLOS. <https://www.itlos.org/index.php?id=252&L=0>. Accessed 12 March 2014, pp. 41-42.

4.3.3 China's State responsibility for fishing on the high seas and within other countries' EEZs

4.3.3.1 Introduction

Due to the overexploitation of coastal fisheries resources and the limited access to waters of China's neighbouring States, Chinese fisheries law and policies encourage Chinese fishermen to fish overseas in order to relieve unemployment pressures. By the end of the 20th century, China had become the major distant-water fishing country in the world.⁹³⁹ With the expansion of China's middle class and the increased consumption of high-value fish species,⁹⁴⁰ the scale of China's distant water fisheries has expanded as well. For example, China permitted the construction of 221 distant water fishing vessels in 2011. In 2012, the total number of distant water fishing vessels increased to 1,830 (excluding the Hong Kong and Macau Special Administrative Regions and Taiwan) belonging to 120 enterprises, which had obtained the qualification to be distant water fishery enterprises.⁹⁴¹ These vessels operated in EEZs of 38 States in the Pacific Ocean and the Atlantic Ocean, on the high seas of the Indian Ocean and in the Antarctic.⁹⁴² However, it is not publicly known in which EEZs Chinese fishing vessels have been operating for reasons of commercial confidentiality.

Given the large scale of China's distant water fisheries, IUU fishing conducted by Chinese fishing vessels has also largely been reported, in particular in waters off West Africa. Examples can be found in the reports of the Environmental Justice Foundation, the news and other publications.⁹⁴³ It should be pointed out that the Chinese fishing vessels here include not only Chinese flagged vessels but also fishing vessels belonging to Chinese enterprises but flagged in other States. As in-

⁹³⁹ Pauly et al. (2013), p.2.

⁹⁴⁰ Mallory TG (2013) China's distant water fishing industry: Evolving policies and implications. *Marine Policy* 38, p. 100.

⁹⁴¹ X (2013) The sustained and stable development of China's distant fisheries in 2012 (in Chinese). Available via China Distant Water Fisheries. <http://www.cndwf.com/bencandy.php?fid=14&id=8171>. Accessed 17 July 2013.

⁹⁴² X (2013) The sustained and stable development of China's distant fisheries in 2012.

⁹⁴³ See: EJF (2009) *Dirty Fish – How EU hygiene standards facilitate illegal fishing in West Africa*. Environmental Justice Foundation, London, Annex 1. Also see: Dobo A (2009) *Illegal Chinese fishing in West African Waters – A study on Chinese IUU activities and its consequences to socio-ecological systems*. Dissertation, Stockholm University, pp. 28-30. Also See: EJF (2007) *Pirate fish on your plate – Tracking illegally-caught fish from West Africa into the European market*. Environmental Justice Foundation, London, pp. 22-24.

roduced in Section 4.2.3.7, China's distant water fishing vessels are allowed to fly the flag of a coastal country and to operate in the sea areas under the jurisdiction of that country. Section 4.2.3.3 has shown that fishing vessels must obtain Chinese nationality in cases where Chinese citizens or legal persons bareboat charter fishing vessels overseas. In these situations, China shall enforce flag State responsibility over such vessels. In addition, in the case of "flags of convenience", the flag a vessel is flying has little links with the beneficial ownership of the catches.⁹⁴⁴ So a State shall control its beneficial owners involved in IUU fishing. Thus, this section mainly discusses China's flag State responsibility over its flagged vessels and its control over Chinese nationals and distant water fishing companies.

4.3.3.2 Case study: West Africa

This Section specifies China-related IUU fishing activities in West Africa, analyses the reasons for China-related IUU fishing in this area and tries to provide possible solutions to this problem. As introduced in Chapter 3, IUU fishing is most serious in the waters off West Africa. Even vessels of certain developed countries, such as vessels of South Korea, have been fishing illegally in this area.⁹⁴⁵ The lack of coastal State control in West Africa makes the situation worse. Thus, a study of this area can pinpoint the most indispensable elements in combating IUU fishing. Another reason why West Africa is an interesting example is because this area has received much attention from NGOs, researchers and media, so that the information about China is accessible.

4.3.3.2.1 Lack of sufficiently serious law?

The most common IUU fishing activities conducted by Chinese fishing vessels in West Africa include: fishing in a prohibited zone; unlicensed fishing; illegal mesh in trawl; mesh size violation; trawling though licensed for purse seine; illegal fishing methods; transshipment at sea; misreported catches and landings; false identification; destroying fishing gear owned by local fishermen; and avoiding arrest.⁹⁴⁶

⁹⁴⁴ Griggs L, Lugten G (2007) Veil over the nets (unravelling corporate liability for IUU fishing offences). *Marine Policy* 31, p. 160.

⁹⁴⁵ EJF (2009) *Dirty Fish – How EU hygiene standards facilitate illegal fishing in West Africa*, p. 22.

⁹⁴⁶ Dobo (2009), p. 103.

In fact, most of these infringements are prohibited under the Fisheries Law of the PRC and the Administrative Provisions for Distant Water Fisheries mentioned in Sections 4.2.3.1 and 4.2.3.7 respectively. However, the fines imposed on Chinese vessels and enterprises that have engaged in IUU fishing under the Fisheries Law of the PRC are much lower than those imposed on illegal fishing conducted by foreigners and foreign vessels within China's national jurisdiction. This phenomenon is very common in international fisheries. For instance, as discussed in Section 4.3.1.3, South Korea has imposed very high fines on illegal foreign fishing vessels within its EEZ recently; while South Korean fishing vessels in West Africa were most involved in IUU fishing during 2011 and 2012.⁹⁴⁷ However, most West African coastal States lack sufficient capabilities to enforce these rights.

4.3.3.2.2 Non-interference principle and China's responsibility in West Africa

Non-interference has been the basic principle and main feature of China's diplomacy.⁹⁴⁸ In the field of fisheries, China provides financial and technical aid to coastal States in West Africa for fishing rights without any additional political conditions. However, China's attitude towards its cooperation with West Africa is criticized as having funded corruption. Compared to China, the EU imposes additional conditions on its aid to West Africa. For example, the EU requests each year that a certain amount of its financial contribution in the fisheries partnership agreement with Cape Verde is used to support the implementation of Cape Verde's sectoral fisheries policy that aims to achieve responsible and sustainable fishing.⁹⁴⁹ Each year, the EU and Cape Verde carry out an evaluation of the progress made in implementing the multiannual sectoral program. If evaluation indicates that the objectives financed directly by EU's financial contribution have not been satisfactorily achieved, the EU reserves the right to reduce that share of the financial contribution with a view to adjusting the amount allocated to the implementation of the Program in line with the results.⁹⁵⁰ Leaving aside whether the

⁹⁴⁷ EJF (2012) *Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU*. EJF, London, p. 35.

⁹⁴⁸ Zhang Z (2010) *On the Non-interference Principle of China's diplomacy in Africa* (in Chinese). *West Asia and Africa* (1), p.11.

⁹⁴⁹ Protocol agreed between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force, Art. 2 (2) (b); OJ L181 of 9 July 2011, p. 2.

⁹⁵⁰ Protocol agreed between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided

EU's fisheries partnership agreements promote responsible and sustainable fishing in West Africa, such agreements indeed play a certain role in preventing corruption by West African governments.

However, some West African governments heavily rely on licensing fees for their national budgets. They may therefore issue more licenses than sustainable fishing can maintain, which may also result in corruption in the process of licensing.⁹⁵¹ In view of this, such governments prefer China's relaxed attitude that does not create too many obstacles for them. Besides the access fee, under the EEZ regime of the UNCLOS, coastal States normally impose restrictive terms and conditions for foreign fishing to access their EEZs, including fishing quotas, vessel control, gear control, observer programs, catch reports, the instalment of Vessel Monitoring Systems and other conditions.⁹⁵² However, certain countries do not have the capability to effectively control fishing activities in their waters. For example, Liberia is still recovering from its civil war, so its government does not have a coast guard to deal with illegal Chinese vessels,⁹⁵³ and Guinea lacks a Vessel Monitoring System.⁹⁵⁴ Additionally, "*bribe payments and intimidation from foreign boat owners*" have also resulted in the ineffectiveness of the board observer program.⁹⁵⁵ Another concern of West African countries is that the host countries may not impose sanctions on illegal foreign fishing activities because if they want to protect diplomatic relations, future loans and aid projects are linked.⁹⁵⁶ The price of fish is also a consideration for West African governments. For example, the Liberian liaison to the Chinese fishing companies has expressed the concern that if Liberia strengthens the control over Chinese destructive fishing methods, Chinese companies will leave so that the price of the fish local Liberians consume will increase.⁹⁵⁷ Thus, in the fisheries relationships between China and West African States, the latter are at a disadvantage.

As a fishing State, China should not avoid the duties over its vessels and enterprises in such weakly-controlled waters. Although China wants to be a responsible participant in marine resources management, it does not take sufficient responsi-

for in the Fisheries Partnership Agreement between the two parties currently in force, Art. 3 (4).

⁹⁵¹ Mallory (2012).

⁹⁵² Xue (2006) China's distant water fisheries and its response to flag state responsibilities, p. 654.

⁹⁵³ Mallory (2012).

⁹⁵⁴ EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU, p. 5.

⁹⁵⁵ Standing A (2008) Corruption and commercial fisheries in Africa. Available via U4. <http://www.u4.no/publications/corruption-and-commercial-fisheries-in-africa/>. Accessed 13 September 2013.

⁹⁵⁶ Standing (2008) Corruption and commercial fisheries in Africa. Available via U4.

⁹⁵⁷ Mallory (2013), p. 104.

bilities over its fishing vessels or enterprises in West Africa. This is because China “imitates” the behaviour of developed countries when they are irresponsible.⁹⁵⁸ As discussed in Chapter 3, European vessels have also been involved in IUU fishing in waters off West Africa. However, the EU’s hesitancy in managing its fishing vessels in this area is also partly due to the unsustainable fishing of other major fishing States, such as South Korea and China.⁹⁵⁹ Thus, the unsustainable fishing competition among major fishing States in West Africa aggravates the IUU fishing in this area.

However, if China continues to ignore compliance with the laws of coastal States and allows unsustainable fishing in the waters off West Africa, China will face more international pressure to combat IUU fishing in the future. On the one hand, more and more coastal States will strengthen the regulations on governance, monitoring and surveillance of fishing in their coastal waters. For example, with an EU-funded community surveillance project, which began in January 2010, the operation of an Environmental Justice Foundation patrol boat and the use of Vessel Monitoring Systems by the government of Sierra Leone have successfully helped Sierra Leone to reduce IUU fishing.⁹⁶⁰ On the other hand, with the introduction of port State measures and market State measures to combat IUU fishing, IUU catches of Chinese flagged vessels and Chinese vessels will meet more obstacles to enter major fish markets. For example, in 2011, 55 per cent of the total distant water catches were transported back to China, while the rest were sold abroad.⁹⁶¹ The EU and Japan are major markets for China’s high-value fish. As discussed in Chapter 3, together with Japan and the US, the EU has put much effort into combating IUU fishing through the port and market State measures in recent years. China’s behaviour has been and will be influenced by these major fish markets, as will be discussed in detail in the following sections.

⁹⁵⁸ Mallory (2013), p. 99.

⁹⁵⁹ Interview with Ms. Gorez Beatrice, Coordinator at Coalition for Fair Fisheries Arrangements in Belgium at the film screening: *Sandgrains* in Brussels on 26 November 2012.

⁹⁶⁰ X (2013) IUU fishing in Sierra Leone declining. Available via Undercurrentnews. <http://www.undercurrentnews.com/2013/04/11/iuu-fishing-in-sierra-leone-declining/#.UkFHdn97As0>. Accessed 11 April 2013.

⁹⁶¹ Bureau of Fisheries of Ministry of Agriculture (2012) *China Fisheries Statistical Yearbook* (in Chinese). China Agriculture Press, Beijing, table 4.1.

4.3.3.3 The possible development of China's duties over its distant water fisheries

Like other distant water fishing States, China should pay attention to responsible fishing in waters of other coastal States, especially States that have poor capabilities to monitor and control fishing activities in their coastal waters.

China has dispatched national observers on board China's distant water fishing vessels in accordance with the management requirements of relevant RFMOs. In order to regulate and strengthen the work of national observers, the Ministry of Agriculture has promulgated the Notice of General Office of the Ministry of Agriculture on Strengthening the Administrative Work of National Observers in Distant Water Fisheries.⁹⁶²

The Ministry of Agriculture issued Interim Measures for the Administration of Monitoring of Distant Water Fishing Vessels in 2012.⁹⁶³ Since then monitoring by a Vessel Monitoring System has been an essential condition for the application for, the examination and approval of distant water fishery projects.

The General Office of the Ministry of Agriculture issued the Notice on Further Strengthening the Management of Renewing and Constructing Distant Water Fishing Vessels in 2013, which expressly states that individuals are not allowed to construct or purchase distant water fishing vessels to engage in distant water fisheries nor to conduct distant water fisheries through agencies.⁹⁶⁴ This means that with the exception of individuals that have already been allowed to conduct distant water fisheries through agencies, in the future only enterprises that have obtained the qualifications for distant water fisheries can do so. Individuals allowed to conduct distant water fisheries through agencies will also gradually be absorbed into enterprises. Therefore, China's control over its distant water fisheries should focus on the behaviour of those enterprises. Meanwhile, the qualification of conducting distant water fisheries shall also be enhanced to ensure sustainable and responsible fisheries. With regard to those enterprises whose fishing vessels were involved in IUU fishing, appropriate sanctions shall be imposed.

⁹⁶² Promulgated and entered into force on 11 January 2011. Available via Chinalawinfo (in Chinese). <http://vip.chinalawinfo.com.auth.lib.bit.edu.cn/newlaw2002/slc/slc.asp?db=chl&gid=143801>. Accessed 24 January 2014.

⁹⁶³ Issued and entered into force on 19 January 2012. Available via Pkulaw.cn (in Chinese). <http://www.pkulaw.cn>. Accessed 24 January 2014.

⁹⁶⁴ The text of the Notice is not accessible. But the main content can be found: Fisheries Bureau (2013) The Ministry of Agriculture further strengthens the management of renewing and constructing distant-water fishing vessels. Available via Ministry of Agriculture of the People's Republic of China. http://www.moa.gov.cn/zwillm/zwdt/201309/t20130903_3594415.htm. Accessed 3 September 2013.

The information on the control of fishing vessels and enterprises that are engaged in IUU fishing is not publicly accessible. Unlike the EU, which has published all texts of fisheries partnership agreements and protocols in its official journal and on the website of the European Commission for Fisheries, the Chinese government does not publish the texts of such fisheries partnership agreements between China and other countries. Lack of transparency in the control of distant water fisheries creates the impression that Chinese distant water fisheries are not well documented and unreported. The fisheries agreements signed between a hosting country and Chinese fishing companies are also closed for the public so that, even though Chinese distant water fishing in an EEZ may be legitimate, they may still be “unreported”. For example, Chinese-flagged vessels and Chinese owned vessels often pay frozen fish rather than cash wages to local crew and the latter determine the price of their labour.⁹⁶⁵ Although China’s distant water fisheries are originally a State-owned sector, now 70 per cent of China’s distant water fishing companies are privately owned, which means that the government’s control over distant water fisheries is even less.⁹⁶⁶ The transparency of information, which is required by the EU, is not so important for the Chinese government. Finally it is the EU’s Member States that require the information on the EU’s competence over fisheries to be transparent, while the Chinese government does not have other States to be responsible for. However, as a flag State, making certain information publicly accessible can show outsiders whether China has taken its flag duties seriously.

China should cooperate with coastal States to ensure sustainable and responsible fishing. When signing fisheries partnership agreements with coastal States, particularly with West African States, China should negotiate with such States on arrangements where part of the licensing fee should become used for improving local fisheries administration and strengthening the capabilities of monitoring, control and surveillance.

China’s fisheries authorities, including the Fisheries Bureau and authorized organizations such as China Distant Water Fisheries Association, should become acquainted with the port State measures of other States in whose ports Chinese fishing vessels use port services. Such authorities, organizations and enterprises should strengthen the control over distant water fishing vessels. On the other, in cases where Chinese fishing vessels are inspected in ports abroad, those authorities should make an effort to avoid undue inspection and to ensure the rights of those vessels and crew abroad. For example, two China-flagged vessels named North Ocean and West Ocean had been listed on the EU’s Community IUU vessel list for two years and have not been removed until 15 July 2013. In fact, the two vessels were first included in the list of the CCAMLR, which then became recog-

⁹⁶⁵ Pauly et al. (2013), p. 5.

⁹⁶⁶ Mallory (2012).

nized by the list of the South East Atlantic Fisheries Organization (SEAFO),⁹⁶⁷ so the two vessels were included in the latter as well. These vessels were also automatically included into the EU Community IUU vessel list because the EU recognizes the lists of the two RFMOs. Such vessels were later removed from the list of the CCAMLR, but due to delayed notification, they were still on the lists of SEAFO and the EU for almost another year.⁹⁶⁸

4.3.3.4 China and its efforts to deter the practice of large-scale high seas drift net fishing

The cooperation between China and the US to deter the practice of large-scale high seas drift net fishing is a successful example of high seas enforcement. On 3 December 1993 China and the US signed the Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of 20 December 1991 (MOU).⁹⁶⁹ The UNGA Resolution 46/215 calls for a global large-scale high seas driftnet moratorium. Although China is not a Contracting Party to the North Pacific Anadromous Fish Commission, it has actively cooperated with the US to patrol the areas in the North Pacific Ocean under threat from high seas driftnet fishing for over two decades. The MOU established high seas enforcement procedures for law enforcement officials of either country to board and inspect US or Chinese flagged vessels suspected of high seas driftnet fishing. The MOU also established a shiprider program, which allows Chinese officials to embark on US Coast Guard

⁹⁶⁷ The SEAFO was established under the framework of the Convention on the Conservation and Management of Fishery Resources in the South East Atlantic Ocean, which was adopted at Windhoek on 20 April 2001 and entered into force on 13 April 2003, UNTS 2221, p. 189.

⁹⁶⁸ Commission Regulation (EU) No 468/2010, Annex, Part B; Commission Implementing Regulation (EU) No 724/2011, Annex, Part B; Commission Implementing Regulation (EU) No 1234/2012, Annex, Part B; Commission Implementing Regulation (EU) No 672/2013, Annex, Part B.

⁹⁶⁹ People.cn (1993) the Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of 20 December 1991 (in Chinese). <http://law.people.com.cn/showdetail.action?id=2682028>. Accessed 24 January 2014.

vessels or aircraft.⁹⁷⁰ Apart from China and the US, other States and regions such as Canada, Japan, Russia and Taiwan have also conducted high seas driftnet vessel sightings and apprehensions in the North Pacific since 2002. The efforts of those countries and regions have contributed to a low chance of large scale driftnet fishing in this area.⁹⁷¹

4.4 The possible development of port State measures in China

As discussed in Section 4.2.3.6, China does not have any law or regulation that provides port State measures against IUU fishing. This means that vessels engaged in IUU fishing or fishing related activities are neither forbidden to enter into China's ports nor prohibited from using the ports for landing, transshipping, packaging and processing of fish or any other port services including, *inter alia*, refuelling and resupplying, maintenance and dry-docking in cases where such a vessel is in a Chinese port. Moreover, there is no legal basis for Chinese port officials to inspect vessels in ports for the purpose of determining whether the vessels have engaged in IUU fishing or fishing related activities or to take any follow-up actions. This is mainly because port State measures against IUU fishing have not been recognized by the international society until recent years. Even though the EU actively promotes port State measures against IUU fishing at both Community and international level, the Council Regulation (EC) No 1005/2008 of 29 September 2008, establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulation (EC) No 1093/94 and (EC) No 1447/1999 (IUU Regulation)⁹⁷² was implemented just a few years ago. However, China does not lack port State control over vessel security. It can inspect foreign vessels sailing, docking or operating in China's ports, internal waters

⁹⁷⁰ NOAA (2012) 2012 Report of the Secretary of Commerce to the Congress of the United States concerning U.S. actions taken on foreign large-scale high seas driftnet fishing. http://www.nmfs.noaa.gov/ia/iuu/driftnet_reports/2012_driftnet_report.pdf. Accessed 26 September 2013, p. 17.

⁹⁷¹ NOAA (2012), p. 7.

⁹⁷² Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999; OJ L286 of 29 October 2008, pp. 1-36.

and territorial seas.⁹⁷³ China's port State control mainly focuses on maritime safety and marine pollution; while port State measures against IUU fishing will need more attention by the international society. This can be seen through the analogy with the development of port State control over maritime safety and the protection of marine environment from pollution. For example, port State control initially existed merely in Europe, the US, Australia and other developed States and regions, while now it has been implemented worldwide.⁹⁷⁴ Currently a port State without sufficient port State measures against IUU fishing is not considered irresponsible. With the gradual prevalence of such measures and trade-market measures by fish markets against States that do not take their port State duties seriously, the adoption of port State measures will become an international obligation. In order to become a responsible port State, the first step China should take is to establish a legal basis that regulates port access and inspection in accordance with the FAO Port State Measures Agreement.

China has sufficient capabilities to adopt and implement port State measures against IUU fishing. China has officially conducted port State control over foreign vessels in nine ports since 1 July 1990 and has been a member of the Tokyo Memorandum of Understanding since April 1994. The Ministry of Transport issued the revised Vessel Safety Inspection Rules on 30 November 2009. The Rules are the legal basis for China's vessel safety inspection. Currently, China's port State control has made a considerable progress. For example, in 2012 China's port State inspection accounted for 26.9 per cent of the total inspection in the Asia-Pacific region and China's detention rate was 1.6 times above the average detention rate in the area.⁹⁷⁵ It can be seen that China has the capabilities to conduct port State control. Port State measures against IUU fishing particularly are aimed at vessels that are used or equipped to be used or intended to be used for fishing or fishing related activities. Article 2 of the Vessel Safety Inspection Rules expressly indicates that the Rules are not applicable to fishery vessels, so maritime safety authorities are not responsible for the port State control over fishery vessels. If China establishes port State measures against IUU fishing, the authorities of port control and inspection may be bestowed upon fisheries bureaus.

Therefore, adding compulsory port inspection of fishing facilities, catches, fishing methods and other relevant factors that can prove IUU fishing is recommended. Considering that China has the largest number of fishing vessels in the world,

⁹⁷³ Art. 5 of the Vessel Safety Inspection Rules of PRC, which was adopted at the tenth executive meeting of the Ministry of Transport on 29 October 2009 and hereby promulgated and entered into force as of 1 March 2010, No. 15, 2009 (in Chinese).

⁹⁷⁴ Li P, Zeng Q (2013) Study on the current situation and trends of Port State Control (in Chinese). *China Maritime Safety* (1), p. 35.

⁹⁷⁵ Tokyo MOU (2012) Annual report of port State control in the Asia-Pacific region 2012. <http://www.tokyo-mou.org/doc/ANN12-r.pdf>. Accessed 31 January 2014, figure 2 and Annex 2.

it is not realistic to inspect all fishing vessels. Therefore, China can learn from the EU to inspect a certain percentage of vessels, in accordance with the requirements of Article 12 of the FAO Port State Measures Agreement. Yet China still provides port service to vessels that have engaged in IUU fishing. A revision of the Fisheries Law of the PRC to expressly prohibit such vessels from port service is strongly recommended.⁹⁷⁶

4.5 China as a market State

China is the largest fish processor and exporter in the world. Its major target markets are the EU, the US and Japan.⁹⁷⁷ China's fish exports consist of re-exports of processed fish, aquaculture products, catches of distant water fisheries and catches in China's waters. This session mainly discusses China's seafood traceability system and the significant role it plays in combating IUU fishing on global markets.

4.5.1 China's own seafood traceability system

When importing raw fish materials to China, there are two documents related to traceability required by China Customs: the Certificate of Origin and the Health Certificate. A Certificate of Origin determines the tariff rates but does not provide sufficient information on catch-related activities to be used to verify compliance with applicable regulations. A Health Certificate records information on the name of a fishing vessel and the location of the catch and is to ensure food safety rather than to combat IUU fishing. It does not contain information of the vessel registration number, the specific location of the catch nor the amount or species of fish caught, which could be found in a catch certificate.⁹⁷⁸

⁹⁷⁶ Xu (2009), p. 27.

⁹⁷⁷ Clarke S (2009) Understanding China's fish trade and traceability systems - a TRAFFIC East Asia report. Available via TRAFFIC. https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.traffic.org%2Ffisheries-re-ports%2Ftraffic_pub_fisheries9.pdf&ei=w29UUoeeNOWI0AWhlYCoAg&usg=AFQjCNHWjRcEEX7A-oRI4adwWg-y8lD0dw. Accessed 9 October 2013, p. 13.

⁹⁷⁸ Clarke (2009), p. 53.

Two agencies are responsible for regulating the import and export of fish and fisheries products in China: the General Administration of Customs of the People's Republic of China (General Administration of China Customs) and the General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China. The two agencies promulgated the Public Announcement on the Implementation of the Customs Clearance Form Online Verification as Announcement No. 68 on 26 November 2007.⁹⁷⁹ The implementation of the Public Announcement shows that China has the capability to track online its import seafood, processing and re-export. The key issues of tracing the provenance of catches in China are which authorities are responsible for verifying catch certificates and how China's current traceability system coordinates with different catch certification systems required by China's target markets. As discussed in Chapter 2, the Marine Stewardship Council (MSC) is at present the only credible global eco-labelling program in fisheries. Products that originate from an MSC-certified fishery meet sustainability criteria and are legally caught. However, the MSC program is voluntary so that China has not imposed any obligation to implement this program. This is mainly because such scheme is unable to significantly promote the demand for sustainably certified products in developing countries.⁹⁸⁰ The following sections mainly focus on China's market State measures.

4.5.2 China's coordination with catch certification systems of major RFMOs

In order to meet the requirements of the ICCAT, the CCAMLR and the IOTC pertaining to catch documentation schemes, the Ministry of Agriculture and the General Administration of China Customs issued the Joint Declaration No 1389 on Utilizing Customs Clearance of Legally Caught Fish for Certain Importing Fisheries Species on 1 June 2010.⁹⁸¹ Since then the Customs Clearance of Legally

⁹⁷⁹ General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (2007) The Public Announcement on the Implementation of the Customs Clearance Form Online Verification as Announcement No. 68 (in Chinese), entered into force on 1 January 2008. http://www.aqsiq.gov.cn/zwgk/jlgg/jlgkzh/200711/t20071128_55748.html. Accessed 11 October 2013.

⁹⁸⁰ Blackmore E (2014) Sustainable fisheries certification. Available via International Institute for Environment and Development. <http://pubs.iied.org/17204IIED.html>. Accessed 18 February 2014.

⁹⁸¹ The Ministry of Agriculture and the General Administration of China Customs (2010) Joint Declaration No 1389 in 2010 on Utilizing Customs Clearance of

Caught Fish issued by the Ministry of Agriculture has become a necessary condition for importing certain species, including bluefin tuna, toothfish, sword fish and bigeye tuna. In addition, the Joint Declaration No 1389 also requires that when applying for the Customs Clearance of Legally Caught Fish, the applicant must submit the original catch certificate issued under the authority of the flag State of the fishing vessel. In cases where fish products are processed in a country or a region other than the flag State, the applicant is required to submit to the Ministry of Agriculture a copy of the catch certificate issued under the authority of the flag State of the fishing vessel and the original re-export certificate issued under the authority of the State or region where the processing plant is located.

4.5.3 China's coordination with catch certification systems of its major markets – taking the EU as an example

As discussed in Chapter 3, cooperation among major fish markets against IUU fishing has been prevalent in recent years. China's major target market, such as the EU, the US and Japan, have already implemented trade-market measures against IUU-caught fish and fish products. China has also actively consulted with the EU and the US as to the conservation and management of marine living resources and combating IUU fishing. This section takes the coordination between China and the EU as an example to elaborate on how China has been affected by market measures and on China's attitude towards State cooperation in combating IUU fishing.

According to the EU's requirements of Catch Documentation Schemes, fish or fish products exported from China to the EU market must be accompanied by validated catch certificates or statements of the processing plant. In order to fulfil these requirements, the Fisheries Bureau of China has since 1 January 2010 been responsible for attesting and validating the information contained in catch certificates, assisting competent authorities of EU Member States to verify catch certificates⁹⁸² and endorsing statements of the processing plant. When issuing catch cer-

Legally Caught Fish for Certain Importing Fisheries Species (in Chinese). Available via General Administration of China Customs. <http://www.customs.gov.cn/publish/portal0/tab399/info230537.htm>. Accessed 1 June 2010.

⁹⁸² European Commission (2013) Information on States and their competent authorities notified under Article 20 (1) and (2) of IUU Regulation No 1005/2008 of 29 September 2008. Available via European Commission Fisheries. http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/flag_state_notifications.pdf. Accessed 18 March 2013.

tificates, the Fisheries Bureau mainly pays attention to examining vessel names and fishing authorization. When issuing statements of the processing plant, the Fisheries Bureau focuses on attesting catch certificates issued by States of raw materials.⁹⁸³ It also checks whether the concerned fishing vessels undermine relevant international conservation and management measures.⁹⁸⁴

Additionally, the Fisheries Bureau has commissioned the CAPPMA and the CDWFA to preliminarily examine catch certificates and statements of the processing plant on issues of coordination, contact, receiving and sending documents and other relevant information. In order to ensure all seafood exported to the EU has been caught in a manner in accordance with international conservation and management measures as well as with the EU IUU Regulation, the CAPPMA and the CDWFA jointly established an industrial standard – the Management Measures on Certification regarding Marine Fisheries Products Exported to the EU.⁹⁸⁵ On the one hand, the CDWFA is responsible for catches of distant water fisheries approved by the Ministry of Agriculture, fisheries products processed by processing plants belonging to distant water fisheries enterprises, fisheries products conserved and managed by RFMOs that China has participated in or is negotiating with, fish or fisheries products processed by domestic processing plants for foreign enterprises and managed by relevant RFMOs, as well as salmon products with imported materials or foreign supplied materials.⁹⁸⁶ On the other hand, the CAPPMA is also responsible for parts of inshore catches and fisheries processing products with imported materials or foreign supplied materials, which represents almost 90 per cent of the fish quantity being exported to the EU.⁹⁸⁷ In 2011 the CAPPMA examined, verified and issued certification for 29,045 batches (498,400

⁹⁸³ General Office of Ministry of Agriculture (2009) Notice of General Office of Ministry of Agriculture on Issuing Catch Certification for Marine Fisheries Products Exported to the EU (in Chinese), issued on 26 November 2009. Available via China Fisheries Administration Website. http://www.cnfm.gov.cn/tzggzyj/200912/t20091201_2647889.htm. Accessed 1 December 2009.

⁹⁸⁴ General Office of Ministry of Agriculture (2009) Notice of General Office of Ministry of Agriculture on Issuing Catch Certification for Marine Fisheries Products Exported to the EU (in Chinese), issued on 26 November 2009. Available via China Fisheries Administration Website. http://www.cnfm.gov.cn/tzggzyj/200912/t20091201_2647889.htm. Accessed 1 December 2009.

⁹⁸⁵ Entered into force on 1 January 2010. Via CAPPMA. www.cappma.org/images/news/200911261720437445.pdf. Accessed 26 November 2009.

⁹⁸⁶ The Management Measures on Certification regarding Marine Fisheries Products Exported to the EU, Art. 5.

⁹⁸⁷ The data is offered by Mr. He Cui, the Executive Vice President of the CAPPMA.

tons) of fisheries products, including 9,334 batches (122,000 tons) from inshore catches and 19,711 batches (376,400 tons) with imported materials or foreign supplied materials.⁹⁸⁸ More than three quarters of fisheries products exported to the EU that were recorded by the CAPPMA can be seen not be caught under China's national jurisdiction. The examination and verification of the statements by the processing plants is vital to the seafood exportation to the EU.

Having the largest number of fish processing plants in the world, China is obliged by the EU IUU Regulation to take its market duties against importing IUU fishing seriously if China wants to continue the export of fisheries products to the EU. For example, because Russia did not notify in advance its competent authorities to the European Commission according to the EU IUU Regulation, the EU prohibited the import of fish products with materials from Russia from 15 January 2010. Russia then notified its competent authorities to the EU and the EU reinstated the import of fish and fisheries products from Russia from 20 February 2010.⁹⁸⁹ Russia is the largest seafood supplier of China, so the EU's prohibition indirectly affected China. The import of fish and fisheries products from Russia, fish products processed in China but with materials from Russia caught between 1 January 2010 and 19 February 2010 could not enter the EU's market. Therefore, China's authorities have to pay high attention to verifying catch certificates validated by other states.

The CDWFA is responsible for the validation of catch certificates for fish caught by Chinese distant water fishing vessels and exported to the EU. A necessary condition is that such vessels must be recorded by the EU.⁹⁹⁰ Additionally, the CDWFA is responsible for monitoring such vessels through Vessel Monitoring Systems. Only fish caught by Chinese distant water fishing vessels that have been permitted to leave China's national jurisdiction by the Ministry of Agriculture and have been monitored by a Vessel Monitoring System can be issued validated catch certificates.⁹⁹¹

Since the EU IUU Regulation came into force, the DG Mare of the EU has been *“assisting Chinese authorities in streamlining their monitoring into a single, integrated traceability system; developing their own domestic formal catch certification and documentation system; and advising them on how to comply with the new*

⁹⁸⁸ The data are offered by Mr. He Cui, the Executive Vice President of the CAPPMA.

⁹⁸⁹ The Department of International Cooperation of Fisheries Bureau of the Ministry of Agriculture (2010) Russian fisheries products caught after 20 February 2010 can export to the EU (in Chinese). Via CAPPMA. http://www.cappma.org/hangyexinxi_article.php?big_class_id=9&small_class_id=56&article_id=3086. Accessed 24 February 2010.

⁹⁹⁰ The Management Measures on Certification regarding Marine Fisheries Products Exported to the EU, Art. 11.

⁹⁹¹ Telephone Communication with Baoshan Huang, Vice President of the China Distant Water Fisheries Association.

*legislation.*⁹⁹² In 2011, the EU checked the implementation of its EU IUU Regulation in China two times. The EU indicated that information in several catch certificates validated by Chinese authorities were still incorrect. The Ministry of Agriculture in China promised that China would improve the validation and confirmed that EU Member States may refuse those catch certificates. Additionally, the EU suggested that the Chinese government should be more involved in the traceability of fish from the moment of catch to the final processing. The EU also advised China to take up more flag State duties.⁹⁹³ Since the EU IUU Regulation entered into force, China's seafood export to the EU has been increased.⁹⁹⁴ The EU IUU Regulation has indeed helped China to pay attention to the provenance of fish but has not much influenced China's fish export.

4.6 Conclusion

The Chinese legal system and fisheries administration system are both highly centralized, so there is hierarchy in the legislation made by different lawmaking institutions. In the field of fisheries, most fisheries legislation has been adopted or promulgated by the State Council and the Ministry of Agriculture, which are both lawmaking institutions and administrative bodies at the same time, which results in "departmentalism". A recent restructuring of fisheries administrative bodies reflects China's intention to strengthen enforcement at sea.

Although China has actively participated in negotiations for major legally binding fisheries agreements against IUU fishing, China has not ratified any of them except for the UNCLOS. China maintains these attitudes because: these agreements have not achieved wide acceptance at global level; some have controversial provisions that are contrary to principles established by the UNCLOS; while some entail many more obligations than rights. Nevertheless, China has adopted and transposed certain measures that have been put forward by those agreements and international non-legally binding instruments to combat illegal fishing into its national legislation, such as the Fisheries Law, fisheries administrative rules and

⁹⁹² X (2009) Spotlight on China as EU issues new rules to protect fish stocks. Available via EU-China News. http://newsletter.eu-in-china.com/newsletters/200908/012_en.html. Accessed August 2009.

⁹⁹³ China Aquatic Products Processing and Marketing Association (2011) The EU checked on IUU fishing in China for two times in 2011 (in Chinese). China Seafood Trade (11).

⁹⁹⁴ Between 2009 and 2011, China's seafood export to the EU was 491,000 tons, 550,700 tons and 574,600 tons respectively.

regulations adopted by the State Council as well as fisheries rules issued by the Ministry of Agriculture.

Due to conflicts between China and its neighbouring countries, coastal sovereignty and sovereign rights have become China's priority. Fisheries agreements based on resolved boundary delimitation between China and its neighbouring States are more effective than those based on unresolved boundary delimitation. So China urgently needs to find ways for fisheries to cooperate while boundary issues are being resolved. China also promotes the development of distant water fisheries to alleviate the pressure on coastal fisheries. China pays more attention to obtaining fishing quotas than to being limited by the flag State duties of the Fish Stocks Agreement and the FAO Compliance Agreement. However, this does not mean that China is not a responsible distant fishing country. China has required Chinese fishermen and fishing vessels to comply with international and regional management and conservation measures. However, the implementation of such measures in waters that lack coastal State control is still weak, such as the illegal fishing conducted by Chinese fishing vessels in West African waters.

China currently does not have any law or regulation that provides for port State measures against IUU fishing. This is mainly because port State measures in this respect have largely not been implemented and China's priorities are not on combating IUU fishing. However, China has sufficient capabilities and should adopt port State measures against IUU fishing as a responsible port State in order to avoid possible trade-market measures taken by other States. Revising the Fisheries Law of the PRC is recommended so that it expressly prohibits IUU fishing vessels from accessing China's ports and requires a certain percentage of vessels to be inspected as the EU does.

China has its own traceability systems, but they are insufficient to serve as catch certificates. China has developed specific schemes to suit requirements of certain RFMOs and its major fish markets, such as the EU. Although improvements are still needed, the EU is generally satisfied with China's implementation.

China has taken its duties to combat IUU fishing as a flag, coastal and market State although it has not ratified most international legally-binding instruments in this respect. As a major fishing State and the biggest fish processing State, China should revise its Fisheries Law and adopt implementing legislation to strengthen the combat of IUU fishing in order to be a responsible State.

Chapter 5 Conclusions

A complex international legal regime for combating IUU fishing has been established. The UNCLOS, the UN Fish Stocks Agreement and FAO agreements and political instruments comprehensively address the issue of IUU fishing. Except for measures of RFMOs, the international framework provides four major State measures for State enforcement, including flag State measures, coastal State duties, port State measures and trade-related measures. Through a comparison of the laws and practice of the EU and China, this thesis evaluated the adequacy of the international legal regime for combating IUU fishing. The EU and China are different in their respective levels of development, marine interests, legal regimes and administrative systems. The elaborate comparison between these two different systems provided useful insights into an improved international regime for the combat of IUU fishing.

This concluding chapter offers a comparison of the legal regimes to combat IUU fishing in the EU and China, as well as an assessment of the successes and challenges of their implementation and enforcement.

5.1 Comparison between the EU and China

5.1.1 Decision-making and enforcement system

The EU has maintained a good balance in the distribution of decision-making power and implementing power among its different institutions. However, a disagreement over decision-making between the European Council and the European Parliament has delayed the adoption of a new Common Fisheries Policy. The EU's exclusive competence and shared competence with its Member States in the field of fisheries have indeed been extended in practice.

China's legal system is highly centralized. At national level, administrative bodies also have power to make rules, regulations and other implementing legislation. The State Council and the Ministry of Agriculture are both law-making institutions and fisheries administrative bodies in China. So they can both enact legislation as soon as there is a need for in the fisheries administration, which enhances

the efficiency of legislation. On the other hand, avoiding the abuse of power and the problem of departmentalism are worries.

In cases where Member States do not comply with EU legislation, the European Commission can resort to legal remedies. As an independent institution, the ECJ plays a significant role in treaty interpretation and the European integration process. The ECJ also promotes coordination in legislation between the EU and Member States. Although in China the Supreme People's Court may request the Standing Committee of the NPC to examine whether a local regulation contradicts the Constitution, laws or administrative regulations, the Supreme People's Court is not independent as the ECJ is. As the human resources of the Standing Committee of the NPC is limited, it is impossible for them to examine all contradictions in legislation. A judicial reform is desirable to allow for an independent judiciary in China.

5.1.2 Decision-making in the development of international fisheries law and implementation

The EU and China have both actively participated in the development of post-UNCLOS fisheries law, which shows their willingness to conserve marine fisheries resources and ensure sustainable fisheries. However, the EU and China have taken different attitudes towards the implementation and enforcement of international fisheries law.

The EU is a pioneer in the combat of IUU fishing at international level. The EU has exclusive competence in the area of the conservation of marine biological resources under the CFP. This encourages the EU to actively conclude international fisheries agreements, whether legally-binding or not, regional conventions and bilateral fisheries agreements. In certain areas, the EU has adopted measures that are more stringent than international standards. The EU has adopted port State measures even though the Port States Measures Agreement has not yet entered into force. Additionally, the EU has also implemented trade-market measures that are provided by IPOA-IUU, which is the implementation of soft law.

China has taken a hesitating attitude towards concluding international fisheries legislation. Unlike the EU, China does not need to share its competence in concluding international fisheries agreements with its local governments. Since the UNCLOS entered into force, boundary delimitation and fisheries conflicts have been crucial problems between China and its neighbouring countries. Although China has participated in all negotiations that contributed to the conclusion of post-UNCLOS fisheries agreements, China shows a negative attitude towards the ratification of such agreements. In the case of dispute settlement, China prefers political negotiation to international adjudication. Compared with legally-binding

law, political instruments are more acceptable to China. Additionally, China takes a wait-and-see attitude towards international fisheries agreements that have not yet entered into force.

5.1.3 Contrasting interests of the EU and China

The EU is a strong supporter of conserving marine fisheries resources by undertaking certain measures beyond those provided by international fisheries legislation. By contrast, as a developing country, China's priority is to develop a fisheries industry rather than to combat IUU fishing.

The CFP allows fishing activities in EEZs of EU Member States to be under the general control of the European Commission, which coordinates not only Member States' fisheries but also fisheries relationships with EU's neighbouring countries. After years of reducing vessels and fishing fleet capacity, the EU has reduced fishing pressure in Community waters to a certain extent. Additionally, certain Member States are major distant-water-fishing countries that have started distant water fisheries very early. In order to assure the quotas regulated by RFMOs, the EU also has a strong focus on regional conservation of marine fisheries resources. Due to the reduction of catches in Community waters, an increasing domestic demand of fish and fisheries products fuels the EU's fish import, while a large number of illegal catches that have gained a competitive price advantage on the EU market. Therefore, the EU is ambitious to combat IUU fishing, in particular through port State and trade-market measures.

China used to have a large number of fishing vessels and fishermen. Since the UNCLOS entered into force and China's neighbouring States established EEZ regimes, many Chinese vessels have had to leave their traditional fishing grounds. Together with unresolved boundary issues, IUU fishing in the China Sea usually triggers fisheries conflicts or even diplomatic conflicts, which sometimes makes the matter too sensitive to achieve cooperation in the field of fisheries. Therefore, China's priority in the China Sea is the protection of its sovereignty and sovereign rights. China has learned from developed countries to promote distant water fisheries. Although China has the largest number of distant-water-fishing vessels in the world, its production capacity and industrial scale is still much smaller than those of developed countries. In addition, China has participated in specific RFMOs in order to get quotas. In this case, economic development and employment are more important for China than sustainable fishing. A phenomenon to be noticed is that China imitates the behaviour of developed countries even when they are not acting responsibly. Only when developed States make some progress in combating IUU fishing, will China be more willing to be bound by international fisheries law. Moreover, trade-market measures, such as international certification

schemes, are unable to promote the demand for sustainably certified products in developing countries, so such schemes are not desirable to China.

5.1.4 Dispute settlement

Although neither the EU nor China have made an official declaration to choose the means of settlement concerning the interpretation or application of the UNCLOS, they have shown different attitudes in practice. The EU has been positively disposed towards the ITLOS when fisheries disputes have happened between EU Member States and third countries. However, in disputes between EU Member States and on matters falling within EU competence and largely regulated by EU measures, procedures of dispute settlement provided by the EU Treaty take precedence over those provided by the UNCLOS.

China consistently and expressly maintains that conflicts should be resolved through friendly consultation and direct negotiation between the countries concerned, instead of resorting to international litigation. The recent dispute with the Philippines shows that China is in a passive position due to lack of experience in legal litigation. Therefore, China should take a more active attitude towards international litigation in fisheries disputes, in particular prompt release, which is a less sensitive issue than boundary conflicts, in order to gain more experience in international litigation.

5.1.5 Effectiveness of the EU's enforcement

The EU has established a comprehensive regime in accordance with international law to fight against IUU fishing. Only with sufficient interaction of different State measures and cooperation with other States can IUU fishing be held in check.

In cases where port State measures or trade-market measures exist, IUU fishing has been much well addressed. The EU applies stricter port State measures than the FAO Port State Measures Agreement does. However, there are still gaps in implementation, such as transshipment at sea between third countries' fishing vessels outside Community waters, insufficient inspection at certain big EU ports, lack of preventing unnecessary inspection delays and a system of compensation and compliant procedures if unnecessary delays occur. This is what is needed to improve future implementation.

The EU's trade-market measures have achieved a remarkable success. They are mainly in accordance with international law. The Catch Certification Scheme and

the Community IUU vessel list have been coordinated with most schemes of RFMOs in which the EU participates. The EU's Catch Certification Scheme has prohibited a large number of IUU catches from entering the EU market, although it has been weakened to a certain extent by flag State fraud. The EU's Community IUU vessel list plays a significant role by threatening to sanction identified vessels. The EU has ambitiously implemented the list of non-cooperating third countries, which forced certain third countries to address IUU fishing. In addition, the EU has established its own traceability of seafood products from catcher to retailer.

The EU is a pioneer in the combat of IUU fishing. On the one hand, the EU has actively cooperated with third countries to verify their compliance with the EU's requirements in combating IUU fishing. On the other hand, the EU aims to create a wide network of certain major seafood markets. The EU's practice can encourage international principles and rules that have been transposed into EU legislation to become accepted by more States, so that those principles and rules could become international customary law through repeated practice.

If there is no sufficient coastal State control, however, merely relying on flag State duties results in a failure to combat IUU fishing. The most obvious example is in West Africa. Even though the EU has established comprehensive legislation to combat IUU fishing, European vessels are still illegally fishing there. This is why the EU has started to fight more actively illegal fishing in West Africa, mainly through port State and trade-market measures.

The sanctions the EU has imposed on IUU fishing are fairly sufficient. With regard to serious infringements, criminal and administrative sanctions may be imposed on legal and natural persons.

5.1.6 China and its challenges of addressing IUU fishing

On the whole China has complied with international fisheries law to a certain extent. China's major problem is how to achieve fisheries cooperation in boundary dispute areas. Illegal fishing is often used as a trigger for boundary conflicts. In such waters, arrest, detention and punishment of fishing vessels and crew caused by IUU fishing may lead to diplomatic conflicts too. In this case, opposing views can only make disputes more serious. Although certain coastal States take stringent unilateral sanctions, IUU fishing cannot be resolved fundamentally. Mobility of fisheries resources requires cooperation among States. Although the situation in the China Sea is complicated, multilateral cooperation is also suggested as a solution to address fisheries conflicts.

Generally speaking, China's distant water fisheries are conducted in accordance with international fisheries law. However, problems still exist in waters without sufficient coastal State control, such as in West African waters. In this case, China

mimics the behaviour of developed countries, and developed countries imitate each other's behaviour, which both contribute to serious IUU fishing. Except when applying other State measures, the priority should be given to improving the capabilities of coastal developing States to control their waters and ports.

As sovereignty and sovereign rights are China's priorities, port State measures and trade-market measures are less developed. In practice, port State measures against IUU fishing are absent in China even though it has sufficient capability to adopt port State measures. As a responsible port State, China should consider building a legal regime for port State control.

China's own traceability system is not sufficient to certify the legality of catches. Although China is not proactive in adopting trade-market measures to address IUU fishing, it has adjusted its fish trade to the requirements of its major target markets and of the RFMOs in which China participates.

The sanctions China has imposed on IUU fishing are relatively light. China's administrative and criminal sanctions may be applied to both natural persons and legal persons. Yet sanctions have only been imposed on fishing activities. With regard to other IUU fishing-related activities, such as selling IUU catches, no specific legal responsibilities have been codified. A suggestion is proposed to set down maximum fines according to the value of IUU catches and thereby make IUU fishing trade illegal. In addition, China's implementing rules, measures and provisions in the field of fisheries need to be made consistent with the Fisheries Law of the PRC.

Apparently the EU and China are facing different challenges to deal with IUU fishing, due to their different political systems, development levels and priorities. Nevertheless, both of them have made efforts to establish regimes to address IUU fishing issues, and to comply with their international obligations.

5.2 Significance of findings

On the basis of the international legal framework for the combat of IUU fishing, this research has studied the implementation of a legal framework by the EU and China in the context of their respective differences. The conclusions reached are important not only for the international legal regime for addressing IUU fishing but also for EU-China legal studies. In the individual contexts of the EU and China, the research has provided important contributions to the field.

Combating IUU fishing is an international concern that involves both developed and developing countries in the decision-making on issues of IUU fishing. Even though China is a developing country, its development level and capabilities have exceeded those of many developing countries.

However, national interests play a major role in implementing international law. Diverging national interests have determined the different attitudes of the EU and China towards various State measures against IUU fishing. However, these States measures interact with each other rather than function independently. Therefore, even though a State has not implemented certain State measures, it can still be constrained under the international legal regime.

The regulation of fishing in the EU has been studied by previous scholars. This research is aimed at the current EU regime to deal with IUU fishing in order to examine the merits and deficiencies. It has also provided insight into the EU's efforts to establish a legitimate and comprehensive regime for combating IUU fishing over the past two decades, in particular its implementation and enforcement in recent years.

There was limited previous research on the implementation of Chinese fisheries law and limited academic concern for the issue of IUU fishing. Even though the information of the Chinese legal regime and its administrative systems is not sufficiently transparent, this research has made an important contribution not only to an understanding of the Chinese legal regime and administrative systems for the combat of IUU fishing but has also provided insight into the implementation of international law in the domestic Chinese context as well as recommendations towards possible future improvement.

There are a few publications that have discussed State implementation of combating IUU fishing. An empirical perspective and a comparison between the EU and China has provided added value to the current research, particularly building up future legal regimes for the combat of IUU fishing in China or in other developing countries facing similar challenges. The EU-China fisheries relationship also gives insights into the challenges China is facing.

From the EU and Chinese fisheries policy, it can be learned that if there is a lack of coastal State control, the most ambitious States cannot effectively enforce their flag State measures in combating IUU fishing. The future development of international fisheries law should be focused on the improvement of port State measures and trade-related measures. Currently these measures do not have effective legally binding force. Therefore, States should be encouraged to sign and ratify the FAO Port State Measures Agreement, so the Agreement can enter into force. Additionally, trade-related measures against IUU fishing should become legally-binding and measures should be standardised.

5.3 Limitations of this research and recommendations for future research

The EU's legal regime for combating IUU fishing has been discussed in this research, which proves to be a dynamic interaction between the EU and its Member States. Although the research has included a few cases that show enforcement by Member States, it would be helpful to research in depth the enforcement of certain major fishing Member States and port Member States, in order to verify the legitimacy of EU's measures against IUU fishing.

The author has based her research mainly on desk work and field research. Attending international meetings, interviewing and communicating with key persons, and her beginning of an internship at the ITLOS have been particularly beneficial to the thesis. Further field research could be done towards some Chinese competent authorities relevant to combating IUU fishing, such as bureaus of fisheries administration responsible for different Chinese sea areas.

During the research, the author has found that port State and trade-market measures play a significant role in combating IUU fishing, in particular measures taken by major fish markets, such as the US. The US has not ratified the UNCLOS, even though it is very ambitious in combating IUU fishing. Therefore, research towards the enforcement of sanctions towards IUU fishing by the US or other States may suggest an alternative implementation of international law and would allow an assessment as to whether conclusions reached here are applicable in other regions in the world.

Bibliography

Journal and articles

Agnew DJ (2000) The illegal and unregulated fishery for toothfish in the Southern Ocean, and the CCAMLR catch documentation scheme. *Marine Policy*, 24 (5): 361-374

Babayev RR (2007) Legal autonomy vs. political power: what is the role of the European Court of Justice in the European Integration? *Romanian Journal of European Affairs* 7 (1): 34-44

Bai Y (2012) Inspiration for China fisheries provided by fishing quota system of New Zealand (in Chinese). *World Agriculture* 8: 85-89

Balton DA, Zbicz DC (2004) Managing deep-sea fisheries: some threshold questions. *The International Journal of Marine and Coastal Law* 19: 247-258

Beckman R (2013) The UN Convention on the Law of the Sea and the maritime disputes in the South China Sea. *The American Journal of International Law* 107 (1): 142-163

Birnie P (1999) New approaches to ensuring compliance at sea: the FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. *Review of European Community & International Environmental Law* 8: 48-55

Caddell R (2010) Caught in the net: driftnet fishing restrictions and the European Court of Justice. *Journal of Environmental Law* 22 (2): 301-314

China Aquatic Products Processing and Marketing Association (2011) The EU checked on IUU fishing in China for two times in 2011 (in Chinese). *China Seafood Trade* (11)

Cho YN (2006) The politic of lawmaking in Chinese local people's congresses. *The China Quarterly* 187: 592-609.

Churchill R (2007) The jurisprudence of the International Tribunal for the Law of the Sea relating to fisheries: is there much in the net? *The International Journal of Marine and Coastal Law* 22: 383-424

Cui L (2012) Adapting to new marine regime and promoting sustainable fisheries – the UN Law of the Sea Convention at 30 (in Chinese). *China Fisheries* 10: 2-4

Edeson W (2001) The international plan of action on illegal unreported and unregulated fishing: the legal context of a non-legally binding instrument. *The International Journal of Marine and Coastal Law* 16: 603-623

Fisheries Bureau of China (1998) The development of international cooperation on fisheries (in Chinese). *China Fisheries* 10: 1-2

Franckx E (2012) Fisheries in the South China Sea: a centrifugal or centripetal force? *Chinese Journal of International Law* 11 (4): 727-747

Erceg D (2006) Deterring IUU fishing through state control over nationals. *Marine Policy* 30: 173-179

Freestone D (2012) The Law of the Sea Convention at 30: successes, challenges and new agendas. *The International Journal of Marine and Coastal Law* 27: 675-682

Friedrich J (2008) Legal challenges of non-binding instruments: the case of the FAO Code of Conduct for Responsible Fisheries. *German Law Journal* 9: 1539-1564

Escher AK (2004) Release of vessels and crew before the International Tribunal for the Law of the Sea. *The Law and Practice of International Courts and Tribunals* 3: 205-374

Forrest R, Pitcher TJ, Watson R et al (2002) Estimating illegal and unreported catches from marine ecosystems: a basis for change. *Fish and Fisheries* 3(4): 317-339

Gao J (2009) A note on the 2008 Cooperation Consensus between China and Japan in the East China Sea. *Ocean Development & International Law* 40 (3): 291-303

Gao Z, Jia B (2013) The Nine-dash line in the South China Sea: history, status, and implications. *The American Journal of International Law* 107 (1): 98-124

GATT (1991) Dispute settlement panel report on United States restrictions on import of tuna. *International Legal Materials* 30: 1594-1623

GATT (1994) Dispute settlement panel report on United States restrictions on import of tuna. *International Legal Materials* 33: 839-903

Gavouneli M (2008) Mediterranean challenges: between old problems and new solutions. *The International Journal of Marine and Coastal Law* 23: 477-497

Goodman C (2009) The regime for flag State responsibility in international fisheries law – effective fact, creative fiction, or future work required? *Australian and New Zealand Maritime Law Journal* (2), vol 23: 157-169

Griggs L, Lugten G (2007) Veil over the nets (unravelling corporate liability for IUU fishing offences). *Marine Policy* 31: 159-168

Gullett W, Schofield C (2007) Pushing the limits of the Law of the Sea Convention: Australian and French cooperative surveillance and enforcement in the Southern Ocean. *The International Journal of Marine and Coastal Law* 22 (4): 545-583

Hardin G (1968) The tragedy of the commons. *Science* 162: 1243-1248

Hayashi M (1996-1997) Enforcement by non-flag States on the high seas under the 1995 Agreement on Straddling and Highly Migratory Fish Stocks. *Georgetown International Environmental Law Review* 9: 1-36

Henriksen T (2009) Revisiting the freedom of fishing and legal obligations on States not Party to Regional Fisheries Management Organizations. *Ocean Development & International Law* 40: 80-96

Hosch G, Ferraro G and Failler P (2011) The 1995 FAO Code of Conduct for Responsible Fisheries: adopting, implementing or scoring results? *Marine Policy* 35: 189-200

Kalaidjian W (2010) Fishing for solutions: the European Union's fisheries partnership agreements with West African coastal States and the call for effective regional oversight in an exploited ocean. *Emory International Law Review* 24: 389-431

Kang JS (2003) The United Nation convention on the law of the sea and fishery relations between Korea, Japan and China. *Marine Policy* 27: 111-124

Kim SK (2012) Illegal Chinese fishing in the Yellow Sea: a Korean officer's perspective. *Journal of East Asia & International Law* 5 (2): 455-477

Kuemlangan B, Press M (2010) Preventing, deterring and eliminating IUU fishing – port State measures. *Environmental Policy and Law* 40 (6): 262-268

- Li J, Li D (2003) The dotted line on the Chinese map of the South China Sea: a note. *Ocean Development & International Law* 34: 287-295
- Li P, Zeng Q (2013) Study on the current situation and trends of Port State Control (in Chinese). *China Maritime Safety* (1): 35-38
- Li Y (2012) The expansion of the jurisdiction of coastal States over marine fisheries (in Chinese). *Social Scientist* 187 (11): 16-19
- Liu X (2007) A case review of France being fined for violating EU fishery law (in Chinese). *Journal of Ocean University of China (Social Science Edition)* 3: 45-48
- Liu Z (2008) The negative influence of the United Nations Convention on the Law of the Sea (UNCLOS) (in Chinese), *Foreign Affairs Review (Shanghai)* 103: 82-89
- Lodge MW, Nandan SN (2005) Some suggestions towards better implementation of the United Nations Agreement on Straddling Fish Stocks and Highly Migratory Fish Stocks of 1995. *The International Journal of Marine and Coastal Law* 20: 345-379
- Mallory TG (2013) China's distant water fishing industry: Evolving policies and implications. *Marine Policy* 38: 99-108
- Markus T, Salomon M (2012) The law and policy behind the upcoming reform of the Common Fisheries Policy. *Journal for European Environmental & Planning Law* 9 (3-4): 257-284
- Mensah TA (2007) The Tribunal and the prompt release of vessels. *The International Journal of Marine and Coastal Law* 22 (3): 425-449
- Molenaar EJ (2004) Multilateral hot pursuit and illegal fishing in the Southern Ocean: the pursuits of the *Viarsa 1* and the *South Tomi*. *The International Journal of Marine and Coastal Law* 19 (1): 19-42
- Molenaar EJ (2011) Non-participation in the Fish Stocks Agreement: status and reasons. *The International Journal of Marine and Coastal Law* 26: 225-257
- Nagel P, Gray T (2012) Is the EU's fisheries partnership agreement (FPA) with Mauritania a genuine partnership or exploitation by the EU? *Ocean & Coastal Management* 56: 26-34
- Ndiaye TM (2011) Illegal, unreported and unregulated fishing: responses in general and in West Africa. *Chinese Journal of International Law* 10 (2): 373-405

Orellana MA (2002) The swordfish dispute between the EU and Chile at the ITLOS and the WTO. *Nordic Journal of International Law* 71: 55-81

Paler L (2005) China's Legislation Law and the making of a more orderly and representative legislative system. *The China Quarterly* 182: 301-318

Pauly D, Belhabib D, Blomeyer R et al (2013) China's distant-water fisheries in the 21st century. *Fish and Fisheries*. doi: 10.1111/faf.12032

Poulantzas NM (2002) *The right of hot pursuit in international law* 2nd Edition. Martinus Nijhoff Publishers. The Hague/London/New York

Qu B (2009) On the application of UNCLOS in China (in Chinese). *Public Administration & Law* (1): 91-93

Rayfuse R (2005) To our children's children's children: from promoting to achieving compliance in high seas fisheries. *The International Journal of Marine and Coastal Law* 20: 509-532

Reuland RC (1993) The customary right of hot pursuit onto the high seas: annotations to Article 111 of the Law of the Sea Convention. *Virginia Journal of International Law* 33: 557-589

Sasegbon D (2012) Assessing the strengths and weaknesses of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. *Southampton Student Law Review* 2: 72-83

Schorkopf F (2009) The European Union as an association of sovereign States: Karlsruhe's ruling on the Treaty of Lisbon. *German Law Journal* 10 (8): 1219-1240

Sodik DM (2008) Non-legally binding international fisheries instruments and measures to combat illegal, unreported and unregulated fishing. *Australian International Law Journal* 15: 129-164

Sung SO (2009) Port State measures as a political instrument to combat IUU fishing (Chinese). *International Fisheries Information (Taiwan)* 199: 29-38

Swan J (2006) Port state measures to combat IUU fishing: international and regional developments. *Sustainable Development Law & Policy* 7: 38-43

Takei Y (2013) International legal responses to the flag State in breach of its duties: possibilities for other States to take action against the flag State. *Nordic Journal of International Law* 82: 283-315

Tang Q (2007) New trends in trade-environment conflict seen from the swordfish dispute (Chinese). *Wuhan University Journal (Philosophy & Social Sciences)* 60 (1): 57-63

Tang Y, Zhu Y (2007) Surmounting departmental legislation (in Chinese). *Outlook Weekly* 4: 46-47

Taylor CR (2010) Fishing with a Bulldozer: Options for unilateral action by the United States under domestic and international law to halt destructive bottom trawling practices on the high seas. *Environ Environmental Law and Policy Journal* 34 (1): 121-171

Theilen JT (2013) What's in a name? The illegality of illegal, unreported and unregulated fishing. *The International Journal of Marine and Coastal Law* 28 (3): 533-550

Tsamenyi M, Hanich Q (2012) Fisheries jurisdiction under the Law of the Sea Convention: rights and obligations in maritime zones under the sovereignty of coastal States. *International Journal of Marine and Coastal Law* 27(4): 783-793

Tsamenyi M, Palma MA, Milligan B and Mfodwo K (2010) The European Council Regulation on Illegal, Unreported and Unregulated Fishing: an international fisheries law perspective. *The International Journal of Marine and Coastal Law* 25:5-31

Tuerk H (2007-2008) The contribution of the International Tribunal for the Law of the Sea to International Law. *Penn State International Law Review* 26 (2): 289-316

Walker R (2011) International law of the sea: applying the doctrine of hot pursuit in the 21st Century. *Auckland University Law Review* 17: 194-218

Warner-Kramer DM, Canty K (2000) Stateless fishing vessels: the current international regime and a new approach. *Ocean and Coastal Law Journal* 5: 227-244

WTO (1998) Report of the panel on the United States - import prohibition of certain shrimp and shrimp products. *International Legal Materials* 37: 832-857

WTO (1999) Report of the appellate body on the United States - import prohibition of certain shrimp and shrimp products. *International Legal Materials* 38: 121-175

Wu H, Zhang D (2010) Territorial issues on the East China Sea: a Chinese position. *Journal of East Asia & International Law* 1: 137-149

Xie X (2012) China's procedure of the conclusion of treaties and the treaty capacity – the review of China's Law of the Procedure of the Conclusion of Treaties (in Chinese). *Journal of the East China University of Politics Science and Law* (1): 46-54.

Xiong T, Che B (2009) Discussion on reasons of the fisheries disputes between China and South Korea and the solutions (in Chinese). *Journal of Anhui Agricultural Sciences* 37 (19): 9165-9166, 9168

Xu H (2009) Measures against IUU fishing and the Fisheries Law of the PRC (in Chinese). *Ocean Development and Management* 26 (8): 26-29.

Xu Y, Han L (2007) Departmental interests – non-erasable trace departmental legislation (in Chinese). *Journal of Shan Xi Police Academy* 15 (3): 29-32

Xue G (2006) China's distant water fisheries and its response to flag state responsibilities. *Marine Policy* 30: 651-658

Xue G (2006) Improved fisheries co-operation: Sino-Vietnamese Fisheries Agreement for the Gulf of Tonkin. *The International Journal of Marine and Coastal Law* 21 (2): 217-234

Yan X, Huang S (2009) Preliminary study of China's fishery administrative system reformation (in Chinese). *Journal of Shanghai Ocean University* 18 (2): 218-221

Yang Z (2012) The present and future of the Sino-South Korean fisheries dispute: a Chinese lawyer's perspective. *Journal of East Asia & International Law* 5 (2): 479-493

Yu X (2002) Implementation of the Sino-South Korean Fishery Agreement: an interview with Niu Yushan who is the Director of the Fishery Administration Superintendence Agency for the Yellow and Bohai Seas (in Chinese). *China Fisheries* (8): 31-32

Zhang J (2002) On reformation of fishery administration in new position (in Chinese). *Chinese Fisheries Economics* (5): 19-21

Zhang Z (2010) On the Non-interference Principle of China's diplomacy in Africa (in Chinese). *West Asia and Africa* (1): 11-16

Zijlmans JMIJ (1995) The (exclusive) external competence of the European Community. *Maastricht Journal of European and Comparative Law* 2 (4): 405-419

Zou K (2002) Gulf of Tonkin. *The International Journal of Marine and Coastal Law* 17 (1): 127-148

Zou K (2003) Sino-Japanese joint fishery management in the East China Sea. *Marine Policy* 27: 125-142

Zou K (2005) Implementing the United Nations Convention on the Law of the Sea in East Asia: issues and trends. *Singapore Year Book of International Law and Contributors* 9: 37-53

Zou K (2006) Joint development in the South China Sea: a new approach. *The International Journal of Marine and Coastal Law* 21 (1): 83-109

Zwinge T (2011) Duties of flag States to implement and enforce international standards and regulations – and measures to counter their failure to do so. *The Journal of International Business & Law* 10: 297-323

Books and chapters

Aqorau T (2007) Illegal, unreported and unregulated fishing in the Western and Central Pacific Ocean (WCPO): some legal and policy issues surrounding control of nationals and charter vessels under the new legal regime in the WCPO. In: Chircop A et al (eds) *Ocean Yearbook* 21, Martinus Nijhoff, Leiden, p 177-201

Balton DA (2004) Chapter 4: dealing with the "bad actors" of ocean fisheries. In OECD (ed) *Fish piracy: combating illegal, unreported and unregulated fishing*. OECD, Paris, p 57-64

Barnes R (2006) The Convention on the Law of the Sea: an effective framework for domestic fisheries conservation. In Freestone D, Barnes R and Ong DM (eds.) *The Law of the Sea: Progress and Prospects*, Oxford University Press, Oxford; New York, p 233-260

Birnie P, Boyle A and Redgwell C (2009) *International law & the environment*, third edition. Oxford University Press, Oxford; New York

Bonfil R, Munro G, Sumaila UR et al (1998) Impacts of distant water fleets: an ecological, economic and social assessment. In: The footprint of distant water fleets on world fisheries. WWF's Endangered Seas Campaign, WWF International, Godalming, Surrey, p. 11-111. [Also issued separately, with same title, as Bonfil R et al (eds) (1998). Fisheries Centre Research Reports 6(6)]

Chaves LA (2000) Illegal, unreported and unregulated fishing: WTO consistent trade related measures to address IUU fishing. In: FAO (ed) Report of and papers presented at the Expert Consultation on Illegal, Unreported and Unregulated Fishing, FAO Fisheries Report No 666. FAO, Rome: 268-281

Chen D (2009) Recent international law of the sea (in Chinese). Ocean Press, Beijing

Cheng J, Cai W, Cheung W et al (2006) An estimation of compliance of the fisheries of China with Article 7 (Fisheries Management) of the UN Code of Conduct for Responsible Fishing. 19 pages in: Pitcher TJ, Kalikoski D and Pramod G (eds) (2006) Evaluations of compliance with the FAO (UN) Code of Conduct for Responsible Fisheries. Fisheries Centre Research Reports, vol 14 (2). University of British Columbia, Vancouver

Churchill R, Owen D (2010) The EU Common Fisheries Policy. Oxford University Press, Oxford

Cullberg M, Lövin I (2009) To draw the line: EU fisheries agreements in West Africa. Swedish Society for Nature Conservation, Stockholm

De Yturriaga JA (1997) The International Regime of Fisheries: from UNCLOS 1982 to the Presential Sea. Martinus Nijhoff Publishers, the Hague

Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs (2005) Law of the Sea Bulletin No 56. United Nations, New York, p 137-138

Doulman DJ (2004) Global overview of IUU fishing and its impacts on national and regional efforts to manage fisheries sustainably: the rationale for the conclusion of the 2001 FAO International Plan of Action. In: FAO. Report of the expert consultation on fishing vessels operating under open registries and their impact on illegal, unreported and unregulated fishing, Miami, Florida, the US, 23-25 September 2003, FAO Fisheries Report No 722, FAO, Rome, p 23-45

Doulman DJ, Swan J (2012) A guide to the background and implementation of the 2009 FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Il-

legal, Unreported and Unregulated Fishing, FAO Fisheries and Aquaculture Circular No 1074. FAO, Rome

Dzidzornu DM (2011) Ocean policy in Africa and treaty aspects of marine fisheries exploitation, management, and environmental protection. In: Chircop A et al (eds) *Ocean Yearbook 25*, Martinus Nijhoff, Leiden, p 27-100

Elferink AO (2004) Chapter 15 Reviewing the implementation of the LOS Convention: the role of the United Nations General Assembly and the meeting of States Parties. In: Elferink AO and Rothwell DR (eds) *Oceans Management in the 21st Century Institutional Frameworks and Responses*, Martinus Nijhoff Publishers: Leiden and Boston, 295-312

Harrison J (2011) *Making the Law of the Sea: a study in the development of international law*. Cambridge University Press, Cambridge; New York

Hayashi M (1999) Chapter 4: The Straddling and Highly Migratory Fish Stocks Agreement. In Hey E (ed) *Developments in international fisheries law*. Kluwer Law International, The Hague, p 55-83

Hosch G (2009) *Analysis of the implementation and impact of the FAO Code of Conduct for Responsible Fisheries since 1995*, FAO Fisheries and Aquaculture Circular No 1038. FAO, Rome

Huang S, Tang Y (2010) *Fisheries regulation and fisheries management (in Chinese)*. China Agriculture Press, Beijing

Johnston DM (1992) A postscript. In Matics KI and McDorman TL (eds) *SEAPOL international workshop on challenges to fishery policy and diplomacy in South-east Asia*. South-East Asian Programme in Ocean Law, Policy, and Management, Bangkok, Thailand, 6-9 December 1992

Joyner CC, Aylesworth L (2008) Managing IUU fishing in the Southern Ocean: rethinking the plight of the Patagonian toothfish. In: Chircop A et al (eds) *Ocean Yearbook 22*, Martinus Nijhoff, Leiden, p 249-290

König D (2012) *Flags of Convenience*. In: Wolfrum R (ed) *The Max Planck Encyclopedia of Public International Law*, vol IV. Oxford University Press, p 118-126

Moore G (1999) *The Code of Conduct for Responsible Fisheries*. In: Hey E (ed) *Developments in international fisheries law*. Kluwer Law International, the Hague; London; Boston, p 85-105

Mundt M (2012) The effects of EU fisheries partnership agreements on fish stocks and fishermen: the case of Cape Verde. In: Evans T et al (eds) *International Political Economy Working Papers*, No. 12/2012. Berlin School of Economic and Law

Nandan SN, Rosenne S (1993) *United Nations Convention on the Law of the Sea 1982 – a commentary. Volume II.* Martinus Nijhoff Publisher, Dordrecht; Boston and London

Paik JH (1996) UNCLOS and boundary delimitation in East Asia. In: Kim D, Park C, Lee SH et al (eds) *UN Convention on the Law of the Sea and East Asia.* The Institute of East and West Studies, Yonsei University, Seoul, p 183-203

Palma MA, Tsamenyi M, Edeson WR (2010) *Promoting sustainable fisheries: the international legal and policy framework to combat illegal, unreported and unregulated fishing.* Martinus Nijhoff Publishers, Leiden

Pech L (2012) The institutional development of the EU post Lisbon: a case of plus ça change ...? In: Ashiagbor D, Countouris N and Lianos I (eds) *The EU after the Treaty of Lisbon: a legal assessment.* Cambridge University Press, p 7-46

Poulantzas NM (2002) *The right of hot pursuit in international law*, 2nd ed. Martinus Nijhoff, The Hague

Swan J (2002) *Fishing vessels operating under open registers and the exercise of flag state responsibilities - information and options*, FAO Fisheries Circular No. 980. FAO, Rome

Tridimas T (2012) Competence after Lisbon – the elusive search for bright lines. In: Ashiagbor D, Countouris N and Lianos I (eds) *The EU after the Treaty of Lisbon: a legal assessment.* Cambridge University Press, p 47-77

Van Houtte A (2004) Flag state responsibility and the contribution of recent international instruments in preventing, deterring and eliminating IUU fishing, In: FAO. *Report of the expert consultation on fishing vessels operating under open registries and their impact on illegal, unreported and unregulated fishing*, Miami, Florida, the US, 23-25 September 2003, FAO Fisheries Report No 722, FAO, Rome, p 47-70

Xue G (2008) China and the Law of the Sea: an update. In: Carsten MD (ed) *International law and military operations.* International law studies, vol 84. Naval War College, Newport, Rhode Island, pp 97- 110

Zou K (2005) *Law of the Sea in East Asia.* Routledge, London and New York

Proceedings and conference papers

Currie D (2013) Reform of the Korean Ocean Industry Development Act. Presentation at the 2013 Greenpeace Parliamentary Workshop, National Assembly of South Korea, Seoul, 10 May 2013

Damanaki M (2011) Zero tolerance on illegal fishing. Speech presented at the 6th International Forum on Illegal, Unreported and Unregulated (IUU) Fishing, Chatham House, London, 13-14 January 2011

Damanaki M (2013) keynote. Speech presented at the 8th international forum on illegal, unreported and unregulated (IUU) fishing, Chatham House, London, 11-12 February 2013

Desquiens D (2013) The IUU Regulation: illustration of the potentialities of the EU legal instrument to fight against IUU fishing. Presentation presented in the round-table on current international legal issues in the field of fisheries, the Catholic University of Louvain, Louvain-la-Neuve, 26 April 2013.

Stylianou M (2013) Update on the implementation of the EU IUU fishing regulation. Presented at the 8th International Forum on Illegal, Unreported and Unregulated Fishing, Chatham House, London, 11-12 February 2013

Online publications

Agnew DJ, Pearce J, Pramod G et al (2009) Estimating the worldwide extent of illegal fishing. Available via Plos One. <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0004570>. Accessed 25 February 2009

Alvarez M, Barbas T (2010) The Vessel Detection System – satellite technology for fisheries monitoring, control and surveillance. Available via European Commission JRC. ipsc.jrc.ec.europa.eu/fileadmin/docs/JRC58358.pdf. Accessed April 2010.

An (2013) China, Vietnam ink agreement on fishery hotline. Available via China View. http://news.xinhuanet.com/english/china/2013-06/21/c_132475771.htm. Accessed 21 June 2013

Atuna (2013) West African canned tuna now a major risk for importers. <http://www.atuna.com/NewsArchive/ViewArticle.asp?ID=12561>. Accessed 21 February 2014

Baidu Encyclopedia (2013) China's islands. <http://baike.baidu.com/view/1106813.htm>. Accessed 16 October 2013

Baird Maritime (2011) Cook Islands sign exploratory fishing agreement with China. <http://www.bairdmaritime.com>. Accessed 5 December 2011

Baird R (2009) Arrests in a cold climate (Part 2) – shaping hot pursuit through State practice. Antarctic and Southern Ocean Law and Policy Occasional Papers 13. Available via USQ ePrints. <http://eprints.usq.edu.au/5604/>. Accessed 16 December 2013

Blackmore E (2014) Sustainable fisheries certification. Available via International Institute for Environment and Development. <http://pubs.iied.org/17204IIED.html>. Accessed 18 February 2014

CCAMLR (2013) Non-Contracting Party IUU Vessel List. <http://www.ccamlr.org/en/compliance/non-contracting-party-iuu-vessel-list>. Accessed 15 November 2013

CCSBT (1994) Text of the Convention for the Conservation of Southern Bluefin Tuna. http://www.ccsbt.org/userfiles/file/docs_english/basic_documents/convention.pdf. Accessed 24 October 2013

Chen Y (2013) The 8th Joint Monitoring and Inspection in the Common Fishery Zone of the Gulf of Tonkin by China and Vietnam goes smoothly (in Chinese). Available via the South China Sea Fishery Information Website. http://www.nhyzchina.gov.cn/Html/2013_08_09/2_1459_2013_08_09_3507.html. Accessed 9 August 2013

Chinabaik (1995) The Statement of People's Republic of China on Relevant Provisions of the UN Fish Stocks Agreement (in Chinese). <http://www.chinabaik.com/law/gjt/1428560.html>. Accessed 5 November 2013

Clarke S (2009) Understanding China's fish trade and traceability systems - a TRAFFIC East Asia report. Available via TRAFFIC. <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&cad=rja&ved=0CC8QFjAA&url=http%3A%2F%2Fwww.traffic.org%2Ffisheries-re->

ports%2Ftraffic_pub_fisheries9.pdf&ei=w29UUoeNOWI0AWhlYCoAg&usg=AFQjCNHWjRcEEX7A-oRI4adwWg-y8lD0dw. Accessed 9 October 2013

CNN Wire Staff (2012) China, Philippines locked in naval standoff. Available via CNN. <http://edition.cnn.com/2012/04/11/world/asia/philippines-china-naval-standoff>. Accessed 11 April 2012

Damanaki M (2013) Sailing on Europe's seas. Available via Horizon 2020 Projects. <http://horizon2020projects.com/sc-bioeconomy-interviews/sailing-on-europes-seas/>. Accessed 9 February 2014

Deep Sea Conservation Coalition (2011) Recommendations of the Deep Sea Conservation Coalition to the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea. Available via Deep Sea Conservation Coalition. <http://www.savethehighseas.org/publicdocs/dscc-brief-icp-june11.pdf>. Accessed 3 February 2014

DEFRA (2013) Important information regarding the import of West African fish products into EU and UK markets. Available via Seafish. <http://www.seafish.org/processors/legislation/legislation-news/iuu-heightened-monitoring-of-west-african-fish>. Accessed 28 February 2013

Deng S (2013) China to restructure oceanic administration, enhance maritime law enforcement. Available via English.news.cn. http://news.xinhuanet.com/english/china/2013-03/10/c_132221768.htm. Accessed 10 March 2013

Dominguez Diaz C (2013) Objective in the fight against IUU fishing. Available via European Bureau for Conservation & Development. www.ebcd.org/pdf/presentation/283-Dominguez_Diaz_EN.pdf. Accessed 20 March 2013

Doulman DJ (2000) A general overview of some aspects of illegal, unreported and unregulated fishing. Available via FAO Fisheries and Aquaculture. <http://www.fao.org/docrep/005/y3274e/y3274e04.htm>. Accessed 15 February 2014

EJF (2006) Las Palmas: port of convenience and gateway to Europe. Available via illegal-fishing.info. http://www.illegal-fishing.info/item_single.php?item=document&item_id=78&approach_id=13. Accessed 30 January 2006

EJF (2011) Impacts of IUU fishing. <http://www.ejfoundation.org/page163.html>. Accessed 18 November 2011

EU Book shop (2004) European Code of Sustainable and Responsible Fisheries Practices. <http://bookshop.europa.eu/en/european-code-of-sustainable-and-responsible-fisheries-practices-pbKL5703443/>. Accessed 4 November 2013

Europa (2005) Speech by EU Commissioner Borg on Oceans and the Law of the Sea (2 September 2005: Hamburg). http://www.eu-un.europa.eu/articles/es/article_5001_es.htm. Accessed 10 January 2014

Europa (2013) European Commission intensifies the fight against illegal fishing. http://europa.eu/rapid/press-release_IP-13-1162_en.htm. Accessed 6 February 2014

Europa (2013) Intervention in the European Parliament plenary session on Illegal, Unregulated and Unreported (IUU) fishing. http://europa.eu/rapid/press-release_SPEECH-13-519_en.htm. Accessed 29 November 2013

European Coast Guard Functions Forum (2014) Mission & Tasks. www.ecgff.eu/mission-tasks. Accessed 8 April 2014

European Commission (2012) RFMOs 'Fit for the Future'. <http://webcast.ec.europa.eu/eutv/portal/archive.html?viewConference=15690>. Accessed 1 June 2012

European Commission (2012) Question and answers on the EU's fight against illegal fishing. Available via Europa. http://europa.eu/rapid/press-release_MEMO-12-859_en.htm. Accessed 15 November 2012

European Commission (2013) European atlas of the seas. http://ec.europa.eu/maritimeaffairs/atlas/index_en.htm. Accessed 7 January 2013

European Commission (2013) Information on States and their competent authorities notified under Article 20 (1) and (2) of IUU Regulation No 1005/2008 of 29 September 2008. Available via European Commission Fisheries. http://ec.europa.eu/fisheries/cfp/illegal_fishing/info/flag_state_notifications.pdf. Accessed 18 March 2013

European Commission (2013) Maria Damanaki's speech at the European Parliament plenary debate on IUU fishing. http://ec.europa.eu/commission_2010-2014/damanaki/headlines/speeches/2013/06/20130611_speech_iuu_en.htm. Accessed 13 June 2013

European Commission (2013) Written Statement by the European Commission on behalf of the European Union. Available via ITLOS (2013) Request for an advisory

ry opinion submitted by the Sub-Regional Fisheries Commission (SRFC). <http://www.itlos.org/index.php?id=252&L=0>. Accessed 18 January 2013

European Commission Fisheries (2012) Bilateral agreements with countries outside the EU. <http://ec.europa.eu>. Accessed 16 November 2012

European Commission Fisheries (2014) Discarding and the landing obligation. http://ec.europa.eu/fisheries/cfp/fishing_rules/discards/index_en.htm. Accessed 27 March 2014.

European Greens Congress (2011) Congress resolution on the reform of the Common Fisheries Policy – green priorities. Available via European Green Party. <http://europeangreens.eu/content/reform-common-fisheries-policy-%E2%80%93-green-priorities>. Accessed 1 February 2013

European Parliament (2011) Answer given by Ms Damanaki on behalf of the Commission to question on increasing transparency regarding European fishing vessels using flags of convenience by Kriton Arsenis. <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2010-9839&language=EN>. Accessed 14 January 2011.

European Parliament (2013) PECH Committee. <http://www.europarl.europa.eu/committees/en/pech/home.html>. Accessed 17 February 2013

Fabra A, Gascón V and Werner R (2006) The use of port State measures to improve fisheries compliance. Available via Illegal-fishing.info. <http://www.illegal-fishing.info>. Accessed 1 November 2011

FAO (2013) Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. <http://www.fao.org>. Accessed 28 October 2013

FAO (2013) Unique Vessel Identifier (UVI) – Global Record. <http://www.fao.org/fishery/topic/18021/en>. Accessed 21 April 2013.

FAO COFI Documents (2012) Regional statistical analysis of responses by FAO Members to the 2011 questionnaire on the Code of Conduct for Responsible Fisheries implementation, COFI/2012/SBD.1. <http://www.fao.org/cofi/33132-0abf8a3d0457871b8f80814b0f8963dbf.pdf>. Accessed 5 November 2013

FAO Fisheries and Aquaculture (2000) Report of the technical consultation on illegal, unreported and unregulated fishing. <http://www.fao.org/docrep/meeting/005/x8623e.htm>. Accessed 5 November 2013

FAO Fisheries and Aquaculture (2001) Report of the second technical consultation on illegal, unreported and unregulated fishing. <http://www.fao.org/docrep/meeting/003/Y0772E.htm>. Accessed 5 November 2013

FAO Fisheries and Aquaculture (2002) Implementation of the International Plan of Action to Deter, Prevent and Eliminate Illegal, Unreported and Unregulated Fishing, FAO Technical Guidelines for Responsible Fisheries No. 9. FAO, Rome. <http://www.fao.org/docrep/003/y1224e/y1224e00.HTM>. Accessed 6 November 2013

FAO Fisheries and Aquaculture (2005) Report of the FAO regional workshop on the elaboration of national plans of action to prevent, deter and eliminate illegal, unreported and unregulated fishing for Southeast Asia subregion. <http://www.fao.org/docrep/009/a0211e/a0211e00.htm>. Accessed 5 November 2013

FAO Fisheries and Aquaculture (2009) Report of the FAO/APFIC regional workshop on port State measures to combat illegal, unreported and unregulated fishing for the South Asian subregion. FAO Fisheries and Aquaculture Report. No. 896. <http://www.fao.org/docrep/011/i0763e/i0763e00.HTM>. Accessed 30 October 2013

FAO Fisheries and Aquaculture (2011) Progress in the Implementation of the Code of Conduct for Responsible Fisheries and related instruments, including International Plans of Action and Strategies, and other matters, COFI/2011/2, Rome, Italy, 31 January – 4 February 2011. <http://www.fao.org/fi/website/>. Accessed 6 November 2013

FAO Fisheries and Aquaculture (2012) Report of the thirtieth session of the Committee on Fisheries, No. 1012, 9-13 July 2012, Rome. <http://www.fao.org/docrep/017/i3105e/i3105e00.htm>. Accessed 26 November 2013

FAO Fisheries and Aquaculture (2013) Database on Port State Measures. <http://www.fao.org/fishery/psm/search/en>. Accessed 30 October 2013

FAO Fisheries and Aquaculture (2013) Fishery Committee for the Eastern Central Atlantic. <http://www.fao.org/fishery/rfb/cecaf/en>. Accessed 24 October 2013

FAO Fisheries and Aquaculture (2013) HSVAR: High Seas Vessels Authorization Record. <http://www.fao.org/fishery/collection/hsvar/2/en#table1>. Accessed 31 October 2013

FAO Fisheries and Aquaculture (2013) Southwest Indian Ocean Fisheries Commission (SWIOFC). <http://www.fao.org/fishery/rfb/SWIOFC/en#Org-LegalFoundation>. Accessed 18 November 2013

FAO Fisheries and Aquaculture (2013) Sub regional Fisheries Commission (SRFC). <http://www.fao.org/fishery/rfb/srfc/en>. Accessed 12 June 2013.

FAO Fisheries and Aquaculture (2013) Vessel Monitoring Systems. <http://www.fao.org/fishery/topic/13691/en>. Accessed 20 November 2013

FAO Fisheries and Aquaculture (2013) Western Central Atlantic Fishery Commission. <http://www.fao.org/fishery/rfb/wecafc/en>. Accessed 24 October 2013

FAO Fisheries and Aquaculture (2014) Sub regional Fisheries Commission (SRFC). <http://www.fao.org/fishery/rfb/srfc/en>. Accessed 19 January 2014

Fisheries.no (2014) Catch certificates. http://www.fisheries.no/resource_management/control_monitoring_surveillance/Catch-Certificate/. Accessed 15 January 2014.

Geirsson (2010) A speech at the Conference for the Head of the Coast Guards of the EU Member States and Schengen Associated Countries in Mijas on 7-8 April 2010. Available via European Coast Guard Functions Forum. www.ecgff.eu/spain-2010/minites. Accessed 8 April 2014

General Administration of Quality Supervision, Inspection and Quarantine of the People's Republic of China (2007) The Public Announcement on the Implementation of the Customs Clearance Form Online Verification as Announcement No. 68 (in Chinese). http://www.aqsiq.gov.cn/zwgk/jlgg/jlgkzh/200711/t20071128_55748.html. Accessed 11 October 2013

GFCM (2012) Driftnets, international fisheries and GFCM reform. Available via GFCM. <http://www.gfcm.org/gfcm/topic/16084/en>. Accessed 8 November 2012

GFCM (2013) Final report of joint GFCM BSC workshop on IUU fishing in the Black Sea. <http://151.1.154.86/GfcmWebSite/MeetingsReportsRepository.html>. Accessed 27 February 2013

GFCM (2013) General Fisheries Commission for the Mediterranean. <http://www.gfcm.org/gfcm/about/en>. Accessed 24 October 2013

Godoy J (2010) Africa: “EU subsidies companies guilty of illegal fishing”. Available via Inter Press Service. <http://www.ipsnews.net/2010/05/africa-eu-subsidises-companies-guilty-of-illegal-fishing/>. Accessed 24 May 2010.

Greenpeace (2013) New South Korean fisheries law a good first step to curb illegal fishing. Greenpeace. [http://www.greenpeace.org/international/en/press/releases/New-South-Korean-fisheries-law-a-good-first-step-to-curb-illegal-fishing/](http://www.greenpeace.org/international/en/press/releases/New-South-Korean-fisheries-law-a-good-first-step-to-curb-illegal-fishing-/). Accessed 2 July 2013

Huang H (2013) Written statement of the People’s Republic of China regarding the request for an advisory opinion submitted by the Sub-Regional Fisheries Commission (SRFC). Available via ITLOS. <https://www.itlos.org/index.php?id=252&L=0>. Accessed 12 March 2014

Institute for European Environmental Policy (IEEP), Lutchman I, Des Clers S et al (2011) Perspectives for the new European Fisheries Fund. Available via IEEP. http://www.ieep.eu/assets/849/Perspectives_on_the_new_European_Fisheries_Fund_en.pdf. Accessed 17 October 2013

International Law Commission (1956) Yearbook of the International Law Commission, Vol. II. <http://legal.un.org/ilc/publications/yearbooks/1956.htm>. Accessed 14 December 2013

ITLOS (2009) Rules of the Tribunal (ITLOS/8), as amended on 17 March 2009. http://www.itlos.org/fileadmin/itlos/documents/basic_texts/Itlos_8_E_17_03_09.pdf. Accessed 18 September 2013

Japan Coast Guard (2012) The situation of the combat of maritime crimes in 2011 (in Japanese). <http://www.kaiho.mlit.go.jp/info/kouhou/h24/k20120302/k120302-1.pdf>. Accessed 2 March 2012.

Japan Coast Guard (2013) The situation of the combat of maritime crimes in 2012 (in Japanese). <http://www.kaiho.mlit.go.jp/info/kouhou/h25/k20130319/k130319-2.pdf>. Accessed 19 March 2013

Jin W (2009) Scarce fisheries resources and new games between China and Vietnam in the Gulf of Tonkin (in Chinese). Available via People Website. <http://world.people.com.cn/GB/9582376.html>. Accessed 2 July 2009

Kim TG (2012) Will higher fines deter Chinese fishing boats? Available via The Korea Times. http://www.koreatimes.co.kr/www/news/biz/2013/07/123_111057.html. Accessed 15 May 2012

Li D (2013) South Korea announces that it will combat illegal Chinese fishing vessels thoroughly (in Chinese). Available via Huanqiu Website. <http://mil.huanqiu.com/world/2013-01/3563300.html>. Accessed 21 January 2013

Li X (2013) A top government official of South Korea: China and South Korea will jointly combat illegal fishing (in Chinese). Available via Huanqiu Website. <http://world.huanqiu.com/exclusive/2013-07/4092908.html>. Accessed 4 July 2013

Lutchman Indrani, Newman Stephanie and Monsanto Maxine (2011) Independent review of the EU Illegal Unreported and Unregulated Regulations. Available via IEEP. <http://www.ieep.eu/publications/2011/12/independent-review-of-the-eu-illegal-unreported-and-unregulated-regulations>. Accessed 2 December 2011

Mallory TG (2012) The Sea's Harvest: China and Global Fisheries. Available via Saisphere. <http://media.sais-jhu.edu/saisphere2011/article/sea%E2%80%99s-harvest-china-and-global-fisheries>. Accessed 8 January 2012

Ministry of Foreign Affairs of the PRC (2013) China made an announcement with regard to Article 298 of the United Nations Convention on the Law of the Sea (in Chinese). <http://www.fmprc.gov.cn/chn/gxh/zlb/tyfg/t270754.htm>. Accessed 10 July 2013

Mohammed EY (2014) Fisheries and the post-2015 development agenda. Available via International Institute for Environment and Development. <http://pubs.iied.org/17203IIED.html>. Accessed 18 February 2014.

NASCO (2013) North Atlantic Salmon Conservation Organization. <http://www.nasco.int/documents.html>. Accessed 24 October 2013

NEAFC (2006) Performance review panel report of the north East Atlantic Fisheries Commission. <http://www.neafc.org/system/files/performance-review-final-edited.pdf>. Accessed in 2006

NEAFC (2010) Report of the 29th annual meeting of the NEAFC. http://www.neafc.org/past_meetings. Accessed 12 November 2010

NEAFC (2011) Report of the 30th annual meeting of the NEAFC. http://www.neafc.org/past_meetings. Accessed 16 January 2014

NEAFC (2014) Guide to the NEAFC IUU A and B List System. <http://www.neafc.org/mcs/iuu/guide>, Accessed 15 January 2014

NOAA (2012) 2012 Report of the Secretary of Commerce to the Congress of the United States concerning U.S. actions taken on foreign large-scale high seas drift-

net fishing.
http://www.nmfs.noaa.gov/ia/iuu/driftnet_reports/2012_driftnet_report.pdf. Accessed 26 September 2013

NOAA Fisheries (2013) Improving international fisheries management, Report to Congress pursuant to Section 403 (a) of the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act of 2006, January 2013. http://www.nmfs.noaa.gov/ia/iuu/msra_page/2013_biennial_report_to_congress__jan_11__2013__final.pdf. Accessed 25 September 2013.

NOAA Fisheries (2013) The Convention on the Conservation and Management of the Pollock Resources in the Central Bering Sea. http://www.afsc.noaa.gov/refm/cbs/convention_description.htm. Accessed 24 October 2013

NOAA Fisheries (2014) Magnuson-Stevens Reauthorization Act. http://www.nmfs.noaa.gov/ia/iuu/msra_page/msra.html. Accessed 4 February 2014

Oceans & Law of the Sea (2007) Report of the Secretary-General A/62/66/Add.2 on oceans and the law of the sea. http://www.un.org/depts/los/general_assembly/general_assembly_reports.htm. Accessed 17 November 2013

Oceans & Law of the Sea (2014) Settlement of disputes mechanism. http://www.un.org/Depts/los/settlement_of_disputes/choice_procedure.htm. Accessed 26 February 2014

Ocean & Law of the Sea (2014) Table recapitulating the status of the Convention and of the related Agreements. http://www.un.org/Depts/los/reference_files/status2010.pdf. Accessed 26 February 2014

OECD (2004) Using trade measures in the fight against IUU fishing: opportunities and challenges. <http://www.oecd.org/greengrowth/fisheries/34227035.pdf>. Accessed 15 February 2014

OECD (2013) Short history of international actions and initiatives against IUU fishing activities. <http://www.oecd.org>. Accessed 18 January 2013

People.cn (1993) the Memorandum of Understanding between the Government of the United States of America and the Government of the People's Republic of China on Effective Cooperation and Implementation of United Nations General Assembly Resolution 46/215 of 20 December 1991 (in Chinese).

<http://law.people.com.cn/showdetail.action?id=2682028>. Accessed 24 January 2014

Phoenix Television (2012) China and South Korea will jointly enforce to combat IUU fishing and improve the management of fishing vessels (in Chinese). Available via Sina. <http://dailynews.sina.com/gb/chn/chnpolitics/phoenixtv/20120415/10153315785.htm>. Accessed 15 April 2012

Pkulaw.cn (2012) Notice of the General Office of the Ministry of Agriculture on issuing Provisional Measures on Administration of Distant Water Fishing Vessel Monitoring (in Chinese). <http://www.pkulaw.cn>. Accessed 21 November 2013

Republic of Seychelles Website (2006) China and Seychelles signed fisheries agreement. <http://sc.mofcom.gov.cn>. Accessed 18 May 2006

Research group on “Supporting and strengthening distant water fisheries” (2010) Supporting distant water fisheries as a strategic industry (in Chinese). Available via National Bureau of Statistics of China. http://www.stats.gov.cn/tjsujia/zggqgl/t20101018_402676860.htm. Accessed 18 October 2010.

Rogers AD, Gianni M (2010) The implementation of UNGA resolutions 61/105 and 64/72 in the management of deep-sea fisheries on the high seas. Available via Deep Sea Conservation Coalition. <http://www.savethehighseas.org/publicdocs/61105-Implementation-finalreport.pdf>. Accessed 3 February 2014

Sandgrains (2012) Sandgrains – background. <http://sandgrains.org/film/background.html>. Accessed 26 November 2012

Sinodefence (2009) China Fisheries Law Enforcement Command (FLEC). <http://www.sinodefence.com/navy/fisheries/fisheries-law-enforcement.asp>. Accessed 14 March 2009

SIOFA (2013) The Southern Indian Ocean Fisheries Agreement – text. <http://www.siodfa.org/the-sio/the-southern-indian-ocean-fisheries-agreement-text/>. Accessed 24 October 2013

SPRFMO (2013) About the SPRFMO. <http://www.southpacificfmo.org/about-the-sprfmo/>. Accessed 24 October 2013

SPRFMO (2013) China’s Report on the implementation of the 2012 Interim Measures for Pelagic Fisheries for the year 2012.

http://www.southpacificrfmo.org/home/SearchForm?Search=China&action_result=Search. Accessed 10 January 2013

Standing A (2008) Corruption and commercial fisheries in Africa. Available via U4. <http://www.u4.no/publications/corruption-and-commercial-fisheries-in-africa/>. Accessed 13 September 2013

Stop Illegal Fishing (2008) Stop illegal fishing in Southern Africa. <http://www.stopillegalfishing.com/documents.php>. Accessed 27 January 2014

Suárez de Vivero JL (2013) EEZs in Europe. In: European information. Available via EurOcean. <http://www.eurocean.org/np4/80.html>. Accessed 1 February 2013

Tarasofsky R (2007) Enhancing the effectiveness of regional fisheries management organizations through trade and market measures. Available via Chatham House. www.chathamhouse.org/publications/papers/view/108484. Accessed 9 April 2014

The Department of International Cooperation of Fisheries Bureau of the Ministry of Agriculture (2010) Russian fisheries products caught after 20 February 2010 can export to the EU (in Chinese). Via CAPPMA. http://www.cappma.org/hangyexinxi_article.php?big_class_id=9&small_class_id=56&article_id=3086. Accessed 24 February 2010

The PEW Environment Group (2010) Port State performance – European Union. http://www.portstateperformance.org/index.php/_countries/country/europe/. Accessed 21 May 2010.

The PEW Environment Group (2010) Preliminary findings from a gap analysis - A comparison of RFMO port state measures with the FAO Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Available via the PEW Charitable Trusts Website. <http://www.pewtrusts.org>. Accessed 26 May 2010

The PEW Charitable Trusts (2014) European Parliament rejects ban on deep-sea bottom trawling. <http://www.pewenvironment.org/news-room/other-resources/european-parliament-rejects-ban-on-deep-sea-bottom-trawling-85899532969>. Accessed 3 February 2014

Tokyo MOU (2012) Annual report of port State control in the Asia-Pacific region 2012. <http://www.tokyo-mou.org/doc/ANN12-r.pdf>. Accessed 31 January 2014

Trygg Mat (2012) A brief analysis of EU IUU listed countries fishing vessels. <http://tryggmat.no/archives/357>. Accessed 15 November 2012

Tsamenyi M, Palma MA, Milligan B and Mfodwo K (2009) The new EC regulation on illegal fishing: implications for ACP countries. Available via Commonwealth Secretariat. http://www.secretariat.thecommonwealth.org/document/190628/159719/159720/187911/tht56_the_new_ec_regulation_on_illegal_fishing.htm. Accessed 29 January 2014

United Nations (2004) Report of the Secretary-General A/59/298 on sustainable fisheries, including through the UN Fish Stocks Agreement, and related instruments. <http://www.un.org/ga/59/documentation/list2.html>. Accessed 17 November 2013

U.S. Fish & Wildlife Service International Affairs (2014) Pelly Amendment. <http://www.fws.gov/international/laws-treaties-agreements/us-conservation-laws/pelly-amendment.html>. Accessed 4 February 2014

Wikipedia (2013) China coastline (in Chinese). http://en.wikipedia.org/wiki/China_coastline. Accessed 16 October 2013.

X (2009) Spotlight on China as EU issues new rules to protect fish stocks. Available via EU-China News. http://newsletter.eu-in-china.com/newsletters/200908/012_en.html. Accessed August 2009

X (2012) China's nine-dashed line in South China Sea. Available via China Daily Mail. <http://chinadailymail.com/2012/05/25/chinas-nine-dashed-line-in-south-china-sea/>. Accessed 25 May 2012.

X (2012) Foreign Ministry Spokesperson: Establishing the Code of Conduct in the South China Sea is a part of the implementation of the Declaration on the Conduct of Parties in the South China Sea. Available via China View. http://news.xinhuanet.com/world/2012-04/05/c_111741057.htm. Accessed 5 April 2012.

X (2013) IUU fishing in Sierra Leone declining. Available via Undercurrentnews. <http://www.undercurrentnews.com/2013/04/11/iuu-fishing-in-sierra-leone-declining/#.UkFHdn97As0>. Accessed 11 April 2013

X (2013) The sustained and stable development of China's distant fisheries in 2012 (in Chinese). Available via China Distant Water Fisheries. <http://www.cndwf.com/bencandy.php?fid=14&id=8171>. Accessed 17 July 2013

Yu Z (2011) Joint enforcement plausible solution to fishing disputes. Via Global Times. <http://www.globaltimes.cn/DesktopModules/DnnForge%20->

%20NewsArticles/Print.aspx?tabid=99&tabmoduleid=94&articleId=690441&moduleId=405&PortalID=0. Accessed 29 December 2011.

Zhang X (2011) Mauritania hails cooperation agreement with China in fishing sector. Available via China View. http://news.xinhuanet.com/english2010/indepth/2011-08/15/c_131050906.htm. Accessed 14 April 2014

Legislations and Official Document

Administrative Provisions on Distant Water Fisheries, adopted at the eighth executive meeting of the Ministry of Agriculture on 14 April 2003, promulgated by Decree No 27 of the Ministry of Agriculture on 18 April 2004, entered into force on 1 June 2003 and revised by Decree No 38 of the Ministry of Agriculture on 1 July 2004

Circular of the General Office of the Ministry of Agriculture on Implementing Vessel Monitoring System over Distant Water Fishing Vessels, promulgated by the General Office of the Ministry of Agriculture concerning Fisheries on 20 April 2010, entered into force on 1 January 2011

Circular of the Ministry of Agriculture on the Issues of Nationality Certificates to Distant Water Fishing Vessels, promulgated by Decree No 30 of the Ministry of Agriculture and entered into force on 5 July 1993, revised by Decree No 39 of the Ministry of Agriculture on 25 December 1997

Commission Decision 2012/C 354/01 of 15 November 2012 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, OJ C 354 of 17 November 2012, pp. 1- 47

Commission Decision 2013/C 346/03 of 26 November 2013 on notifying the third countries that the Commission considers as possible of being identified as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (The 2013 Decision on the Notice of the Possibility of Identified as Non-cooperating third Countries); OJ C 346 of 27 November 2013, pp. 26-49

Commission Implementing Decision 2013/C 346/02 of 26 November 2013 identifying the third countries that the Commission considers as non-cooperating third countries pursuant to Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing; OJ C 346 of 27 November 2013, pp. 2-25

Commission Implementing Regulation (EU) No 724/2011 of 25 July 2011 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing; OJ L 194 of 26 July 2011, pp. 14-18

Commission Implementing Regulation (EU) No 1222/2011 of 28 November 2011 amending Regulation (EC) No 1010/2009 as regards administrative arrangements with third countries on catch certificates for marine fisheries products, OJ L 314 of 29 November 2011, pp. 2-11

Commission Implementing Regulation (EU) No 1234/2012 of 19 December 2012 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing; L 350 of 20 December 2012, pp. 38-43

Commission Implementing Regulation (EU) No 336/2013 of 12 April 2013 amending Regulation (EC) No 1010/2009 as regards administrative arrangements with third countries on catch certificates for marine fisheries products, OJ L 105 of 13 April 2013, pp. 4-6

Commission Implementing Regulation (EU) No 672/2013 of 15 July 2013 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing; OJ L 193 of 16 July 2013, pp. 6-11

Commission Implementing Regulation (EU) No 865/2013 of 9 September 2013 amending Regulation (EC) No 1010/2009 as regards administrative arrangements with third countries on catch certificates for marine fisheries products; OJ L 241 of 10 September 2013, pp. 1-3

Commission Implementing Regulation (EU) No 137/2014 of 12 February 2014 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing; OJ L 43 of 13 February 2014, pp. 47-54

Commission Regulation (EC) No 2244/2003 of 18 December 2003 laying down detailed provisions regarding satellite-based Vessel Monitoring Systems; OJ L 333 of 20 December 2003, pp. 17-27

Commission Regulation (EC) No 1010/2009 of 22 October 2009 laying down detailed rules for the implementation of Council Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (Implementing Regulation of the IUU Regulation); OJ L 280 of 27 October 2009, pp. 5-41

Commission Regulation (EU) No 86/2010 of 29 January 2010 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Commission Regulation (EC) No 1010/2009 as regards exchange of information on inspections of third country vessels and administrative arrangements on catch certificates; OJ L 26 of 30 January 2010, pp. 1-16

Commission Regulation (EU) No 395/2010 of 7 May 2010 amending Commission Regulation (EC) No 1010/2009 as regards administrative arrangements on catch certificates; OJ L 115 of 8 May 2010, pp. 1-22

Commission Regulation (EU) No 468/2010 of 28 May 2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing; OJ L 131 of 29 May 2010, pp. 22-26

Commission Regulation (EU) No 202/2011 of 1 March 2011 amending Annex I to Council Regulation (EC) No 1005/2008 as regards the definition of fishery products and amending Regulation (EC) No 1010/2009 as regards prior notification templates, benchmarks for port inspections and recognized catch documentation schemes adopted by regional fisheries management organizations; OJ L 57 of 2 March 2011, pp. 10-18

Commission Implementing Regulation (EU) No 404/2011 of 8 April 2011 laying down detailed rules for the implementation of Council Regulation (EC) No 1224/2009 establishing a Community control system for ensuring compliance with the rules of the Common Fisheries Policy (Commission Implementing Regulation No 404/2011), non-legislative acts; OJ L 112 of 30 April 2011, pp. 1-153

Council Decision 96/428/EC of 25 June 1996 on acceptance by the Community of the Agreement to promote compliance with international conservation and management measures by fishing vessels on the high seas; OJ L 177 of 16 July 1996, pp. 24-25

Council Decision 98/392/EC of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof; OJ L 179 of 23 June 1998, pp. 1-2.

Council Decision 98/414/EC of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing 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 stocks and highly migratory fish stocks; OJ L 189 of 3 July 1998, pp.14-41.

Council Decision 2011/443/EU of 20 June 2011 on the approval, on behalf of the European Union, of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; OJ L 191 of 22 July 2011, pp. 1-2

Council Directive 92/43/EEC of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora; OJ L 206 of 22 July 1992, pp. 7-92

Council Implementing Decision 2014/170/EU of 24 March 2014 establishing a list of non-cooperating third countries in fighting IUU fishing pursuant to Regulation (EC) No 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing; OJ L 91 of 27 March 2014, pp. 43-47

Council Regulation (EC) No 1239/98 of 8 June 1998 amending Regulation (EC) No 894/97 laying down certain technical measures for the conservation of fishery resources; OJ L 171 of 17 June 1998, pp. 1-4

Council Regulation (EEC) No 345/92 of 27 January 1992 amending for the eleventh time Regulation (EEC) No 3094/86 laying down certain technical measures for the conservation of fishery resources; OJ L 42 of 18 February 1992, pp. 15-23

Council Regulation (EEC) No 2847/93 of 12 October 1993 establishing a control system applicable to the common fisheries policy, repealed by Council Regulation (EC) No 1224/2009; OJ L 261 of 20 October 1993

Council Regulation (EC) No 2371/2002 of 20 December 2002 on the conservation and sustainable exploitation of fisheries resources under the Common Fisheries Policy, repealed by Regulation No 1380/2013 of the Parliament and of the Council; OJ L 358 of 31 December 2002, pp. 59-80

Council Regulation (EC) No 2187/2005 of 21 December 2005 for the conservation of fishery resources through technical measures in the Baltic Sea, the Belts and the Sound, amending Regulation (EC) No 1434/98 and repealing Regulation (EC) No 88/98; OJ L 349 of 31 December 2005, pp. 1-23

Council Regulation (EC) No 809/2007 of 28 June 2007 amending Regulation (EC) No 894/97, (EC) No 812/2004 and (EC) No 2187/2005 as concerns driftnets; OJ L 182 of 12 July 2007, pp. 1-2

Council Regulation (EC) No 734/2008 of 15 July 2008 on the protection of vulnerable marine ecosystems in the high seas from the adverse impacts of bottom fishing gears; OJ L 201 of 30 July 2008, pp. 8-13.

Council Regulation (EC) 1006/2008 of 29 September 2008 concerning authorizations for fishing activities of Community fishing vessels outside Community waters and the access of third country vessels to Community water, amending Regulation (EEC) No 2847/93 and (EC) No 1627/94 and repealing Regulation (EC) No 3317/94; OJ L 286 of 29 October 2008, pp. 33-44

Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006; OJ L 343 of 22 December 2009, pp. 1-50

Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999; OJ L286 of 29 October 2008, pp. 1-36

Council Regulation (EU) No 40/2013 of 21 January 2013 fixing for 2013 the fishing opportunities available in EU waters and, to EU vessels, in certain non-EU waters for certain fish stocks and groups of fish stocks which are subject to international negotiations or agreements; OJ L 23 of 25 January 2013, pp. 54-153

Declaration concerning the competence of the European Community with regard to matters governed by the United Nations Convention on the Law of the Sea of 10 December 1982 and the Agreement of 28 July 1994 relating to the implementation of Part XI of the Convention. Available via Oceans & Law of the Sea. http://www.un.org/Depts/los/convention_agreements/convention_declarations.htm #European Community Declaration made upon formal confirmation. Accessed 25 March 2014

Detailed Rule of Implementing Fisheries Law of the People's Republic of China, adopted by the State Council on 14 October 1987, promulgated and entered into force on 19 October 1987

Directive 2008/56/EC of the European Parliament and of the Council of 17 June 2008 establishing a framework for community action in the field of marine environmental policy (Marine Strategy Framework Directive); OJ L 164 of 25 June 2008, pp. 19-40

Directive 2009/147/EC of the European Parliament and of the Council of 30 November 2009 on the conservation of wild birds; OJ L 20 of 26 January 2010, pp. 7-25

European Commission (2002) Community action plan for the eradication of illegal, unreported and unregulated fishing, (Community Action Plan), Communication from the Commission, COM(2002) 180 final, Brussels, 2002

European Commission (2007) Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – on a new strategy for the Community to prevent, deter and eliminate Illegal, Unreported and Unregulated fishing (Community Strategy on IUU Fishing)

European Court of Justice (1993) Opinion 2/91 of the Court of 19 March 1993, delivered pursuant to the second subparagraph of Article 228 (1) of the EEC Treaty – Convention No 170 of the International Labour Organization concerning safety in the use of chemicals at work

European Parliament (2011) European Parliament Resolution P7_TA(2011)0516 of 17 November 2011 on Combating Illegal Fishing at the Global Level – the Role of the EU

Fisheries Law of the People's Republic of China, adopted at the 14th Meeting of the Standing Committee of the NPC and promulgated by Decree No 34 of the President of the PRC on 20 January 1986, revised by Decree No 38 of the President of the PRC on 31 October 2000, by Decree No 25 of the President of the PRC on 28 August 2004, by Decree No 18 of the President of the PRC on 28 August 2009 and by Decree No 8 of the President of the PRC on 28 December 2013 respectively

Interim Provisions for the Fishery Activities of Foreigners or Foreign Vessels in the Sea Areas under the Jurisdiction of the People's Republic of China, adopted at the executive meeting of the Ministry of Agriculture on 21 June 1999, promulgat-

ed by Decree No 18 of the Ministry of Agriculture and entered into force on 24 June 1999, revised by Decree No 38 of the Ministry of Agriculture on 1 July 2004

Law of the People's Republic of China on the Procedure of the Conclusion of Treaties, adopted at the 17th Meeting of the Standing Committee of the Seventh NPC on 28 December 1990, promulgated by Decree No 37 of the President of the PRC and entered into force on 28 December 1990

Law of the People's Republic of China on the Territorial Sea and the Contiguous Zone, adopted at the 24th Meeting of the Standing Committee of the Seventh NPC, promulgated by Decree 55 of the President of the PRC and entered into force on 25 February 1992

Law on the Exclusive Economic Zone and the Continental Shelf of the People's Republic of China, Adopted at the 3rd Meeting of the Standing Committee of the 9th NPC, promulgated by Decree No 6 of the President of the PRC and entered into force on 26 June 1998

Measures for the Visas for the Vessels of the People's Republic of China to Enter and Exit Fishery Ports, promulgated by Decree No 11 of the Ministry of Agriculture and entered into force on 26 January 1990, revised by Decree No 39 of the Ministry of Agriculture on 25 December 1997

Measures of the People's Republic of China on the Registration of Fishing Vessels, adopted at the tenth executive meeting of the Ministry of Agriculture in 2012, promulgated by Decree No 8 of the Ministry of Agriculture on 22 October 2012 and entered into force on 1 January 2013, revised by Decree No 5 of the Ministry of Agriculture on 31 December 2013

Notices on Prohibiting the Use of Large-scale Drift Fishing on High Sea, promulgated by the Ministry of Agriculture and entered into force on 12 February 1993

Procedure in Dealing with Illegal Activities of Foreigners or Foreign Vessels, promulgated by the Ministry of Agriculture of the PRC and entered into force on 3 September 1999

Protocol agreed between the European Union and the Republic of Cape Verde setting out the fishing opportunities and the financial contribution provided for in the Fisheries Partnership Agreement between the two parties currently in force; OJ L 181 of 9 July 2011, p. 2

Provisions for the People's Republic of China on Superintendence and Administrative Sanctions of the Navigation in Fishery Ports, adopted at the sixth executive

meeting of the Ministry of Agriculture on 9 May 2000, promulgated by Decree No 34 of the Ministry of Agriculture and entered into force on 13 June 2000

Provisions on the Administration of Fishery Administrative Cruising within Exclusive Economic Zones, promulgated by Decree No 85 of the Fisheries Bureau of the Ministry of Agriculture of the PRC and entered into force on 14 November 2005

Provisions on the Administration of Fishery Licensing, adopted at the ninth executive meeting of the Ministry of Agriculture on 9 May 2002, promulgated by Decree No 19 of the Ministry of Agriculture on 23 August 2002 and entered into force on 1 December 2002, revised by Decree No 38 of the Ministry of Agriculture on 1 July 2004, by Decree No 6 of the Ministry of Agriculture on 8 November 2007 and by Decree No 5 of the Ministry of Agriculture on 31 December 2013

Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (2013 CFP Regulation); OJ L 354 of 28 December 2013, pp. 22-60

Regulation of the People's Republic of China on the Administration of Traffic Safety on Fishing Port Waters, adopted at the 40th executive meeting of the State Council on 5 May 1989, promulgated by Decree No 38 of the State Council on 3 July 1989, came into force on 1 August 1989 and revised by Decree No 588 of the State Council on 8 January 2011

Rules of Administrative Sanctions on Fisheries, adopted on 23 December 1997, promulgated by Decree No 36 of the Ministry of Agriculture and entered into force on 5 January 1998

Several Opinions on Promoting the Sustainable and Healthy Development of Marine Fisheries, promulgated by the State Council and entered into force on 8 March 2013

The Law on Legislation of the People's Republic of China, adopted at the third Session of the Ninth National People's Congress and promulgated by Decree 31 of the President of the PRC on 15 March 2000, and entered into force on 1 July 2000

The Treaty of Lisbon amending the Treaty on European Union (TEU) and the Treaty establishing the European Community (TEC), renamed as the Treaty on the Functioning of the European Union (TFEU), signed on 13 December 2007, entered into force on 1 December 2009; OJ C 306 of 17 December 2007

Cases

ECJ (1971) Commission v Council, Case 22/70, AETR, Judgment of the Court of 25 November 1971

ECJ (1976) Cornelis Kramer and others, Joined cases 3/76, 4/76 and 6/76, Judgment of the Court of 14 July 1976

ECJ (1981) Commission of the European Communities v United Kingdom of Great Britain and Northern Ireland, Case 804/79, Judgment of the Court of 5 May 1981

ECJ (1996) Commission v Council, Case 25/94, Judgment of the Court of 19 March 1996

ECJ (2005) Commission of the European Communities v French Republic, Case 304/02, Judgment of the Court (Grand Chamber) of 12 July 2005

ECJ (2006) Commission of the European Communities v Ireland, Case 459/03, Judgment of the Court (Grand Chamber) of 30 May 2006

ECJ (2009) French Republic v Council of the European Union, Case 479/07, Judgment of the Court (Third Chamber) of 5 March 2009

ECJ (2009) Commission of the European Communities v French Republic, Case 556/07, Judgment of the Court (Third Chamber) of 5 March 2009

ECJ (2009) Commission of the European Communities v Italian Republic, Case 249/08, Judgment of the Court (Seventh Chamber) of 29 October 2009

ITLOS (1997) The M/V “Saiga” case (Saint Vincent and the Grenadines v. Guinea), Prompt Release, Judgment of 4 December 1997.

ITLOS (1999) Southern Bluefin Tuna Cases (New Zealand v. Japan; Australia v. Japan), Provisional Measures, Order of 27 August 1999.

ITLOS (1999) The M/V “Saiga” (No. 2) Case (Saint Vincent and the Grenadines v. Guinea), Merits, Judgment of 1 July 1999.

ITLOS (2000) The “Camouco” Case (Panama v. France), Prompt Release, Judgment of 7 February 2000.

ITLOS (2000) The “Monte Confurco” Case (Seychelles v. France), Prompt Release, Judgment of 18 December 2000.

ITLOS (2001) The “Chaisiri Reefer 2” Case (Panama v. Yemen), Prompt Release. ITLOS/Press 52: Case removed from Tribunal’s list.

ITLOS (2001) The “Grand Prince” Case (Belize v. France), Prompt Release, Judgment of 20 April 2001.

ITLOS (2002) The “Volga” Case (Russian Federation v. Australia), Prompt Release, Judgment of 23 December 2002.

ITLOS (2004) The “Juno Trader” Case (Saint Vincent and the Grenadines v. Guinea-Bissau), Prompt Release, Judgment of 18 December 2004.

ITLOS (2007) The “Hoshinmaru” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007.

ITLOS (2007) The “Tomimaru” Case (Japan v. Russian Federation), Prompt Release, Judgment of 6 August 2007.

ITLOS (2009) Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union), Order 2009/1 of 16 December 2009.

Other

Bureau of Fisheries of Ministry of Agriculture (2012) China Fisheries Statistical Yearbook (in Chinese). China Agriculture Press, Beijing

Dobo A (2009) Illegal Chinese fishing in West African Waters – A study on Chinese IUU activities and its consequences to socio-ecological systems. Dissertation, Stockholm University

EJF (2007) Pirate fish on your plate – Tracking illegally-caught fish from West Africa into the European market. Environmental Justice Foundation, London

EJF (2009) Dirty Fish – How EU hygiene standards facilitate illegal fishing in West Africa. Environmental Justice Foundation, London

EJF (2012) Pirate fishing exposed: the fight against illegal fishing in West Africa and the EU. EJF, London

EJF (2012) Through the net. The implementation of the EU Regulation to Prevent, Deter and Eliminate IUU Fishing. EJF, London

EJF (2013) Transshipment at sea: the need for a ban in West Africa. EJF, London

European Commission (2012) Facts and figures on the Common Fisheries Policy. Publications Office of the European Union, Luxembourg

European Commission Eurostat (2012) Agriculture, fishery and forestry statistics – main results – 2010-11. Publications Office of the European Union, Luxembourg

FAO (2002) Report of the expert consultation of regional fisheries management bodies on harmonization of catch certification, FAO Fisheries Report No. 697. FAO, Rome

FAO (2008) Report of the FAO/APFIC/SEAFDEC Regional Workshop on Port State Measures to Combat IUU Fishing, Bangkok, Thailand, 31 March – 4 April 2008. FAO Fisheries and Aquaculture Report No 868. FAO, Rome, p. 58, Annex B.

FAO (2010) The state of world fisheries and aquaculture 2010. FAO, Rome

FAO (2012) Evaluation of FAO's support to the implementation of the Code of Conduct for Responsible Fisheries, final report. FAO, Rome

FAO (2012) The state of world fisheries and aquaculture 2012. FAO, Rome

GFCM (2012) Report of the thirty-sixth session. Marrakech, Morocco, 14-19 May 2012. GFCM Report No 36. FAO, Rome

Kulchytskyy A (2012) Legal aspects of port State control. Dissertation, Lund University

Sodik DM (2007) Combating illegal, unreported and unregulated fishing in Indonesian waters: the need for fisheries legislative reform. Dissertation, University of Wollongong

Xue G (2004) China's response to international fisheries law and policy: national action and regional cooperation. Dissertation, University of Wollongong

UN (2006) S.S. "T'm alone" (Canada, US), 30 June 1933 and 5 January 1935. In UN Reports of International Arbitral Awards, Vol. III, pp. 1609-1618.

UNGA (2010) Report of the resumed Review Conference on the 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. Report presented in review conference on the 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, A/CONF.210/2010/7, New York, 24-28 May 2010