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### **HUMAN RIGHTS AND FISHING: A MULTIDIMENSIONAL CHALLENGE**

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#### **ABSTRACT**

In the last few years, it has been recognized more and more that human rights also play a role in the maritime sector. Human rights violations at sea are easy to overlook because they happen largely out of sight of most of society and they are based often on the structural power imbalances between seafarers or coastal residents and ship operators or far-away flag states. This article reveals some of the relationships between different actors and the potential for human rights violations in the maritime context. The article highlights the role and limitations of international law in this context. It will also be shown how different state and non-state actors, including consumers, can contribute to strengthening the protection of human rights at sea.

**KEYWORDS**

Fishing, Human Rights, International Law, Work Safety, Consumers

**NOTES**

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## INTRODUCTION

Human rights have long been a concern outside international human rights law in the narrow sense of the term, and some of the issues which predate the development of modern international human rights law remain relevant today – e.g. the duty of a state to inform a consular official of another state if a citizen of that state has been arrested, Art. 36 (1)(b) of the Vienna Convention on Consular Relations<sup>1</sup> (VCCR). Such “elementary considerations of humanity”<sup>2</sup> can also be found in the law of the sea,<sup>3</sup> and in recent years there have been notable developments when it comes to human rights and different uses of the seas. These developments are not only legislative but also practical in nature. More and more, rights of those who work at sea or otherwise depend on the seas for their livelihoods are recognized by governments, international organizations, and non-governmental organizations (NGOs).

Like elsewhere, human rights matters at sea are a question of power relationships. Due to the nature of the multiple uses of the seas, there is not one single set of rules which govern these relationships. International law, as a multi-level tool applicable from the local to the global level, can provide a framework for the treatment of these relationships. Starting with examples of these relationships, it will be shown in this text which particular human rights challenges exist in the fishing sector (albeit without a claim to completeness), and how international law can be utilized to protect human rights. This analysis will not be restricted to international human rights treaties in the narrow sense of the term but will also include other international legal instruments.

This text aims to provide an overview of some of the human rights challenges related to fishing. As will be shown, the problem is one of the different relationships between a wide range of actors. Law is one attempt to regulate relationships. In the case of human rights and the sea, the geographical distance between different actors leads to a personal and regulatory distance. While a seafarer might be a citizen of one country and be employed by a manning agency in another country, he or she might find herself working on a vessel owned by a company registered in a third country and flying the flag of a fourth, operating off the coasts and in ports in yet more countries, potentially impacting the lives of individuals living for example along the coast of yet more countries. The same applies to a large extent in the case of marine fishing. These relationships between individuals, corporations,

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<sup>1</sup> *Vienna Convention on Consular Relations*, Apr. 24, 1963, 21 U.S.T. 77, 596 U.N.T.S. 261, art. 36.

<sup>2</sup> *Corfu Channel (U.K. v. Alb.)*, International Court of Justice, 1949 I.C.J. 4, 22 (Apr. 9), 2.

<sup>3</sup> Sophie Cacciaguidi-Fahy, “The Law of the Sea and Human Rights”; in: Sanford R. Silverburg, ed., *International Law: Contemporary Issues and Future Development* (Westview Press, 2011).

states, coastal populations, and consumers form a complicated web which, for many involved, remains invisible.

As far as the impact on human rights is concerned, workers' rights, environmental human rights, and food security stand out as key problems, and different actors influence each other in different ways, ranging from bad working conditions on fishing vessels to environmental pollution destroying the livelihoods of fishing communities. This text showcases some of these relationships and uses one example, that of illegal, unreported, and unregulated (IUU) fishing, to highlight the ability of international law to provide adequate solutions — but also to show the limitations which international law faces in this regard. Even though a range of measures has been taken in recent years to combat IUU fishing, IUU fishing remains a law enforcement problem and states remain rather inactive. The slow pace of ratifications of the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, the key international treaty in the fight against IUU fishing, which entered into force in 2016, indicates a relative lack of interest on the part of consumer states, such as China. As the relationship between consumers of fish caught in IUU fishing and local communities in areas suffering from the effects of IUU fishing remains invisible, regulation remains difficult.

In a last step, it will be shown how existing international human rights norms, in particular the rights to food and health, can be utilized to provide affected local communities with legal tools to defend themselves against the effects of IUU fishing. This final section includes analyzing how these results also apply to other human rights aspects of fishing.

Some of the existing relationships will be described before looking at specific issues, such as labour standards, safety and working conditions, illegal, unreported and unregulated (IUU) fishing, and effects on coastal populations. These examples already indicate that the fundamental conflict between coastal states and flag states also plays a role when it comes to fishing. A focus on states as key legal actors, however, runs the risk of overlooking the human aspect. At the core "of international law has always been its ultimate concern for the human being."<sup>4</sup> The international law of the sea has always been about the competing interests of coastal and seafaring states. Human rights are, for the purposes of this text, concerned with the relationship between the individual and the state, but also with the relationships between different non-state actors. At the core of this text is not the state, not even the system of norms, but the individual and his or her ability to

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<sup>4</sup> Malcom N. Shaw, *International Law*, 4<sup>th</sup> ed. (1997, reprint 2000), 183.

utilize international law<sup>5</sup> to protect him- or herself against violations of human rights.

## 1. LABOUR STANDARDS AND SAFETY AT WORK

Even though the approximately 1.65 million<sup>6</sup> seafarers and 38 million<sup>7</sup> fishers around the world make tremendous contributions to the global economy as well as to food security, their work often happens under conditions which would be unacceptable in most countries. Being confined to a vessel often for months on end, without a possibility to seek recourse, withheld wages, cramped living conditions on board, inability to communicate with loved ones, long working hours, insufficient safety equipment (or the complete absence thereof), discrimination based on, for example, ethnicity or gender, the risk of being stranded far from home in case the employer becomes bankrupt, and threats to health and human lives — these are just some of the serious problems faced by those working on board.

For seafarers, the situation has been improved (at least on paper) due to the entry into force of the Maritime Labour Convention<sup>8</sup> (MLC) on August 20, 2013, while the situation in the fishing industry has provided more pervasive challenges. In the fishing industry, in particular in places such as Thailand,<sup>9</sup> there are numerous examples of work situations which amount to servitude. Today slavery is outlawed under all circumstances (*ius cogens*).<sup>10</sup> The prohibition of slavery and forced labour is also found in numerous international human rights treaties, for example in Article 8 of the the International Covenant on Civil and Political Rights<sup>11</sup> (ICCPR), Article 4 of the European Convention on Human Rights<sup>12</sup> (ECHR), and Article 6 of the American Convention on Human Rights<sup>13</sup> (ACHR). While the prohibition of slavery through international law can be traced back to even before the 1926 Slavery Convention, the idea that forced labour should be

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<sup>5</sup> On international human rights litigation as an option for individuals see e.g. Stefan Kirchner, "Lis alibi pendens in International Human Rights Litigation," *Edilex Lakikirjasto* (March 2, 2018) // <https://www.edilex.fi/artikkelit/18545>.

<sup>6</sup> Org. for Econ. Coop'n. & Dev. (OECD), "What would make Global Skills Partnerships work in practice?" *OECD Migration Policy Debates* No. 15 (May 2018): 3.

<sup>7</sup> International Labour Organisation (ILO), "Work in Fishing Convention No. 188 (2007) to enter into force" (November 16, 2016) // [http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_535063/lang--en/index.htm](http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_535063/lang--en/index.htm).

<sup>8</sup> *Maritime Labour Convention*, International Labour Organisation (ILO), Feb. 23, 2006, 45 I.L.M. 792.

<sup>9</sup> Human Rights Watch, "Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry" (January 23, 2018) // <https://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>.

<sup>10</sup> Renee C. Redman, "The League of Nations and the Right to be Free from Enslavement: The First Human Right to Be Recognized as a Customary International Law - Freedom: Beyond the United States," *Chi.-Kent L. Rev.* Vol. 70 (1994).

<sup>11</sup> *International Covenant on Civil and Political Rights*, Dec. 19, 1966, 999 U.N.T.S. 171, Art. 8.

<sup>12</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, Nov. 4, 1950, E.T.S. 5, 213 U.N.T.S. 221, Art.4.

<sup>13</sup> *American Convention on Human Rights*, Organization of American States, Nov. 22, 1969, O.A.S.T.S. No.36, 1144 U.N.T.S. 123, Art. 6.

outlawed had been codified a short time later, specifically in the 1930 ILO Convention No. 29, the Forced Labour Convention,<sup>14</sup> which is still used as a guide in interpreting the prohibition of forced labour in international human rights treaties, such as the European Convention on Human Rights, for example in the *van der Musselle* case.<sup>15</sup>

ILO Convention No. 188, the Work in Fishing Convention,<sup>16</sup> (ILO 188), which entered into force only on 17 November 2017, can be compared to the MLC with regard to the aims pursued. However, so far the ILO 188 has only been ratified by ten countries, the absolute minimum required for the entry into force. These countries are,<sup>17</sup> in chronological order of ratification,<sup>18</sup> Bosnia and Herzegovina, Argentina, Morocco, South Africa, the Republic of Congo (a.k.a. Congo-Brazzaville), France, Norway, Estonia, Angola and Lithuania. While some of these countries, in particular Norway, have considerable numbers of fishing fleets, this is not the case for all of them (Bosnia-Herzegovina, for example, has a coastline of only about 20 km and it's territorial sea is entirely surrounded by Croatia's internal waters). Nevertheless, ILO 188 has the potential to contribute to improvements of the labour rights standards enjoyed by people working in the fishing industry. The international treaty, which follows the ILO's 2007 Work in Fishing Recommendation,<sup>19</sup> "applies to all fishers and all fishing vessels engaged in commercial fishing operations."<sup>20</sup> It has to be noted that states can opt out of all or parts of the convention when it comes to fishing in lakes, rivers and canals,<sup>21</sup> and that rules concerning small vessels with a length of less than 24 meters<sup>22</sup> and those which stay at sea for less than seven days<sup>23</sup> do not have to be implemented immediately but can be implemented "progressively."<sup>24</sup> From the perspective of human rights, this approach is not new. The progressive fulfilment of human rights obligations is a hallmark of social and cultural human rights, as opposed to social and political rights, such as the right to free speech, which has to be implemented immediately when an international treaty takes effect for a state. Usually this is

<sup>14</sup> *Forced Labour Convention*, June 29, 1930, 39 U.N.T.S. 55.

<sup>15</sup> *Van der Musselle v. Belgium*, European Court of Human Rights, App. No. 8919/80, 6 Eur. H.R. Rep. 163, 194-201 (1983).

<sup>16</sup> *Convention Concerning Work in the Fishing Sector*, ILO, No. 188, June 14, 2007 // [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C188](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188).

<sup>17</sup> International Labour Organisation (ILO), "Ratification of C188 - Work in Fishing Convention, 2007 (No. 188)" //

[http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312333](http://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312333).

<sup>18</sup> *Ibid.*

<sup>19</sup> International Labour Organisation (ILO), "Work in Fishing Convention and Recommendation, 2007" // [http://www.ilo.org/wcmsp5/groups/public/@ed\\_dialogue/@sector/documents/publication/wcms\\_161220.pdf](http://www.ilo.org/wcmsp5/groups/public/@ed_dialogue/@sector/documents/publication/wcms_161220.pdf).

<sup>20</sup> *Convention Concerning Work in the Fishing Sector*, *supra* note 16, Article 2 (1).

<sup>21</sup> *Ibid.*, Article 3 (1) (a).

<sup>22</sup> *Ibid.*, Article 4 (2) (a).

<sup>23</sup> *Ibid.*, Article 4 (2) (b).

<sup>24</sup> *Ibid.*, Article 4 (1).

justified by the fact that it takes time and resources to create the infrastructure necessary to realize social rights, schools, hospitals and the like. By singling out small commercial vessels, there is a risk that the existing marginalization of small scale fishers will continue even with the implementation of new standards. This impression gets even stronger when one sees that only vessels with a length of 24 meters<sup>25</sup> or more or vessels which “normally navigate at a distance exceeding 200 nautical miles from the coastline of the flag state or navigate beyond the outer edge of its continental shelf, whichever distance from the coastline is greater”<sup>26</sup> have to be certified by the flag state with regard to compliance with ILO 188. Fishing vessels shorter than 24 m and operating less than 200 nm from the coast do not even have to be certified by the flag state. This means that in practice working conditions on small fishing vessels will not even appear on the state’s radar screen, even if it has ratified ILO 188 (which so far has only be done by ten states).

That said, the requirements imposed on the operators of commercial fishing vessels under ILO 188 are not that far-reaching. Article 8 ILO 188 emphasizes the obligation to create a safe work environment, with a focus on “on-board occupational safety and health awareness training,”<sup>27</sup> and other aspects include issues with which the maritime industry is already familiar from other conventions, such as MLC and STCW, for example medical examinations<sup>28</sup> or minimum age rules.<sup>29</sup> Particular attention is given to work conditions of fishers,<sup>30</sup> food and accommodation,<sup>31</sup> as well as health and social security.<sup>32</sup> In many ways, ILO 188 can in theory serve the same purpose that MLC serves for the shipping sector already today. Like in other areas, however, the international regulation of fisheries continues to lag behind legal developments for the shipping industry. Notable examples are the 1995 International Convention on Training, Certification and Watchkeeping for Fishing Vessel Personnel<sup>33</sup> (STCW-F), which followed the 1978 International Convention on Training, Certification and Watchkeeping<sup>34</sup> (STCW) for the shipping industry or the 1977 Torremolinos Convention for the Safety of Fishing Vessels<sup>35</sup> and the 1993 Protocol thereto,<sup>36</sup> which in turn was amended with the

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<sup>25</sup> *Ibid.*, Article 41 (1) (a).

<sup>26</sup> *Ibid.*, Article 41 (1) (b).

<sup>27</sup> *Ibid.*, Article 8 (2) (c).

<sup>28</sup> *Ibid.*, Articles 10 et seq.

<sup>29</sup> *Ibid.*, Article 9.

<sup>30</sup> *Ibid.*, Part IV.

<sup>31</sup> *Ibid.*, Part V.

<sup>32</sup> *Ibid.*, Part VI.

<sup>33</sup> *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)*, International Maritime Organisation (IMO), July 7, 1995 // <http://www.imo.org/en/OurWork/HumanElement/Pages/STCW-F-Convention.aspx>.

<sup>34</sup> *International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, with Annex (STCW)*, International Maritime Organisation (IMO), July 7, 1978, S. Exec. Doc. EE 96-1, C.T.I.A. No. 7624, 1361 U.N.T.S. 190.

<sup>35</sup> *Torremolinos International Convention for the Safety of Fishing Vessels*, Apr. 2 1977, Austl. Dept. of Foreign Affairs, Select Documents on Int'l Affairs, No. 25 Volume 2 (1977) p. 1 //

2012 Cape Town Agreement<sup>37</sup> — none of the latter three instruments has entered into force at the time of writing.<sup>38</sup>

Meanwhile, bad working conditions and human rights violations continue. Merely creating new legal norms will not necessarily provide a solution to this problem — but actually giving norms a legally binding effect is. ILO 188 required a decade between adoption and entry into force,<sup>39</sup> STCW-F even took 17 years from adoption until entry into force<sup>40</sup> and the attempts to create binding norms regarding ship safety for fishing vessels is an international law saga of its own. In many regards, international law has an enforcement problem. When it comes to fishing vessels, it is the step from draft texts to binding treaty and the lack of ratifications which is the key problem.

From the perspective of governments, this is not surprising. What happens at sea is often geographically far removed from capitols and, especially for countries without a strong maritime tradition, out of sight is out of mind. This aspect should not be underestimated. In addition, many work-relationships in the fishing industry are informal or, like in the shipping industry, involve actors from different countries, different legal systems, speaking different languages. This, in turn, makes access to justice for workers in the fishing industry more difficult, even in cases which do not amount to slavery-like conditions, as they remain common in a number of countries.

## 2. ENVIRONMENTAL POLLUTION AS A HUMAN RIGHTS CONCERN

While the focus of this text is on fishing at sea, people who engage in fishing in rivers and lakes face somewhat similar problems, at least with regard to environmental pollution. From a legal perspective, internal waters fall fully under the sovereignty of the state and outside the geographical scope of the Law of the Sea Convention, but awareness of environmental challenges is important for both types of fishing — not least due to the effects of environmental pollution on the health of consumers.

In addition, substantial parts of the pollution experienced at sea is not caused by ships but stems from land-based sources. Coastal and inland communities play

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<http://www.austlii.edu.au/au/other/dfat/seldoc/1977/2521.html>.

<sup>36</sup> *Torremolinos Protocol Relating to the 1977 Torremolinos International Convention for the Safety of Fishing Vessels*, Apr. 2, 1993 // [http://hulpinlood.nl/wp-content/uploads/2015/03/BIJLAGE16\\_1993-Torremolinos-Protocol.pdf](http://hulpinlood.nl/wp-content/uploads/2015/03/BIJLAGE16_1993-Torremolinos-Protocol.pdf).

<sup>37</sup> *Cape Town Agreement of 2012 on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels*, Oct. 12, 2012.

<sup>38</sup> See International Maritime Organisation (IMO), "GISIS: Status of Treaties" // <https://gisis.imo.org/Public/ST/Treaties.aspx>.

<sup>39</sup> *Convention Concerning Work in the Fishing Sector*, *supra* note 16.

<sup>40</sup> *STCW-F*, *supra* note 33.



an important role in land-based pollution of the seas. In particular, eutrophication due to the use of fertilizers in agriculture, the increase in plastic pollutants in recent years, and other forms of water pollution has dramatic effects on marine life, including fish stocks used for human consumption. In the case of diadromous fish species, fish which migrate between salt water and fresh water during their life, such as fishing in rivers and lakes, as well as environmental pollution further inland, affects fish stocks and therefore the livelihood of fishers and the profits of fishing companies. While fishing in rivers and lakes is not covered by the law of the sea, they can have an impact on fishing at sea – and vice versa.

Coastal communities do not only suffer the effects of IUU fishing. Compared to cargo shipping, pollution by fishing vessels is often overlooked. In recent years, plastic pollution of the seas has gained more widespread attention.<sup>41</sup> While land-based plastic waste, including micro-plastics, is an important factor in this regard, plastic waste from fishing vessels, including lost or discarded nets, causes significant damage to marine wildlife. Like other ships, fishing vessels cause air pollution. Ship-based air pollution is estimated to lead to 50,000 additional premature deaths every year in Europe alone.<sup>42</sup> While it is not exactly clear how many people suffer negative health effects from air pollution by fishing vessels, this, too, is an issue in the context of the right to health. Oil pollution by fishing vessels can directly affect marine wildlife and the livelihood of coastal populations. Some challenges are shared between inland fishers and fishers at sea. Apart from polluted waters, dam construction is such an issue. The construction of dams impacts not only local fisheries but also the transport of nutrients and minerals downstream and into the sea, which then affects the flora and fauna there.

In recent decades, environmental pollution has been recognized as a human rights concern. For example, the European Court of Human Rights (ECtHR) speaks of a “right to a healthy environment”<sup>43</sup> as part of “the right to one’s home, which the State has to protect against interferences by others”<sup>44</sup> according to Article 8 of the European Convention on Human Rights<sup>45</sup> (ECHR).<sup>46</sup> The same norm, which also protects the right to private life, has been used under the latter limb to claim a violation of the right to private life in the case of an indigenous Sámi fisherman

<sup>41</sup> David Shukman, “Shame and anger’ at plastic ocean pollution,” *BBC News* (December 4, 2017) // <https://www.bbc.co.uk/news/science-environment-42221262>.

<sup>42</sup> John Vidal, “Huge cruise ships will worsen London air pollution, campaigners warn,” *The Guardian* (March 31, 2016) // <https://www.theguardian.com/environment/2016/mar/31/huge-cruise-ships-will-worsen-london-air-pollution-campaigners-warn>.

<sup>43</sup> *Hatton and Others v. the United Kingdom*, App. No. 36022/97, [2003] 37 Eur. H.R. Rep. 611 (July 8, 2003) (joint dissenting opinion of Judges Costa, Ress, Türmen, Zupančič, and Steinberg).

<sup>44</sup> Christoph Grabenwarter, *European Convention on Human Rights - Commentary*, 1<sup>st</sup> ed. (Munich: C. H. Beck, 2014): 222 (Article 8, margin no. 79).

<sup>45</sup> *Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra* note 12, Art. 8.

<sup>46</sup> See *Lopez Ostra v. Spain*, 303-C Eur. Ct. H.R. (ser. A) (Judgment of Dec. 9, 1994); see also *Hatton and Others v. the United Kingdom*, *supra* note 43; see also Christoph Grabenwarter, *supra* note 44: 222 (Article 8, margin nos. 320-21).

whose livelihood based on river fishing was at risk due to the construction of a dam in Norway.<sup>47</sup> In extreme cases, environmental pollution and overfishing can threaten the rights to food and health. The right to life also requires states to take the necessary action to ensure that individuals have the means to survive.<sup>48</sup> Given that many coastal communities in the developing world are heavily dependent on fishing, overfishing and environmental pollution can affect even most fundamental rights. Considering the protective dimension of human rights, the so-called *status positivus*,<sup>49</sup> states have a duty to take action to protect individuals against harm from environmental pollution.<sup>50</sup>

There are different ways in which international law can be utilized to safeguard the human rights of coastal residents. Oil spills can serve as an example in this regard: when it comes to oil pollution, liability conventions which provide for obligatory insurance schemes, such as the 2001 International Convention on Civil Liability for Bunker Oil Pollution Damage<sup>51</sup> (hereafter: Bunker Convention or BUNKER) can provide for some compensation for coastal states, if it has been ratified by the flag state. While oil spills from tanker vessels, such as the recent spill after the sinking of the *Sanchi* off the coast of China,<sup>52</sup> are particularly feared, bunker oil can cause significant damage to the natural environment as well. For example in 2007 the cargo vessel *Cosco Busan* hit the Bay Bridge between San Francisco and Oakland, which led to an oil spill.<sup>53</sup> In addition to killing 7,000 birds, almost a third of all spawning herring between the Marin Headlands and San Mateo county were killed.<sup>54</sup> The Bunker Convention is meant to cover damages caused by spills of such oils.<sup>55</sup> The Bunker Convention applies to fishing vessels<sup>56</sup> — but only

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<sup>47</sup> *O.B. and Others v. Norway*, App No. 15997/90, <http://hudoc.echr.coe.int/eng?i=001-1462>.

<sup>48</sup> See Jens Meyer-Ladewig and Bertold Huber, "Artikel 2 Recht auf Leben": 69; in: Jens Meyer-Ladewig, Martin Nettesheim, and Stefan von Raumer, eds., *EMRK – Europäische Menschenrechtskonvention – Handkommentar*, 4<sup>th</sup> ed. (2017).

<sup>49</sup> On the development of the notion that states have a positive duty to protect individuals against acts of third parties in the context of the European Convention on Human Rights, see in detail Leo Zwaak, "Chapter 6 – Right to Life (Article 2)": 358 et seq.; in: Pieter van Dijk, Fried van Hoof, Arjen van Rijn, and Leo Zwaak, eds., *Theory and Practice of the European Convention on Human Rights*, 4<sup>th</sup> ed. (2006).

<sup>50</sup> Jens Meyer-Ladewig and Bertold Huber, *supra* note 48: 71.

<sup>51</sup> *International Convention on Civil Liability for Bunker Oil Pollution Damage [BUNKER]*, Mar. 23, 2001, [2009] A.T.S. 14.

<sup>52</sup> Euan McKirdy and Nanlin Fang, "Oil spill off China coast now the size of Paris," *CNN* (January 18, 2018) // <https://edition.cnn.com/2018/01/18/asia/china-sanchi-tanker-oil-spill-intl/index.html>.

<sup>53</sup> Demian Bulwa, Kevin Fagan, and Carl Nolte, "Pilot says Cosco Busan's captain directed vessel into bridge," *San Francisco Gate* (November 14, 2007) // <https://www.sfgate.com/news/article/Pilot-says-Cosco-Busan-s-captain-directed-vessel-3300990.php>.

<sup>54</sup> Chris Leggett and Mark Curry, "Recreational Fishing Damages Due to the Cosco Busan Oil Spill," *Cosco Busan Natural Resource Damage Assessment* (December 30, 2010) // <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=36961&inline>.

<sup>55</sup> On the wide material scope, see *BUNKER*, *supra* note 51, Article 1 (5)

<sup>56</sup> This already follows from *BUNKER*, *supra* note 51, Article 1 (1); see also Konstantinos Bachxevanis, "The Bunker Pollution Convention 2001," *Reed Smith LLP, Litigation Department, Shipping Group, Admiralty & Casualty Department* (September 2009) // <https://www.reedsmith.com/-/media/files/perspectives/2009/09/the-bunker-pollution-convention-2001/files/the-bunker-pollution-convention-2001/fileattachment/the-bunker-pollution-convention-2001--k-bachxevani.pdf>.

to those with a tonnage in excess of 1,000 GT.<sup>57</sup> This covers very large fishing vessels like factory trawlers but excludes many small vessels. One example, from Iceland: in the last 5 years, 70 new fishing vessels entered service in Iceland, 53 were smaller than 30 GT and only 15 were larger than 1,000 GT. In less developed countries with a heavier emphasis on small vessels, the relative number of vessels which are actually covered by BUNKER is likely to be even smaller. This means that bunker oil spills by small vessels are not covered by insurance schemes, putting coastal populations at an additional disadvantage. Oil spills are, in a sense, only the tip of the iceberg. Other forms of vessel-source pollution also affect local communities, for example air pollution. Fishing vessels are covered by the International Convention for the Prevention of Pollution from Ships<sup>58</sup> (MARPOL),<sup>59</sup> a widely ratified<sup>60</sup> international treaty which regulates pollution by ships. Compliance with international standards, such as the future reduction in sulphur content for ship exhausts decided on by the International Maritime Organization (IMO) in 2018,<sup>61</sup> is essential for the protection of the natural environment and the human rights to health and to a healthy environment of residents in coastal areas.

### 3. IUU FISHING

Coastal residents who are dependent on near-coastal fisheries for their livelihood and survival are also among those who are particularly at risk from illegal, unreported and unregulated (IUU) fishing. While the balance of power in the regulation of the international law of the sea has shifted towards the coastal states in recent decades, the rights of coastal populations and those working in the fishing industry are by no means guaranteed. In remote areas in particular, coastal populations often hardly (if at all) benefit from increasing maritime traffic, although they bear the risk of environmental pollution, such as oil spills. This is particularly the case for communities which depend on the sea for their livelihoods. Although hailed as alternative sources of income in times of overfishing, an increase in maritime tourism does not necessarily lead to economic benefits for local coastal populations either. Other technical developments have also been detrimental for

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<sup>57</sup> BUNKER, *supra* note 51, Article 1 (11)

<sup>58</sup> *International Convention for the Prevention of Pollution from Ships, Nov. 2, 1973, 1313 U.N.T.S. 3, as modified by the Protocol of 1978 Relating to the International Convention for the Prevention of Pollution from Ships [MARPOL 73/78], Feb. 17, 1978, 1340 U.N.T.S. 184.*

<sup>59</sup> *Ibid.*, Article 2(4), defines the term 'ship' as "a vessel of any type whatsoever operating in the marine environment and includes hydrofoil boats, air-cushion vehicles, submersibles, floating craft and fixed or floating platforms."

<sup>60</sup> See International Maritime Organisation (IMO), *supra* note 38.

<sup>61</sup> International Maritime Organisation (IMO), "IMO sets 2020 date for ships to comply with low sulphur fuel oil requirement" (October 28, 2016) // <http://www.imo.org/en/MediaCentre/PressBriefings/Pages/MEPC-70-2020sulphur.aspx>; see also MARPOL 73/78, *supra* note 58, Annex VI.

coastal communities. For example, long-range fishing fleets from developed countries which operate off the coasts of developing countries, such as off the coast of West Africa, contribute to the depletion of fish stocks and provide an insurmountable economic competition for local fishing fleets. These fleets are often forced to operate closer to shore due to the constraints imposed by the smaller size of vessels and limited seaworthiness for the oceans.

IUU fishing also endangers coastal communities. While some IUU fishing is undertaken by small scale fishing operations close to home, IUU fishing is actually part of a larger problem. A large amount of fish which are caught with IUU fishing are destined for markets in locations where there is a high demand for fish and limited law enforcement, e.g. due to corruption or the absence of a legal system based on the effective implementation of the rule of law, as in the People's Republic of China.

While IUU fishing has long been seen as a problem of administrative law,<sup>62</sup> a matter of missing permits,<sup>63</sup> and a problem which was thought to be solvable by the Food and Agricultural Organization (FAO),<sup>64</sup> more recently there has been a shift towards understanding IUU fishing as a problem of international organized crime.<sup>65</sup> This approach allows for concerted transnational efforts to combat IUU fishing.<sup>66</sup> By framing IUU fishing no longer as a matter of missing permits — a mere technicality which can be resolved — but as a criminal activity, the international community not only gives states an incentive and a possibility to take effective action,<sup>67</sup> it also can also help to create awareness among consumers.

## CONCLUSION

IUU fishing is a crime which violates the laws of flag states, the rights of coastal states under the international law of the sea, and the human right to food security of people who live in coastal regions and who depend on locally sourced fish as a source of nutrition. So called 'dolphin-friendly' labels can be found on tuna cans in many supermarkets. Choosing fish which has been caught with methods which limit bycatch, in particular bycatch of members of sentient species, such as dolphins, is seen as an ethical choice. However, consumers might be given the impression that sustainable fishing has to come at a price. This is especially the case when sustainably fished fish retails at a significantly higher price than fish

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<sup>62</sup> Eve de Coning and Emma Witbooi, "Towards a new 'fisheries crime' paradigm: South Africa as an illustrative example," *Marine Policy* Vol. 60 (2015): 209.

<sup>63</sup> *Ibid.*

<sup>64</sup> *Ibid.*

<sup>65</sup> *Ibid.*: 210–214.

<sup>66</sup> *Ibid.*

<sup>67</sup> *Ibid.*

which is not labelled in such a manner. At the end of the day, however, incentives to engage in IUU fishing or in fishing practices which are detrimental to human rights or to the natural environment only exist because they make fishing cheaper and increase the profit margin of those who engage in these activities, which are already outlawed under international law.

More than anything else, the ongoing violations of human rights in and by the fishing industry are a problem of law enforcement. This is a common problem in international law, and it is a problem which can and must be solved by states, be they flag states or states in which involved companies are incorporated or whether they are destinations for illegally caught fish. This is easier said than done because states have an interest in the ability of their citizens to access cheap food — as do individuals. Many consumers are not in a position to exercise choice in this regard. Consumers in rich countries who are able to make a choice, however, can utilize this economic power and pressure national governments into enforcing international legal standards.

Efforts to reduce dolphin bycatch when catching tuna show that there is a demand for ethically sourced fish and willingness on the part of many consumers who can afford to make a choice to actually pay more for fish caught with 'dolphin-friendly' methods. More awareness among consumers about the human rights violations committed in the fishing industry, workers' rights, environmental rights, or other human rights, can lead to increasing pressure which in turn can lead to increasing demands for ethically sourced seafood. From a legal perspective, it can be asked, as the legal status of non-state actors in international law continues to develop, at which point consumers become complicit in human rights violations. In particular in light of the cases of slavery in the fishing industry it needs to be asked in how far there is an *erga omnes* obligation, not only for states but also for individuals, to the effect that everybody is legally obliged to refrain from buying fish which has been caught under conditions of slavery. However, in practice this will remain a problem of insufficient awareness among consumers, meaning that the impetus to action remains on the states. In terms of international law, in particular keeping in mind the criminal law approach outlined earlier and the *jus cogens* prohibition of slavery, states already have the obligation to prevent these violations of fundamental human rights in the fishing industry, as well as the legal tools to do so.

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