

Summer 2017

The Global North, the Global South, and the Challenges of Ensuring Due Diligence for Sustainable Fishing Governance

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Recommended Citation

26 *Transnat'l L. & Contemp. Probs.* 435 (2017)

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The Global North, the Global South, and the Challenges of Ensuring Due Diligence for Sustainable Fishing Governance

Anastasia Telesetsky*

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The fishing business is booming.¹ In 2014, fishermen around the globe landed 81.5 million tons of wild marine fish.² Fishing has also been expanding with thirteen out of the twenty-five major fishing countries, increasing their 2014 catch by over a 100,000 tons from 2013.³ A growing urban-based middle class with a preference for consuming fish is at least partially fueling this increase that may have long-term consequences for both fish stocks and fish-dependent communities.⁴ As the fishing business continues to grow, numerous coastal communities that have historically depended on fisheries for their livelihood and basic nutrition are experiencing scarcity.⁵ This Article explores tensions that have arisen not just between Global North and Global South States, but also between Global South States over the sustainable management of fisheries, particularly for small-scale fisheries.

The first section of this Article will discuss fisheries conflicts between the Global North and Global South with an illustration of this tension through the presence of EU fishing vessels in Western African waters, as well as tensions

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¹ FOOD AND AGRIC. ORG. OF THE U.N. [FOA], THE STATE OF WORLD FISHERIES AND AQUACULTURE: CONTRIBUTING TO FOOD SECURITY AND NUTRITION FOR ALL 10 (2016), www.fao.org/3/a-i5555e.pdf [hereinafter FAO SOFIA 2016 REPORT].

² *Id.* at 4 (stating that while 82.6 million tons were captured in 2011, the landing number for 2014 reflects a trend towards increasing amounts of fish being captured with 79.7 million tons captured in 2012 and 81 million tons captured in 2014).

³ *Id.* at 10–11 (stating that countries reporting increases include: China, Indonesia, Vietnam, Myanmar, Norway, Chile, Korea, Morocco, Spain, Taiwan, United Kingdom, Denmark, and Ecuador).

⁴ Katie Lebling, *Fishing for Answers: Understanding Drivers and Environmental Impacts of China's Distant Water Fishing Fleet*, WILSON CENTER CHINA ENVIRONMENT FORUM 4 (2013), <https://www.wilsoncenter.org/sites/default/files/Fishing%20for%20Answers.pdf>.

⁵ Christopher D. Golden et. al., *Fall in Fish Catch Threatens Human Health*, 534 NATURE 317, 318 (June 15, 2016).

among Global South fishing States illustrated by the South China Sea dispute. The second section describes the duty of due diligence for States to ensure flagged vessels fish responsibly and summarizes soft law efforts by the Food and Agriculture Organization to address some of the pressures on small-scale fishers. While the exercise of due diligence by States will contribute to a reduction in illegal fishing or unreported fishing, even where States accept responsibility to combat Illegal, Unreported, and Unregulated (“IUU”) fishing, this alone will not directly revive already heavily impacted fisheries. The final section of this Article suggests the need to strengthen alternatives to State governance of fisheries, such as industry and NGO-facilitated Fisheries Investment Projects (“FIPs”).

I. GLOBAL NORTH-SOUTH AND GLOBAL SOUTH-SOUTH INDUSTRIAL FISHING CHALLENGES

Historically, fishermen pursued their livelihoods close to shore. Operating in wooden boats, in often difficult weather conditions, with generally small nets, fishing was a risky business. With the advent of the Industrial Revolution, the ability to power boats reliably across stormy oceans, and the development of deployable durable polymer nets, made industrial fishing a highly efficient and profitable enterprise.⁶ As Global North States depleted fish stocks within their immediate coastal waters, they began to look for new fishing fertile grounds. The Grand Banks fishery located above productive submarine shelves off the coast of Newfoundland and Labrador in Canada tragically illustrates consequences of the race to fish. Over the course of several centuries, fleets from England, France, Portugal, Canada, Russia, and the United States exploited the marine resources.⁷ As net and trawl technologies improved, fish landings—catches landed in foreign or domestic ports—increased as fishermen could fish deeper waters. In 1995, the Canadian government closed all cod and flounder fisheries on the nose and tail of the Grand Banks.⁸

As Global North fisheries are closed or restricted due to regulations covering fishing effort and fishing capacity, global fishing fleets including Global South fleets from China have relocated to the Global South.⁹ Some fleets have introduced new and more efficient ways to harvest. For example, after the 1950s entry of Japanese industrial fishing vessels into Pacific Ocean tuna fisheries, U.S. vessels replaced their pole-and-line methods with purse seines made of highly durable material that could be deployed for miles and

⁶ For an excellent history of early industrial fishing, see generally CALLUM ROBERTS, *THE UNNATURAL HISTORY OF THE SEA* (2007).

⁷ *The Grand Banks and the Flemish Cap*, GOV'T OF CANADA: FISHERIES AND OCEANS CANADA (June 8, 2012), http://www.dfo-mpo.gc.ca/international/media/bk_grandbanks-eng.htm.

⁸ *Id.*

⁹ See Lebling, *supra* note 4.

then mechanically retrieved.¹⁰ Japanese vessels that had been formerly using live bait, which required them to stay close to a shore base, adopted purse seine technology dissolving the need for bait. Eventually, other distant water fishing States from both the Global North and South including Korea, Taiwan, China, New Zealand, Philippines, and Indonesia have deployed purse seiners.¹¹ The overcapacity of fishing vessels, particularly purse seiners, has substantially impacted the abundance of some tuna stocks in the Western and Central Pacific Ocean such as bigeye and yellowfin tuna.¹² While Pacific States are grappling with establishing fisheries management through Vessel Day Schemes to restrict the number of vessels authorized to fish on any given day, IUU fishing is undermining their fishery management efforts.

In February 2016, a research report estimated the total volume of product either harvested or transshipped involving IUU activity in Pacific tuna fisheries is 306,440 tons with an economic value of approximately \$616 million.¹³ Much of this IUU activity is taking place by licensed vessels.¹⁴ With a combined GDP of \$8.6 billion, IUU fishing for small Pacific Island States may be leading to losses of 7 percent of GDP for Pacific Islands.¹⁵

As a result of less active fisheries management and, in some cases, even more limited enforcement, distant water fishing nations from both the Global North and South are actively fishing in the coastal waters of West African States and the immediately adjacent high seas.¹⁶ As in the Pacific, the loss of fish to IUU fishing has economic consequences for coastal African States. In 2012, fisheries economists estimated that Senegal lost \$300 million of potential

¹⁰ Kate Barclay, *History of Industrial Tuna Fishing in the Pacific Islands: A HMAP Asia Project Paper 7* (China Research Ctr., U. of Tech. Sydney, Working Paper No. 169, 2010), https://www.murdoch.edu.au/Research-capabilities/Asia-Research-Centre/_document/working-papers/wp169.pdf.

¹¹ *Id.* at 8.

¹² *Id.* at 17.

¹³ DUNCAN SOUTER ET AL., ASIA PAC, TOWARDS THE QUANTIFICATION OF ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING IN THE PACIFIC ISLANDS REGION 36 (2016), <http://www.m2cms.com.au/uploaded/5/ZN1981%20-%20MRAG%20AP%20FFA%20IUU%20Report.pdf>.

¹⁴ *Id.* at 5–7.

¹⁵ PACIFIC ISLAND SMALL STATES, THE WORLD BANK (2016), <http://data.worldbank.org/region/pacific-island-small-states> (see GDP graph; then select year 2015). Pacific Island Small States are defined by the World Bank to include: Fiji, Kiribati, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu. *Id.*

¹⁶ Daniel Pauly et al., *China's Distant-Water Fisheries in the 21st Century*, 15 FISH & FISHERIES 3, 474–88 (2014) (describing China's 900 vessel distant-water fishing fleet deployed outside of North Asia and indicating that this fleet underreports its catches); *Database on EU External Fleet*, WHO FISHES FAR, <http://www.whofishesfar.org> (last visited Feb. 12, 2017) (providing a searchable database for all EU fisheries access agreements outside of the European Union including several agreements with West African States including Cape Verde, Guinea-Bissau, and Senegal).

revenue from IUU fishing, which was equivalent to 2 percent of its GDP.¹⁷ IUU fishing not only has impacts on the economy but also on community health and well-being. This is because coastal communities depend on fish as their primary source of protein and fatty acids and are unable to procure subsistence food. The decline of fish stocks due to IUU fishing is particularly critical in Africa where several countries derive a large portion of animal protein from marine fish including: Sierra Leone (57 percent), Ghana (52 percent), Senegal (37 percent), Angola (29 percent), Cameroon (25 percent) and Nigeria (23 percent).¹⁸

Global North States, including Member States of the European Union (“EU”), have access to prime Western African fishing grounds as a result of negotiated access agreements.¹⁹ Despite recurring questions about the sustainability of these agreements from environmental, social, and economic perspectives, eighteen additional access agreements have been negotiated since the first was signed in 1980 between Senegal and Guinea-Bissau. This first agreement covered mainly coastal and demersal species substantially impacted by industrial fishing practices.²⁰ While these agreements are intended to help States better manage their surplus marine resources, in practice, the agreements have inadvertently facilitated heavier exploitation of Global South resources. For example, one version of the EU-Mauritania Agreement covered shrimp capture but did not cover the bycatch from Spanish shrimp trawling activities.²¹ In practice, Spanish shrimp trawlers were reaping the financial rewards of bringing in large number of demersal fish as bycatch with no payments to the coastal State for these fish. Likewise, Spanish longliners have been reaping the financial rewards of capturing sharks that are not covered under various the partnership and access agreements.²²

Even while more recent partnership agreements have remedied some of the concerns of earlier versions of fisheries agreements as classic business agreements, criticism remains that the presence of EU fishing vessels places burdens on coastal communities. For example, in 2015, the EU renegotiated and extended its agreement with Mauritania for four more years to allow 100 EU vessels to operate in Mauritania’s waters and catch 280,000 tons of shrimp,

¹⁷ ALFONSO DANIELS ET AL., WESTERN AFRICA’S MISSING FISH: THE IMPACTS OF ILLEGAL, UNREPORTED AND UNREGULATED FISHING AND UNDER-REPORTING CATCHES BY FOREIGN FLEETS (2016), <https://www.odi.org/sites/odi.org.uk/files/resource-documents/10665.pdf>.

¹⁸ CAL. ENVTL. ASSOCIATES, APPENDIX 6: COUNTRY AND MARKET INFORMATION, CHARTING A COURSE TO SUSTAINABLE FISHERIES (2012), <http://chartingacourse.org/download/94>.

¹⁹ Frédéric Le Manach et al., *European Union’s Public Fishing Access Agreement in Developing Countries*, 8(11) PLOS ONE 1, 2 (2013). These agreements were initially called “fisheries agreements” and since 2004 have been called “fisheries partnership agreements.” *Id.*

²⁰ *Id.*

²¹ *Id.* at 6.

²² *Id.*

tuna, pelagic fish and demersal fish.²³ Environmental groups and coastal community groups have expressed concerns the EU and coastal fishing vessels may be competing for small pelagic fish with consequences not just for Mauritania, but also neighboring States like Senegal.²⁴

Where access to a valuable fishery ground in the Global South proves difficult due to closures to foreign vessels or a lack of access agreement, Global North companies and some companies from powerful Global South States such as China may still gain access to such limited fisheries through joint venture agreements. In many cases, Global South governments loathe to interfere with any of these contractual arrangements because of a desire to attract foreign direct investment and secure sources of export revenue.²⁵

In Senegal, joint ventures are common because they offer distant water fishing companies access to the Senegalese flag, which provides special benefits under fisheries management schemes. As the Deputy Secretary General of the National Fishing Observers Union in Senegal commented recently, “[m]ost of our industrial fishing companies are just front companies for foreign operators; the only national thing they have is the Senegalese flag.”²⁶ Flying the Senegalese flag means a vessel does not need to carry fisheries observers and typically results in lighter sanctions for any fishing law infractions.²⁷ Additionally, charters have been employed by European Union nationals in Liberia and Ghana to gain access to coastal waters.²⁸

²³ Mauritania: Fisheries Partnership Agreement, EUR. COMMISSION: FISHERIES, https://ec.europa.eu/fisheries/cfp/international/agreements/mauritania_en (last updated Feb. 13, 2017).

²⁴ Till Bruckner, *Greenpeace Calls for End of Private Fishing Deals in West Africa, Questions E.U. Food Security Claims*, HUFFINGTON POST: THE BLOG (Aug. 3, 2015, 10:47 AM), www.huffingtonpost.com/till-bruckner/fiti-overfishing-africa-c_b_7921196.html.

²⁵ Eric Mungatana et. al., *Fisheries Resource Accounts for the Maputo Coastal Districts of Mozambique*, in IMPLEMENTING ENVIRONMENTAL ACCOUNTS: CASE STUDIES FROM EASTERN AND SOUTHERN AFRICA 73 (Rashid M. Hassan & Eric D. Mungatana eds.) (describing the commercial Mozambique fishing sector as dominated by joint ventures).

²⁶ VOICES FROM AFRICAN ARTISANAL FISHERIES: CALLING FOR AN AFRICAN YEAR OF ARTISANAL FISHERIES 11 (Gaoussou Gueye ed., Aboubacar Alpha Barry et al. trans., 2016), <http://www.caopa-africa.org/wp-content/uploads/2016/03/Voices-from-african-Artisanal-Fisheries.pdf>.

²⁷ *Id.* at 11–12. The report states,

When vessels flying the flag of Senegal are arrested, they are almost exempted of sanction, so to speak, to save the jobs, people say. For the same infringement, - for instance, carrying on an activity non-compliant with its license category-, a foreign vessel will be fined 50 million CFA francs. While for a vessel flying the Senegalese flag, it is only 10 million CFA francs.

Id.

²⁸ Irina Popescu, European Parliamentary Research Serv., *Expanding the Network of EU Tuna Fisheries Agreements*, PE 586.611, 3 (July 2016), [http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586611/EPRS_BRI\(2016\)586611_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/BRIE/2016/586611/EPRS_BRI(2016)586611_EN.pdf).

Global South actors have replicated the dynamics of Global North actors in fishing not just off the West Coast of Africa, but also off the coast of States who identify with the Global North. For example, Japan is contending with Chinese vessels operating illegal drift nets (10 nautical miles to 100 nautical miles in length) where the high seas meet the Japanese exclusive economic zone.²⁹ China, a State that self-identifies with the Global South, has overfished its own territorial waters by a magnitude two times what is sustainable.³⁰ China's distant water fishing fleet of approximately 500 vessels is deployed across the globe and there are numerous instances of illegal fishing.³¹ The South China Sea conflict, involving multiple States across the Global South, is believed to be fueled in part by a "race to fish" with multiple States chasing valuable fish targets including tuna.³²

Over the years, there have been proposals for joint management of the fisheries and cooperation under UNCLOS Article 197, which urges States to cooperate "as appropriate, on a regional basis, directly or through competent international organizations, in formulating and elaborating international rules, standards and recommended practices and procedures consistent with this Convention, for the protection and preservation of the marine environment, taking into account characteristic regional features."³³ Given the heightened tensions in the region, cooperation is unlikely to materialize soon. To create conditions for cooperation, States must, at a minimum, exercise due diligence over their fleets and nationals. The next section describes the basic due diligence requirements of States as articulated by the International Tribunal for the Law of the Sea.

II. STATE LEGAL OBLIGATIONS TO DUE DILIGENCE

Given the increasing rate of distant water fishing from a variety of nations, including both Global North and Global South States, do States have an obligation to exercise due diligence over the vessels that they flag? In 2013, the Sub-Regional Fisheries Commission ("SRFC"), a West African fisheries

²⁹ Charlie Campbell, *The Fight to Save the World's Seas From China's Bloated Fishing Industry*, TIME: WORLD (Aug. 24, 2016), <http://time.com/4463943/japan-china-fishing-marine-iuu-environment-google-skytruth>.

³⁰ *Id.* (noting that 13 million tons of fish were removed from Chinese waters even though the maximum sustainable yield has an upper limit of 8–9 million tons).

³¹ *Id.* (observing a boat that appeared to be operating in Mexican and New Zealand waters based on geographical positioning records operating illegally off the coast of Guinea and South America respectively).

³² Rachel Bale, *One of the World's Biggest Fisheries is on the Verge of Collapse*, NAT'L GEOGRAPHIC: WILDLIFE WATCH (Aug. 29, 2016), <http://news.nationalgeographic.com/2016/08/wildlife-south-china-sea-overfishing-threatens-collapse> (noting that fish in the region provide food and jobs for approximately 3.7 million people in ten countries with competing claims to resources that are impacting both food security and economic growth in the region; also noting that seven overlapping sets of fisheries laws compete within the region).

³³ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

organization representing several States,³⁴ brought a request for an advisory opinion on behalf of its members to understand “the obligations of the flag State in cases where IUU fishing activities are conducted within the Exclusive Economic zone of third-party States.”³⁵ The International Tribunal for the Law of the Sea (“ITLOS”) concluded that while the “primary responsibility for taking the necessary measures to prevent, deter and eliminate IUU fishing rests with the coastal State” this “does not release other States from their obligations in this regard.”³⁶ The Tribunal then delineated the responsibility of distant water fishing States to coastal States.

First, a distant water fishing State must ensure compliance by its flagged vessels with the law and regulations of the coastal State. Under SRFC rules, flag States operating within the SRFC region must attempt to ascertain whether its flagged vessels, with appropriate fishing licenses, are following regulations, including those related to transshipping fish from certain ports and keeping written catch records. To ensure compliance, a flag State “must adopt the necessary administrative measures to ensure that fishing vessels flying its flag are not involved in activities which will undermine the flag State’s responsibilities under the Convention in respect of the conservation and management of marine living resources.”³⁷

A distant water fishing State has the additional obligation of not only ensuring compliance by flagged vessels but also by “nationals engaged in fishing activities within the exclusive economic zone of a coastal State.”³⁸ This language extends a State’s responsibility beyond its own flagged vessel to cover its nationals who may be taking part in fishing operations under a flag of convenience or coastal State flag. Taken together, the Tribunal concludes “that flag States are obliged to take the necessary measures to ensure that their nationals and vessels flying their flag are not engaged in IUU fishing activities.”³⁹

The ITLOS decision is remarkable because it encompasses all distant water fishing nations regardless of whether they are from the Global North or South. All States are recognized as having a “responsibility to ensure” that both their nationals and vessels are acting in conformity with coastal State fisheries laws, and there is no differentiation made for implementation of State obligations on the basis of common but differentiated responsibilities. The

³⁴ State members include Guinea, Cape Verde, The Gambia, Guinea Bissau, Mauritania, Senegal, and Sierra Leone. *Id.*

³⁵ Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Case No. 21, Advisory Opinion of Apr. 2, 2015, para. 1, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion/C21_AdvOp_02.04.pdf.

³⁶ *Id.* at paras. 106 & 108.

³⁷ *Id.* at para. 119.

³⁸ *Id.* at para. 123 (citing art. 62(4) of UNCLOS).

³⁹ *Id.* at para. 93.

“responsibility to ensure” is a “due diligence obligation,” which means the State must “take all necessary measures to ensure compliance and to prevent IUU fishing by fishing vessels flying its flag.”⁴⁰ At a minimum, as pertains to its flagged vessels, a flag State must provide enforcement, oversight of vessel compliance with coastal conservation measures, sufficient sanctions to deter IUU fishing (including deprivation of benefits from IUU fishing), proper markings on a vessel for identification purposes, and investigation of allegations of IUU fishing. Even if coastal States have a primary responsibility to combat IUU fishing in their own waters, flag States have a proactive role to play in order to satisfy their “due diligence obligations.”

While the ITLOS decision is only an advisory opinion, it is a clear articulation of the substantive content of flag State responsibility. States have been receptive, albeit slowly, to the April 2015 decision. Ideally, distant water fishing States might increase their patrols or provide patrol assistance to coastal States to ensure the flagged vessels and nationals from the distant water fishing States are not engaged in IUU fishing. Among the known active distant water fishing nations operating in West African waters, only the European Union has reacted directly to the advisory opinion. While not yet finally approved as of February 2017, the European Commission is discussing the adoption of a regulation on the sustainable management of external fishing fleets.⁴¹ The regulation would apply to both EU vessels operating in non-EU waters as well as on the high seas.⁴² It will cover vessels that were formerly flagged to EU Member States any time during the five years preceding a request for fishing authorization if the vessel had been reflagged to a non-EU State for two years or less before returning to the EU fleet.⁴³ EU Member States must require EU vessels to obtain proper fishing authorization, which requires, in the case where there is no sustainable fisheries partnership agreement, evidence of the sustainability of a planned fishing activity either on the basis of an RFMO scientific report, or on the basis of “a scientific evaluation provided by the third country[,] and/or by a regional fisheries management organization.”⁴⁴ Applications for fishing authorizations must include the address, email, and telephone of the vessel owner, the economic

⁴⁰ Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission, Case No. 21, Advisory Opinion of Apr. 2, 2015, para. 124, https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion/C21_AdvOp_02.04.pdf.

⁴¹ Proposal for a Regulation of the European Parliament and of the Council on the Sustainable Management of External Fishing Fleets, Repealing Council Regulation (EC) No. 1006/2008, European Commission (2015) 636 final (Dec. 10, 2015). The European Parliament has adopted a legislative resolution to revise portions of the Commission’s proposal. Sustainable Management of External Fishing Fleets (February 2, 2017) P8_TA-PROV(2017)0015 [hereinafter Proposal for Regulation].

⁴² *Id.* at art. 1.

⁴³ *Id.* at art. 6.

⁴⁴ *Id.* at art. 18(c).

operator, and the master of the vessel.⁴⁵ EU vessels are required to provide catch and landing declaration to the coastal State as well as the EU flag State, who is required to cross-check the data provided.⁴⁶

There are no English-language public records of responses to the ITLOS decision from other distant water fishing nations such as China, Korea, and Taiwan.⁴⁷ At a minimum, the exercise of due diligence should require each distant water fishing State to make publicly available a strategy of how the flag State intends to enforce against certain known IUU activities by its vessels and nationals including:

- fishing without a license or without a quota allocation;
- fishing in closed areas;
- fishing with illegal gear;
- capturing protected species;
- possessing more than one flag or being registered in more than one State;
- not reporting or underreporting catch.

The need for a State to undertake “all necessary measures” is likely to entail greater investments in supervision from a flag State and might lead to requirements for distant water vessels to carry qualified observers and operate Vessel Monitoring Systems at all times. Both Global North and South flag States may need to invest in satellite detection systems and regular inspection patrols. Where a State is unable to conduct patrols, it may want to enter into boarding agreements with the Coastal State or other States that are patrolling in the area. The status quo in West African waters will not be sufficient. To offer more specific guidance to nationals and vessels, States may want to follow the lead of the European Union in its efforts to improve transparency of the fishing activities of its vessels in non-EU waters.

III. FISHERIES IMPROVEMENT PROGRAMS AND THE FISHERIES TRANSPARENCY INITIATIVE

Government due diligence efforts in support of a State’s responsibility to ensure that its distant water fishing vessels and nationals are not participating in IUU fishing are essential. These efforts alone, however, will not be enough to address impending food security and livelihood crises. In addition to the North-South challenges and South-South challenges described above, there are challenges within coastal communities as too many artisanal fisheries over-extract marine resources by fishing far beyond the maximum sustainable yield for a given region. A fisheries administrator from Senegal described how the

⁴⁵ *Id.* at annex 1.

⁴⁶ Proposal for Regulation, *supra* note 41.

⁴⁷ The author searched for the terms “Advisory Opinion,” “due diligence,” and “IUU fishing” to determine if there were any public responses that were available in English to explain due diligence efforts of non-SRFC states to respond to potential IUU fishing activities. The author’s search did not reveal any sources.

overcapacity problem arises through uncontrolled access to resources: “A farmer leaving his remote village, having no idea about fishing, can come here, have a pirogue [wooden boat] built and declare himself a fisherman.”⁴⁸

States are partially to blame for the declining marine resource biomass in their coastal fisheries because they fail to work with existing communities to properly manage them. States have a number of policy options they can exercise to reduce both fishing efforts and capacity within coastal fisheries including enforcing customary tenure rights, introducing territorial use rights, and catch quotas for impacted fisheries. All these management options, however, will require adequate monitoring and enforcement to ensure success. A number of Global South States have only recently begun to tackle overcapacity, but immediate interventions are necessary to conserve what remaining biomass there is and invest in the future of the fishery. Two interventions from private entities may contribute to more rational fisheries management by assisting both directly, and indirectly, low-capacity communities in the Global South: privately funded fisheries improvement programs and the Fisheries Transparency Initiative.

One option for improving global fisheries is restoring commercial fish stocks to improve reduction of competition in imperiled fisheries. To further restoration objectives, a direct management initiative by a variety of private actors, including civil society groups such as the World Wildlife Fund and for-profit fishing companies, fund the creation of fisheries improvement projects. The projects originally served to assist communities in preparing to meet Marine Stewardship Council standards for fisheries certification. While each “fisheries improvement project” (“FIP”) is different in terms of its objectives, all of the projects operate to strengthen private environmental governance control over local fisheries by investing in either the creation or the revival of community-based fisheries management institutions.

While the actual efficacy of FIPs in restoring marine biodiversity is still uncertain, FIPs have improved multi-stakeholder engagement in the management process and multi-stakeholder communication. For example, a FIP to improve Indonesian Snapper can receive certification by the Marine Stewardship Council, an independent evaluator for the environmental sustainability of fishing operations, by conducting a biological stock assessment, organizing a snapper buyers group among forty U.S. companies, creating a single sustainability standard, and coordinating a snapper producer association.⁴⁹

While each FIP is different, the long-term efficacy of a FIP may depend on the ability of stakeholders not just to coordinate within a single community but

⁴⁸ VOICES FROM AFRICAN ARTISANAL FISHERIES, *supra* note 26, at 9.

⁴⁹ See generally Indonesia Sustainable Snapper Initiative, SUSTAINABLE FISHERIES PARTNERSHIP (2011), http://sfpcms.sustainablefish.org.s3.amazonaws.com/2011/06/29/Snapper%20White%20Paper-updated%20June%202011_Draft-98e3b8f6.pdf (last visited Feb. 12, 2017).

across communities and potentially across borders, depending on the nature of the particular stock. Additionally, FIP facilitators, whether they are NGOs or companies, may want to consider improving the social cohesion within a fishing community. Here, FIP facilitators may want to remind States of the 2011 Food and Agriculture Organization of the United Nations (“FAO”) *Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries* that identified small-scale fisheries as a primary driver for poverty alleviation and sustainable development in the Global South.⁵⁰ Guideline six calls for States to promote social development within fishing communities, including “human resource development such as health, education, literacy, digital inclusion and other skills of a technical nature that generate added value to the fisheries resources as well as awareness raising.”⁵¹ The guidelines also recognize the “importance of children’s well-being and education for the future of the children themselves and of society at large.”⁵²

While these types of social interventions are not the type of “due diligence” contemplated by ITLOS in its recent advisory opinion, this type of social investment by Global South States in the capacity and well-being of its citizens can yield long-term dividends not just for communities, but for resources upon which the communities depend. When Global North States extend development aid to Global South States for projects, such as improving fisheries stocks, Donor States may also want to consider contributing simultaneously to related social development projects, such as the development of training centers for fishermen and schools for fishermen’s children. Where these types of loans and grants are not forthcoming, Global South States may want to consider specific requests to support community-enhancement projects within fishing communities. Where there is a basis for trust among community members, fishermen are more likely to cooperate with community coastal fishery rules.

A second potential governance intervention that may help with the recovery of impacted fisheries is the Fisheries Transparency Initiative (“FiTI”),⁵³ a conceptual initiative modeled on the Extractive Industry Transparency Initiative.⁵⁴ The FiTI was launched by the NGO Transparency International as a global initiative to be adopted by individual States.⁵⁵ It is

⁵⁰ U.N. FAO, VOLUNTARY GUIDELINES FOR SECURING SUSTAINABLE SMALL-SCALE FISHERIES IN THE CONTEXT OF FOOD SECURITY AND POVERTY ERADICATION ix (2015), <http://www.fao.org/3/a-i4356e.pdf>.

⁵¹ *Id.* at 8.

⁵² *Id.* at 10.

⁵³ See generally FISHERIES TRANSPARENCY INITIATIVE, AT A GLANCE: RESPONSIBLE FISHERIES THROUGH TRANSPARENCY AND PARTICIPATION (2016), http://fisheriestransparency.org/wp-content/uploads/2016/02/FiTI_AtAGlance_EN_20160210-1.pdf.

⁵⁴ See MEMORANDUM FROM FISHERIES TRANSPARENCY INITIATIVE, FiTI NEWSLETTER 2 (Oct. 2015) http://fisheriestransparency.org/wp-content/uploads/2015/12/FiTI_Newsletter_20151029.pdf.

⁵⁵ FISHERIES TRANSPARENCY INITIATIVE, *supra* note 53.

described as a “voluntary initiative with mandatory requirements” where States that chose to join are expected to comply with requirements to gather, verify, and disclose certain information about fisheries.⁵⁶ Principles adopted in Nouakchott, Mauritania form the basis of the initiative.⁵⁷ Specifically, States agreed that sustainable fisheries are essential for “food security, poverty alleviation and sustainable development” and that sovereign governments “are responsible for the sustainable management of fisheries.”⁵⁸ States and other stakeholders agreed transparency is essential for fisheries management and that achieving transparency requires relevant information be in an accessible format that can be “shared and verified through the active, free, effective, meaningful and informed participation of governments, business, civil society, scientists, and other stakeholders as equal partners.”⁵⁹ A number of States including Mauritania, Indonesia, Senegal, and the Seychelles are in the process of making commitments to support transparency based on this civil society initiative.⁶⁰ If these commitments include public sharing of contractual agreements with foreign nationals, or fishing authorizations for foreign vessels, this initiative may become a critical tool in helping States meet their due diligence obligations of providing adequate supervision of their flagged vessels and nationals.

IV. CONCLUSION

Global fishing is a cross-cutting challenge for both the Global North and the Global South as States grapple with industrial fishing, destructive fishing methods, and general overcapacity across all fleets. As with most complex problems, there is no simple or singular fix that will reduce the current threat of distant water fishing fleets. Under international treaty and customary law, States have due diligence obligations to ensure they are not condoning IUU fishing activities by flagged vessels or nationals. Yet, States, particularly some of the larger distant water fishing nations, have been silent on how they are meeting or intend to meet their due diligence obligations. In the absence of concerted action by States to enforce good fishery management practices by their vessels or nationals, additional initiatives are required to protect food security and livelihoods. In some regions, communities, with the support of private actors, are attempting to revive dwindling stocks to meet the Marine Stewardship Council sustainability standards. Communities hope to achieve

⁵⁶ MEMORANDUM FROM FISHERIES TRANSPARENCY INITIATIVE, *supra* note 54.

⁵⁷ FISHERIES TRANSPARENCY INITIATIVE, NOUAKCHOTT DECLARATION ON THE FISHERIES TRANSPARENCY INITIATIVE (FITI) 1 (Feb. 3, 2016), [http://fisheriestransparency.org/wp-content/uploads/2016/02/FITI_1stIntConf Declaration-EN_20160212.pdf](http://fisheriestransparency.org/wp-content/uploads/2016/02/FITI_1stIntConf%20Declaration-EN_20160212.pdf).

⁵⁸ *Id.* at 4.

⁵⁹ *Id.*

⁶⁰ Andrea Durighello, *UPDATE - Mauritania Urges World to Fight Fishing Secrecy; Three More Countries Commit*, FISH TRANSPARENCY INITIATIVE (Feb. 4, 2016), <http://fisheriestransparency.org/update-mauritania-urges-world-to-fight-fishing-secrecy-three-more-countries-commit>.

this, because sustainable fish are typically valued more in the market than fish whose sustainability cannot be determined.

A key player in the dynamic between the Global North and the Global South is the individual consumer, wherever that consumer might be located. In the Global North, consumers are demanding more from food markets and restaurants. Because most fish captured are consumed directly by humans,⁶¹ consumers can collectively change corporate practices by demanding more from retailers, who will demand more from wholesalers, who will demand more from fish processors, who will finally demand more from the fishing fleets.⁶² The fish supply chain becomes an important driver of change. Both affluent individuals and citizens of the Global South can be more demanding of their supply chains and inquire from food producers about their sustainability practices to make purchasing decisions that favor certain fishing practices over others. Increasing rapidly from 500 million people in 2014, the number of middle class consumers in China and India is projected to reach 1.5 billion people by 2020.⁶³ This increase in the affluent populations in these nations alone can have a profound positive or negative effect on fisheries' production, depending on the populace's awareness and active concern.

What citizens of both the Global North and Global South do not know about the production of food they consume is problematic if timely interventions are to be taken. All citizens must recognize the consequences of actions taken in the name of food production that fail to adequately protect critical marine resources. Even where States fail to exercise sufficient due diligence in overseeing their fleets, conscientious consumers can collectively change global fisheries' rules of engagement for the good of the marine environment.

⁶¹ *Fish as Food*, MARINE STEWARDSHIP COUNCIL, <https://www.msc.org/healthy-oceans/the-oceans-today/fish-as-food> (last visited Feb. 13, 2017).

⁶² See e.g., Emiko Terazono, *Accord on Eco-Labeling Boosts Sustainable Fishing: Regulators, Agencies, Retailers and Suppliers are Finding Common Ground*, FINANCIAL TIMES (Nov. 30, 2016), <https://www.ft.com/content/871be9f8-a76d-11e6-8898-79a99e2a4de6> (describing the Global Seafood Sustainability Initiative).

⁶³ Homi Kharas, *How a Growing Global Middle Class Could Save the World's Economy*, TRUST (July 05, 2016), <http://magazine.pewtrusts.org/en/archive/trend-summer-2016/how-a-growing-global-middle-class-could-save-the-worlds-economy>.