‘END’ IUU FISHING: EXPANDING IMPLEMENTATION TO ACHIEVE SDG TARGET 14.4

Dr. Arron N. Honniball
NUS Centre for International Law (CIL)
Cilhan@nus.edu.sg
TODAY’S PRESENTATION

UN General Assembly Resolution 73/292 (9 May 2019):

• The 2020 Conference shall identify ways to implement goal 14; share experiences in implementation; and identify challenges and solutions for all goal 14 targets.

• The problem: IUU fishing.
• The (required) legal responses of all states:
  – Established: flag and coastal state duties.
  – Semi-Established (binding in treaties): port state duties.
  – Emerging (binding in treaties): state of nationality duties.
  – Expanding: market states.
• Conclusion: A net of overlapping and equipped jurisdictions.
THE PROBLEM – IUU FISHING

SDGs Target 14.4: By 2020, effectively regulate harvesting and end overfishing, illegal, unreported and unregulated fishing and destructive fishing practices and implement science-based management plans [...] (UNGA Res. 70/1).

IMPLEMENTING STATES’ RIGHTS & DUTIES TO COMBAT IUU FISHING
Advisory Opinion – SRFC (ITLOS, 2015); South China Sea Arbitration Award (UNCLOS Annex VII Arbitral Tribunal, 2016).

**Coastal States:**

*Primary responsibility* for conservation and management of living resources in the EEZ.

- Adopt CMMs & enforcement procedures for all living resources.
- Take measures necessary to prevent, deter and eliminate IUU fishing in the EEZ.

**Flag States:**

General obligations for all maritime areas:

- Effective jurisdiction and control so as to not undermine flag state’s responsibilities for conservation and management of marine living resources.
- Investigate reported cases, undertake necessary remedies, inform reporting state.

Specific obligations concerning foreign EEZs:

- Due diligence obligation ensure vessels do not conduct IUU fishing in foreign EEZs.
  - Evolves in light of new scientific knowledge or technology.
  - Prohibit fishing unless coastal state authorizes; proper vessel markings; enforcement mechanisms to monitor and secure compliance; adequate sanctions.
- Further Specificity: *Sep. Op Judge Paik* (Rule of Reference); *SCS Award* (prevent harvesting of endangered species & destruction of their habitats).
PORT STATES

Duties

UN Fish Stocks Agreement:

port state “has the right and the **duty** to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures”.

• Reiterated:
  – Numerous global instruments - soft and hard law - culminating in the **2009 Port State Measures Agreement**.
  – Regional practice – including both treaties and binding CMMs.

• EU Identification of Non-Cooperating Third States (‘yellow card’/‘red card’):
  – **Extensive** consideration of port state duties (1 red card: step I; 17 yellow cards).

Rights

• Right to impose more extensive offences:
  – E.g. Thailand: Chotchainavee 35 and related vessels.

**Foreign Flag States**: Should apply pressure- *PSMA*; Prior Flag Notification- *EU 2020/21*.
STATES OF NATIONALITY AND MARKET STATES

Nationality: regulation of legal and natural persons.

Rights:
• “International law recognizes a state’s jurisdiction to prescribe law with respect to the conduct, interests, status, and relations of its nationals outside its territory”.

Obligations:
• Increasing inclusion in CMMs binding RFMO/A members.
• Obiter dictum by international courts and tribunals.
• EU Identification of Non-Cooperating Third States (‘yellow card’/‘red card’):
  – 7 Cases involving Asian States: 1 case general recognition, 5 cases issues raised with the sufficiency of control over nationals.

Market States
• Expansions on the Horizon:
  – USA, NOAA Report to Congress 2019, forthcoming expansion of foreign flag state practices reviewed concerning IUU fishing.

IMPLEMENTING STATES’ RIGHTS & DUTIES TO COMBAT IUU FISHING
THANK YOU

- Overarching theme of the 2020 Conference: 
  *Scaling up ocean action to implement SDG 14*

Dr. Arron N. Honniball, NUS Centre for International Law (CIL), Cilhan@nus.edu.sg

**IMPLEMENTING STATES’ RIGHTS & DUTIES TO COMBAT IUU FISHING**