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## China's IUU Fishing Fleet: Pariah of the World's Oceans

*Raul (Pete) Pedrozo*

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*Raul (Pete) Pedrozo\**

## CONTENTS

I.	Introduction.....	320
II.	Applicable Regulatory Framework.....	321
	A. FAO Compliance Agreement.....	322
	B. UN Fish Stocks Agreement.....	322
	C. FAO Code of Conduct for Responsible Fisheries.....	323
	D. IPOA-IUU .....	324
	E. Agreement on Port State Measures .....	325
	F. Voluntary Guidelines for Flag State Performance .....	326
	G. Voluntary Guidelines for Catch Documentation Schemes....	327
III.	China's Illicit Fishing Activities .....	328
	A. China's Distant-Water Fishing (DWF) Fleet .....	328
	B. Chinese DWF Fleet Activities.....	330
IV.	Stateless Vessels .....	348
V.	State Responsibility for Internationally Wrongful Acts .....	350
VI.	Conclusion .....	351

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The thoughts and opinions expressed are those of the author and not necessarily those of the U.S. government, the U.S. Department of the Navy, or the U.S. Naval War College.

## I. INTRODUCTION

The leading global maritime security threat today is not piracy, but rather illegal, unreported, and unregulated (IUU) fishing,<sup>1</sup> and China is once again the kingpin of IUU fishing.<sup>2</sup> Ninety-three percent of the world's major fish stocks are either fully exploited, overexploited, or significantly depleted.<sup>3</sup> Left unchecked, IUU fishing exacerbates the depletion of fish stocks, thereby contributing to global geo-political instability by increasing tension among competing distant water fishing fleets, threatening the sustainability of coastal States' fisheries, and damaging fragile ecosystems.<sup>4</sup>

The value of global fish production in 2018 was estimated at \$401 billion.<sup>5</sup> However, since 20 percent of global fish catch results from IUU fishing, legal fishermen are losing tens of billions of dollars in revenue every year.<sup>6</sup> Moreover, IUU fishing violates both national and international laws and regulations and threatens fish resources that are critical to global food security. More than 3.3 billion people—half of the world's population—depend on fish for 20 percent of their animal protein.<sup>7</sup> Since IUU fishing reduces the availability of a critical protein source, it significantly impacts a large percentage of the world's population, disproportionately from lesser developed States.

Illegal fishing includes fishing activities conducted in violation of applicable national and international laws and regulations. Unreported fishing involves “fishing activities that are not reported or are misreported to relevant

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1. U.S. Coast Guard, *Illegal, Unreported and Unregulated Fishing Strategic Outlook* (Sept. 2020), [https://www.uscg.mil/Portals/0/Images/iuu/IUU\\_Strategic\\_Outlook\\_2020\\_FINAL.pdf](https://www.uscg.mil/Portals/0/Images/iuu/IUU_Strategic_Outlook_2020_FINAL.pdf) [hereinafter *USCG Strategic Outlook*].

2. China 2021 Country Results, *IUU Fishing Index*, <https://www.iuufishingindex.net/profile/china> (last visited Apr. 18, 2022) (the Index provides a measure of the degree to which States are exposed to and effectively combat IUU fishing).

3. UN FOOD AND AGRICULTURE ORGANIZATION, *THE STATE OF WORLD FISHERIES AND AQUACULTURE (2020)* [hereinafter *FAO STATE OF WORLD FISHERIES (2020)*].

4. *USCG Strategic Outlook*, *supra* note 1.

5. *FAO STATE OF WORLD FISHERIES (2020)*, *supra* note 3.

6. U.S. National Oceanic and Atmospheric Administration, *Fishwatch: U.S. Seafood Facts (2020)*, <https://www.fishwatch.gov/> (last visited Apr. 21, 2022).

7. *FAO STATE OF WORLD FISHERIES (2020)*, *supra* note 3.

authorities” in violation of national laws and regulations or reporting procedures of relevant regional fisheries management organizations.<sup>8</sup> Unregulated fishing occurs in two scenarios: (1) fishing activities that are inconsistent with State responsibility for conserving living marine resources under international law (such as the United Nations Convention on the Law of the Sea (UNCLOS), Articles 116–120) “in areas or for fish stocks for which there are no applicable conservation or management measures;” and (2) fishing activities that are inconsistent with the conservation measures of a regional fisheries management organization (RFMO)-managed area by stateless vessels or foreign flag vessels or fishing entities of States that are not party to the RFMO.<sup>9</sup>

This article briefly reviews the regulatory framework applicable to IUU fishing. It then discusses China’s predatory fishing practices, focusing primarily on China’s distant-water fishing (DWF) fleet. It examines China’s IUU activities in various regions of the world, including the Western and Eastern Pacific Ocean, the Southwest Atlantic Ocean, the Indian Ocean, and Antarctica. The article then examines the principle of exclusive flag State jurisdiction on the high seas and suggests that Chinese DWF vessels that change their name and disable their satellite tracking systems should be assimilated to be stateless vessels subject to the jurisdiction of all nations on the high seas. It will also suggest that China’s failure to comply with its legal obligations under UNCLOS concerning the conservation and management of the living resources of the high seas is an international wrongful act for which China bears responsibility. The article concludes with recommendations on measures the international community can take to influence China to better regulate its DWF fleet and effectively combat IUU fishing.

## II. APPLICABLE REGULATORY FRAMEWORK

Since the adoption of UNCLOS in 1982, the international community has adopted several fisheries management instruments, both binding and voluntary, that address IUU fishing. These instruments provide guidance on matters such as port State measures, flag State performance, coastal State responsibilities, and market State measures to combat IUU fishing practices.

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8. National Oceanic and Atmospheric Administration, Understanding Illegal, Unreported, and Unregulated Fishing, <https://www.fisheries.noaa.gov/insight/understanding-illegal-unreported-and-unregulated-fishing> (last visited Apr. 18, 2022).

9. *Id.*

IUU fishing, however, will only be eliminated when all States fulfill their responsibilities under this legal framework. Of note, China is not a party to any of the binding agreements.

*A. FAO Compliance Agreement*<sup>10</sup>

The Food and Agriculture Organization (FAO) Compliance Agreement seeks to enhance flag State responsibility by calling on States to strengthen control over vessels that fly their flag to ensure compliance with international conservation and management measures. In this regard, flag States should ensure that none of their vessels fish on the high seas unless authorized and that they can effectively exercise their responsibility to ensure their flag vessels comply with international measures. In addition, the Compliance Agreement aims to prevent the “re-flagging” of vessels fishing on the high seas under the flags of States that are unable or unwilling to enforce international fisheries conservation and management measures. The Agreement calls for international cooperation in its implementation and requires flag States to maintain a record of their fishing vessels and to take appropriate enforcement measures against their vessels that violate the provisions of the Agreement, to include refusal, suspension, or withdrawal of the authorization to fish on the high seas. There are currently forty-two States parties to the Agreement.<sup>11</sup>

*B. UN Fish Stocks Agreement*<sup>12</sup>

The UN Fish Stocks Agreement addresses the long-term conservation and sustainable use of straddling and highly migratory fish stocks. In this regard, conservation and management measures applicable on the high seas and in areas under national jurisdiction shall be compatible. The Agreement outlines the role of regional and sub-regional organizations and arrangements in

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10. Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, *opened for signature* Nov. 24, 1993, T.I.A.S. 03-424.1, 2221 U.N.T.S. 91 (entered into force Apr. 24, 2003).

11. UN Food and Agriculture Organization, Illegal, Unreported, and Unregulated (IUU) Fishing, <http://www.fao.org/iuu-fishing/international-framework/fao-compliance-agreement/en/> (last visited Apr. 18, 2022) [hereinafter FAO IUU Home Page].

12. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of December 10, 1982, Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, *opened for signature* Dec. 4, 1995, T.I.A.S. 01-1211, 2167 U.N.T.S. 3 (entered into force Dec. 11, 2001).

adopting and enforcing conservation and management measures. It also calls on flag States to take measures to ensure their vessels fishing on the high seas comply with these measures and do not engage in any activity that undermines the effectiveness of such measures. States that are not members of, or do not participate in, a subregional or regional fisheries management organization or arrangement are not discharged from the obligation to cooperate in the conservation and management of the relevant fish stocks. Such States shall not allow their flag vessels to engage in fishing operations for fish stocks that are subject to conservation and management measures established by such organization or arrangement.<sup>13</sup> The Agreement also spells out flag State duties to issue permits or licenses, register fishing vessels, and maintain a national record of vessels authorized to fish on the high seas. Additionally, the Agreement requires implementation of vessel monitoring, surveillance systems, and compliance and enforcement mechanisms. Flag States are also expected to cooperate in international, regional, and sub-regional enforcement mechanisms, including boarding and inspection procedures. The Agreement highlights the importance of port State enforcement measures, indicating that port States have the right and the duty to take measures to promote the effectiveness of sub-regional, regional, and global conservation and management measures. There are currently ninety-one States parties to the Agreement.<sup>14</sup>

C. *FAO Code of Conduct for Responsible Fisheries*<sup>15</sup>

Fisheries are a vital source of protein, create jobs, provide recreation, and generate trade and economic well-being for people globally. Accordingly, fisheries should be utilized and managed in a responsible manner. The FAO Code of Conduct for Responsible Fisheries was adopted in 1995 and contains principles and international standards for responsible practices to ensure that living aquatic resources are effectively conserved, managed, and developed with due respect for the ecosystem and biodiversity. These principles and standards can be implemented nationally, sub-regionally, or at the regional level to achieve long-term conservation and sustainable use of fisheries resources. The Code is voluntary and should be applied in accordance

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13. *Id.* art. 17.

14. FAO IUU Home Page, *supra* note 11.

15. UN Food and Agriculture Organization Res. 4/95, Code for Responsible Fisheries (Oct. 31, 1995).

with international law. The Code contains principles and international standards for responsible practices to ensure that living aquatic resources are effectively conserved, managed, and developed with due respect for the ecosystem and biodiversity.<sup>16</sup>

#### D. IPOA-IUU<sup>17</sup>

The International Plan of Action to Prevent, Deter, and Eliminate IUU Fishing (IPOA-IUU) is a voluntary instrument developed within the framework of the Code of Conduct for Responsible Fisheries. IUU fishing continues to be an issue of serious and increasing concern in all the world's fisheries. Regrettably, international instruments to combat IUU fishing have been ineffective due to a lack of political will, priority, capacity, and resources to ratify or accede to and implement them. IUU fishing undermines national and regional fisheries management organizations' efforts to conserve and manage fish stocks. The result is a "loss of short and long-term social and economic opportunities" and "negative effects on food security and environmental protection."<sup>18</sup> The IPOA-IUU aims 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."<sup>19</sup>

Measures focus on flag State responsibilities, coastal and port State measures, internationally agreed market-related measures, research, and regional fisheries management organizations. Flag States "should ensure that fishing vessels entitled to fly their flag do not engage in or support IUU fishing" and should maintain a record of their fishing vessels.<sup>20</sup> Flag States should also ensure that vessels entitled to fly their flag fishing in waters outside their sovereignty or jurisdiction are issued a valid authorization to fish.<sup>21</sup> Coastal States should exercise their sovereign resource rights in the exclusive

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16. FAO IUU Home Page, *supra* note 11.

17. UN Food and Agriculture Organization, International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (2001).

18. *Id.*

19. *Id.* sec. III.8.

20. *Id.* secs. IV.34, 42.

21. *Id.* sec. IV.45.

economic zone (EEZ) and “implement measures to prevent, deter, and eliminate IUU fishing” in the EEZ.<sup>22</sup> Port States should implement fair, transparent, and nondiscriminatory measures to control fishing vessels to prevent, deter, and eliminate IUU fishing.<sup>23</sup>

All States should also take steps to prevent “fish caught by vessels identified by the relevant regional fisheries management organization to have been engaged in IUU fishing being traded or imported into their territories.”<sup>24</sup> Additionally, States should cooperate “to adopt appropriate multilaterally agreed trade-related measures . . . to prevent, deter, and eliminate IUU fishing for specific fish stocks or species.”<sup>25</sup> Such trade-measures “could include the adoption of multilateral catch documentation and certification requirements, [and] import and export controls or prohibitions.”<sup>26</sup>

#### *E. Agreement on Port State Measures*<sup>27</sup>

The use of port State measures was first included as a core element in the IPOA-IUU. The Agreement on Port State Measures is the first binding international instrument that specifically targets IUU fishing. The Agreement aims to prevent, deter, and eliminate IUU fishing “through the adoption and implementation of effective port State measures” that can be applied by the parties to vessels not entitled to fly their flags when these vessels seek entry to their ports or while they are in port.<sup>28</sup> Global implementation of the Agreement coupled with better flag State performance, effective monitoring, control, and surveillance, and robust market access and trade measures will strengthen international efforts to curb IUU fishing.<sup>29</sup> The Agreement currently has sixty-seven States parties but does not include China.

The Agreement establishes minimum measures for port States to apply to foreign vessels seeking entry into their ports or while they are in their ports. These measures are designed to verify that vessels have not engaged

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22. *Id.* sec. IV.51.

23. *Id.* sec. IV.52.

24. *Id.* sec. IV.66.

25. *Id.* sec. IV.68.

26. *Id.* sec. IV.69.

27. Agreement on Port State Measures to Prevent, Deter, and Eliminate Illegal, Unreported and Unregulated Fishing, *opened for signature* Nov. 22, 2009, T.I.A.S. 16-605 (entered into force June 5, 2016).

28. *Id.*

29. *Id.*

in IUU fishing to block fish caught from such activities from reaching national and international markets and reduce the incentive for vessels to engage in IUU fishing. For example, port States shall require that vessels provide certain information to competent State authorities prior to granting a vessel port entry.<sup>30</sup> Based on the information provided and other relevant information regarding the vessel's activities, the port State shall decide whether to grant port entry.<sup>31</sup> After a vessel enters port, the port State may deny the vessel the use of the port for landing, transshipping, packaging, and processing of fish, as well as other port services such as refueling, resupplying, maintenance, and drydocking.<sup>32</sup> The port State can deny such services if: (1) the vessel does not have a valid authorization from the flag State to engage in fishing; (2) the vessel does not have a valid authorization from the coastal State to engage in fishing in areas under the jurisdiction of the coastal State or that the fish on board were taken in violation of coastal State requirements; (3) the flag State fails to confirm, upon request, that the fish on board were taken in accordance with applicable requirements of a regional fisheries management organization; or (4) the port State has reasonable grounds to believe that the vessel was engaged in IUU fishing.<sup>33</sup>

*F. Voluntary Guidelines for Flag State Performance*<sup>34</sup>

The objective of the FAO Voluntary Guidelines for Flag State Performance is to prevent, deter, and eliminate IUU fishing or fishing related activities through the effective implementation of flag State responsibilities to ensure the long-term conservation and sustainable use of living marine resources and marine ecosystems. The voluntary guidelines include a variety of actions States can take to ensure their flag vessels do not engage in IUU fishing. These include monitoring, control, and surveillance activities, such as vessel monitoring systems and observers. States are encouraged to exchange information and cooperate with flag States so that flag States can refuse to register vessels that are “flag-hopping”—attempts to register with another flag State—or refuse to register vessels that have been reported for IUU fishing.

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30. *Id.* art. 8.1.

31. *Id.* art. 9.1.

32. *Id.* art. 11.1.

33. *Id.*

34. UN Food and Agriculture Organization, Voluntary Guidelines for Flag State Performance (2015), <https://www.fao.org/3/i4577t/i4577t.pdf>.

The Guidelines also contain recommendations on how States can encourage compliance, take action against non-complying vessels, and enhance international cooperation to assist developing countries fulfil their flag State responsibilities.<sup>35</sup>

Recommended actions by flag States include: (1) execute flag State duties in accordance with international law; (2) respect coastal State sovereignty and rights; (3) prevent, deter, and eliminate IUU fishing; (4) effectively exercise flag State jurisdiction and control; (5) ensure owners and operators of its flag vessels do not support or engage in IUU fishing; (6) ensure the conservation and sustainable use of living marine resources; (7) take effective action against its flag vessels that are non-compliant; (8) discharge its duty to cooperate in accordance with international law; (9) exchange information and coordinate activities between national agencies; (10) exchange information with other States and provide mutual legal assistance in investigation and judicial proceedings as required by their respective international obligations; and (11) cooperate with developing States to enhance their abilities as flag States including through capacity building.

*G. Voluntary Guidelines for Catch Documentation Schemes*<sup>36</sup>

The FAO Voluntary Guidelines for Catch Documentation Schemes<sup>37</sup> is the first international policy document with comprehensive guidelines on catch documentation schemes for wild capture fish caught for commercial purposes. The objective of the Guidelines is to assist States, regional fisheries management organizations, regional economic integration organizations, and other intergovernmental organizations develop and implement new catch documentation schemes or harmonize or review existing schemes to determine if fish throughout the supply chain originate from catches consistent with applicable conservation and management measures.<sup>38</sup>

Catch documentation schemes are trade-related measures designed to prevent, deter, and eliminate IUU fishing and should be based on the fol-

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35. *Id.*

36. UN Food and Agriculture Organization, *Voluntary Guidelines for Catch Documentation Schemes* (2017), <https://www.fao.org/3/i8076e/i8076e.pdf>.

37. *Id.*

38. *Id.*

lowing principles: (1) conformity with relevant international law; (2) no unnecessary trade barriers; (3) equivalence; (4) risk-based; (5) reliable, simple, clear, and transparent; and (6) electronic, if possible.<sup>39</sup>

### III. CHINA'S ILLICIT FISHING ACTIVITIES

The IUU Fishing Index found that China is the worst-performing country overall in combating IUU fishing.<sup>40</sup> The Index ranks all 152 coastal States of the world based on a set of forty indicators related to the prevalence of IUU fishing in each State and each State's vulnerability and response to IUU fishing, relying on coastal, flag, port, and other State responsibilities. "Vulnerability" includes indicators relating to the risk that IUU fishing may occur. China was rated worst as a flag State, second worst as a port State, and worst overall. "Prevalence" refers to indicators that relate to known or suspected IUU incidents. China was rated worst as a flag State, worst as a port State, and worst overall. "Response" looks at indicators that relate to actions taken to reduce IUU fishing. China was rated the second worst.<sup>41</sup> China's score, aggregated across all indicator responsibilities and types, was 3.93 (the worst-performing country), including the worst-performing country for two out of three indicator types.<sup>42</sup>

#### A. China's Distant-Water Fishing (DWF) Fleet

DWF fleets engage in industrial scale fishing activities and are often associated with IUU fishing. These fleets are normally subsidized by their governments, which incentivizes IUU fishing, and "are often subject to weak, negligent, or intentionally complicit management by their flag States."<sup>43</sup> Predator States, like China, also use their DWF fleets to undermine the rules-based international legal order by exploiting "gaps between governance structures"

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39. FAO IUU Home Page, *supra* note 11.

40. G. Macfadyen et. al., The IUU Fishing Index, 2019 (Jan. 2019), <https://globalinitiative.net/wp-content/uploads/2019/02/IUU-Fishing-Index-Report-web-version.pdf> [hereinafter IUU Fishing Index].

41. *Id.* at 3, 57, 73.

42. *Id.* at 26, 57, 73.

43. USCG Strategic Outlook, *supra* note 1, at 14.

and operating in “areas where there is little or no effective enforcement presence.”<sup>44</sup> Beijing, in particular, has failed to acknowledge and address IUU fishing problems in its DWF fleet, placing its own interests above the need to preserve the marine ecosystems, food supplies, and economic stability of other States.

DWF is dominated by five fleets—China, Taiwan, Japan, South Korea, and Spain—that account for 90 percent of the global effort. Between 2015 and 2017, China and Taiwan comprised over 60 percent of global DWF efforts in foreign waters, with China having the largest fleet.<sup>45</sup> Alleged violations of international norms and governance structures by Chinese-flagged vessels are on the rise as China’s DWF fleet increasingly engages in illegal fishing in foreign EEZs around the world. There is also evidence that a growing number of stateless vessels in the Northern Pacific display “characteristics of Chinese registration.”<sup>46</sup> In addition, the People’s Armed Forces Maritime Militia is being used by the Chinese Communist Party to coerce and intimidate legitimate fishers on the high seas and in foreign EEZs to advance China’s long term maritime strategic goals in the Yellow, East China, and South China Seas. China’s disregard for the sovereign rights of other nations in their EEZs threatens the stability of States that depend “on marine resources for food security and economic development” and is a direct challenge to the international rules-based legal order.<sup>47</sup>

A report published in June 2020 by the Overseas Development Institute, a British think tank, estimates that China’s DWF fleet is five to eight times larger than originally thought. The report identified 16,966 Chinese DWF vessels, including 12,490 vessels operating outside Chinese waters between 2017 and 2018. The most common DWF vessels are trawlers—1,821 vessels (double the largest previous estimates)—that operate primarily in the Northwest Pacific Ocean. However, these vessels also conduct intense operations in the Southeast Pacific and Southwest Atlantic squid fisheries. Of equal or greater concern are the 927 Chinese DWF vessels registered abroad. The bulk of these vessels—518—are flagged in African nations that have limited

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44. *Id.*

45. *Id.*

46. *Id.*

47. *Id.*

enforcement measures and restrict fishing rights to domestically registered vessels.<sup>48</sup>

The Overseas Development Institute Report further found that at least 183 Chinese DWF vessels, some of which are government-owned or operated, are involved in IUU fishing. Given this governmental link, China could easily target its flag State enforcement efforts against IUU activities by these vessels if it was so inclined, but it has refused to do so.<sup>49</sup> In this regard, the IUU Index found that nations operating DWF fleets that have poor scores for both flag State prevalence and flag State response indicators, like China, are considered particularly problematic. In this regard, there is an urgent need to hold China and other predatory countries accountable for their poor performance and take appropriate remedial action to eliminate IUU fishing globally.<sup>50</sup>

### B. Chinese DWF Fleet Activities

China's burgeoning economy and increasing demand for fish protein has caused the Chinese DWF fleet to grow exponentially from thirteen vessels in the mid-1980s to nearly seventeen thousand vessels today.<sup>51</sup> Overfishing by Chinese fishermen over the years has resulted in significant depletion of fishing stocks in Chinese waters. As a result, China's DWF fleet has moved its fishing operations to the high seas and foreign EEZs throughout the world. Although information on the exact geographical location of the fleet is limited, Chinese vessels are known to operate throughout the Eastern (off Central and South America) and Western (off the Korean Peninsula, East and South China Sea, and Oceania) Pacific, Southwest Atlantic (off the coast of Argentina), Antarctica, Southeast Atlantic (off the west coast of Africa), and the Indian Ocean (off the east coast of Africa).

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48. Miren Gutiérrez et al., *China's Distant-Water Fishing Fleet: Scale, Impact and Governance* 8, 9, 15 (June 2020), [https://cdn.odi.org/media/documents/chinesedistantwater-fishing\\_web.pdf](https://cdn.odi.org/media/documents/chinesedistantwater-fishing_web.pdf) [hereinafter ODI Report (2020)].

49. *Id.* at 9, 21, 26, 31.

50. IUU Fishing Index, *supra* note 40, at 103.

51. ODI Report (2020), *supra* note 48, at 33.

## 1. Central and South America

Productive fisheries along the Pacific coast of Central and South America are a critical source of income for local fishermen, a valuable export commodity, and an important source of protein for communities throughout the region. It is not uncommon, however, for Chinese DWF vessels to surreptitiously operate in the area and threaten the security of the food source. Between July and October 2020, Ecuador, Peru, and Chile expressed concern over the presence of over three hundred unwelcome Chinese fishing vessels operating off their coasts.

The Chinese DWF fleet was initially observed fishing for giant squid near Ecuador's Galápagos Islands, a UNESCO World Heritage site and an Ecuadorian national marine reserve, accounting for 99 percent of the fishing activities in the area. Although there is no direct evidence that any of the Chinese vessels entered the more than fifty-one thousand square miles of the protected ocean marine reserve, it is probable given that Chinese ships routinely change their names and disable their Automatic Identification System (AIS) or Global Positioning System (GPS) trackers to hide their location and identity in order to conceal illegal activities.<sup>52</sup> Fishing in the reserve without permission would be a clear violation of Ecuadorian law, as well as China's international legal obligations under UNCLOS.<sup>53</sup>

U.S. Secretary of State Michael Pompeo commended Ecuador for "raising the alarm about the . . . vessels fishing near [the] Galápagos marine reserve and harvesting endangered sharks for their fins, along with many other protected species."<sup>54</sup> Secretary Pompeo also expressed firm U.S. support for

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52. Susanne Rust, *Tensions Rise in Ecuador and Peru as Chinese Fishing Fleet Moves South from Galapagos*, LOS ANGELES TIMES (Sept. 23, 2020, 5:01 PM), <https://www.latimes.com/environment/story/2020-09-23/tensions-rise-in-ecuador-and-peru-as-chinese-fishing-fleet-moves-south-from-galapagos>; *Ecuador Says Chinese Trawlers Turned Off Tracking System near Galapagos*, STRAITS TIMES (Aug. 19, 2020, 11:58 AM), <https://www.straitstimes.com/world/americas/ecuador-says-chinese-trawlers-turned-off-tracking-system-near-galapagos>; Natalia A. Ramos Miranda, *Chile Keeps Eye on Chinese Fishing Fleet Along South American Coast*, REUTERS (Oct. 8, 2020, 4:50 PM), <https://www.reuters.com/article/us-chile-fishing-china-idUSKBN26T3IL>.

53. United Nations Convention on the Law of the Sea art. 56, Dec. 10, 1982, 1833 U.N.T.S. 397 [hereinafter UNCLOS].

54. Press Statement by Secretary of State Michael Pompeo, On China's Predatory Fishing Practices in the Galápagos (Aug. 2, 2020), <https://cl.usembassy.gov/on-chinas-predatory-fishing-practices-in-the-galapagos/>.

Ecuador's efforts to ensure Chinese-flagged fishing vessels do not engage in IUU fishing, indicating that the United States stands with "States whose economies and natural resources are threatened by PRC-flagged vessels' disregard for the rule of law and responsible fishing practices."<sup>55</sup> The United States also deployed the U.S. Coast Guard Cutter *Bertholf* to the region to assist the Ecuadorian Navy patrol international and Ecuadorian waters and monitor the Chinese DWF fleet.<sup>56</sup>

In September 2020, the fleet moved south to fish off the coast of Peru and Chile. The fleet was kept under constant surveillance by the Peruvian and Chilean Navies to ensure the Chinese vessels did not encroach into the EEZs of the two South American nations.<sup>57</sup> According to Alfonso Miranda, President of the *Comité para el Manejo Sustentable del Calamar Gigante* (Committee for the Sustainable Management of the Jumbo Flying Squid of the South Pacific), China's DWF fleet illegally catch fifty thousand tonnes of Humboldt squid, worth over \$85 million, in Peruvian waters every year.<sup>58</sup> As a result, Peru now requires all foreign fishing vessels that use its ports to observe the Peruvian satellite tracking scheme and declare the volume of their catch. Vessels with a history of IUU fishing are not admitted into port.<sup>59</sup> Similarly, in Chile, where 70 percent of fish stocks have collapsed or are overexploited, the Servicio Nacional de Pesca y Acuicultura (National Fisheries and Aquaculture Service) estimates that the cost of IUU fishing by foreign-flagged vessels exceeds \$397 million annually.<sup>60</sup> To address the problem, Chile enacted the Cuttlefish Law in 2019, which prohibits trawling for giant squid.<sup>61</sup>

Confronted by the annual presence of a massive Chinese DWF fleet, Chile, Colombia, Ecuador, and Peru issued a joint statement in November 2020 indicating that they were prepared to take necessary measures "to pre-

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55. *Id.*

56. Rust, *supra* note 52.

57. Miranda, *supra* note 52; *Fleet of 250 Chinese Fishing Boats Monitored by Peru Navy*, NIKKEI ASIA (Sept. 20, 2020, 7:55 JST), <https://asia.nikkei.com/Politics/International-relations/Fleet-of-250-Chinese-fishing-boats-monitored-by-Peru-navy>.

58. Gonzalo Torrico, *South America Plans Regional Response to China's Squid Fleet*, MARITIME EXECUTIVE (Jan. 17, 2021, 11:42 AM), <https://maritime-executive.com/editorials/south-america-plans-regional-response-to-china-s-squid-fleet>.

59. *Id.*

60. Torrico, *supra* note 58.

61. *Id.*

vent, discourage, and jointly confront” IUU fishing in waters near their respective EEZs.<sup>62</sup> The four countries, which are members of the Permanent Commission to the South Pacific, condemned the illegal fishing by foreign-flagged vessels and indicated that they would increase cooperation and real-time information exchanges to combat IUU fishing off their coasts.<sup>63</sup>

## 2. South China Sea

In the South China Sea Arbitration Case,<sup>64</sup> the arbitral tribunal was asked to consider whether China breached its international legal obligations by allowing Chinese fishermen to engage in harmful fishing practices and harvesting of vulnerable, threatened, and endangered species.<sup>65</sup> Based on the evidence presented at the hearing, the tribunal found that China breached its obligations under UNCLOS, Articles 192 and 194(5), to take necessary measures to protect and preserve the marine environment, regarding the harvesting of endangered species from the fragile ecosystems at Scarborough Shoal and Second Thomas Shoal.<sup>66</sup> The tribunal also found that China breached its obligation to protect and preserve the marine environment by tolerating and protecting the harvesting of giant clams by vessels using the propeller chopping method.<sup>67</sup>

Evidence presented to the tribunal of a pattern of illegal Chinese fishing practices at Scarborough and Second Thomas Shoals in the South China Sea included:

1. Chinese fishermen were found in possession of endangered corals and marine turtles (1998).
2. Chinese fishing vessels were found with four tons of endangered corals on board (2000).
3. Chinese fishing vessels were found with endangered sea turtles, sharks, and corals on board (2001).

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62. *South American States Join Forces Against Chinese Fishing Threat*, CHANNEL NEWS ASIA (Nov. 5, 2020, 8:20 AM), <https://www.channelnewsasia.com/news/world/south-american-states-join-forces-against-chinese-fishing-threat-13469088>.

63. *Id.*

64. South China Sea Arbitration (Phil. v. China), Case No. 2013-19, PCA Case Repository, Award (Perm. Ct. Arb. 2016).

65. *Id.* ¶ 949.

66. *Id.* ¶ 964.

67. *Id.* ¶ 966.

4. Tons of endangered corals and clams were confiscated from Chinese fishing vessels (2002).

5. The Philippine Navy intercepted Chinese fishing vessels loaded with endangered giant clams (2004).

6. Four Chinese fishing vessels were found and photographed in possession of sixteen tons of assorted endangered corals and live clam shells (2005).

7. Chinese fishing vessels were found and photographed with endangered corals (2006).

8. Large amounts of endangered corals and giant clams were found and photographed on board Chinese fishing vessels that were later joined by Chinese government vessels (2012).

9. Two Chinese fishing vessels, operating under the protection of Chinese government vessels, were observed with endangered giant clams inside the cargo hold (2012).

10. Chinese fishing vessels, accompanied by a Chinese warship and two other government ships, were observed by the Philippine Navy gathering endangered coral and harvesting endangered giant clams and dredging at Second Thomas Shoal (2013).

11. Philippine National Police arrested Chinese fishermen who were engaged in large-scale harvesting of endangered hawksbill sea turtles (2014).

12. Chinese fishing vessels have engaged in widespread harvesting of endangered giant clams using boat propellers to break through the coral substrate in search of buried clam shells.<sup>68</sup>

The tribunal noted that all of the sea turtles found on board Chinese fishing vessels were threatened with extinction and subject to the strictest level of international controls on trade under Appendix I to the Convention on International Trade in Endangered Species of Wild Fauna and Flora, to which China is a party. In this regard, the tribunal considered that China had an obligation to protect and preserve the marine environment, as reflected in Articles 192 and 194(5) of UNCLOS, which includes a due diligence obligation to prevent the harvesting of species that are recognized internationally as being at risk of extinction and requiring international protection.<sup>69</sup> Similarly, the giant clams and coral harvested by Chinese fishermen are listed as threatened species in Appendix II to the Convention on International

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68. *Id.* ¶¶ 950–954.

69. *Id.* ¶¶ 956, 960.

Trade in Endangered Species of Wild Fauna and Flora. China's transgressions were aggravated by the fact that Chinese fishermen were using boat propellers to excavate shells from reef flats, which has led to near-complete destruction of the affected reef areas.<sup>70</sup> Accordingly, the tribunal concluded that China had an obligation under Articles 192 and 194(5) of UNCLOS to prevent harm that would affect depleted, threatened, or endangered species indirectly through the destruction of their habitat.<sup>71</sup>

All the vessels involved in these incidents were Chinese-flagged vessels and thus under the jurisdiction and control of China. China was aware that Chinese fishermen were illegally engaged in harvesting species that were recognized internationally as being threatened with extinction and causing widespread environmental degradation. China therefore had a duty to adopt and enforce rules and measures to prevent such acts. Nevertheless, the illegal poaching practices have persisted. Not only did China deliberately ignore these harmful acts but it also dispatched warships and other armed government vessels to protect the Chinese boats engaged in illegal fishing activities.<sup>72</sup>

In response to China's IUU fishing in the South China Sea, the United States is homeporting three enhanced fast-response U.S. Coast Guard cutters in the Western Pacific to monitor IUU fishing that threatens U.S. and partner-nation sovereignty, as well as to show U.S. resolve to discourage Chinese malign behavior. The enhanced cutters will increase U.S. capabilities and range in the Western Pacific to counter Chinese and other nations' illicit activities and reinforce regional partnerships with friends and allies to help ensure a free and open Indo-Pacific.<sup>73</sup>

### 3. Natuna Islands

Indonesia has been the victim of IUU fishing by several States, including China. In response to this illegal fishing, Indonesia mobilized its fishing fleet in 2020 to help the Indonesian Navy guard against Chinese incursions into Indonesian waters off the Natuna Islands in the South China Sea. Tensions

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70. *Id.* ¶ 957.

71. *Id.* ¶¶ 959, 960.

72. *Id.* ¶¶ 961–964.

73. Ralph Jennings, *Why US Wants to Send Coast Guard to the Seas near China*, VOA NEWS (Nov. 10, 2020, 5:36 AM), <https://www.voanews.com/usa/why-us-wants-send-coast-guard-seas-near-china>.

between the two countries intensified after two Chinese Coast Guard vessels and a People's Liberation Army Navy frigate were spotted escorting fifty Chinese fishing boats in Indonesia's EEZ. Ten Indonesian warships and several fighter aircraft were deployed to patrol the waters off the islands.<sup>74</sup> President Joko Widodo also visited Natuna to reaffirm Indonesian control over the islands after Jakarta lodged a diplomatic protest with Beijing on December 30, 2019, denouncing the Chinese incursions.<sup>75</sup> China argues that the area in question falls within the nine-dash line and that the waters off the Natuna Islands are traditional Chinese fishing grounds. Given Indonesia's dependence on China for investment and trade, as well as the ability of its ill-equipped Navy and Coast Guard to counter Chinese naval preeminence, it is questionable whether Indonesia will be able to curtail Chinese incursions in the long term without outside assistance.<sup>76</sup> Nonetheless, Indonesia has enhanced the defensive capabilities of its Maritime Security Agency (*Badan Keamanan Laut*, or Bakamla) vessels by equipping its four patrol boats with 12.7 millimeter SM-5 machine guns and 30 millimeter remote-controlled weapon systems, and there are efforts underway to designate Bakamla as Indonesia's only coast guard.<sup>77</sup>

In the past, Indonesia took a novel approach to curtail IUU fishing by blowing up and sinking foreign-flagged fishing vessels illegally operating in its EEZ. Between 2015 and 2019, Maritime and Fisheries Minister Susi Pudjiastuti ordered the destruction of over five hundred foreign fishing vessels that were confiscated for illegally fishing in Indonesian waters.<sup>78</sup> The Indonesian government views the harsh enforcement measure as a deterrent rather than as retaliation against any country.<sup>79</sup> The novel approach is also

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74. Stanley Widiyanto, *Indonesia Mobilizes Fishermen in Stand-Off with China*, REUTERS (Jan. 6, 2020, 10:21 AM), <https://www.reuters.com/article/us-indonesia-china/indonesia-mobilizes-fishermen-in-stand-off-with-china-idUSKBN1Z51JR>; Tiola & Dedi Dinarto, *The Natuna Standoff: Transcending Fisheries Issues?*, THE DIPLOMAT (Nov. 5, 2020, ), <https://thediplomat.com/2020/11/the-natuna-standoff-transcending-fisheries-issues/>.

75. Joe Cochrane, *Chinese Fishing Vessels in Spat with Indonesia Leave Natunas. Friends Again?*, SOUTH CHINA MORNING POST (Jan. 9, 2020, 6:30 PM), <https://www.scmp.com/week-asia/politics/article/3045388/friends-again-chinese-fishing-vessels-spat-indonesia-leave>.

76. *Id.*

77. Tiola & Dinarto, *supra* note 74.

78. *Indonesia Sinks 51 Fishing Boats*, BANGKOK POST (May 4, 2019, 8:49 PM), <https://www.bangkokpost.com/world/1672020/indonesia-sinks-51-fishing-boats>.

79. Aloysius Unditu, *Sinking Captured Fishing Boats is Deterrent, Not Retaliation, Indonesia Says After South China Sea Clash with Vietnam*, SOUTH CHINA MORNING POST (May 2, 2019,

paying dividends for Jakarta. Between 2015 and 2016, Indonesian catch recovered from 2.5 million tons to 6.6 million tons.<sup>80</sup>

Even if viewed as illegal, Indonesia could justify blowing up and sinking vessels engaged in IUU fishing as a lawful countermeasure.<sup>81</sup> As a party to UNCLOS, China has an international legal obligation to prevent fishing vessels that fly its flag from illegally fishing in other nations' EEZs.<sup>82</sup> China has not only willfully failed to comply with its obligations but has also deployed Chinese Coast Guard and People's Liberation Army Navy ships to protect Chinese fishing vessels illegally fishing in Indonesian waters. Under generally accepted principles of international law, States incur responsibility for their internationally wrongful acts.<sup>83</sup> An internationally wrongful act occurs when an act or omission is attributable to a State under international law and constitutes a breach of an international obligation of that State.<sup>84</sup> A State breaches its international obligations when an act of that State does not conform to what is required of the State by those obligations.<sup>85</sup> China's failure to properly regulate its fishing fleet, as well as its complicity in these illegal activities, are internationally wrongful acts under international law for which China bears the legal consequences.<sup>86</sup>

As the injured State, Indonesia may take countermeasures against the responsible State—China—to induce China to comply with its flag State obligations under UNCLOS.<sup>87</sup> The only limitation is that countermeasures must be commensurate with the injury suffered—significant depletion of fish stocks and loss of revenue—taking into account the gravity of the internationally wrongful act—China's failure to take appropriate enforcement

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7:30 AM), <https://www.scmp.com/news/asia/southeast-asia/article/3008485/sinking-captured-fishing-boats-deterrent-not-retaliation>.

80. Madelyn Kearns, *Indonesia Fighting IUU Fishing by Blowing Up Boats*, SEAFOOD-SOURCE (Sept. 26, 2016), <https://www.seafoodsource.com/news/supply-trade/indonesia-fighting-iuu-fishing-by-blowing-up-boats>.

81. Int'l Law Comm'n, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, with Commentaries, 2001 YEARBOOK OF THE INTERNATIONAL LAW COMMISSION, vol. II, pt. 2, art. 22 [hereafter Responsibility of States for Internationally Wrongful Acts].

82. UNCLOS, *supra* note 53, arts. 56, 61, 62, 92.

83. Responsibility of States for Internationally Wrongful Acts, *supra* note 81, art. 1.

84. *Id.* art. 2.

85. *Id.* art. 12.

86. *Id.* art. 28.

87. *Id.* art. 49.

measures as the flag State—and the rights in question—Indonesia’s sovereign rights over living resources in its EEZ.<sup>88</sup>

#### 4. North Korea

In 2017 and 2018, Global Fishing Watch estimated that over 1,600 Chinese vessels fished illegally in North Korean waters as part of a large “dark fleet,” reportedly catching over 160,000 metric tons of squid worth over \$440 million.<sup>89</sup> Many of these fishing activities were in violation of UN sanctions imposed on North Korea in response to its nuclear and ballistic missile activities since 2006.

UN Security Council Resolution (UNSCR) 2371 prohibits North Korea from supplying, selling, or transferring, directly or indirectly, seafood (including fish, crustaceans, mollusks, and other aquatic invertebrates), and prohibits States from procuring such items from North Korea.<sup>90</sup> UNSCR 2397 clarifies that the full sectoral ban on seafood in UNSCR 2371 prohibits North Korea from selling or transferring, directly or indirectly, fishing rights.<sup>91</sup>

The panel of experts established by UNSCR 1874 (2009) found that North Korea continues to illegally transfer its fishing rights in order to secure foreign currency for the country, and that large numbers of Chinese fishing boats are operating in North Korean waters. The monthly cost of an individual fishing license is about \$7,250, and it is not uncommon for Chinese fishing vessels operating in North Korean waters to fly false flags or turn off their satellite tracking systems to conceal their nationality.<sup>92</sup>

China’s DWF fleet has fished in North Korean waters for nearly two decades, but it has not reported its fishing activities since 2016. Lacking this information, it is impossible to conduct accurate stock assessments in the squid fishery. Nonetheless, since 2003, Global Fishing Watch estimates that catches in the fishery have dropped by 80 percent and 82 percent in South

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88. *Id.* art. 51.

89. See Jaeyoon Park et al., *Illuminating Dark Fishing Fleets in North Korea*, SCIENCE ADVANCES (July 22, 2020), <https://www.science.org/doi/10.1126/sciadv.abb1197> (hereinafter Global Fishing Watch Report).

90. S.C. Res. 2371 (Aug. 5, 2017).

91. S.C. Res. 2397 (Dec. 22, 2017).

92. Panel of Experts Established Pursuant to Resolution 1874, Letter Dated 21 February 2019 Addressed to the President of the Security Council, U.N. Doc. S/2019/171 (Mar. 5, 2019).

Korean and Japanese waters, respectively. These numbers are concerning given that squid is “South Korea’s top seafood by production value, one of the top 5 seafoods consumed in Japan, and, until recent sanctions, was the third largest North Korean export.”<sup>93</sup>

Most Chinese fishing vessels operating in North Korean waters turn off their AIS, hence the label “dark fleet.” Nevertheless, Global Fishing Watch found the few vessels broadcasting AIS originated from Chinese ports. AIS transmissions from 140 vessels were matched to Earth-imaging company Planet imagery, corroborating South Korean Coast Guard inspections and confirming the vessels’ origin as China. Global Fishing Watch also used low-resolution, high sensitivity optical imagery at night to identify large Chinese “lighting vessels” that use bright lights—seven hundred incandescent bulbs generating over one thousand lux—to lure target species. Use of high sensitivity optical imagery allowed Global Fishing Watch to identify “a minimum of 108 lighting vessels of Chinese origin operating in North Korean waters in 2017 and 130 in 2018.”<sup>94</sup> These Chinese vessels unlawfully engaged in 91,400 fishing days in 2017 and 67,300 fishing days in 2018 in North Korean waters.<sup>95</sup>

Global Fishing Watch estimates that Chinese vessels—over nine hundred in 2017 and over seven hundred in 2018—illegally caught over 101,300 metric tons of squid worth \$275 million in 2017 and 62,800 metric tons of squid worth \$171 million in 2018.<sup>96</sup> These operations have resulted in a 70 percent decline in once-abundant squid stocks in North Korean waters and negatively affected squid stocks in Japanese and South Korean waters.<sup>97</sup> Many of these vessels turn off their AIS transponders and have no registration papers, no flag, and no license from North Korea to fish in its waters. Therefore, they are fishing illegally.<sup>98</sup> Given their lack of appropriate documentation, third party States like South Korea and Japan should consider these vessels to be stateless for purposes of enforcement jurisdiction on the high seas.

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93. See Global Fishing Watch Report, *supra* note 89 (footnotes omitted).

94. See *id.* at 2.

95. *Id.*

96. *Id.* at 2–4.

97. Ian Urbina, *The Deadly Secret of China's Invisible Armada*, NBC NEWS (July 22, 2020), <https://www.nbcnews.com/specials/china-illegal-fishing-fleet/index.html>.

98. Global Fishing Watch Report, *supra* note 89, at 3; UNCLOS, *supra* note 53, arts. 56, 61, 62.

## 5. Southwestern Atlantic

China's DWF fleet is no stranger to the western South Atlantic. Each year, between December and May, the Chinese fleet fishes for squid off the coast of Argentina. The exact number of Chinese boats fishing in the area is difficult to ascertain as many of the vessels conceal their activities by routinely changing their registry, turning off their AIS transponders, and having no observers on board. Over the past several years, there have been numerous documented incidents of clashes between Argentine authorities and Chinese boats caught illegally fishing in Argentina's EEZ.

In 2012, two Chinese vessels were seized by Argentine authorities for illegally fishing for squid in Argentina's EEZ. On February 21, 2016, an Argentine Coast Guard *Mantilla*-class patrol boat opened fire on the *Jing Yuan 626*, a Chinese fishing vessel that was illegally fishing in Argentina's EEZ. The Chinese vessel escaped after an eight-hour chase. A week later, on February 29, the Chinese fishing boat *Hua Li 8* was caught illegally fishing within the Argentine EEZ. An Argentine Coast Guard vessel fired warning shots but was unable to detain the *Hua Li* after it fled into international waters. The *Hua Li* reentered Argentina's EEZ on March 3, giving rise to another five-hour chase by two Argentine Coast Guard vessels and a helicopter. The *Hua Li* was able to avoid its pursuers but was arrested in May by the Indonesian Navy.<sup>99</sup> The following day, on March 4, the Chinese fishing vessel *Hua Xiang 801* was fired upon by an Argentine Coast Guard patrol boat. The *Hua Xiang* escaped after a three-hour chase. China blamed the incidents on minor differences in boundary coordinates between Chinese and Argentine nautical charts.<sup>100</sup>

In mid-March 2016, an Argentine Coast Guard patrol boat sank the *Lu Yan Yuan Yu 010* after the Chinese vessel was caught illegally fishing in Argentina's EEZ. Several attempts by the Argentine Coast Guard to contact the suspect vessel by hailing the fishing boat over the radio and sending audio and visual signals, as well as firing warning shots, were ignored. The fishing boat then turned off its running lights and attempted to flee towards international waters. After the Chinese boat conducted several dangerous

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99. Michelle Carrere, *Past Illegal Activity Dogs Chinese Fleet That Fished Squid near Galapagos*, MONGABAY (Romina Castagnino trans, Sept. 23, 2020), <https://news.mongabay.com/2020/09/past-illegal-activity-dogs-chinese-fleet-that-fished-squid-near-galapagos/>.

100. *Argentina Sinks Chinese Fishing Boat Lu Yan Yuan Yu 010*, BBC NEWS (Mar. 16, 2016), <https://www.bbc.com/news/world-latin-america-35815444>.

maneuvers to force a collision, the Argentine Coast Guard ship opened fire to disable it. There were no injuries, and all thirty-two Chinese crew members were rescued. China expressed serious concern over the incident and demanded that Argentina conduct a full investigation.<sup>101</sup>

In early March 2018, a federal judge in Argentina issued an international capture order after five Chinese fishing boats were detected illegally fishing in Argentina's EEZ off the Patagonian coast. Efforts by the Argentine Coast Guard to detain one of the vessels, the *Jing Yuan 626*, were unsuccessful, as the other four Chinese boats maneuvered to prevent Argentine authorities from detaining the *Jing Yuan*.<sup>102</sup>

More recently, on April 28, 2020, an Argentine Coast Guard patrol boat, *GC-27*, observed the Chinese fishing vessel *Lu Rong Yuan Yu 668* illegally fishing off the coast of Puerto Madryn. Repeated efforts to contact the Chinese vessel by radio calls and sound and visual signals were unsuccessful. The *Lu Rong Yuan Yu* turned off its fishing lights and made a run for international waters. *GC-27* was joined by a maritime patrol aircraft, but the Chinese vessel successfully evaded capture. A week later, on May 4, 2020, the Argentine Coast Guard detained a Chinese fishing boat, the *Hong Pu 16*, which had turned off its AIS transponder and was illegally fishing in Argentina's EEZ. After a three-hour chase, the Chinese fishing boat was boarded. Argentine officials found seven hundred kilograms of fresh fish and three hundred tons of frozen fish in the vessel's hold. International Maritime Organization records indicated the boat belonged to a Chinese fishery company, the Zhoushan Hongpu Ocean Fishery.<sup>103</sup>

According to a report prepared by the OceanoSanos (Healthy Oceans) Organization on irregularities in the identification of vessels in the port of Montevideo, "many ships manipulate their identity transmitted through the

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101. *Id.*

102. *Argentina Calls for Capture of Five Chinese Fishing Boats*, REUTERS (Mar. 8, 2018, 5:46 PM), <https://www.reuters.com/article/us-argentina-china-fishing/argentina-calls-for-capture-of-five-chinese-fishing-boats-idUSKCN1GK35T>.

103. Michelle Carrere, *Barco chino que pescaba ilegalmente en Argentina tendría un 'barco gemelo' para cometer ilegalidades* (Chinese Ship Fishing Illegally in Argentina Would Have a "Twin Ship" to Commit Illegalities), MONGABAY (May 11, 2020), <https://es.mongabay.com/2020/05/oceanos-pesca-ilegal-en-argentina/>; Eduardo Szklarz, *Argentine Navy Captures Chinese Vessel Fishing Illegally*, DIÁLOGO AMÉRICAS (May 19, 2020), <https://dialogo-americas.com/articles/argentine-navy-captures-chinese-vessel-fishing-illegally/>.

satellite system.”<sup>104</sup> The study found that “1% of all ships convey a false identity, 19% shut down their illicit cover-up system, and 44% of Chinese vessels manipulate the GPS position transmitted by the satellite system.”<sup>105</sup>

In January 2021, the U.S. Coast Guard Legend-class National Security Cutter *USCGC Stone (WMSL 758)* deployed to the South Atlantic to build regional partnerships and counter IUU fishing. On January 9, *USCGC Stone* conducted several exercises with the Guyanese Defense Force Coast Guard to combat IUU fishing, using a new shiprider agreement ratified in 2020. It then conducted joint patrols with the Brazilian Navy and concluded its deployment with a visit to Argentina. As a global leader in the international effort to curtail IUU fishing, the United States considers that “IUU fishing jeopardizes global food security, destabilizes the economic security of coastal States, and violates state sovereignty by undermining international agreements and fisheries conservation measures.”<sup>106</sup> Accordingly, the United States encourages the littoral States of the South Atlantic to collaborate to protect their fisheries resources and urges all nations to implement international measures, like the FAO Agreement on Port State Measures, to combat IUU fishing.<sup>107</sup>

## 6. West Africa

IUU fishing is rampant along the West African coast. Stretching more than four thousand miles from Mauritania to Cameroon, West African waters are home to some of the richest and most diverse fisheries in the world. Unfortunately, most West African countries lack the capacity to adequately patrol or monitor their waters. As a result, over 40 percent of the region’s fish catch is caught illegally—the highest level in the world.<sup>108</sup> Although China is not the only nation illegally fishing in African waters, OceanMind estimates that

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104. *Pesca Ilegal, No Declarada y No Reglamentada en el Atlántico Sur*, OCEANOSANOS (2018), <http://oceanosanos.org/wp-content/uploads/2018/11/OS-Informe-0001-A.pdf>.

105. *Id.*

106. U.S. Dep’t of State, Office of the Spokesperson, Media Note, *U.S. Coast Guard Operation Southern Cross Builds Multilateral Cooperation to Combat Illegal, Unreported, and Unregulated (IUU) Fishing in the South Atlantic*, Jan. 15, 2021, <https://uy.usembassy.gov/u-s-coast-guard-multilateral-cooperation-tocombat-illegal-unreported-and-unregulated-iuu-fishing/>.

107. *Id.*

108. Neil Munshi, *The Fight for West Africa’s Fish*, FINANCIAL TIMES (Mar. 13, 2020), <https://www.ft.com/content/0eb523ca-5d41-11ea-8033-fa40a0d65a98>.

over 75 percent of ships fishing off the west coast of Africa are registered to Chinese companies.<sup>109</sup>

In 2015, a Greenpeace report found that China's DWF fleet has engaged in illegal and ecologically destructive fishing practices for the last three decades off the coasts of Gambia, Guinea, Guinea-Bissau, Mauritania, Senegal, and Sierra Leone. Between 1985 and 2013, the presence of Chinese fishing vessels exponentially grew from 13 to 462. Many of these vessels were bottom trawlers, which Greenpeace says are "one of the most destructive fishing methods in the modern fishing industry."<sup>110</sup> Over 16 percent of these vessels engaged in illegal fishing activities—to include manipulating AIS information, operating in prohibited areas, fishing without a license, and falsifying gross tonnage. These illegal activities were made possible by weak local enforcement capabilities and lack of proper supervision by Chinese authorities. Moreover, over 50 percent of the documented illegal fishing activities were conducted by ships of the State-owned company China National Fisheries Corporation, which makes the Chinese Communist Party complicit in the unlawful activities. Greenpeace found that China National Fisheries Corporation under-reported gross tonnage for forty-four of its fifty-nine vessels, a practice that allows companies to avoid paying licensing fees and is an indicator that the vessels were fishing in prohibited areas.<sup>111</sup>

These illegal practices deprive indigenous African fishermen of their jobs and livelihood, as well as destroy the marine environment. For example, of the 130 vessels licensed to fish for tuna in Mozambican waters, only one was flagged in Mozambique. Over 50 percent of fish stocks along the Nigerian and Senegalese coasts are categorized as overfished, with Senegal losing \$300 million to IUU fishing in 2012. It is estimated that West African nations lose

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109. Gregory Tosi, *Mozambique Loses as Foreigners Plunder Its Coast*, THE MARITIME EXECUTIVE (June 16, 2019, 5:45 PM), <https://www.maritime-executive.com/editorials/mozambique-loses-as-foreigners-plunder-its-coast?fbclid=IwAR0OIMvHrqdZosBI-WaGQR67OK8wTQS7NQRF8xCXQt7NfLfkZRzKJjywP034>.

110. Kathryn Stone, *China Fishing Illegally in West Africa: Greenpeace Study*, THE MARITIME EXECUTIVE (May 20, 2015, 5:42 PM), <https://www.maritime-executive.com/article/china-fishing-illegally-in-west-africa-greenpeace-study>.

111. *China Fishes Illegally off West Africa Coast*, Greenpeace Report, FISHERIES COMMITTEE FOR THE WEST CENTRAL GULF OF GUINEA (May 20, 2015), <https://fcwc-fish.org/other-news/china-fishes-illegally-off-west-africa-coast-greenpeace-report-finds>.

over \$2.3 billion in revenue due to IUU fishing.<sup>112</sup> The Pew Charitable Trusts estimates that between 2000 and 2011, 64 percent of China's average annual catches—nearly three million tons valued at \$7.15 billion—came from West Africa.<sup>113</sup> According to the Overseas Development Institute, three hundred thousand jobs generating \$3.3 billion could be created in Africa by reversing the economic losses attributable to IUU fishing.<sup>114</sup>

Efforts by African States to clamp down on IUU fishing are hampered by lack of resources. For example, in 2013, Sierra Leone only had two coast guard boats to patrol its 160,000 square kilometer EEZ. They are also hampered by reliance on China for trade and investment—China is Africa's biggest trading partner and in 2015 pledged \$60 billion in development investment for African nations over a three-year period. Most African nations employ a catch-as-catch-can approach to enforcement. In a thirty-day period, a single Chinese fishing vessel and its crew were arrested for illegally fishing in Cameroon's EEZ and South Africa impounded a Chinese fishing boat and fined its owners for IUU fishing in its EEZ. However, there are hundreds of Chinese fishing vessels operating illegally off the West African coast daily. This hit-or-miss approach to enforcement is not effective in deterring China's DWF fleet from engaging in illegal fishing activities.<sup>115</sup> An exasperated African Union called on China in 2016 to stop its destructive fishing practices in African nations' fishing grounds.<sup>116</sup>

The call went unheeded, as Chinese transgressions continued unabated. In 2017, Guinea, Sierra Leone, and Guinea-Bissau officials detained seven Chinese vessels that were fishing for protected species and using small-gauge nets to catch more fish. The ships were released after their owners paid a

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112. Anthony Kleven, *China's Fishing Fleet Plundering African Waters*, THE JAPAN TIMES (Sept. 4, 2016), <https://www.japantimes.co.jp/opinion/2016/09/04/commentary/world-commentary/chinas-fishing-fleet-plundering-african-waters/>.

113. Salem Solomon, *Chinese Overfishing Threatens West African Economies*, VOA NEWS (July 17, 2017, 6:34 PM), <https://www.voanews.com/a/chinese-overfishing-threatens-west-african-economies/3947764.html>.

114. Kleven, *supra* note 112.

115. *Id.*

116. *Cameroon: African Countries Call for China to Stop Illegal Fishing*, FISHERIES COMMITTEE FOR THE WEST CENTRAL GULF OF GUINEA (Jan. 20, 2016), <https://fcwc-fish.org/other-news/cameroon-african-countries-call-for-china-to-stop-illegal-fishing>.

fine.<sup>117</sup> This catch-and-release approach to enforcement offers little in the way of deterrence as Chinese vessels are allowed to return to sea and immediately resume their illicit fishing practices.

Imposing fines is similarly ineffective given that the Chinese Communist Party heavily subsidizes China's DWF fleet—\$6.5 billion in subsidies in 2013.<sup>118</sup> In some cases, Chinese owners simply refuse to pay their fines and continue to operate illegally. In June 2019, for example, the *Lu Rong Yuan Yu 956*, a Chinese-owned Ghana-based vessel, was arrested and fined \$1 million for illegally fishing—using illegal nets and destroying pelagic fish habitats—in Ghanaian waters. Under Ghanaian law, a vessel that fails to pay an assessed fine for illegal fishing may not be issued a new fishing license. Nonetheless, AIS transmissions from December 2019 to February 2020 reflect that the vessel continued to operate illegally off the coasts of Ghana and the Ivory Coast.<sup>119</sup> The vessel, which is operated by the Rongcheng Ocean Fishery Company, was arrested for a second time on May 30 for “using nets with a mesh size below the legal limit and for catching undersized fish.”<sup>120</sup>

Even when local regulations prove effective in preventing IUU fishing, foreign fishing companies find ways to skirt the rules. For example, Guinea-Bissau adopted legislation that prevented large industrial fishing vessels from operating off its coast by denying them fishing licenses. Foreign fishing companies circumvented the law by renting and deploying small boats from neighboring Senegal that do not require a license to fish in Guinea-Bissau waters. These small boats then return their catch to large motherships stationed on the high seas, which take the fish back to Senegal to be sold at market.<sup>121</sup>

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117. Emma Farge, *Seven Chinese Vessels Detained off West Africa for Illegal Fishing*, REUTERS (May 3, 2017, 9:13 AM), <https://www.reuters.com/article/us-westafrica-china-fishing/seven-chinese-vessels-detained-off-west-africa-for-illegal-fishing-idUSKBN17Z1GS>.

118. Solomon, *supra* note 113.

119. Mark Godfrey, *Chinese Trawler Fishing in Ghana Again, Without Paying USD 1 Million Fine*, SEAFOODSOURCE (Mar. 3, 2020), <https://www.seafoodsource.com/news/environment-sustainability/china-trawler-fishing-in-ghana-again-without-paying-usd-1-million-fine>.

120. Mark Godfrey, *Trawler from China's Top Processing Hub is Seized by Ghanaian Authorities for Second Time*, SEAFOODSOURCE (June 10, 2020), <https://www.seafoodsource.com/news/environment-sustainability/trawler-from-china-s-top-processing-hub-is-seized-by-ghanaian-authorities-for-second-time>.

121. *Id.*

Chinese-backed trawlers are also heavily involved in a lucrative trade scheme in Ghana known as “saiko.” This traditional barter system, which is prohibited by Ghanaian law, involves “illegally transferring frozen stocks of bycatch from industrial trawlers to small canoes for sale.”<sup>122</sup> The Environmental Justice Foundation has expressed concerns that the use of industrial trawlers rather than small-scale boats to fish for stocks traditionally sought by artisanal fishers is rapidly depleting these stocks and putting them at risk of collapse. The Environmental Justice Foundation estimates that in 2017 “saiko” was responsible for siphoning \$34 to \$64 million of revenues (over one hundred thousand metric tons of fish) from the Ghanaian fishing industry.<sup>123</sup> To the chagrin of local fishermen, it is estimated that 90 percent of “Ghana’s industrial trawl fleet is actually owned by Chinese corporations.” These corporations use local “front” companies to register as Ghanaian vessels in order to circumvent restrictions in Ghanaian law that limit the number of foreign-flagged fishing vessels that can operate in Ghanaian waters.<sup>124</sup>

## 7. Indian Ocean

The FAO assesses that 33.3 percent of the fish stocks in the Western Indian Ocean are being fished at biologically unsustainable levels. The effects of IUU fishing, which has increased in intensity due to regulatory gaps and expanding fishing fleets, are not factored into this calculation.<sup>125</sup> China is one of the main culprits for IUU fishing in the region, as increasing demand for seafood at home has resulted in a dramatic expansion and subsidization of its DWF fleet. In this regard, China accounts for nearly 20 percent (\$7.2 billion) of total global fisheries subsidies (\$35.4 billion). These tax exemptions and fuel and vessel construction subsidies allow large Chinese fishing companies to turn a profit.<sup>126</sup>

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122. Jewel Fraser, *EJF Decries Chinese Involvement in Ghana’s Illegal Saiko Trade*, SEAFOOD-SOURCE (Aug. 27, 2018), <https://www.seafoodsource.com/news/environment-sustainability/ejf-decries-industrialization-of-artisanal-fishing-bycatch-trade-in-ghana>.

123. *Id.*

124. Kate Bartlett, *Fishy Business: Report Details Chinese Fleet’s Illegal Operations in West Africa*, VOA NEWS (Apr. 7, 2022), <https://www.voanews.com/a/fishy-business-report-details-chinese-fleet-s-illegal-operations-in-west-africa-/6519387.html>.

125. FAO STATE OF WORLD FISHERIES, *supra* note 3, at 54.

126. *China Flagged Vessels Target Unregulated North West Indian Ocean Squid Fishery*, STOP ILLEGAL FISHING (Oct. 23, 2020), <https://stopillegalfishing.com/news-articles/china-flagged-vessels-target-unregulated-north-west-indian-ocean-squid-fishery/>.

Between 2015 and 2020, the number of non-regional fishing vessels operating in the Indian Ocean region have increased dramatically.<sup>127</sup> The presence of Chinese trawlers and refrigerated cargo ships (reefers) has been the most pronounced. In 2015, only four Chinese-flagged vessels were identified by their AIS tracks as operating in the Indian Ocean just outside the EEZs of Yemen and Oman. The number of Chinese trawlers, fishing primarily for squid and saury, increased to thirty-two in 2016 and fifty-three in 2017. In 2020, the number grew to two hundred.<sup>128</sup> During the same period, twenty-one reefers engaged in transshipment of catch. Transporting catch to ports and delivering supplies to the fishing fleet were also observed in the region.<sup>129</sup> Ownership of the fishing boats was difficult to determine, as most of the vessels did not appear to have International Maritime Organization numbers. All the reefers, however, were owned by Chinese entities.<sup>130</sup>

According to the World Wildlife Fund, squid fishing has increased by 830 percent over the past five years.<sup>131</sup> Overexploitation of squid, exacerbated by poor enforcement and lack of management measures, can not only lead to a collapse of the stock but can also have a negative impact on pelagic food webs. Squid represent an “important prey for 12 predatory species in the Western Indian Ocean, especially bigeye tuna and swordfish.”<sup>132</sup> Yet there is no regulatory framework in place to manage this fishery.<sup>133</sup>

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127. Dinakar Peri, *Increasing Presence of Chinese Research and Fishing Vessels in the Indian Ocean Region*, THE HINDU (Nov. 28, 2020, 18:49 IST), <https://www.thehindu.com/news/national/increasing-presence-of-chinese-research-and-fishing-vessels-in-indian-ocean-region/article33200864.ece>.

128. *China Flagged Vessels Target Unregulated North West Indian Ocean Squid Fishery*, *supra* note 126.

129. FISH-i Africa, *Squid Capture in the Northwest Indian Ocean: Unregulated Fishing on the High Seas 4 (2017)* [hereinafter FISH-i Africa Report (2017)].

130. *Id.* at 9–10.

131. *Unregulated Fishing in the Indian Ocean is Putting Food Security and Ocean Health at Risk*, WORLD WILDLIFE FUND (Nov. 20, 2020), [https://wwf.panda.org/wwf\\_news/?1013641/Unregulated-fishing-in-the-Indian-Ocean-is-putting-food-security-and-ocean-health-at-risk](https://wwf.panda.org/wwf_news/?1013641/Unregulated-fishing-in-the-Indian-Ocean-is-putting-food-security-and-ocean-health-at-risk).

132. FISH-i Africa Report (2017), *supra* note 129, at 11–12.

133. *China Flagged Vessels Target Unregulated North West Indian Ocean Squid Fishery*, *supra* note 126.

## IV. STATELESS VESSELS

As a general rule, unless otherwise provided for in a treaty, the flag State has exclusive jurisdiction over vessels that fly its flag on the high seas.<sup>134</sup> Vessels may not, however, change their flag during a voyage or while in port unless there is a real transfer of ownership or change of registry.<sup>135</sup> If a ship sails under the flags of two or more States, using them as a matter of convenience, the ship may not claim the nationality of any State and may be assimilated to a ship without nationality.<sup>136</sup>

Some examples of conduct that could lead a vessel to be treated as one without nationality include: (1) the vessel displays no name, flag, or other identifying characteristics; (2) the master or person in charge, upon request, makes no claim of nationality or registry for that vessel; and (3) the claim of registry or the vessel's display of registry is either denied or not affirmatively and unequivocally confirmed by the State whose registry is claimed. Chinese fishing boats are notorious for shutting off their AIS transponders or manipulating the data to mask their identities, take on new identities, or conceal their true locations. Should vessels that engage in such nefarious conduct be assimilated as stateless vessels and therefore subject to the jurisdiction of all States?

International Maritime Organization guidelines require that AIS “should always be in operation when ships are underway or at anchor” unless “the master believes that the continual operation of AIS might compromise the safety or security of his/her ship.”<sup>137</sup> For example, the master may switch off the AIS “in sea areas where pirates and armed robbers are known to operate.”<sup>138</sup> AIS automatically provides information to shore stations, other ships, and aircraft, including the “ship's identity, type, position, course, speed, navigational status and other safety-related information.”<sup>139</sup> AIS also allows ships to “receive automatically such information from similarly fitted

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134. UNCLOS, *supra* note 53, art. 92.

135. *Id.*

136. *Id.*

137. IMO Res. A.917(22), ¶ 21 (Nov. 29, 2001) (Guidelines for the Onboard Operational Use of Shipborne Automatic Identification Systems (AIS)) [hereinafter IMO AIS Guidelines].

138. *Id.*

139. International Convention for the Safety of Life at Sea, 1974, Reg. V/19, ¶ 2.4.5, Nov. 1, 1974, 32 U.S.T. 47, 1184 U.N.T.S. 277 (as amended).

ships.”<sup>140</sup> Finally, AIS can additionally be used to monitor and track ships, as well as exchange data with shore-based facilities.<sup>141</sup>

Each AIS message contains information that falls into two main categories—dynamic information<sup>142</sup> and static information.<sup>143</sup> Static information also includes voyage-related information.<sup>144</sup> Static information is inputted by the vessel's crew and includes identifying data about the ship, such as the Maritime Mobile Service Identity number, a unique nine-digit identification number that is programmed into the ship's AIS system and can be used to deduce the vessel's flag. Static information also includes the ship's International Maritime Organization number, a seven-digit number that is never re-assigned to another ship, as well as the international radio call sign and name of the vessel.<sup>145</sup> A ship that manipulates this static information to alter its identity should be assimilated to be stateless. This would allow a warship of any State to board and take enforcement action against the vessel on the high seas if it has reasonable grounds to suspect that the vessel has engaged in such conduct.<sup>146</sup>

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140. *Id.*

141. *Id.*

142. Dynamic information is broadcast every two to ten seconds depending on the vessel's course and speed while underway and every six minutes while anchored and includes: heading and bearing, course and speed over ground, rate of turn (right or left), ship's position coordinates (latitude/longitude), position time stamp in coordinated universal time (UTC) (when message was generated), and navigational status (“7” indicates vessel is engaged in fishing). IMO AIS Guidelines, *supra* note 137.

143. Static information is provided by the vessel's crew and transmitted every six minutes and includes: Maritime Mobile Service Identity number (a unique nine-digit identification number for each vessel station programmed into the AIS system that can be used to deduce the vessel's flag), IMO number (seven-digit number that is never reassigned to another ship), international radio call sign and name, dimensions (length and beam), type of ship, type of positioning system (GPS, DGPS, Loran-C), and location of position-fixing antenna. *Id.*

144. Voyage information is also provided by the crew and is transmitted every six minutes and includes: ship's draught, destination and estimated time of arrival, hazardous cargo (type), and route plan (waypoints). *Id.*

145. *Id.*

146. UNCLOS, *supra* note 53, art. 110.

## V. STATE RESPONSIBILITY FOR INTERNATIONALLY WRONGFUL ACTS

As discussed above, under generally accepted principles of international law, States incur responsibility for their internationally wrongful acts.<sup>147</sup> An internationally wrongful act occurs when an act or omission is attributable to a State under international law and constitutes a breach of an international obligation of that State.<sup>148</sup>

Although all States have the right to fish on the high seas, that right is not unlimited.<sup>149</sup> As a party to UNCLOS, China has a “duty to take, or to cooperate with other States in taking, such measures . . . as may be necessary for the conservation of the living resources of the high seas.”<sup>150</sup> Additionally, all States are required to “cooperate with each other in the conservation and management of living resources in the areas of the high seas.”<sup>151</sup> Given China’s reprehensible record of IUU fishing and disregard for regional fisheries organizations’ rules, China has clearly failed to live up to its obligations under the Convention. Beijing’s unwillingness or inability to adequately regulate and manage the operations of its vast DWF fleet is leading to widespread degradation of global fish stocks in total disregard of its treaty obligations.<sup>152</sup>

China also has a duty to consider the interests of coastal States when fishing on the high seas. Where fish stocks occur both within the EEZ and on the high seas adjacent to the EEZ, coastal States and States fishing for such stocks on the high seas are required to pursue an agreement on measures necessary to conserve these straddling stocks on the high seas.<sup>153</sup> Similarly, coastal States and other States that fish for highly migratory species are required to “cooperate directly or through appropriate international organizations with a view to ensuring conservation and promoting the objective of optimum utilization of such species throughout the region,” both within the EEZ and on the high seas.<sup>154</sup> There is no evidence that China has sought to cooperate with coastal States to conserve such stocks in foreign

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147. Responsibility of States for Internationally Wrongful Acts, *supra* note 81, art. 1.

148. *Id.* art. 2.

149. UNCLOS, *supra* note 53, art. 116.

150. *Id.* art. 117.

151. *Id.* art. 118.

152. ODI Report (2020), *supra* note 48, at 9, 22, 33.

153. UNCLOS, *supra* note 53, art. 63.

154. *Id.* art. 64.

EEZs or on the high seas. Rather, China turns a blind eye toward its DWF fleet's IUU fishing activities in coastal State EEZs.<sup>155</sup>

China's failure to comply with its legal obligations under UNCLOS to cooperate to conserve the living resources of the oceans constitutes an internationally wrongful act for which China bears State responsibility.<sup>156</sup> As the responsible State, China is under an obligation to make full reparation for the injury caused by its internationally wrongful acts.<sup>157</sup> Full reparation includes restitution, compensation, and/or satisfaction.<sup>158</sup>

Restitution requires that China re-establish the situation that existed before the wrongful act was committed.<sup>159</sup> Given the long-term, widespread damage to the marine environment resulting from China's IUU fishing, it is unlikely that China could restore the health of fish stocks to the status quo ante. Since restitution is unavailable or is insufficient to correct the injuries suffered by the international community, in general, and aggrieved coastal States, in particular, China has a legal obligation to pay compensation for the injuries caused by its internationally wrongful acts, which includes any financially assessable damages.<sup>160</sup> China may also be required to pay interest on any principal sum due, if necessary, to ensure full reparation, which accrues from the date the principal sum should have been paid until the date the obligation is paid in full.<sup>161</sup> China should also be required to give satisfaction for its misdeeds—an acknowledgement that it breached its international obligations under UNCLOS, and a formal apology to the international community, including the coastal States concerned.<sup>162</sup>

## VI. CONCLUSION

According to the FAO, 34.2 percent of stocks are currently being fished at biologically unsustainable levels, while 59.6 percent are being fished at maximally sustainable levels. Only 6.2 percent of stocks are underfished.<sup>163</sup> Since IUU fishing, by definition, is not reported, the percentage of overfished or

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155. ODI Report (2020), *supra* note 48, at 33.

156. Responsibility of States for Internationally Wrongful Acts, *supra* note 81, art. 28.

157. *Id.* art. 31.

158. *Id.* art. 34.

159. *Id.* art. 35.

160. *Id.* art. 36.

161. *Id.* art. 38.

162. *Id.* art. 37.

163. FAO STATE OF WORLD FISHERIES (2020), *supra* note 3, at 47–48.

fully fished stocks is undoubtedly much higher than reported by the FAO. China accounts for over 35 percent of global fish production.<sup>164</sup> Yet, Chinese consumers, comprising about 18 percent of the world's population, account for over 36 percent of total global fish consumption.<sup>165</sup> As China's population continues to grow, so will its appetite for fish. As fish stocks continue to decline in the East and South China Seas from overfishing and industrialization, China's DWF fleet will be forced to expand its worldwide IUU operations to satisfy this growing domestic appetite.

For example, China's DWF fleet accounts for 50 to 70 percent of squid caught on the high seas. Many of these boats also fish illegally in other nations' EEZs or in noncompliance with regional fisheries management organization regulations. In 2018, Chinese boats fishing illegally in North Korean waters caught more squid—160,000 tons worth \$440 million—than Japan and South Korea combined. There is growing concern that squid stocks, which have declined by over 70 percent in South Korean and Japanese waters since 2003, are on the verge of collapse. This precipitous decline of squid in the Yellow Sea and East China Sea is a direct result of China's IUU fishing in North Korean waters.<sup>166</sup>

It is important that the international community act now to prevent, deter, and eliminate China's IUU fishing practices. Given China's deplorable record of IUU fishing, non-compliance with the rules-based international legal order, and willful degradation of the marine environment, "it is more important than ever that the international community stands together for the rule of law and insists on better environmental stewardship from Beijing."<sup>167</sup> Given the extent of China's financial support for its DWF fleet, imposing fines will not deter Chinese fishermen or companies from fishing illegally. More robust countermeasures must be imposed, like Jakarta's practice of destroying fishing boats engaged in illegal activities in its EEZ. Coastal States should also enact domestic legislation that would allow impounding boats and associated fishing gear and confiscating any catch. Chinese ships that manipulate their AIS transmissions and change their name to avoid detection should also be assimilated to be stateless and subject to the jurisdiction of all States on the high seas.

The international community should also assert maximum pressure to encourage China to improve the governance of its DWF fleet to prevent

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164. *Id.* at 2.

165. *Id.* at 70.

166. Urbina, *supra* note 97.

167. Secretary Pompeo Press Statement, *supra* note 54.

IUU fishing and the collapse of global fish stocks. Some measures the Overseas Development Institute recommends that China can take to better govern its DWF fleet, sustain global fisheries, and combat IUU fishing include:

- Improve the registration and transparency of DWF vessels and their owners and operating companies;
  - Adopt higher standards as the flag State, such as ratification of the Agreement on Port State Measures and joining all appropriate RFMOs;
  - Require stricter regulation and enforcement of DWF fleet operations;
- and
- Strengthen bilateral cooperation with coastal States where the DWF fleet operates.<sup>168</sup>

Failure to take appropriate countermeasures against China and require better flag State regulation and enforcement of its DWF fleet will increase the percentage of fish stocks that are being exploited at unsustainable levels and encourage greater IUU fishing.

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168. ODI Report (2020), *supra* note 48, at 9, 34.