

# Disordered Legal Pluralism and Legal Security in Internationally Shared Fisheries

 *Mercedes Rosello\**

## 1. Introduction

Attaining human security in fisheries is an important objective that international law has so far failed to conquer. Internationally shared fisheries can generate particularly challenging scenarios for human security, hosting a wide range of stakeholders that range from the powerful to the very vulnerable. To illustrate the discussion with an example, in West Africa industrial vessels have historically captured a significant proportion of stocks that are shared with local artisanal and subsistence fishers.<sup>1</sup> Foreign fleets have operated under various forms of agreement with different coastal States in the region,<sup>2</sup> but have also been accused

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\* Senior Lecturer, Leeds Beckett University. Acknowledgements: The author thanks Dr. Mitchell Lennan for feedback provided on an earlier draft of this article. Any errors remain the author's alone.

1. Nathan J. Bennett et al, 'Environmental (in)justice in the Anthropocene Ocean' (2023) 147 *Marine Policy*, 105383, Section 2.5.
2. Mi-Ling Li et al, 'Tracking industrial fishing activities in African waters from space' (2021) 22(4) *Fish and Fisheries* 851, 856.

of engaging in illegal and/or unreported fishing operations there.<sup>3</sup> Some shared stocks such as small pelagic species like sardines, mackerels, and sardinellas have an important role in providing food and work security to human populations in the region.<sup>4</sup> The abundance of these stocks is impacted by unsustainable fishing as well as other factors such as climate change and increasing trade pressures.<sup>5</sup> Access to these shared fisheries by large foreign vessels in some African States has generated tensions with small scale artisanal fishers which at times have led to violence.<sup>6</sup> Some practices have caused disruption of subsistence fishing with acutely detrimental outcomes for coastal communities.<sup>7</sup> West African States have ratified international agreements and established domestic laws for the regulation of fishing activities, including provisions for overseeing the access and operations of foreign vessels to such fisheries.<sup>8</sup> Nevertheless, these developments have not been sufficient to stem the problem of over-exploitation in the region, where human insecurity endures.<sup>9</sup>

To address threats to human security through law in the context of internationally shared fisheries in which vulnerable stakeholders are pres-

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3. Dyhia Belhabib and others, 'Euros vs. Yuan: Comparing European and Chinese Fishing Access in West Africa' (2015) 10 PLOS ONE e0118351; Edmund C. Merem et al, 'Analyzing the tragedy of illegal fishing on the West African coastal region.' (2019) 9(1) International Journal of Food Science and Nutrition Engineering 1-15, 9.

4. Pierre Failler, 'Climate Variability and Food Security in Africa: The Case of Small Pelagic Fish in West Africa' (2014) 2(2) Journal of Fisheries & Livestock Production, 2-4.

5. *ibid.*

6. Environmental Justice Foundation, 'Pirate Fishing Exposed: The Fight Against Illegal Fishing in West Africa and the EU' (EJF, 2012) 11.

7. Environmental Justice Foundation and Hen Mpoano, 'Issue Brief: The problem with 'Saiko', an Environmental and Human Catastrophe' (EJF and HM, 2018) 1.

8. Tafsir M. Ndiaye, 'Illegal, Unreported and Unregulated Fishing: Responses in General and in West Africa' (2011) Chinese Journal of International Law 373, 379, quoting Réne-Jean Dupuy, *L'Ocean Partagé* (Pédone, Paris, 1979) 397-398.

9. Belhabib, Sumaila and Pauly (n 3) 72.

ent is not straightforward. In this article, legal instruments and academic literature are scoped in order to unearth possible legal causes of human insecurity in those fisheries contexts, and possible avenues to understand and address them. Part 2 sets out a dual understanding of human security spanning subsistence and safety dimensions, which together coalesce to support human dignity. Part 3 identifies and discusses different international legal and voluntary instruments that are relevant to the protection of human security in fishing, placing a particular focus on its subsistence dimension. It also explains the role of human rights in the security of the most vulnerable fishery stakeholders, and highlights the complexity that multiple international legal instruments can introduce in the context of a fishery.

Considering recent international law and governance research, Part 4 reviews existing literature and discusses how interpretive and implementation silos can result in a less than satisfactory outcome for the legal regulation of fishing activities. Such silos can generate a 'disordered' legal pluralism, particularly once rules from different national origins constellate to regulate different stakeholder activities in internationally shared fisheries, risking incoherence and asymmetries in rights and obligations, and ineffectual regulatory outcomes. This discussion illustrates the desirability of engaging in detailed analysis into and across the different domestic legal rule bundles that constellate to regulate stakeholder activities in internationally shared fisheries, with the aim of producing insight into specific features of legal disorder. In Part 5, a legal security approach is identified as possessing suitable features to guide such a task. This part sets out the principal formal and substantive characteristics of legal security, outlining its synergies with human rights approaches, and its core features of being antithetic to normative chaos and protective of individual rights. The article concludes with a reflection on disordered pluralism and legal insecurity and their relevance for the protection of human security in fisheries contexts.

## 2. Human Insecurity in Internationally Shared Fisheries

The objective of attaining sustainability in marine fisheries is important to maintain the health and productivity of the ocean.<sup>10</sup> International fisheries law (IFL) provides the normative foundation for attaining those ends.<sup>11</sup> Its aim is regulating the conservation and sustainable management of wild marine stocks that cannot be undertaken by a single State due to their transboundary nature.<sup>12</sup> However, IFL has not been effective in this quest.<sup>13</sup> According to recent estimates by the UN Food and Agriculture Organization (FAO), stocks fished unsustainably have increased from 10% in the mid-1970s to 34.2% in 2019.<sup>14</sup> Fishing activity requires adequate regulation because it directly contributes to the removal of marine species,<sup>15</sup> and if carried out destructively or excessively it can be a stressor of the marine ecosystems that sustain stocks.<sup>16</sup> Fishing activ-

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**10.** Food and Agriculture Organization (FAO), ‘State of World Fisheries and Aquaculture’ (Rome 2022), xvii [FAO]; UN, ‘Second World Ocean Assessment’, Volume I, 32 [WOC Vol. I]. Increasingly, there is also a need to consider the detrimental effects of climate change on vulnerable stocks and populations as part of the management of stocks and the regulation of fishing operations: See IPCC, ‘Synthesis Report: Contribution of Working Groups I, II and III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change’ (2014).

**11.** FAO *ibid.* 93-95.

**12.** Robin Allen, James Joseph, and Dale Squires, *Transnational Tuna Fisheries* (Blackwell, 2010) 3.

**13.** Mialy Andriamahefazafy et al, ‘Sustainable development goal 14: To what degree have we achieved the 2020 targets for our oceans?’ (2022) 227 Ocean and Coastal Management 106273.

**14.** FAO, State of World Fisheries and Aquaculture’ (Rome 2022), 46.

**15.** Jeremy B. C. Jackson et al, ‘Historical Overfishing and the Recent Collapse of Coastal Ecosystems’ (2001) 293(5530) Science 629-637; Boris Worm et al, ‘Global Patterns of Predator diversity in the Open Oceans’ (2005) 309(5739) Science 1365-1369; Cecilia M. Holmlund and Monica Hammer, ‘Ecosystem services generated by fish populations’ 1999 (29) Ecological Economics 253, 254.

**16.** David Malakoff D, ‘Extinction on the high seas’ (1997) 277 Science 486.

ties that are undertaken without being subject to any kind of regulation, and those that breach laws established to manage fishing activity, are inconsistent with international legal obligations, or otherwise undermine international fisheries management measures, are usually referred to as illegal, unreported and unregulated or 'IUU' fishing. While not always the only cause of unsustainable fishing, IUU fishing can undermine efforts by regulators, industry, and third parties to ensure effective conservation and management of marine stocks.<sup>17</sup> IUU fishing can be complex in its characteristics and is acknowledged to be a persistent obstacle to attaining sustainability in fishery management.<sup>18</sup> The aim of combatting unsustainable and IUU fishing activities has long been endorsed by the United Nations (UN),<sup>19</sup> and is increasingly linked to the safeguarding of human security.<sup>20</sup>

However, defining human security is not straightforward.<sup>21</sup> Historically, security has been a concept tied to the State, but the 1994 Global Development Report of the United Nations Development Programme (UNDP) marked a shift towards an increasing policy focus on the security of human life. It disengaged security from an exclusive association to the threat of war and tied it to a broader spectrum of threats and risks spanning across political and socio-economic contexts, with a focus on

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17. FAO and IMO, Third Session of the Joint FAO/IMO *Ad Hoc Working Group on Illegal, Unreported and Unregulated Fishing and Related Matters* (2015) 3. Available at <<https://www.fao.org/3/i5736e/i5736e.pdf>> accessed 31 December 2022.

18. FAO, 'Report of the Third Meeting of the Regional Working Group on Illegal, Unreported and Unregulated (IUU) Fishing' (2019) 8-19, 22.

19. UN Sustainable Development Goal 14: Conserve and sustainably use the oceans, seas and marine resources. Available at <<https://www.un.org/sustainabledevelopment/oceans/>> accessed 31 December 2022.

20. FAO (n 14) 93-95.

21. It is a contested concept that can be interpreted and valued differently depending on disciplinary boundaries. For a broad overview, see Gerd Oberleitner, 'Human Security and Human Rights' (2002) 8 ETC Human Rights and Democracy Occasional Paper Series 1, 3.

the individual.<sup>22</sup> Human security conceived in this way extends to include the requirement that States should not just protect the security of the human beings over whom they have jurisdiction from external aggression, but also cater for 'an environment within the State which allows for the well-being and safety of the population'.<sup>23</sup> The UNDP Report attributed two dimensions to human security, namely 'safety from such chronic threats as hunger, disease and repression', and 'protection from sudden and hurtful disruptions in the patterns of daily life – whether in homes, jobs or in communities.' It further considered that those threats 'can exist at all levels of national income and development'.<sup>24</sup> Fukuda-Parr and Messineo have usefully summarised human security as including freedom from fear as well as freedom from want.<sup>25</sup> In the ocean domain, human insecurity associated to fishing and other marine and maritime operations preserves that dual quality.<sup>26</sup> Each dimension alone and in combination in turn can pose a threat to human dignity.<sup>27</sup>

Unsustainable fishing is acknowledged to be a cause of human insecurity due to the serious impacts of depleting resources upon which human beings and their communities depend for survival through food and work.<sup>28</sup> The need to attain and maintaining sustainability is therefore syn-

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22. Emma Rothschild, 'What is Security?' (1995) 124 (3) *Daedalus* 53, 56.

23. In this regard, human security has a broader meaning that personal security as recognised in Article 3 of the Universal Declaration of Human Rights. See Oberleitner (n 21) 10, 15-16.

24. United Nations Development Programme, *Human Development Report 1994* (Oxford University Press, 1994) 23.

25. Sakiko Fukuda-Parr and Carol Messineo, 'Human Security: a critical review of the literature' (2012) CRPD Working Paper No. 11, 3.

26. Christian Bueger and Timothy Edmunds, 'Blue crime: Conceptualising transnational organised crime at sea' (2020) 119 *Marine Policy* 104067.

27. UN Human Security Unit, 'Framework for Cooperation for the system-wide application of Human Security' (2015) 1-15, 2.

28. Elizabeth R. DeSombre, 'The Security Implications of Fisheries' (2019) 95 *International Affairs* 1019, 1033. Tim McClanahan, Edward H. Allison and Joshua E. Cinner, 'Managing Fisheries for Human and Food Security' (2015) 16 *Fish and Fisheries* 78, 85.

ergetic with human security in its 'freedom from hunger' dimension. Additionally, some aspects of fishing operations can occur in ways that pose a threat to human security in its 'freedom from fear' dimension.<sup>29</sup> Fishing crews can experience fear through threats to safety from piracy and other violent crimes.<sup>30</sup> Extreme labour practices in fisheries can also be a source of fear.<sup>31</sup> De Sombre refers to scenarios involving crewing fraud, abandonment on board of vessels, unjust and often brutal working practices, and severe deprivation, often derived from steep economic pressures.<sup>32</sup> Safety concerns are unfortunately extensive in the fishing industry: a recent report denounces a staggeringly high mortality level, which could be in the region of 100,000 per year.<sup>33</sup> Causes involve dangerous working practices stemming from various and often interconnected causes: illegality and secrecy, at times protected by corruption, intense and often unjust competition over dwindling resources, poverty and desperation, the impacts of conflict, and the ravaging effects of environmental degradation.<sup>34</sup>

Just as insecurity is complex, so are the stakeholders that partake of internationally shared fisheries, and so are the possible threats to their security: Smaller companies and individual fishers are ubiquitous in marine fisheries, and can potentially be exposed to many of the threats described

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**29.** Eve De Coning, *Transnational organized crime in the fishing industry: Trafficking in persons, smuggling of migrants, illicit drugs trafficking* (United Nations Office on Drugs and Crime, 2011) 140; Patrick Vrancken, Emma Witbooi, Jan Glazewski, 'Introduction and overview: Transnational organised fisheries crime' (2019) 105 *Marine Policy* 116, 116.

**30.** See in respect of vulnerability to piracy: <<https://www.reuters.com/article/us-somalia-pirates-incidents-factbox-idUSTRE59Q1LE20091027>> accessed 31 December 2022.

**31.** In the broader maritime security context, see Christian Bueger, 'What Is Maritime Security?' (2015) 53 *Marine Policy* 159, 161. See also Ioannis Chapsos, 'Is Maritime Security a Traditional Security Challenge?' in Anthony J Masys (ed), *Exploring the Security Landscape: Non-Traditional Security Challenges* (Springer International Publishing 2016) 59.

**32.** De Sombre (n 28) 1033.

**33.** Fish Safety Foundation, 'Triggering Death: Quantifying the True Human Cost of Global Fishing' (2022) 32-34.

**34.** *ibid.* 42, 45, 73, 77, 92; summary at 166.

in the previous section.<sup>35</sup> Large transnational corporations are capable of having significant impact on the availability of marine living resources,<sup>36</sup> but the crews on board of their fishing vessels are not exempt from threats to their security.<sup>37</sup> Hence, diverse actors of mixed sizes, capacities and influence can assemble around specific fisheries in heterogeneous human security scenarios. Such multiple fishing actors often coexist while operating separately from each other in operational, epistemic, and regulatory silos.<sup>38</sup> While actors share a fishery, they can inflict as well as suffer a range of impacts directly and indirectly on the stock and on each other.<sup>39</sup> The smaller scale fishers are likely to be in a situation of increased vulnerability due to their dependency on the resource and lower resilience capacity.<sup>40</sup>

### 3. Legal Complexity

The governance of the fishing activities that converge upon an internationally shared fishery requires cooperation and coordination efforts by State authorities, as well as bringing together different regulatory

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**35.** Including to the unintended consequences of policy decisions. See Andrew M. Song et al, 'Collateral Damage? Small-Scale Fisheries in the Global Fight against IUU Fishing' (2020) 21 *Fish and Fisheries* 831-834.

**36.** Henrik Österblom et al, 'Transnational Corporations as 'Keystone Actors' in Marine Ecosystems' (2015) *PlotsOne*. Available at <<https://doi.org/10.1371/journal.pone.0127533>> accessed 31 December 2022.

**37.** Bueger (n 31) 161; for examples in fisheries, see EJF (n 6) (n 7), DeSombre (n 28), De Coning (n 29).

**38.** Bennett (n 1).

**39.** Bueger (n 31) 161.

**40.** Dyhia Belhabib, U. Rashid Sumaila and Daniel Pauly D, 'Feeding the poor: contribution of West African fisheries to employment and food security' (2023) 111 *Ocean & Coastal Management* 72, 72.

instruments and arrangements domestically and internationally. Effectiveness can be enhanced by cross-institutional cooperation initiatives,<sup>41</sup> and mixed public and private actor responses to perceived wrongdoing, which are no longer the exclusive domain of States.<sup>42</sup> Often formed in support of States with limited capacity and resources,<sup>43</sup> such assemblages can strengthen responses to insecurity risks, but also have the potential to add legal and jurisdictional complexity.<sup>44</sup> International cooperation is often organised around legal commitments established by international agreement.<sup>45</sup> Multiple international agreements are relevant to human security in fishing operations.

Firstly, IFL is integrated by a host of global, regional and bilateral agreements articulated around the United Nations Convention on Law of the Sea (the Convention, or LOSC).<sup>46</sup> Key global fisheries agreements

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**41.** Juan L. Suarez de Vivero, Juan C. Rodriguez Mateos and D. Florido del Corral, 'The paradox of public participation in fisheries governance. The number of actors and the devolution process' (2008) 32(3) *Marine Policy* 319, 324.

**42.** Jade Lindley and Erika Techera, 'Controlling IUU Fishing through Problem-Oriented Policing' in Saskia Hufnagel and Anton Moiseienko (eds.) *Policing Transnational Crime: Law Enforcement of Criminal Flows* (Routledge, 2020) 51. More broadly, see Carolin Liss, 'New Actors and the State: Addressing Maritime Security Threats in Southeast Asia' (2013) 35 *Contemporary Southeast Asia: A Journal of International and Strategic Affairs*, 141–155; Brendan Flynn, 'Non-state and Hybrid Actorness at Sea: From Narco-Subs to Drone Patrols' in *Routledge Handbook of Maritime Security* (Routledge, 2022) 287–298.

**43.** Carolin Liss, 'Non-state Actors in the Maritime Domain: Non-state Responses to Maritime Security Challenges' in Lisa Otto (ed) *Global Challenges in Maritime Security. Advanced Sciences and Technologies for Security Applications* (Springer, 2020) 215.

**44.** See for example, the three-week detention of crew on board of the Spanish long-liner Alemar Primero by Gabonese officials and a Sea Shepherd Crew over a suspected breach of authorisation conditions and of applicable European Union law in waters of Sao Tome and Principe. Available at <<https://www.iuuwatch.eu/2017/09/fish-cash-batter-eu-robs-africa-seafood/>> accessed 31 December 2022. For a more general analysis of the issue, see Liss (n 43) 225.

**45.** Ndiaye (n 8) 387.

**46.** United Nations Convention on the Law of the Sea (Montego Bay, adopted 10 December 1982, entered into force 16 November 1994) 1833 *UNTS* 396.

are the 1993 FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and the 2009 Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing.<sup>47</sup> Numerous regional treaties have also been adopted in order to constitute organisations with scientific assessment, data collection, and stock allocation and other competences relevant to fishery management. Amongst these bodies, Regional Fisheries Management Organisations (RFMOs) are responsible for adopting rules, processes, and technical and allocation measures, some of which are relevant to the food security of developing States and the protection of artisanal and subsistence fishers.<sup>48</sup> Several voluntary instruments have been elaborated by the FAO in order to promote fisheries conservation and to combat IUU fishing.<sup>49</sup> Broadly speaking, IFL is concerned with the regu-

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**47.** In particular, see Articles 24 and 25 of the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UNFSA).

**48.** Michael W. Lodge et al, *Recommended Best Practices for Regional Fisheries Management Organizations: Report of an independent panel to develop a model for improved governance by Regional Fisheries Management Organizations* (Chatham House, 2007) 96.

**49.** See the FAO Code of Conduct for Responsible Fisheries. Available at <<https://www.fao.org/iuu-fishing/international-framework/code-of-conduct-for-responsible-fisheries/en/>> accessed 31 December 2022; FAO International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported, and Unregulated Fishing <<https://www.fao.org/iuu-fishing/international-framework/ipoa-iuu/en/>> accessed 31 December 2022; FAO Voluntary Guidelines for Flag State Performance <<https://www.fao.org/iuu-fishing/international-framework/voluntary-guidelines-for-flag-state-performance/en/>> and FAO Voluntary Guidelines on the Responsible Governance of Tenure of Land, Forests and Fisheries in the Context of National Food Security <<https://www.fao.org/3/i2801e/i2801e.pdf>> accessed 31 December 2022.

lation of marine capture fishing activities and the conservation and management of marine living resources, and therefore predominantly relates to the freedom from want dimension of human security.<sup>50</sup>

The second dimension of human security, namely freedom from fear, relates more closely to the protection of individuals who work in the fishing sector, whether on board of a vessel or in support of fishing operations, and by extension to the regulation of employment, training, and operating practices with a view to ensuring human safety. As Lindley and Techera discuss in the context of IUU fishing control, multiple treaties converge for the regulation of these activities.<sup>51</sup> These include the 2007 International Labour Organization (ILO) Work in Fishing Convention No. 188, the 2012 International Maritime Organization (IMO) Cape Town Agreement on the Implementation of the Provisions of the 1993 Protocol relating to the Torremolinos International Convention for the Safety of Fishing Vessels, and the 2012 IMO Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel. In addition, the 2000 United Nations Convention against Transnational Organized Crime and its protocols,<sup>52</sup> are relevant to the growing problem of human trafficking on board of fishing vessels.<sup>53</sup> All these treaties are important for safety aspects of human security, and the safeguarding of human beings from dangerous working practices, the impacts of crime, or unsafe fishing vessel structures, which are areas that IFL does not fully extend to. Insofar as they apply to marine fisheries contexts,

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**50.** Valentin J. Schatz, and A.N. Honniball, 'International Fisheries Law' (2020) Oxford Bibliographies < <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0196.xml> > accessed 31 December 2022.

**51.** Lindley and Techera (n 42) 73.

**52.** Especially the Protocol against the Smuggling of Migrants by Land, Sea and Air.

**53.** See Joan P. Mileski, Cassia Bomer Galvao, and Zaida Denise Forester, 'Human trafficking in the commercial fishing industry: A multiple case study analysis' (2020) 116 *Marine Policy* 103616.

those agreements also operate under the framework of the LOSC, which set out the jurisdictional blueprint that State parties must abide by.<sup>54</sup>

The rules that emanate from those instruments can be adopted, implemented, and enforced differently by States depending on their respective jurisdiction. The LOSC establishes zonal jurisdictional demarcations and related cooperation mechanisms. A key jurisdictional divide for the purposes of governing fishing operations concerns the Exclusive Economic Zone (EEZ), where flag States and coastal States play distinct roles. According to Article 92 of the Convention, a flag State has exclusive jurisdiction over the vessels it registers and regulates in the high seas, but the rules of jurisdiction are different in the EEZ: Under Article 56(1)(a) of the Convention, in the EEZ, which measures 200 nautical miles from the baseline, coastal States have 'sovereign rights for the purpose of exploring and exploiting, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil'.<sup>55</sup> The EEZs of the world are the marine areas where most marine living resources occur.<sup>56</sup> However, as Stephens explains, coastal States 'do not have general sovereignty in these waters, and high seas freedoms (with the exception of fishing) continue to apply'.<sup>57</sup> The implication of this is that the living resources of a fishery situated in the EEZ are subject to the legal prescription and enforcement

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**54.** Shirley V. Scott, 'The LOS Convention as a constitutional regime for the oceans' in Alex G. Oude Elferink (ed.) *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (Brill Nijhoff, 2005) 9.

**55.** In accordance with Articles 2 and 3 of the Convention 'The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea', which extend 'up to a limit not exceeding 12 nautical miles, measured from baselines determined in accordance with this Convention'.

**56.** Ndiaye (n 8) 381.

**57.** Tim Stephens, 'Global Ocean governance in the Anthropocene: From extractive imaginaries to planetary boundaries?' (2022) *Global Policy* 1, 3.

protection of the coastal State, as corollary to its international rights and obligations under the Convention for the purposes of conserving and managing the fishery.<sup>58</sup> As specified in Article 62(4) of the Convention, this includes the establishment of management measures, such as setting a total allowable catch and quota, licensing rules, fishing regulations, scientific, and other conservation and management measures. However, the coastal State is obligated by Article 62(2) of the LOSC to give access to surplus resources to vessels flagged to other States if it 'does not have the capacity to harvest the entire allowable catch'. Foreign vessels can thus operate under international access agreements or under individual licensing and/or chartering arrangements with the relevant coastal State.<sup>59</sup>

The coastal State must balance the possible economic benefits that foreign vessel access might bring against other factors. Article 61(3) requires coastal States to *inter alia* have consideration of the economic needs of their coastal communities when they determine the total allowable catch and establish conservation and management measures. Naturally, such measures are to apply to national and foreign vessels operating in the EEZ, as Article 62(4) makes clear. To have consideration for the economic needs of coastal communities when balancing access related priorities and interests implies the need to consider their needs in the context of having to share with other stakeholders fish stocks upon which they may depend as sole source of work, food, and development.<sup>60</sup> As Nakamura,

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**58.** Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4, 34 ¶108 [Advisory Opinion to the SRFC].

**59.** These are typical arrangements in the West African region. See Vlad M. Kaczynski, 'Coastal Fishing Fleets in the Sub-Saharan West African EEZ' (1989) *Marine Policy* 1, 3 et seq.

**60.** Daniela Diz, Elisa Mogera and Meriwether Wilson, 'Sharing the benefits of sustainable fisheries: from global to local legal approaches to marine ecosystem services for poverty alleviation (Science – Policy Analysis)' (2017) 7 *University of Strathclyde Centre for Environmental Law and Governance* 25.

Diz, and Morgera argue, ex-ante impact assessments should be undertaken if the larger stakeholders with which the fishery is to be shared are known to have a detrimental environmental and/or social impact.<sup>61</sup> This is particularly important if the resource is not plentiful.<sup>62</sup> Further, other considerations also apply with regard to the utilisation of the resources, as Article 62(3) indicates that the coastal State shall:

...take into account all relevant factors, including, *inter alia*, the significance of the living resources of the area to the economy of the coastal State concerned and its other national interests, [...] the requirements of developing States in the subregion or region in harvesting part of the surplus and the need to minimize economic dislocation in States whose nationals have habitually fished in the zone or which have made substantial efforts in research and identification of stocks.

This implies an element of discernment in access and allocation decisions on the basis of locality, development, and the flag State's relationship with the coastal State in fisheries matters and contribution made to the coastal State's fisheries knowledge.

In the EEZ, flag States must have due regard for the rights as well as the obligations of coastal States,<sup>63</sup> which as explained are principally concerned with living resource management. This due regard obligation is significant not only for flag States to support the coastal State in matters involving compliance and enforcement of the coastal State's own fisheries laws: arguably, it is also important for overseeing fishing conduct under rules established by the flag State itself, insofar as they are addi-

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**61.** Julia Nakamura, Daniela Diz and Elisa Morgera, 'International legal requirements for environmental and sociocultural assessments for large-scale industrial fisheries' (2022) 31 *Review of European, Comparative, and International Environmental Law* 331, 331.

**62.** See Failler (n 4) 2.

**63.** Richard Barnes, 'Flag States', in Donald Rothwell et al (eds.) *The Oxford Handbook on the Law of the Sea* (Oxford, Oxford University Press, 2015) 317, 211-212.

tional to and compatible with those established by the coastal State.<sup>64</sup> Further, flag States remain responsible for the operational standards set out in Article 94(5) of the Convention, which refers broadly to administrative, technical, and social matters as they may take place on board of the fishing vessel.<sup>65</sup> Hence, many scenarios of risk that are relevant to human security directly fall under the umbrella of flag State jurisdiction in accordance with LOSC Article 94 irrespective of vessel location. The resulting jurisdictional landscape may not always be characterised by clarity, and might instead be prone to overlaps, authority avoidance, friction and potentially detrimental results for human security.<sup>66</sup>

In this scenario of legal complexity, special attention should be paid to the legal protections of the most vulnerable fishery actors.<sup>67</sup> In particular, smaller scale subsistence fishers are less resilient to human security threats as well as being under-represented in the decision-making processes leading to stock access and other management decisions and measures, which can perpetuate situations of comparative disadvantage.<sup>68</sup> Legitimacy questions are relevant too where impacted coastal communities lack representation, leading to discrepancies between the need to secure access to food, work, and development, and policy priorities.<sup>69</sup> These

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**64.** For example, European Union shark finning restrictions apply to European Union vessels even in the EEZ of coastal States with no such restrictions. For commentary of shark finning legislation in the European Union and a brief overview of other frameworks, see Annamaria Passantino, 'The EU shark finning ban at the beginning of the new millennium: the legal framework' (2013) 71(3) *ICES Journal of Marine Science* 429-434.

**65.** Ndiaye (n 8) 397-398.

**66.** In a broader context, see Vassilis P. Tzevelekos, 'Human Security and Shared Responsibility to Fight Transnational Crimes: Resolution 2240 (2015) of the United Nations Security Council on Smuggling of Migrants and Human Trafficking off the Coast of Libya' in Stefan Salomon, Lisa Heschl, Gert Oberleitner and Wolfgang Benedek (eds.) *Blurring Boundaries: Human Security and Forced Migration* (Brill, 2017) 99, 92.

**67.** Diz, Mogera, and Wilson (n 60) 28.

**68.** See Bennett (n 1) 105383.

**69.** Diz, Mogera, and Wilson (n 60) 25.

contexts require consideration of impacts not only in an empirical sense, but also legally, to assess erosion of individual rights,<sup>70</sup> including rights of an economic and social character associated with the need to a productive environment and to development.<sup>71</sup> There is a synergetic and mutually reinforcing relationship between human security and those rights, though only the latter have a normative character by virtue of their legal status.<sup>72</sup>

As Diz, Morgera and Wilson advocate, a human rights approach is desirable to secure the nutrition, work availability, and development opportunity of those whose security is affected.<sup>73</sup> The International Covenants on Civil and Political Rights, and on Economic, Social, and Cultural rights are widely ratified instruments.<sup>74</sup> In addition, the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (the Guidelines) provides guidance to States on the adoption of human rights approaches in the context of small-scale marine fisheries protection, management, and promotion. It is among the stated objectives of the Guidelines to 'enhance the contribution of small-scale fisheries to global food security and nutrition and to support the progressive realization of the right to adequate food'.<sup>75</sup> They also aim *inter alia* to make a contribution 'to the equitable development of small-scale fishing communities' and to 'poverty eradication' in the context of fishery management.<sup>76</sup> Ad-

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70. See Robert J. Hanlon, and Kenneth Christie, *Freedom from Fear, Freedom from Want: An Introduction to Human Security* (University of Toronto Press, 2016) 57.

71. See Oberleitner (n 21) 20.

72. Wolfgang Benedek, 'Human Security and Human Rights Interaction' (2008) 59 International Social Science Journal 7, 14.

73. Diz, Mogera, and Wilson (2017) 25 & 26, footnote 60.

74. Available at <<https://www.ohchr.org/en/instruments-listings>> accessed 31 December 2022.

75. FAO Guidelines, paragraph 1.1(a).

76. *ibid.*, paragraph 1.1(b).

ditionally, the Guidelines promote the adoption of a human rights based approach in domestic legislation and the participation of small-scale fishing communities in the decision-making processes that affect them and the resources they depend on, particularly in developing countries and in support of marginalised groups.<sup>77</sup>

In summary, when a fishery is situated in the EEZ and is internationally shared by stakeholders of several nationalities, the applicable international norms relating to jurisdiction imply the convergence of domestic legal rules not only from the coastal State, but also as many flag States as there are vessel nationalities in that EEZ at any one time. The implications of this for human security are that the fishery stakeholders' activities will in many cases be regulated differently depending on activity and flag. The extent to which such legislation contains the necessary human security protections is likely to depend on *inter alia* whether the different States involved have ratified or acceded to a multiplicity of international instruments. As discussed, these transcend the scope of IFL, including agreements touching on employment practices, health and safety, transnational crime, and human rights. Additionally, protections for the smaller and more vulnerable fishery stakeholders might also depend on the extent to which the coastal State has adopted the recommendations in the FAO Guidelines.

## 4. Disordered Legal Pluralism

Beyond the previously discussed complexities, additional reasons suggest that the analysis of international instruments alone might not be sufficient to comprehensively identify the causes for the failure of IFL in the

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77. *ibid.*, paragraph 1.2.

protection of human security. The effectiveness of many international treaties depends not only on their content and scope, or the number of ratifications or accessions, but also on their implementation and its broader effects.<sup>78</sup> Further, international cooperation obligations for the management of transboundary fishing are typically *due diligence* obligations.<sup>79</sup> This is 'an obligation to deploy adequate means, to exercise best possible efforts, to do the utmost' in order to achieve the desired result.<sup>80</sup> Such obligations do not therefore imply the attainment of specific outcomes or standards, permitting States considerable discretion in their implementation. Additionally, insofar as this type of obligations establish duties that domestic authorities must abide by, they are more likely to require implementation in a State's domestic legal system than other types of international obligation.<sup>81</sup> As Verdier and Versteeg indicate, obligations of this nature often require the adoption of domestic legislation to have full effect.<sup>82</sup>

It might be tempting to think that if two States have ratified and implemented the same international agreement, the parts of their domestic legal frameworks resulting from the implementation of that agreement might be similar, or at least compatible and/or complementary. Yet, this

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**78.** Pierre-Hugues Verdier and Mila Versteeg 'International Law in National Legal systems: An Empirical Investigation' (2015) 109(3) *American Journal of International Law* 514, 517, 522.

**79.** *Advisory Opinion to the SRFC*, ¶ 124.

**80.** *Responsibilities and obligations of States with respect to activities in the Area*, Advisory Opinion, 1 February 2011, ITLOS Reports 2011, p. 10, ¶ 110.

**81.** For example, obligations leading to the establishment of international bodies may not require domestic legislation, whereas obligations to issue authorisation or licences, or to close off an area to fishing activity may require such legislation to furnish domestic authorities with the relevant legal powers and establish related obligations on citizens, sanctions where appropriate, etc. See Karen Knop, 'Here and There: International Law in Domestic Courts' (2000) 32 *New York University Journal of International Law & Politics* 501, 506.

**82.** Verdier and Versteeg (n 41) 517, 522.

should not be taken for granted. As Knop explains, the domestic legal rules that result from international treaty implementation are the product of a 'process of translation from international to national'.<sup>83</sup> This might result in diverging meanings across States and across institutions within States. According to Roberts, international law is a product of social construction and is processed and understood via the perception of different actors who often interpret and apply it differently across distinct national and sub-national communities, even within the context of the same specialist fields.<sup>84</sup> There is a risk that differences in interpretation and implementation might result in a lack of coherence within and across domestic scenarios. This risk will be enhanced in fishery contexts involving transnational fishing operators. The domestic legal rules that constellate to regulate the conduct of actors in a shared fishery in matters of human security protection, some of which will originate from different States, might set out processes, rights, and obligations that interact poorly with one another, resulting in asymmetries, fragmentation, and ultimately ineffectiveness.

The environmental governance literature is illustrative of problems derived from the unintended consequences of disordered legal outcomes. Several authors have highlighted fragmentation,<sup>85</sup> and qualitative differences in substance and process across relevant legal systems, resulting in what can be termed a 'disordered legal pluralism' across and within

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**83.** See Knop (n 81).

**84.** Anthea Roberts, *Is international law international?* (Oxford University Press, 2017) 24, 25, 35.

**85.** In respect of fragmentation in fisheries governance, see Catherine Blanchard, 'Fragmentation in high seas fisheries: Preliminary reflections on a global oceans governance approach' (2017) 84 *Marine Policy* 327; Mialy Andriamahefazafy et al, 'Sustainable development goal 14: To what degree have we achieved the 2020 targets for our oceans?' (2022) 227 *Ocean and Coastal Management* 106273. More broadly, see Christian Bueger and Timothy Edmunds, 'Blue Crime: Conceptualising Transnational Organised Crime at Sea' (2020) 119 *Marine Policy* 104067.

States, which can challenge legal coherence on multiple fronts.<sup>86</sup> Heyvaert warns that regulation derived from global or regional institutions can generate a destabilising influence on the cohesiveness of legal frameworks designed for environmental protection.<sup>87</sup> Such effects range from geographic factors to others linked to thin legitimacy, polycentricity and coordination challenges amongst others.<sup>88</sup> Heyvaert refers to the bundles of legal rules that can converge to govern different aspects of transnational scenarios as ‘a patchwork more than a framework’.<sup>89</sup> Further, according to Young, in contexts of environmental protection there are unclear interplays between rules as they interact at different levels, potentially giving rise to incoherent and ineffectual governance practices across the different contexts and communities to which they apply.<sup>90</sup> The regulation of transboundary fishing activity relies on a multiplicity of rules of diverse scope and origin.<sup>91</sup> While it is known that there is fragmentation and that asymmetries within and across domestic legal systems exist in respect of the duties and protections they establish,<sup>92</sup> the specific voids and frictions that result from their interactions with one another are less

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**86.** Maarten Bavinck and Joyeeta Gupta, ‘Legal Pluralism in Aquatic Regimes: A Challenge for Governance’ (2014) 11 *Current Opinion in Environmental Sustainability* 78, 81; Joeri Scholtens and Maarten Bavinck, ‘Lessons for Legal Pluralism: Investigating the Challenges of Transboundary Fisheries Governance’ (2014) 11 *Current Opinion in Environmental Sustainability* 10, 11.

**87.** Veerle Heyvaert, ‘The Transnationalization of Law: Rethinking Law through Transnational Environmental Regulation’ (2017) 6 *Transnational Environmental Law* 205, 209.

**88.** *ibid.*, 212.

**89.** *ibid.*, 220.

**90.** Oran Young, ‘Vertical Interplay among Scale-dependent Environmental and Resource Regimes’ (2006) 11 *Ecology and Society* 27, 28.

**91.** Henrik Österblom et al., ‘Adapting to regional enforcement: fishing down the governance index.’ (2010) 5(9) *PloS one* e12832. Available at <<https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0012832>> accessed 31 December 2022.

**92.** Bavinck and Gupta (n 86) 81; Scholtens and Bavinck (n 86) 11.

well known.<sup>93</sup> Such voids and frictions are likely to increase when the full spectrum of international instruments that are relevant to human security in fisheries is taken into account.

The preceding considerations suggest that cooperation in prescription and enforcement in the regulation of human security in fishing might at least in part fail due to the content, scope, and interactions of domestic legal rules. Poorly integrated sets of domestic rules can result from the different interpretation and implementation processes that individual sovereign States follow in their respective ratifications or accessions of international agreements.<sup>94</sup> Martin refers to States as being able to ‘interpret and implement their commitments across all sectors in an endless variety of ways’.<sup>95</sup> Such result may not necessarily involve infringement of international obligations,<sup>96</sup> but where it occurs it might foster a less than optimum outcome for the regulation of fishing operations,<sup>97</sup> particularly given the interactions and interdependencies previously discussed. Hence disordered legal pluralism has the potential to produce a legal landscape that is opaque, fragmented, incoherent, and ineffectual.<sup>98</sup>

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**93.** However, a lack of coordination across domestic fishery policies is an acknowledged problem that the FAO has tried to address via the utilisation of national plans of action in the context of IUU fishing control. The FAO International Plan of Action to Prevent, Deter and Eliminate IUU Fishing addresses this issue in paragraphs 25 to 27.

**94.** Josh Martin, ‘A Transnational Law of the Sea’ (2021) 21(2) *Chicago Journal of International Law* 419, 435 *et seq.*

**95.** *ibid.*, 438.

**96.** At least in part this result is acknowledged to be related to complexity and domestic implementation difficulties. See, for example, Jenny Cheatle, ‘Overview of Procedures to Assess Compliance in ICCAT’ (undated)- Available at <<https://www.iattc.org/GetAttachment/cf71b4b4-d462-45a6-a378-002219581380/Overview%20of%20procedures%20to%20assess%20compliance%20in%20ICCAT>> accessed 31 December 2022.

**97.** For a broader analysis on jurisdictional silos, see Yoshifumi Tanaka, ‘Zonal and integrated management approaches to ocean governance: reflections on a dual approach in international law of the sea’ (2004) 19(4) *International Journal of Marine and Coastal Law* 483-514.

**98.** See Scholtens and Bavinck (n 86) 10, 11.

In fisheries contexts, a lack of transparency and precision in respect of authorisations and permits and their associated conditions and duties, such as notification of catches, discards, and landings, can have detrimental results for stocks as well as the security of crews.<sup>99</sup> These are important factors not only for ascertaining the legality and sustainability of operations or evaluating the equity of access decisions, but also for avoiding unnecessary tensions related to jurisdiction and enforcement. Moreover, if a fishery supports different stakeholders, the externalisation of losses by one stakeholder is borne by another.<sup>100</sup> Individual protections, rights and obligations, across stakeholders might be asymmetrical, raising the possibility that those most exposed to human security threats might also be the most lacking in basic legal protections. It follows that regulatory silos should be avoided in favour of an approach that is coherent to the fishery and its stakeholders.

These issues invite reflection on the failing fortunes of international law in respect of fisheries sustainability and related human security erosions.

While prominent international narratives often point at flaws and gaps in individual treaties, or at failures in the implementation of international obligations by States as a root cause for ineffectiveness,<sup>101</sup> these insights might not offer a comprehensive explanation of the reasons for

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**99.** See footnote 44 regarding the case of the longliner *Alemar Primero*, which was detained in São Tomé & Príncipe as a direct result of confusion in respect of fishing authorisations and permits involving shark fishing, and evidence of on board shark carcasses separated from fins prohibited by European Union law.

**100.** See Martin (n 94) 445.

**101.** See WOC Vol. I (n 10) 23.

**102.** See WOC Vol. I (n 10) 23.

failure.<sup>102</sup> The material set out in the previous paragraphs suggests that disordered legal pluralism might also be preventing effectiveness. Hence, insight into the features and interactions of the domestic rule assemblages that constellate across shared fisheries appears desirable to fully scope possible causes of legal ineffectiveness.

An approach based on domestic as well as comparative exploration across specific domestic legal rules as they constellate around the fishery is compatible with the UN Framework for Cooperation for the system-wide application of Human Security (the Framework) and its recommendations.<sup>103</sup> The Framework is rooted in UN General Assembly Resolution 66/290, according to which a common understanding of human security embraces the right of human beings, especially the most vulnerable, to live with dignity and free from want and fear, and enjoy an equal opportunity to develop their human potential. Apart from having human beings at its heart, the Framework also calls for approaches that are comprehensive, context-specific, and prevention-oriented. It also recognises multiple interlinkages across peace and development, and across civil, political, social, economic and cultural rights. It recognises that multiple institutional collaborations are required nationally and internationally to avoid policy silos and acknowledges States as the principal actors with responsibility for ensuring the human security of their

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**102.** Additional anecdotal examples can be offered to illustrate how the intricacies of the legal and jurisdictional rules that govern transboundary fishing can undermine the effectiveness of legal frameworks. See firstly the recent complaints over court instruction time and ensuing delays following *Operacion Tarantelos* in Spain, which involved a sting on unauthorised bluefin tuna farming in Malta: <https://www-moncloa-com.cdn.ampproject.org/c/s/www.moncloa.com/2022/07/28/atun-rojo-audiencia-nacional-pesca-ilegal-1539897/amp/>. See also the failure to prosecute a Chinese vessel after at sea arrest in Uruguay over confusion surrounding the facts and their legal significance: <https://www-elpais-com-uy.cdn.ampproject.org/c/s/www.elpais.com.uy/amp/informacion/judiciales/fiscal-archivo-caso-buque-chi-no-entendio-hubo-pesca-ilegal-desacato.html>.

**103.** UN Human Security Unit (2015) (n 27) 1.

citizens. A key aim of this approach is to strengthen the protection and empowerment of human beings. Part of its function is analytical: ‘to uncover the various factors that impede those who are most vulnerable (...) from accessing essential public services and economic opportunities. Subsequently, services can be tailored to meet the specific needs of these groups.’<sup>104</sup>

The integrative approach that characterises the Framework resonates with the direction followed by many legal scholars interested in identifying, tracing and comparing the features of legal frameworks as they apply to transnational conduct regulation scenarios. For example, Scott explains that many scholars opt for an inclusive legal pluralism that incorporates non-legal rules that possess conduct regulating force.<sup>105</sup> Yet, transcending legal fragmentation via inclusive approaches that integrate non-legal rules risks missing legal accountability voids and complexity barriers. Legal accountability should remain a part of any approach aiming to reinforce the protection and empowerment of individuals vis-à-vis decisions of State authorities that have the potential to undermine their security. Further, situations of disordered pluralism call for analysis of the disordered features to shed clarity before integrative exercises are undertaken. However, to the extent that disordered pluralism is a systemic problem, analysis requires a suitable guiding tool to identify and remedy potential issues of fragmentation and incoherence within and across legal fields and systems. To meet these demands, a legal security approach could prove useful.

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**104.** *ibid.*, 6.

**105.** Craig Scott, ‘Transnational Law as Proto-Concept: Three Conceptions’ (2009) Research Report No. 32/2009, Osgood Hall Law School of York University, p. 865 et seq. This approach is also supported by Zumbansen. See Peer C. Zumbansen, ‘Transnational Law: Theories and Applications’ in Peer C. Zumbansen (ed.) *The Oxford Handbook of Transnational Law* (Oxford University Press, 2021) 3.

## 5. The Legal Security Lens

Legal security is both a concept and a legal principle with two complementary dimensions: subjectively, it interprets and constrains the exercise of public authority from the perspective of individual rights, and objectively it requires the legal architecture to be systemically coherent.<sup>106</sup> It is associated with the aim of securing for human beings a level of certainty in and accessibility to individual rights and obligations, so as to allow some critically important aspects of life to unfold without disruption from detrimental intervention by public authorities.<sup>107</sup> It supports the articulation of clear and coherent legal rules in areas of civil and especially economic life that are mediated by public authority, safeguarding the credibility of the law and predictability of its application.<sup>108</sup> Systemic considerations refer to epistemology and coherence of legal rules and processes within the domestic legal architecture,<sup>109</sup> meaning legal security is antithetic to normative chaos.<sup>110</sup> An implication of this imperative for systematicity and accessibility is that decision-making by public authority must be transpar-

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**106.** Gregorio Peces-Barba Martínez, 'Legal Security from the Point of View of the Philosophy of Law' (1995) 8 *Ratio Juris* 127, 132, 136, 139; Biruté Pranevičienė and Kristina Mikalauskaitė-Šostakienė, 'Guarantee of Principles of Legitimate Expectations, Legal Certainty and Legal Security in the Territorial Planning Process' (2012) 19 *Jurisprudencija* 643, 647; Åke Frandberg, *From Rechtsstaat to Universal Law-State: An Essay in Philosophical Jurisprudence* (Springer, 2014) p. 143. Ivaylova CB, 'Legal Security as a Principle in Law Making' (2017) 2(14) *Globalization, the State and the Individual* 23, 24, 27.

**107.** Frandberg, *ibid*. See also Arghyrios A. Fatouros, 'The Quest for Legal Security of Foreign Investments - Latest Developments' (1963) 17 *Rutgers Law Review* 257-304; RJ Greenwald, 'Problems of Legal Security of the World Hard Minerals Industry in the International Ocean' (1971) 4 *Natural Resources Law* 639-645.

**108.** Anne-Julie Kerhuel and Arnauld Raynouard, 'Measuring the Law: Legal Certainty as a Watermark' (2010) 8 *International Journal of Disclosure and Governance* 4, 17, 18, 20.

**109.** Cherneva Boyka Ivaylova, 'Legal Security as a Principle in Law Making' (2017) 2(14) *Globalization, the State and the Individual* 23, 27.

**110.** Peces-Barba Martinez (n 106) 137, 139.

ently justified by reference to legal rules and principles, preventing arbitrariness.<sup>111</sup> Hence, legal security is fundamentally tied to the rule of law.

Legal security is not only a conceptual and methodological approach: it has been enshrined as a constitutional principle that is present in numerous domestic legal systems, especially in Europe.<sup>112</sup> It promotes an open and mature legal order as a public good upon which human beings can rely for the understanding and actioning of their legally recognised rights and freedoms.<sup>113</sup> For example, where domestic law recognises a right to participate in economic life, this includes the non-encroachment of that right by public measures to protect the individual's ability to access and rely on the legal rules, and anticipate decisions that are consistent with them in matters related to tenure or access to resources. These features make legal security an instrument of interest for legal analysis in internationally shared fishery scenarios, given the previously discussed context of disordered legal pluralism. Such approach is also compatible with the broad features of the UN Framework, and synergetic with human rights approaches to natural resource regulation.<sup>114</sup> The lens can

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**111.** *ibid.*, 224-228.

**112.** Orlando Mejía-Herrera, 'El principio general de la seguridad jurídica en la jurisprudencia comunitaria europea: un punto de referencia para los tribunales latinoamericanos' (2012) 2 Boletín Electrónico sobre Integración Regional del CIPEI. Available at: <<https://intranet.eulacfoundation.org/es/system/files/E1%20PRINCIPIO%20GENERAL%20DE%20LA%20SEGURIDAD%20JUR%C3%88DICA%20EN%20LA%20JURISPRUDENCIA%20COMUNITARIA%20EUROPEA..pdf>> accessed 31 December 2022; Stanley L. Paulson, 'Radbruch on Unjust Laws: Competing Earlier and Later Views?' (1995) 15(3) Oxford Journal of Legal Studies 489, 495.

**113.** Kerhuel and Raynouard (n 108) 11, 17.

**114.** In particular, Principles 7, 8, and 9 of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries exhort the adoption of rules-based approaches underpinned by independent adjudication, the publication of clearly defined laws, policies, and decisions in accessible formats and languages, and upholding the rule of law as the basis for accountability. For further insight on the human rights dimensions of the Guidelines, see Nakamura, Diz, and Morgera (n 61) 331.

help highlight legal voids related to human security concerns, such as the absence or asymmetry in protected rights, or the presence of competing rights or administrative barriers to the exercise of such right. If used comparatively, it can also support the identification and analysis of asymmetries and discontinuities in individual obligations as they apply to different stakeholders in the shared fishery. In turn, this has the potential of producing knowledge on the effect of legal silos and other flaws. This knowledge can be used to provide a basis for legal development towards a regulatory approach that is coherent with the requirements of the fishery and attuned to human security needs.

## 6. Conclusion

The background and discussion previously set out invite reflection on the reasons for the failing fortunes of international law in securing sustainable exploitation of fishery resources essential for human subsistence and other human security concerns. Prominent international narratives rightly point at the flaws and scope limitations in international treaties, and at failures in the implementation of international obligations by certain States as a root cause for failure. However, they alone might not offer a sufficiently comprehensive explanation. In addition, disordered legal pluralism is likely to also be a factor compromising the effectiveness of IFL and other international law frameworks. It might generate undesirable results including a lack of coherence in legal regulation and leaving vulnerable persons insufficiently protected. As fishing and related activities taking place in internationally shared fisheries often unfold in regulatory silos, legal incoherences and voids might not be obvious unless careful legal analysis of the disordered features is undertaken. Legal security appears well positioned as a perspective to undertake such analysis.

The combination of subjective and systemic features in the legal security approach and its synergetic relationship with human rights and the rule of law make it a desirable lens to evaluate the regulatory landscape of internationally shared fisheries. Used comparatively, it can guide analysis of asymmetries in individual rights and obligations. Overall, it should produce useful knowledge upon which to base specific legal reforms and development, as preparative steps towards more integrative governance approaches.

## References<sup>115</sup>

- Allen R, Joseph J, Squires D, *Transnational Tuna Fisheries* (Blackwell, 2010).
- Andriamahefazafy M et al, ‘Sustainable development goal 14: To what degree have we achieved the 2020 targets for our oceans?’ (2022) 227 Ocean and Coastal Management 106273.
- Barnes R, ‘Flag States’, in Rothwell D et al (eds.), *The Oxford Handbook on the Law of the Sea* (Oxford University Press, 2015).
- Bavinck M, Gupta J, ‘Legal Pluralism in Aquatic Regimes: A Challenge for Governance’ (2014) 11 Current Opinion in Environmental Sustainability 78.
- Belhabib D, and others, ‘Euros vs. Yuan: Comparing European and Chinese Fishing Access in West Africa’ (2015) 10 PLOS ONE e0118351.
- Belhabib D, Sumaila UR, Pauly D, ‘Feeding the poor: contribution of West African fisheries to employment and food security’ (2023) 111 Ocean & Coastal Management 72.
- Benedek W, ‘Human Security and Human Rights Interaction’ (2008) 59 International Social Science Journal 7.
- Bennett NJ et al, ‘Environmental (in)justice in the Anthropocene Ocean’ (2023) 147 Marine Policy, 105383.
- Blanchard C, ‘Fragmentation in high seas fisheries: Preliminary reflections on a global oceans governance approach’ (2017) 84 Marine Policy 327.
- Bueger C, Edmunds T, ‘Blue crime: Conceptualising transnational organised crime at sea’ (2020) 119 Marine Policy 104067.

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**115.** All internet sources have last been accessed on 31 December 2022.

- Chapsos I, 'Is Maritime Security a Traditional Security Challenge?' in Masys AJ (ed), *Exploring the Security Landscape: Non-Traditional Security Challenges* (Springer International Publishing, 2016).
- Cheatle J, 'Overview of Procedures to Assess Compliance in ICCAT' <<https://www.iatc.org/GetAttachment/cf71b4b4-d462-45a6-a378-002219581380/Overview%20of%20procedures%20to%20assess%20compliance%20in%20ICCAT>>.
- Christian B, 'What Is Maritime Security?' (2015) 53 *Marine Policy* 159.
- De Coning E, *Transnational organized crime in the fishing industry: Trafficking in persons, smuggling of migrants, illicit drugs trafficking* (United Nations Office on Drugs and Crime 2011).
- DeSombre ER, 'The Security Implications of Fisheries' (2019) 95 *International Affairs* 1019.
- Diz D, Morgera E, Wilson M, 'Sharing the benefits of sustainable fisheries: from global to local legal approaches to marine ecosystem services for poverty alleviation (Science – Policy Analysis)' (2017) 7 *University of Strathclyde Centre for Environmental Law and Governance* 25.
- Environmental Justice Foundation and Hen Mpoano, 'Issue Brief: The problem with 'Saiko', an Environmental and Human Catastrophe' (2018).
- Environmental Justice Foundation, 'Pirate Fishing Exposed: The Fight Against Illegal Fishing in West Africa and the EU' (2012).
- Failler P, 'Climate Variability and Food Security in Africa: The Case of Small Pelagic Fish in West Africa' (2014) 2(2) *Journal of Fisheries & Livestock Production* 2.
- Fatouros AA, 'The Quest for Legal Security of Foreign Investments - Latest Developments' (1963) 17 *Rutgers Law Review* 257.
- Fish Safety Foundation, 'Triggering Death: Quantifying the True Human Cost of Global Fishing' (2022).
- Flynn B, 'Non-state and Hybrid Actorness at Sea: From Narco-Subs to Drone Patrols' in Ruxandra-Laura B, Ferreira S, Ryan BJ (eds), *Routledge Handbook of Maritime Security* (Routledge 2022).
- Frandsberg Å, *From Rechtsstaat to Universal Law-State: An Essay in Philosophical Jurisprudence* (Springer, 2014).
- Fukuda-Parr S, Messineo C, 'Human Security: a critical review of the literature' (2012) CRPD Working Paper No. 11.
- Greenwald RJ, 'Problems of Legal Security of the World Hard Minerals Industry in the International Ocean' (1971) 4 *Natural Resources Law* 639.
- Hanlon RJ, Christie K, *Freedom from Fear, Freedom from Want: An Introduction to Human Security* (University of Toronto Press, 2016).

- Heyvaert V, 'The Transnationalization of Law: Rethinking Law through Transnational Environmental Regulation' (2017) 6 *Transnational Environmental Law* 205.
- Holmlund CM, Hammer M, 'Ecosystem services generated by fish populations' 1999 (29) *Ecological Economics* 253.
- Ivaylova CB, 'Legal Security as a Principle in Law Making' (2017) 2(14) *Globalization, the State and the Individual* 23.
- Jackson JBC et al, 'Historical Overfishing and the Recent Collapse of Coastal Ecosystems' (2001) 293(5530) *Science* 629.
- Kaczynski VM, 'Coastal Fishing Fleets in the Sub-Saharan West African EEZ' (1989) *Marine Policy* 1.
- Kerhuel AJ, Raynouard A, 'Measuring the Law: Legal Certainty as a Watermark' (2010) 8 *International Journal of Disclosure and Governance* 4.
- Lindley J, Techera E, 'Controlling IUU Fishing through Problem-Oriented Policing' in Hufnagel S, Moiseienko A (eds.) *Policing Transnational Crime: Law Enforcement of Criminal Flows* (Routledge, 2020).
- Liss C, 'New Actors and the State: Addressing Maritime Security Threats in Southeast Asia' (2013) 35 *Contemporary Southeast Asia: A Journal of International and Strategic Affairs* 141.
- Liss C, 'Non-state Actors in the Maritime Domain: Non-state Responses to Maritime Security Challenges' in Otto L (ed), *Global Challenges in Maritime Security. Advanced Sciences and Technologies for Security Applications* (Springer, 2020).
- Lodge MW et al, *Recommended Best Practices for Regional Fisheries Management Organizations: Report of an independent panel to develop a model for improved governance by Regional Fisheries Management Organizations* (Chatham House, 2007).
- Malakoff D, 'Extinction on the high seas' (1997) 277 *Science* 486.
- Martin J, 'A Transnational Law of the Sea' (2021) 21(2) *Chicago Journal of International Law* 419.
- McClanahan T, Allison EH, Cinner JE, 'Managing Fisheries for Human and Food Security' (2015) 16 *Fish and Fisheries* 78.
- Mejía-Herrera O, 'El principio general de la seguridad jurídica en la jurisprudencia comunitaria europea: un punto de referencia para los tribunales latinoamericanos' (2012) 2 *Boletín Electrónico sobre Integración Regional del CIPEI*.
- Merem EC et al., 'Analyzing the tragedy of illegal fishing on the West African coastal region' (2019) 9(1) *International Journal of Food Science and Nutrition Engineering* 1.
- Mi-Ling Li et al, 'Tracking industrial fishing activities in African waters from space' (2021) 22(4) *Fish and Fisheries* 851.

- Mileski JP, Bomer Galvao C, Forester ZD, 'Human trafficking in the commercial fishing industry: A multiple case study analysis' (2020) 116 *Marine Policy* 103616.
- Nakamura J, Diz D, Morgera E, 'International legal requirements for environmental and sociocultural assessments for large-scale industrial fisheries' (2022) 31 *Review of European, Comparative, and International Environmental Law* 331.
- Ndiaye TM, 'Illegal, Unreported and Unregulated Fishing: Responses in General and in West Africa' (2011) *Chinese Journal of International Law* 373.
- Oberleitner G, 'Human Security and Human Rights' (2002) 8 *ETC Human Rights and Democracy Occasional Paper Series*.
- Österblom H et al, 'Transnational Corporations as 'Keystone Actors' in Marine Ecosystems' (2015) *PlosOne*.
- Österblom H et al., 'Adapting to regional enforcement: fishing down the governance index' (2010) 5(9) *PlosOne*.
- Passantino A, 'The EU shark finning ban at the beginning of the new millennium: the legal framework' (2013) 71(3) *ICES Journal of Marine Science* 429.
- Paulson SL, 'Radbruch on Unjust Laws: Competing Earlier and Later Views?' (1995) 15(3) *Oxford Journal of Legal Studies* 489.
- Peces-Barba Martínez G, 'Legal Security from the Point of View of the Philosophy of Law' (1995) 8 *Ratio Juris* 127.
- Pranovičienė B, Mikalauskaitė-Šostakienė K, 'Guarantee of Principles of Legitimate Expectations, Legal Certainty and Legal Security in the Territorial Planning Process' (2012) 19 *Jurisprudencija* 643.
- Réne-Jean Dupuy, *L'Ocean partagé* (Pédone Paris, 1979).
- Roberts A, *Is international law international?* (Oxford University Press, 2017)
- Rothschild E, 'What is Security?' (1995) 124 (3) *Daedalus* 53.
- Schatz VJ, Honniball AN, 'International Fisheries Law' (2020) *Oxford Bibliographies*.
- Scholtens J and Bavinck M, 'Lessons for Legal Pluralism: Investigating the Challenges of Transboundary Fisheries Governance' (2014) 11 *Current Opinion in Environmental Sustainability* 10.
- Scott C, 'Transnational Law as Proto-Concept: Three Conceptions' (2009) Research Report No. 32/2009, Osgood Hall Law School of York University.
- Scott SV, 'The LOS Convention as a constitutional regime for the oceans' in Oude Elferink AG (ed.), *Stability and Change in the Law of the Sea: The Role of the LOS Convention* (Brill Nijhoff, 2005).
- Song AM et al, 'Collateral Damage? Small-Scale Fisheries in the Global Fight against IUU Fishing' (2020) 21 *Fish and Fisheries* 831.

- Stephens T, 'Global Ocean governance in the Anthropocene: From extractive imaginaries to planetary boundaries?' (2022) *Global Policy* 1.
- Suarez de Vivero JL, Rodriguez Mateos JC and Florido del Corral D, 'The paradox of public participation in fisheries governance. The number of actors and the devolution process' (2008) 32(3) *Marine Policy* 319.
- Tanaka Y, 'Zonal and integrated management approaches to ocean governance: reflections on a dual approach in international law of the sea' (2004) 19(4) *International Journal of Marine and Coastal Law*.
- Tzevelekos VP, 'Human Security and Shared Responsibility to Fight Transnational Crimes: Resolution 2240 (2015) of the United Nations Security Council on Smuggling of Migrants and Human Trafficking off the Coast of Libya' in Salomon S, Heschl L, Oberleitner G and Benedek W (eds.) *Blurring Boundaries: Human Security and Forced Migration* (Brill, 2017).
- Verdier PH, Versteeg M, 'International Law in National Legal systems: An Empirical Investigation' (2015) 109(3) *American Journal of International Law* 514.
- Vrancken P, Witbooi E, Glazewski J, 'Introduction and overview: Transnational organised fisheries crime' (2019) 105 *Marine Policy* 116.

Worm B et al, 'Global Patterns of Predator diversity in the Open Oceans' (2005) 309(5739) *Science* 1365.

- Young O, 'Vertical Interplay among Scale-dependent Environmental and Resource Regimes' (2006) 11 *Ecology and Society* 27.
- Zumbansen PC, 'Transnational Law: Theories and Applications' in Zumbansen PC (ed.), *The Oxford Handbook of Transnational Law* (Oxford University Press, 2021).