

Fishing activities conducted with the use of forced labour under the revised EU fisheries control system: Improving maritime security through control, inspection, and technology

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1. Introduction

There was once a Peugeot 406 parked on Boulevard Louis Schmidt, Brussels, with a large sticker on the hood that said: ‘fishing is more than fish’, and a picture of two anglers in the background smiling and holding beers. No, this is not a paper about the importance of recreation in fostering friendship and social interaction. Yet, one aspect of that story is also relevant here. Fishing is not just about fish. It is first and foremost about *humans*, alone and in their interaction with nature.¹ It is about

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1. Chin-Chia Thien, ‘Reflections on the Human-Fish Nexus in the Law of the Sea: Innovations in Legal Doctrine for Sustainable Fisheries’, 160-1, in Pierandrea Leucci and Ilaria Vianello (eds.), *ASCOMARE Yearbook on the Law of the Sea. Volume 2: Fisheries and the Law of the Sea in the Anthropocene Era* (Luglio Editore, 2022).

fishers, consumers, buyers, retailers, the people working for and in fisheries, whether on land or at sea, and those depending on fish for their livelihoods and subsistence (over 3.3 billion people in the world).²

As early as 1609, Grotius held in his *Mare Liberum* that certain fishing obligations bind “not the thing, that is the sea or fishing, but the persons”.³ Fishing is a human activity, with all the legal considerations and socio-economic implications involved in managing fish in a long-term and sustainable manner.

Fashioning the discussion around humans does not diminish the importance of everything else, including fish. On the contrary, by examining fishing-related aspects from a human perspective, we can truly appreciate the significance of preserving the relationship between humans and nature. The equation is easy: a decline in the fish population can have dire consequences for business, the job market, food supply, and biodiversity at large, with operational and human externality costs likely to impact the security of individuals and States in the short to long term,⁴ such as those resulting from fishing operations carried out using forced labour. A hideous practice consisting of exacting fishing work or services from someone under the threat of punishment, and closely linked to the unsustainable use of marine living resources, illegal, unreported, and unregulated (IUU) fishing, and transnational organized crime, including human trafficking at sea.⁵

2. Daniel F. Viana (et al), ‘Nutrient Supply from Marine Small-scale Fisheries’ (2023) Scientific Reports, Nature Portfolio, (2023)13:11357, 1-9, 1; and Food and Agriculture Organization, ‘The State of World Fisheries and Aquaculture (SOFIA) 2022’ (Rome, 2022) 87.

3. Hugo Grotius, *The Free Sea* (Knud Haakonssen trad., Liberty Fund Ind., 2004) 31.

4. Alejandro J. Garcia Lozano (et al.), ‘Decent work in fisheries: Current trends and key considerations for future research and policy’ (2022) Marine Policy 136 (2022) 104922, 1-10, 2; and Kjellrun Hiis Hauge (et al.), ‘Fisheries Depletion and Collapse’, 2-5, in *IRGC Report “Risk Governance Deficits: An Analysis and Illustration of the Most Common Deficits in Risk Governance”* (Geneva, 2010).

5. European Union, *Consolidated version of the Treaty on European Union*, 13 December 2007, 2008/C 115/01.

States and regional actors may have a specific policy interest in addressing the socio-economic implications of fisheries and the fight against forced labour in the seafood industry. When it comes to the European Union (EU), such a policy interest operates at multiple levels, including at: (a) the consumer level, to ensure that products stemming from forced labour do not reach the EU market; (b) the fishery production level, to ensure the long-term conservation of fish stock and protect the interests of people, including honest fishing operators and coastal communities, depending on it; and (c) the human level, to preserve the EU founding values of respect for human dignity and human rights, as reflected in the relevant provisions of the Treaty on European Union (TEU) and in the Charter of Fundamental Rights of the EU.⁶

The EU has equipped itself with a regulatory toolbox that covers various areas of work and competences of the Union, such as social policy, judicial cooperation in criminal matters, trade, consumer protection, and fisheries. The legislation on fisheries is particularly important for the EU, as fishing activities involving forced labour often occur in maritime areas where coastal States have powers to prescribe and enforce fishery regulations, as outlined in the 1982 UN Convention on the Law of the Sea (UNCLOS)⁷ and international customary law.⁸ These powers extend to fishing activities carried out by vessels flying the flag of other States.⁹

6. TEU, Articles 2 and 6.

7. United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994).

8. J. Ashley Roach, 'Today's Customary International Law of the Sea' (2014) *Ocean Development & International Law*, 45:3, 239-259, 247; and Carolyn Hudson, 'Fishery and the Economic Zones as Customary International Law' (1980) 17 *San Diego L. Rev.* 661, 661-689. See also, *South China Sea Arbitration* (The Republic of Philippines v. The People's Republic of China), Award, Merits, Permanent Court of Arbitration, 12 July 2016, 257.

9. Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea (Fourth Edition)* (Manchester University Press, 2022), 545-549.

The EU regulatory framework governing fisheries is based on a differentiated system of competences, which is laid down by the Treaty for the Functioning of the European Union (TFEU).¹⁰ On the one hand, Article 3(1)(d) of the TFEU provides for the exclusive competence¹¹ of the Union on the conservation of marine biological resources under the common fisheries policy (CFP), including rules on fisheries control, inspection and enforcement that are necessary to ensure compliance with the CFP objectives. On the other hand, Article 4(2)(d) of the TFEU indicates that "... fisheries, excluding the conservation of marine biological resources" are a shared competence between the Union and the Member States.¹² While compliance with minimum labour standards onboard fishing vessels normally falls within the scope of the latter provision and other shared competences of the EU,¹³ fishing activities conducted with the use of forced labour are relevant for the CFP so long as they affect, either directly or indirectly, the conservation and management of fish stocks.

Building on the above considerations, after 5 years of intense legislative negotiations on the revision of the fisheries control system of the CFP, the European Parliament and the Council of the EU eventually agreed to amend Regulation (EC) 1224/2009 ('the Control Regu-

10. European Union, *Consolidated version of the Treaty on the Functioning of the European Union*, 13 December 2007, 2008/C 115/01.

11. Article 2(1) of the TFEU provides that "[w]hen the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts".

12. Article 2(2) of the TFEU provides that "[w]hen the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence".

13. E.g., Article 4(2)(b) and (j) of the TFEU.

lation')¹⁴ to include, among other things, new rules on fisheries control and enforcement addressing some of the challenges posed by forced labour to the conservation and management of marine living resources. These rules go hand-in-hand with other important legislative changes laid down by the revised Control Regulation on vessels tracking, sanctions and the use of technology for control purposes. The author of this paper contributed to the drafting and negotiation of some of the relevant amendments and provisions on behalf of the European Commission, especially those concerning sanctions and fishing activities conducted with the use of forced labour.

This chapter aims to explore and discuss how the new EU fishery control rules and technology can contribute to curbing forced labour in fisheries, for the benefit of maritime security at large. To do that, the chapter starts with some background information on forced labour in fisheries (section 2) and on social sustainability under the CFP rules (section 3). Then, the chapter discusses the EU fisheries control system in light of the recent legislative changes, with a focus on the provisions related to forced labour, control technology and the law of the sea (section 4). Lastly, it elucidates the complexities underlying the relationship between forced labour, fisheries control, and maritime security (section 5) before closing with some final remarks (section 6).

14. Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Union control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006.

2. Forced labour in fisheries

The Food and Agriculture Organization (FAO) reports that an estimated 38 million of people were employed in global capture fisheries in 2020,¹⁵ for a total first sale value of fishery production of USD 141 billion¹⁶ and a trade net of about USD 150 billion.¹⁷ Over 124,000 of those people are estimated to work on EU fishing vessels,¹⁸ with thousands more operating onboard foreign vessels fishing in the maritime waters of the 22 coastal Member States of the EU, which today form the largest combined exclusive economic zone (EEZ) in the world.¹⁹

Fishing is a risky business, one of the three most dangerous occupations in the world.²⁰ The main reason for this lies in the nature and operational aspects of fishing activities, which require intense physical work and the use of dangerous gear and techniques, and are carried out in an adverse environment.²¹ Tailored safety and labour rules and standards are important to ensure decent working conditions in fisheries and prevent human rights abuses and exploitative practices from taking place onboard fishing vessels. This includes abuses and practices connected with forced labour, which involves the exaction of fishing work or services from someone under the threat of punishment, in accordance with Ar-

15. SOFIA (n 2) 66-68.

16. Ibid., 1.

17. Ibid., 5.

18. Scientific, Technical and Economic Committee for Fisheries (STECF), *The 2022 Annual Economic Report on the EU Fishing Fleet (STECF 22-06)*, 30.

19. European Commission, Joint Communication to the European Parliament and the Council on the update of the EU Maritime Security Strategy and its Action Plan “An enhanced EU Maritime Security Strategy for evolving maritime threats” (JOIN(2023) 8 final).

20. SOFIA (n 2) 143; and FAO, Committee on Fisheries, Thirty-fourth Session, ‘Safety at sea and decent work in fisheries and aquaculture’, 1-5 February 2021 (COFI/2020/Inf.14.1).

21. ILO, *Caught at Sea – Forced Labour and Trafficking in Fisheries* (ILO, 2013) 19.

ticle 2 of the International Labour Organization (ILO) Convention on Forced Labour, 1930 (No 29)²² and its supplementing Protocol adopted in 2014.²³

Academia, UN agencies,²⁴ the fishing industry, and civil society²⁵ have frequently linked forced labour to:

- a. *The unsustainable use of marine living resources.* Poor fisheries management and overfishing can contribute to the depletion of stocks and the subsequent increase in fisheries production costs, fishing efforts, and market prices.²⁶ This situation may lead dishonest operators to maximise profits or leverage fisheries production expenses (e.g., crew, gear and fuel costs)²⁷ by illegally recruiting people, particularly mi-

22. ILO, *Forced Labour Convention, C29*, 28 June 1930, C29. In force, 1 May 1932.

23. ILO, *Protocol of 2014 to the Forced Labour Convention, 1930*, 11 June 2014, P029. In force, 9 November 2016.

24. E.g., UNODC reports: *Global Report on Trafficking in Persons* (UNODC, 2020); and ILO, 'Profits and Poverty: The Economics of Forced Labour' (Geneva, 2014), and ILO (n 21).

25. E.g., Human Rights Watch report: 'Hidden Chains: Human Rights Abuses and Forced Labour in Thailand's Fishing Industry' (2018); Greenpeace and SBMI reports: 'Forced Labour at Sea: The Case of Indonesian Migrant Fishers' (2021) and 'Seabound: The Journey to Modern Slavery on the High Seas' (2019); and European Justice Foundation report: 'Blood and Water: Human Rights Abuse in the Global Seafood Industry' (2019).

26. Sara G. Lewis (et al.), 'Chapter 18 - Human Rights and Sustainable Fisheries', 381-382, in Phillip S. Levin and Melissa R. Poe, *Conservation for the Anthropocene Ocean. Interdisciplinary Science in Support of Nature and People* (Elsevier Inc., 2017); Penelope J. Ridings, 'Labour Standards on Fishing Vessels: A Problem in Search of a Home?' (2021) *Melbourne Journal of International Law*, Vol. 22, 1-24, 2-3; Christina Stringer (et al.), 'Not in New Zealand's waters, surely? Labour and human rights abuses aboard foreign fishing vessels' (2011) *New Zealand Asia Institute Working Paper Series No. 11-01*, 3; and Andrea Longo, 'The Human Dimension of Fishing Activities: Towards a Broader Meaning of Illegal Fishing?', 127-8, in Pierandrea Leucci and Ilaria Vianello (eds.), *ASCOMARE Yearbook on the Law of the Sea. Volume 2: Fisheries and the Law of the Sea in the Anthropocene Era* (Luglio Editore, 2022). See also, ILO (n 21) 22.

27. Scientific, Technical and Economic Committee for Fisheries (STECF), *The 2022 Annual Economic Report on the EU Fishing Fleet (STECF 22-06)* (EU, 2022) 232.

grants,²⁸ and cutting costs related to safety and labour standards in fisheries. ILO recently observed that: “...there seems to be a direct link between overfishing, declining fish stocks and the use of forced labour on board fishing vessels in some parts of the world.”²⁹

- b. *IUU fishing activities*. Numerous studies and research have addressed IUU fishing vis-à-vis forced labour.³⁰ This link was also recognised by the European Commission in its 2020 report on the implementation of Regulation (EC) 1005/2008 (‘the IUU Regulation’),³¹ where the Commission noted that “[b]reaches of human rights and labour rights in the fisheries sector are often associated with IUU fishing.”³² Accordingly, in a resolution published by the European fishing industry in 2023, “[t]he social partners underlined growing and shared evidence that the fleets scoring worst in global illegal, unreported and unregulated (IUU) fishing are also the ones where

28. SOFIA (n 2) 143; Melissa Marschke, Peter Vandergeest, ‘Slavery scandals: Unpacking labour challenges and policy responses within the off-shore fisheries sector’ (2016) Marine Policy, Vol. 68, June 2016, 39-46, 41; Lozano (et al.) (n 4) 4; Charlotte Tindall (et al.), ‘Illuminating the Mechanisms to Mitigate Forced and Child Labour Risks Within Marine Stewardship Council Certified Fisheries’ (2022) Marine Policy 143 (105140), 1-10, 1; and Lewis (et al.) (n 26) 380.

29. ILO, *Fisher First - Good Practices to End Labour Exploitation at Sea* (ILO, 2016) 8-13.

30. Julio Jorge Urbina, ‘Towards an international legal definition of the notion of fisheries crime’ (2022) Marine Policy, Vol. 144, October 2022, 1-6, 3-4; Ridings (n 26) 2; Lozano (et al.) (n 4) 2; Alastair Couper, Hance D Smith and Bruno Ciceri, *Fishers and Plunderers: Theft, Slavery and Violence at Sea* (Pluto Press, 2015) 78-94; ILO (n 21) 11; and Mary Mackay (et al.), ‘The Intersection Between Illegal Fishing, Crimes at Sea, and Social Well-Being’ (2020) Front. Mar. Sci. 7:589000, 1-9, 6.

31. Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999.

32. Report from the Commission to the European Parliament and the Council on the application of Council Regulation (EC) No 1005/2008 establishing a community system to prevent, deter and eliminate illegal, unreported and unregulated fishing (COM(2020) 772 final).

more cases of forced labour and human rights and labour abuses are observed.”³³

- c. *Human trafficking at sea*. Exploiting individuals to compel them to work in fisheries falls within the definition of ‘Trafficking in persons’ outlined in Protocol II to the Palermo Convention on Transnational Organized Crime.³⁴ UN data reports that 28% of the 27.6 million people trafficked every year to be forced into work³⁵ eventually end up in the fishing sector, including in Europe.³⁶ These numbers have been showing a growing trend during the COVID-19 pandemic.³⁷ In 2020, UNODC noted that “it is likely that traffickers will continue to rely on the very nature of fishing and its remoteness in the world’s oceans to exploit victims, in particular migrants”.³⁸

Effectively preventing, deterring and eliminating forced labour in fisheries requires understanding its practical implications and challenges. Moreover, coordinated work and widespread ratification and implementation of the relevant international legal instruments and standards are needed, including those encapsulated in the International Labour

33. Resolution of the Social Partners in the sea-fisheries sector on the fight against forced labour (Brussels, 30 January 2023), Para 4.

34. UN General Assembly, *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, 15 November 2000. See also, European Court of Human Rights, *Rantsev v. Cyprus and Russia*, Judgment, 7 January 2010, 282.

35. ILO, Walk Free, International Organization for Migration, *Global Estimates of Modern Slavery. Forced Labour and Forced Marriage* (Geneva, 2022) 22-26 and 33.

36. Emmet Malone, ‘Action needed to protect migrant fishers working on foreign vessels in Irish waters, says Union’ (2023) *The Irish Time*, 17 February 2023, available at <<https://www.irishtimes.com/ireland/social-affairs/2023/02/17/action-needed-to-protect-migrant-fishers-working-on-foreign-vessels-in-irish-waters-says-union/>>; Lewis (et al.) (n 26) 380; Longo (n 26) 132; and Lozano (et al.) (n 4) 3.

37. ILO (et al.) (n 35) 27-28.

38. UNODC, *Global Report on Trafficking in Persons* (UNODC, 2020), Chapter IV (‘Trafficking for Forced Labour – The Economy of Coercion’).

Organization (ILO) Work in Fishing Convention (C-188).³⁹ The Convention was adopted in 2007 and entered into force on November 16, 2017,⁴⁰ in order to fill the regulatory gap left by other international legal instruments, such as the International Convention for the Safety of Life at Sea (SOLAS)⁴¹ and the Maritime Labour Convention (MLC),⁴² which are only limitedly applicable to fishing vessels.⁴³ This is partly due to the scale and distribution of fisheries worldwide (approximately 4.1 million fishing vessels, mostly small-scale,⁴⁴ compared to 105 thousand merchant vessels, mostly large-scale),⁴⁵ which makes implementation more complex and costly in practice.

39. ILO, *Work in Fishing Convention, 2007 (No 188)*, 14 June 2007, C188. In force, 16 November 2017. See also ILO, 'The Work in Fishing Convention, 2007 (No 188): Getting on board. Issues paper for discussion at the Global Dialogue Forum for the promotion of the Work in Fishing Convention, 2007 (No 188)', 15-17 May 2013, (5.4).

40. To date, only 21 States, including 8 Member States of the EU, have ratified C-188: Angola, Antigua and Barbuda, Argentina, Bosnia and Herzegovina, Congo, Denmark, Estonia, France, Kenya, Lithuania, Morocco, Namibia, The Netherlands, Norway, Poland, Portugal, Senegal, South Africa, Spain (from 29 February 2024), Thailand and UK. As discussed above in this paper, the EU's competence on social and labour standards related to fisheries does not generally fall under the scope of Article 3(1)(d) of the TFEU. As a result, the ratification of C-188 and the transposition of its provisions into national law lies with the Member States. On 21 May 2012, the General Confederation of Agricultural Cooperatives in the European Union (COGECA), ETF and EUROPÊCHE concluded an agreement, which was then amended on 8 May 2013, setting minimum social and labour requirements for fisheries implementing C-188. The social partners asked for these requirements to be incorporated into EU law, in accordance with Article 155 of the TFEU. The agreement was eventually adopted under Council Directive (EU) 2017/159 of 19 December 2016.

41. IMO, *International Convention for the Safety of Life at Sea*, 1 November 1974, 1184 UNTS 3. In force, 25 May 1980.

42. ILO, *Maritime Labour Convention*, 23 February 2006, MLC. In force, 20 August 2013.

43. Lewis (et al.) (n 26) 385-386; Longo (n 26) 139-141; and Ridings (n 26) 5.

44. SOFIA (n 2), 59-60.

45. United Nations Conference on Trade and Development, *Handbook of Statistics* (UN Publications, 2023), 65-66.

3. The ‘social dimension’ of the CFP

There is a common misconception about the nature and scope of the CFP rules and objectives. As the CFP primarily deals with the conservation and management of marine living resources,⁴⁶ some may assume that the human and socio-economic aspects related to the use of such resources lie outside the scope of the CFP regulatory framework. Yet, this is not the case.

Rules and standards established under the mandate of the CFP, either directly or indirectly, pertain to humans.⁴⁷ From rules on stock-assessment, which are necessary to determine national quotas and fishing capacity, to fisheries control, traceability and technical measures (e.g., temporary closure of fisheries or requirements on selective gears), there are numerous socio-economic implications of the work carried out by EU policymakers, legislators, and national authorities.⁴⁸ Fishing is a human activity, and as such, it involves legal and practical considerations related to the way fisheries are conducted, the rights and interests of individuals involved in fisheries, and the impact of fishery rules on local communities, markets, and employment.⁴⁹ These considerations reveal a pattern of human vulnerability inherent in the measures adopted by the EU to regulate fisheries.

Is that enough to justify the use of the CFP mandate to establish rules on aspects of socio-economic importance related to fisheries? Not neces-

⁴⁶. CFP Basic Regulation, Article 1(1).

⁴⁷. SOFIA (n 2) 143. On sustainability and human rights in fisheries, see also Masitha Tismananda Kumala (et al.), ‘Fishermen Human Rights Protection and Sustainable Development in the Indonesian Maritime Sector’ (2023) *Lex Portus*, Vol. 9, Issue 4, 16-25, 22-24.

⁴⁸. Simon Mardle (et al.), ‘Objectives of Fisheries Management: Case Studies from the UK, France, Spain and Denmark’ (2002) *Marine Policy* 26, 415-428, 425.

⁴⁹. Kate Brooks (et al.), ‘Selecting and assessing social objectives for Australian fisheries Management (2015) *Marine Policy* 53, 111-122, 112.

sarily. There is a distinction between legal relevance and scope. Articles 3(1)(d) and 4(2)(d) of the TFEU differentiate the competences of the EU on aspects not pertaining to the conservation of marine biological resources that are therefore beyond the scope of the CFP. Yet, the latter does not close the door to the adoption of socially sound conservation and management measures. This is reflected in Regulation (EU) No 1380/2013 ('the CFP Basic Regulation') mapping out the fundamentals of the CFP scope, objectives and policy areas.⁵⁰ In particular, the Regulation requires fishing activities to be conducted in a way that is "consistent with the objectives of achieving economic, social and employment benefits".⁵¹ It also mandates the CFP to "contribute to ensuring a level-playing field for fisheries [...] products marketed in the Union" and to assess the socio-economic impact of fishing activities on stocks,⁵² in accordance with Article 61(3) of UNCLOS and Article 6(3) of the UN Fish Stocks Agreement (UNFSA).⁵³ The EU is a contracting Party to both UNCLOS and the UNFSA.⁵⁴

The European Parliament has recently emphasised the importance of integrating and enhancing labour conditions, health and safety, training, social inclusion, and a fair standard of living in the CFP to achieve so-

50. Richard Barnes (et al.), 'Introduction: External aspects of the European Union Common Fisheries Policy' (2020) *The International Journal of Marine and Coastal Law* 35, 5-17, 6.

51. CFP Basic Regulation, Article 2(1).

52. *Ibid.*, Article 2(2) and (5)(g).

53. 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), 4 August 1995. 2167 UNTS 3. In force, 11 December 2001. The definition of 'precautionary approach to fisheries management' included in Article 4 of the CFP Basic Regulation cross-refers to Article 6 of the UNFSA.

54. UNCLOS, act of formal confirmation on 1 April 1998; and UNFSA, act of formal confirmation on 19 December 2003.

cial sustainability.⁵⁵ The latter substantiates the connection between the responsible utilization of marine resources and the management of social aspects in fisheries. Measures that promote socially responsible practices are thus justified to mitigate the human risks and actual harm caused by the unsustainable exploitation of marine biological resources. These measures should align with the objectives and scope of the CFP and also address the negative impact of exploitative practices in fisheries, particularly those that contribute to unfair competition and are associated with IUU fishing. Compliance with any rules and measures set out under the CFP mandate is to be ensured through a fisheries control system, including the fight against IUU fishing.⁵⁶

4. The EU fisheries control system

The fisheries control system of the Union is the set of CFP rules that contribute to defining the range of powers and responsibilities of Member States for the control, inspection and enforcement of fisheries conducted within and outside Union waters. The centrepiece of this system is the Control Regulation, which recently underwent a substantial restructuring of its content and provisions by means of amending Regulation (EU) 2023/2842, which entered into force on 9 January 2024.⁵⁷ The new fish-

55. European Parliament resolution of 16 September 2021 on Fishers for Future: Attracting a New Generation of Workers to the Fishing Industry and Generating Employment in Coastal Communities (P9_TA(2021)0386), Recital A.

56. CFP Basic Regulation, Article 36(1).

57. Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control.

eries control rules build on the legislative proposal published by the European Commission on 30 May 2018⁵⁸ to (1) bridge the gaps with the CFP rules and EU policies put forward after the adoption of the Control Regulation, in 2009; (2) simplify and digitalise the fisheries control system in place; (3) improve the availability, reliability and completeness of fishery data; and (4) remove obstacles that hinder the development of a culture of compliance and equitable treatment of operators in the EU.⁵⁹

Some of the revised rules that are relevant for the discussion include the obligation for all fishing vessels to use a Vessel Monitoring System (VMS) or other tracking devices, the mandatory installation of remote electronic monitoring (REM) systems, including Closed-circuit Television (CCTV) cameras, for control purposes, and provisions to strengthen and harmonise sanctioning and enforcement for infringements of the CFP, including certain forms of forced labour in fisheries. These rules will be examined and discussed below.

4.1 Fishing activities conducted with the use of forced labour

Articles 74(8) and 90(2)(p) of the revised Control Regulation introduce rules against fishing activities conducted with the use of forced labour. These provisions were not part of the package of amendments included in the original 2018 proposal. They were set forth by the co-legislators, under the initiative of the European Commission, during the final stages of the 5-year negotiations, among other things, to better achieve the so-

58. Proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 768/2005, (EC) No 1967/2006, (EC) No 1005/2008, and Regulation (EU) No 2016/1139 of the European Parliament and of the Council as regards fisheries control (COM/2018/368 final).

59. *Id.*

cial fisheries management objectives of the EU through fisheries control and enforcement.

Before examining and discussing the relevant CFP provisions in more detail, some clarification on the meaning and scope of ‘fishing activities conducted with the use of forced labour’ is herein necessary.

First, the term ‘forced labour’ is to be interpreted in line with the definition of ‘forced or compulsory labour’ in Article 2 of the ILO Convention on Forced Labour, 1930 (No 29) – i.e., “all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily”. This is well reflected in Articles 74(8) and 90(2)(p) of the revised Control Regulation and corresponding recitals.⁶⁰ The ILO definition recognises three fundamental elements that must coexist in order to configure a situation of forced labour:⁶¹ the exaction of work or service from a person;⁶² the threat of any punishment (e.g., physical or psychological violence)⁶³ to compel a person to work or provide the service; and the involuntary nature of the condition. According to the ILO, the involuntary nature of the condition includes situations where a person offered themselves voluntarily

60. No reference is expressly made to the 2014 ILO Forced Labour Protocol extending the definition of forced labour to specific categories of people (e.g., those trafficked to be forced into work). Nonetheless, it is reasonable to believe that, also for the customary status of the relevant provisions of the Protocol, as long as those people forcibly perform or contribute to “fishing activities” onboard a fishing vessel under the (coastal or flag) Member State jurisdiction, then Articles 74(8) and 90(2)(p) and interrelated provisions of the revised Control Regulation would apply.

61. For a more detailed examination of the content of the definition of ‘forced labour’, see ILO, ‘Guidelines concerning the measurement of forced labour’ (2018) 20th International Conference of Labour Statisticians, Geneva, 10-19 October 2018 (ICLS/20/2018/Guidelines), 2.

62. “It comprises any activity performed by persons of any sex and age to produce goods or to provide services for use by others or for own use.” *Id.*

63. An example of penalty “threat” for irregular migrant workers is the menace of reporting them to the police or immigration authorities.

but was recruited under false promises and/or prevented from leaving the job.⁶⁴

Second, the term ‘fishing activity’ should be interpreted in light of Article 4(1) of the Control Regulation, which encompasses a wide range of activities related to fisheries, not just the act of catching and retaining fish onboard. The list of such activities should include, at the very least, “searching for fish, shooting, setting, towing, hauling of a fishing gear, taking catch on board, transshipping, retaining on board, processing on board, transferring, caging, fattening and landing of fish and fisheries products.”

Third, in order to commit an offence under Article 90(2)(p), a person in a condition of forced labour should contribute to or otherwise support (“conducted with the use of”) one or more of the fishing activities listed in Article 4(1) above. It is important to draw a line between actions and responsibilities of Member States for the crime of *forced labour* under EU and international law, and those concerning ‘fishing activities with the use of forced labour’ pursuant to Articles 74(8) and 90(2)(p) of the Control Regulation. The latter are narrower in scope, as they do not aim at tackling forced labour per se. Rather, they equip Member States and national authorities with the tools and powers they need to effectively detect and punish the use of forced labour in fisheries. As such, proceedings initiated by Member States under the Control Regulation are without prejudice to other proceedings that Member States may be required to initiate against natural or legal persons responsible for compulsory labour or other interrelated crimes.⁶⁵

64. ILO, ‘Guidelines concerning the measurement of forced labour’ (n 61) 2. See also Marschke and Vandergeest (n 28) 41.

65. Recital (89) of the revised Control Regulation is clear in that respect: “...conducting fishing activities with the use of forced labour should be regarded as a serious infringement, without prejudice to any criminal sanctions for forced labour in accordance with Member States’ obligations under the ILO Convention No 29 on Forced Labour.”

Fourth, the new provisions concerning fishing activities with the use of forced labour will apply from 9 January 2026, i.e. 2 years after the entry into force of Regulation (EU) 2023/2842.⁶⁶ Member States should act sufficiently in advance to give full effect to the new rules, including by training fisheries inspectors or adopting the relevant domestic legislation.

Lastly, it should be noted that forced labour in fisheries does not constitute IUU fishing for the purposes of the relevant EU legislation. The amendments brought by the fisheries control revision to Article 3 ('Fishing vessels engaged in IUU Fishing') of IUU Regulation⁶⁷ formally exclude fishing activities conducted with the use of forced labour from the scope of the latter provision.⁶⁸ Yet, it might be argued that the offence covered by Article 90(2)(p) constitutes 'illegal fishing' for the purposes of Article 2(2) of the IUU Regulation, as the former would in any case qualify as a breach of the applicable EU/national fishery law in force.⁶⁹ This is without prejudice to any different legal interpretation or practical application of the rule by the Union and its Member States.

4.1.1 Article 74(8) – Conduct of inspections

The conduct of inspections on board fishing vessels, whether in EU waters or onboard Union fishing vessels operating on the high seas, is regulated by Title VII of the Control Regulation. One of the basic rules of in-

66. Amending Regulation (EU) 2023/2842, Article 7(2).

67. Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999.

68. Article 90(2)(p) of the Control Regulation is not mentioned in the list of serious infringements qualifying as an IUU fishing conduct by fishing vessels.

69. On a broader and human rights inclusive conceptualisation of IUU/illegal fishing, see Longo (n 26) 148-153.

spection⁷⁰ is the duty of national control authorities to verify compliance of activities carried out by masters and fishing operators with the rules of the CFP.⁷¹ This obligation entails a number of tasks to be performed by fisheries officials at sea, including conducting checks onboard fishing vessels,⁷² drawing inspection reports and taking actions in the event of a suspected or confirmed infringement detected in the course of or after an inspection.⁷³ In the latter case, fisheries officials should ‘immediately’ inform other national authorities (if any) that might be competent for the violation⁷⁴ and do whatever is necessary to ensure the safekeeping of the evidence of the infringement,⁷⁵ including, where appropriate, stopping the vessel and waiting for any other competent authority to conduct further investigation, and take the necessary action required under national and Union law (see 4.1.2). Accordingly, the new Article 74(8)⁷⁶ of the Control Regulation requires fisheries officials to notify any relevant competent authorities of the Member State concerned whenever they suspect that fishing activities are conducted with the use of forced labour. For that purpose, fisheries officials should be able to conduct a preliminary assessment of the situation on the basis of indicators of potential

70. Under Article 4(4) of the Control Regulation ‘inspection means any check which is carried out by officials regarding compliance with the rules of the common fisheries policy and which is noted in an inspection report.’ The term ‘official’ is defined at point (6) of the same provision as any person authorised by a national authority, the Commission or the European Fisheries Control Authority to carry out an inspection. The latter term, as such, does not include officials of third countries engaging in inspection.

71. Control Regulation, Article 74(3).

72. *Id.*

73. *Ibid.*, Article 82(1).

74. *Ibid.*, Article 82(2)(c).

75. *Ibid.*, Article 82(2)(b).

76. Control Regulation, Article 74(8): ‘If an official carrying out an inspection has reason to believe that a fishing vessel is engaged in fishing activities with the use of forced labour, as defined in Article 2 of the International Labour Organization (ILO) Convention No 29 on Forced Labour, that official shall notify any other relevant authorities of that Member State.’

non-compliance with the relevant CFP rules. Specialised training and capacity development, in accordance with Article 74(5) of the revised Control Regulation,⁷⁷ are critical in that respect, particularly “to ensure that labour issues are understood by enforcement personnel” dealing with fisheries.⁷⁸

The above indicators could be developed under national law, building on States-practice, as well as on the list of ILO general indicators of forced labour⁷⁹ and relevant guidelines.⁸⁰ They could be taken into account for the selection of targets for inspection under the risk analysis to be performed by Member States pursuant to Article 74(10). National procedures should be in place to ensure interoperability and coordination among fisheries officials and other competent authorities. This goes along with the general obligation under Article 5(3) of the Control Regulation requiring Member States “to adopt appropriate measures, allocate adequate financial, human and technical resources and set up all administrative and technical structures necessary for ensuring control, inspection and enforcement of activities” conducted within the scope of the CFP.

4.1.2 Article 90(2)(p) – Serious infringements of the CFP

The sanctioning and enforcement regime for violations of the CFP rules is primarily laid down by Titles VII and VIII of the Control Regulation,

77. The new Article 74(5) of the Control Regulation requires Member States to provide their officials with “the training necessary to perform their tasks.” Similar training could also be financed by Member States with the EMFAF money, in accordance with the specific objectives laid down by Article 14(1) of the EMFAF Regulation.

78. ILO (n 29) 57.

79. ILO, Special Action Program to Combat Forced Labour, *ILO Indicators of Forced Labour* (1 October 2012).

80. ILO (n 61). See also ILO, *Towards Freedom at Sea. Handbook for the detection of forced labour in commercial fishing* (ILO, 2023), 8-11.

and by several provisions of the IUU Regulation. Read together, the two Regulations provide for a list of infringements of the CFP to be qualified as ‘serious’ in reason of their gravity, nature and impact.⁸¹ The list is partly inspired by the one of ‘serious violations’ established under Article 21(11) of the UNFSA.⁸²

From 9 January 2026, the new control rules will centralise (under Article 90 of the Control Regulation) and expand the list of serious infringements of the CFP. The same rules will also provide for the objective qualification of illegal conducts listed in Article 90(2) as ‘serious’, without a case-by-case assessment of their gravity, nature and impact.

The list of objectively qualified serious infringements includes the act of engaging in ‘fishing activities conducted with the use of forced labour’ (Article 90(2)(p)). This is a novelty brought by the fisheries control revision, as no serious infringement previously listed in the relevant provisions of the Control Regulation and the IUU Regulation included any similar offence.

Whenever a serious infringement under Article 90(2)(p) is detected in the waters of a Member State (e.g., in the course of or after an inspection), the competent authorities of that Member State are required to systematically take the necessary actions to ensure compliance with the CFP rules.⁸³ Such actions range from the conduct of further investigation⁸⁴ to the use of immediate enforcement measures⁸⁵ and the imposi-

81. Control Regulation, Article 90(1); and IUU Regulation, Articles 3(1) and 42(1).

82. Some of the relevant offences listed in Article 3(1) of the IUU Regulation reproduce the serious violations established under Article 21(11) of the UNFSA, provided the broader scope of application of the former provision extending beyond offences concerning highly migratory fish stocks and straddling fish stocks on the high seas and in the EEZ of a coastal State.

83. Control Regulation, Article 89(1).

84. IUU Regulation, Article 43(1).

85. *Id.*

tion of sanctions and penalty points to the master of the fishing vessel or its licence holder.⁸⁶

How does the system work in practice? If an official of a Member State suspects that a fishing activity has been conducted with the use of forced labour in the waters of that Member State or onboard fishing vessels flying its flag, after informing other national authorities (if any) competent for that offence, such official/authority is required to take the necessary immediate enforcement action to prevent the continuation of the offence and allow for its full investigation.⁸⁷ This includes, in particular, the possibility to temporarily immobilise the vessel suspected of the offence and reroute it to port to conduct further investigation.⁸⁸ In the event that the competent authorities of the Member State concerned confirm that fishing activities have been conducted with the use of forced labour, they shall ensure, among other things, that (i) the natural or legal persons responsible for the offence are punished with proportionate, effective and dissuasive sanctions, including, where applicable, with minimum administrative sanctions in accordance with Article 91a of the revised Control Regulation, and other accompanying sanctions;⁸⁹ and (ii) penalty points are assigned to the master and licence holder of the fishing vessel responsible for such offence.⁹⁰ The accumulation of points for serious infringements can lead to the temporary or permanent suspension of the fishing licence and/or the right to command a vessel,⁹¹

86. Control Regulation, Articles 90 and 92.

87. IUU Regulation, Article 43(2) [until 9 January 2026. After that, Article 91(2) of the revised Control Regulation].

88. *Id.*

89. Control Regulation, Articles 89, 89a and 91b.

90. *Ibid.*, Article 92 and Annex III. For a serious infringement under Article 90(2)(p), the maximum number of points (7) shall be assigned.

91. *Ibid.*, Article 92(6) and (7).

and trigger the suspension or impossibility to apply for EU funding.⁹² These rules are particularly effective against forced labour in fisheries, as they not only target the material executor of the offence but also extend to the natural or legal person responsible for the fishing licence and benefiting from the offence. It is worth mentioning what the UNODC already observed in 2011: “it is likely that fishers, rather than the true masterminds behind the criminal activity, are held responsible for criminal activities such as migrant smuggling, illicit traffic in drugs and marine living resource crimes...”⁹³

The new rules are applicable to offences committed onboard all fishing vessels, including small ones (12 meters or below), representing over 80% of fishing vessels operating in Union waters.⁹⁴ This contributes, among other things, to better implementing paragraph 6.13 of the FAO Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (‘the SSF Guidelines’), asking States to “adopt effective measures to protect fish and fish workers, including migrants, with a view to the complete elimination of forced labour in fisheries, including small-scale fisheries.”

As mentioned above, the legal and financial implications arising from the violation of the relevant CFP rules are not exempt from the more severe consequences that may result from any criminal proceedings initiated for the crime of forced labour. This is in accordance with the obligation of all States (both conventional and customary) to eliminate the use

92. E.g., Article 11 of Regulation (EU) 2021/1139 on the European, Maritime, Fisheries and Aquaculture Fund, and Commission Delegated Regulation (EU) 2022/2181.

93. UNODC, ‘Transnational Organized Crime in the Fishing industry. Focus on: Trafficking in Persons, Smuggling of Migrants, and Illicit Drugs Trafficking’ (UN, 2011), 129.

94. Sebastian Villasante (et al.), ‘Chapter 5. The implementation of the landing obligation in small-scale fisheries of southern European Union countries’, 91, in Sven Sebastian Uhlmann (et al.), *The European Landing Obligation* (2019, Springer Open).

of forced labour within their territory, waters, and on vessels flying their flag, and to cooperate towards this goal.⁹⁵

4.1.3 Fishing activities with the use of forced labour and UNCLOS

Academic literature has extensively discussed human rights in relation to UNCLOS, particularly in recent years.⁹⁶ While the 1982 Convention is not precisely a human rights instrument, “human rights considerations are set in its normative structure”,⁹⁷ as some of its provisions do address the human rights implications of utilizing maritime spaces and resources, either directly or indirectly.⁹⁸ This link has been emphasized by international courts and tribunals, including the International Tribunal for the Law of the Sea (ITLOS).⁹⁹ Additionally, the examination of human

95. Bianca Haas (et al.), ‘Untangling Jurisdictional Complexities for Crew Labour Regulations on Fishing Vessels in Western and Central Pacific Ocean’ (2023) *The International Journal of Marine and Coastal Law* 38, 1-20, 667; Oona A. Hathaway, ‘Brief of Yale Law School Center for Global Legal Challenges as Amicus Curiae in Support of Respondents, Nestlé USA, Inc. v. Doe & Cargill, Inc. v. Doe’ (2021) *Just Security* series 20.

96. E.g., Bernand H. Oxman, ‘Human rights and the United Nations Convention on the Law of the Sea’ (1997) 36 *Colum. J. Transnat’l L.* 399-429, 401; Chris Whomersley, ‘UNCLOS at 40: What about human rights?’ (2023) *Marine Policy*, Vol. 148; Tafsir Malick Ndiaye, ‘Human Rights at Sea and the Law of the Sea’ (2019) *Beijing Law Review*, 10, 261-277, 269; Naama Omri and Gershon Hasin, ‘Rethinking Ocean Exclusivity: The case of Human Rights’ (2023) *U. Pa. J. Int’l L.*, Vol. 44:4, 947-1005, 956.

97. Ndiaye (n 96).

98. *Ibid.* See also, Sofia Galani, ‘Assessing Maritime Security and Human Rights: The Role of the EU and its Member States in the Protection of Human Rights in the Maritime Domain’ (2020) *The International Journal of Marine and Coastal Law* 35 (2020) 325-347, 332.

99. Anna Petrig and Marta Bo, ‘The International Tribunal for the Law of the Sea and Human Rights’, 353-411, in Martin Scheinin, *Human Rights Norms in ‘Other’ International Courts* (CUP, 2019).

rights should be considered within the broader framework of the law of the sea architecture.

UNCLOS recognises the exclusive rights of a coastal State to regulate fisheries in its internal waters, territorial sea, archipelagic waters, EEZ and continental shelf.¹⁰⁰ The relevant provisions arguably reflect customary international law.¹⁰¹ Further details on the content of those rights are laid down in Part V of UNCLOS. In particular, Article 62(4) of UNCLOS provides coastal States with the authority to establish certain fishing conditions (e.g., licencing, use of gear, training) onboard fishing vessels operating in their EEZ. The list of conditions in Article 62(4) does not expressly refer to labour aspects or conditions, although the former is not meant to be exhaustive ('inter alia'). In that respect, the case-law of ITLOS recognised the right of a coastal State to set conditions that are relevant for fisheries, even if they are not specifically mentioned by the Convention (e.g., on shipboard processing and bunkering).¹⁰² The legal justification behind this broad interpretation lies in the functional nature of the coastal State's rights to regulate fisheries. In other words, given the impact that certain activities may have on the exclusive fisheries rights of a coastal State, the latter should be allowed under UNCLOS to adopt and enforce national rules to regulate such activities by and onboard fishing vessels, including foreign ones, operating in its waters. It follows that the adoption by a coastal State of fishery rules addressing, among other things, forced labour on board fishing vessels operating in its waters would be enforceable by

100. UNCLOS, Articles 2, 21, 49, 56, 61-62, 73 and 77. Churchill, Lowe and Sander (n 9) 513-599.

101. See Roach (n 8) and Hudson (n 8).

102. E.g., *M/V "Virginia G" case* (Panama v. Guinea-Bissau), Merits, Judgment, ICGJ 452, ITLOS Case No. 19, 14th April 2014, International Tribunal for the Law of the Sea (ITLOS), 67-70 ¶ 211-223.

the same State, in accordance with its sovereignty and sovereign rights to regulate fisheries.¹⁰³ Evidently, any enforcement power exercised by a coastal State for that purpose should be in line with UNCLOS and international law.¹⁰⁴

There is an underlying legal question, however, revolving around the jurisdictional nature of the enforcement powers and responsibilities of a flag State for certain labour violations (including those related to forced labour in fisheries) committed on board vessels flying its flag that operate in the waters of a coastal State, in a way therefore inconsistent with its fishery laws and regulations.¹⁰⁵ The issue is reflected in a recent ILO (et al.) report identifying “complicated legal jurisdictions for the enforcement of labour and human rights” between coastal and flag States as one of the causes of forced labour in fisheries.¹⁰⁶ In other words, who is responsible for fisheries enforcement on board foreign vessels operating in the coastal State’s waters? Is it the coastal State or the flag State of those vessels?

This jurisdictional dilemma is compounded by a strict interpretation of Article 94 of UNCLOS, which would recognise States with primary jurisdiction and control over all labour issues on board fishing vessels

103. Bianca Haas (et al.) (n 95) 666; Mercedes Rosello, ‘Disordered Legal Pluralism and Legal Security in Internationally Shared Fisheries’, 52, in Pierandrea Leucci, Ilaria Vianello, *ASCOMARE Yearbook on the Law of the Sea. Volume 2: Fisheries and the Law of the Sea in the Anthropocene Era* (Luglio Editore, 2022) 58-59.

104. Pierandrea Leucci, ‘Enforcing Fishery Legislation in the Exclusive Economic Zone of Non-Parties to UNCLOS’, 317-381, in Pierandrea Leucci and Ilaria Vianello (eds.), *ASCOMARE Yearbook on the Law of the Sea. Volume 1: Law of the Sea, Interpretation and Definitions* (Luglio Editore, 2021).

105. UNCLOS, Article 92(1). See also, Myron H. Nordquist, Neal R. Grandy, Satya N. Nandan, and Shabtai Rosenne, United Nations Convention on the Law of the Sea of 1982: A Commentary, Volume II (Brill/Nijhoff, 1993), Article 1.

106. ILO (et al.) (n 29) 33.

flying their flag, irrespective of where they operate.¹⁰⁷ Because of that, some may argue that the responsibility for enforcing forced labour's provisions on foreign fishing vessels operating in the waters of a coastal State should lie with the flag State of that vessel.¹⁰⁸ Still this is not the case, at least insofar as three fundamental conditions are met: (a) the relevant forced labour's provisions are incorporated in the *fishery* legislation of the coastal State;¹⁰⁹ (b) those provisions are either directly or indirectly linked with fisheries, including with the conservation and management of the coastal State's marine living resources; and (c) *fishery* rules adopted for that purpose only apply to foreign fishing vessels authorised to fish in the coastal State's waters or otherwise illegally engaging in fishing activities therein.

The flag State would retain certain enforcement powers on vessels flying its flag, especially to uphold its due diligence obligation for activities carried out by them in the coastal State's waters.¹¹⁰ Yet, fishing activities in the waters of a coastal State are subject to compliance with the terms and conditions established by it.¹¹¹ Hence, a breach of the relevant terms and conditions by a foreign vessel would allow the coastal State concerned to take the measures of enforcement necessary to ensure compliance with its fishery law, including inspection, boarding, arrest,

107. Ibid., Article 94(3)(b).

108. Lewis (et al.) (n 26) 387; and Ridings (n 26) 22.

109. M/V “Virginia G” case (n 102) 71, para 224.

110. Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission, Advisory Opinion, 2 April 2015, ITLOS Reports 2015, p. 4; and UNCLOS, Article 94(6). See also South China Sea arbitration (Philippines v China), Final Award, PCA Case No 2013- 19, ICGJ 495 (PCA 2016), 12th July 2016.

111. Ibid., Article 62(4). See also, Ridings (n 26) 13; and Steven Haines, ‘Developing Human Rights at Sea’, in Aldo Chircop (et al.), *Ocean Yearbook 35:18-51* (2021), 41-2.

the institution of judicial proceedings,¹¹² and confiscation.¹¹³ A different interpretation would deprive the relevant coastal State's laws and regulations of its teeth, particularly when fishery offences are committed by vessels registered in countries with poor flag State performance (e.g., open registers or flag of convenience). Moreover, a flag State-centric approach would contradict other provisions of UNCLOS and relevant case law, which give coastal States exclusive and functional rights to regulate fisheries in their waters.¹¹⁴ This aligns with the holding of ITLOS in its 2015 Advisory Opinion on IUU fishing, which explicitly recognised the primary responsibility of the coastal State to prevent, deter and eliminate illegal fishing (covering any violation of national fishery law) in its waters, including by taking all necessary enforcement measures for that purpose. This condition, as explained by ITLOS, does not release "oth-

112. E.g., UNCLOS, Articles 62(4)(h) and 73(1). This is true also in the territorial sea, although not specifically mentioned by UNCLOS. In fact, a narrow interpretation of Article 27 of the Convention, limiting the power of coastal States to exercise criminal jurisdiction on board foreign vessels passing through the territorial sea, would not be acceptable for at least two reasons: first, a similar power is already recognised by UNCLOS in Article 73(1) for fishery offences committed in the EEZ (where the sovereign authority of the coastal State should be weaker than the one in the territorial sea). Second, Article 27(1)(a) still recognises the criminal jurisdiction of the coastal State whenever the consequences of any crime committed onboard foreign vessels "extend to the coastal State". No doubt exists, in that respect, that engaging in any act of illegal fishing with the use of forced labour in the territorial sea of a coastal State would result in negative consequences (e.g., overfishing, unfair competition) for the latter.

113. See also *Tomimaru case* (Japan v. Russian Federation), Judgment, Prompt Release, ITLOS Case No 15, ICGJ 419 (ITLOS 2007), 6th August 2007, International Tribunal for the Law of the Sea (ITLOS), 23 ¶ 73. See also, *M/V "Virginia G" case* (n 102), 77-78 ¶ 253-257.

114. It should be noted, in that respect, that the coastal State's competence to exercise enforcement against foreign fishing vessels for the violation of its fisheries law and regulations is already recognised in respect of certain social, technical or administrative conditions, expressly mentioned in Article 94 of UNCLOS (e.g., training). The fact of those conditions being mentioned in Article 94 of UNCLOS does not make them *ipso facto* enforceable exclusively by the flag State, if other provisions of UNCLOS (and international law) indicate otherwise.

er States from their obligations in this regard”.¹¹⁵ Instead, it establishes a hierarchical system of jurisdictional powers and competences at sea, which are essential for effectively enforcing the applicable fishery law and assessing compliance with the relevant conservation and management duties under UNCLOS.¹¹⁶

4.2 Fisheries control tools and technology

In line with the objective of the 2018 Commission proposal, the Control Regulation was also amended to introduce requirements on the tracking of fishing vessels, as well as to improve the monitoring of compliance with the special discard ban rules (i.e., the landing obligation) set out under the CFP Basic Regulation.¹¹⁷

Regarding vessel tracking, the revised Control Regulation extends the requirement for all fishing vessels to be equipped with a fully functioning VMS or other tracking device, including those that were previously exempted due to their small size.¹¹⁸ Fishing vessels that have a VMS or other tracking device must transmit their location, course, and speed data at regular intervals (at least every 2 hours)¹¹⁹ to the competent authorities of

115. ITLOS Advisory Opinion (n 110) 33-34 ¶ 105-108. See also, ILO (n 21) 9.

116. For a better understanding of the jurisdictional tensions related to the enforcement of human rights on board foreign vessels operating in the coastal State's waters, see Irini Papanicopolulu, 'Human Rights and the Law of the Sea', in David Joseph Attard (et al.), *The IMLI Manual on International Maritime Law: Volume I: The Law of the Sea* (OUP, 2014), 19.

117. CFP Basic Regulation, Article 15.

118. According to Article 9(2) and (5) of the Control Regulation (pending the application of the new amendments to Article 9, between 2026 and 2030), fishing vessels below 12 meters are excluded from the VMS obligation, while certain vessels between 12 and 15 meters could be exempted from the obligation under certain conditions.

119. Commission Implementing Regulation (EU) No 404/2011, Article 22. Shorter periods for the frequency of transmission of VMS can be set under specific rules, e.g. for vessels operating in fishing restricted areas (Article 50 of the Control Regulation).

their flag State. These authorities will then automatically make the data available to the coastal State for activities conducted in its waters.¹²⁰ The new tracking requirements will be implemented in a phased approach, starting with fishing vessels below 12 meter in 2026,¹²¹ and certain fishing vessels below 9 meters operating very close to the shore in 2030.¹²²

The revised Control Regulation also introduces provisions concerning fishing vessels above 15 meters¹²³ switching off their AIS for exceptional reasons (e.g., piracy risks). AIS is a radio-based tool used to geolocate vessels, originally developed to improve maritime safety and prevent collisions at sea. Today, it also plays a very important role as fisheries monitoring tools, including for control, inspection and cross-checking purposes.¹²⁴ Unlike VMS data, AIS data is openly accessible, as it can be automatically collected through a Very High Frequency (VHF) radio-transponder installed on ships or on land, and is usually transmitted every few minutes.¹²⁵ The new Article 10(2) of the Control Regulation, which applies from 9 January 2024, requires the master of fishing vessels equipped with an AIS to inform its flag Member State about the reasons for switching off the system, and to restart the AIS as soon as the source

120. Control Regulation, Article 9(5) and (7).

121. Ibid., Article 9(2) and (3), and Amending Regulation (XXXX), Article 7(2).

122. Ibid., Article 9(4).

123. According to Article 10(1) of the Control Regulation and Annex II of Directive 2002/59/EC, all fishing vessels above 15 meters shall have installed onboard a fully functioning AIS system.

124. Pascal Thoya (et al.), 'AIS and VMS ensemble can address data gaps on fisheries for marine spatial planning' (2021) *Sustainability*, 13(7), 3769, 1-12; Mark James (et al.), 'AIS data to inform small scale fisheries management and marine spatial planning' (2018) *Marine Policy*, Vol. 91, 113-121; and Jennifer L. Shepperson (et al.), 'A comparison of VMS and AIS data: the effect of data coverage and vessel position recording frequency on estimates of fishing footprints' (2017) *ICES Journal of Marine Science*, Vol. 75, Issue 3, 988-998.

125. Daniel C. Dunn (et al.), 'Empowering High seas governance with satellite vessel tracking data' (2018) *Wiley Fish and Fisheries*, 2018, 1-11.

of danger has disappeared. The provision is based on the voluntary procedures outlined in the ‘Revised Guidelines for the Onboard Operational Use of Shipborne Automatic Identification Systems’, adopted on 2 December 2015 under the auspices of the IMO.¹²⁶

Lastly, Article 13 of the revised Control Regulation provides for the mandatory installation of REM systems, including CCTVs, onboard fishing vessels of 18 meters or above that pose a high risk of non-compliance with the rules on the landing obligation.¹²⁷ Member States may also allow for the use of cameras onboard their flagged vessels for purposes other than controlling compliance with discards rules.¹²⁸ The new requirements will apply from January 2028¹²⁹ and are complemented by important provisions on the protection of personal data, which should be read in the context of the other provisions of the Control Regulation and those laid down by Regulation (EU) 2016/679.¹³⁰

While the mentioned control technology is not entirely novel, its expanded and modernised implementation plays a key role in enhancing fisheries control and enforcement, ultimately promoting sustainability and benefiting the CFP as a whole. This is particularly true when the same control technology is used to collect evidence and detect behaviours to profile fishing vessels with a higher risk of forced labour onboard, including (1) vessels spending a very long time at sea, in isolation,

126. IMO Resolution A.1106(29), 2 December 2015. Paragraph 22 of the Annex, in particular, provides for procedures that are similar to those laid down by Article 10(2) of the Control Regulation, although in a non-mandatory language.

127. CFP Basic Regulation, Article 17.

128. Control Regulation, Article 13(6).

129. Amending Regulation (EU) 2023/2842, Article 7(7).

130. Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).

and largely relying on support vessels and transshipment (prohibited in EU waters)¹³¹ for operational purposes; (2) vessels making ports of call only or predominantly in countries with a high slavery risk (Global Slavery Index)¹³² or where fishery control is very poor; (3) vessels engaging in IUU fishing, including those placed on RFMOs provisional IUU vessels lists, and/or in other illegal activities at sea (e.g., illegal trade of sensitive species or drug trafficking); and (4) vessels regularly failing to transmit VMS and/or AIS data (i.e., ‘going dark’) and using other types of deceptive techniques.¹³³

A study conducted by McDonald (et al.)¹³⁴ on 16,261 industrial fishing vessels relying on vessel monitoring data shows that “fishing vessels using forced labour behave differently than the rest of the global fishing fleet.”¹³⁵ Despite some criticism of the findings and models used in that study,¹³⁶ the research opens up a technical debate and builds momentum on the role played by vessel monitoring data, remote sensing, and machine learning in identifying patterns of behavioural

131. Control Regulation, Article 20(1).

132. A flagship’s report published every year by the Walk Free Foundation providing ‘national estimates of modern slavery for 160 countries.’ It is worth mentioning also the analysis of the Global Slavery Index data made by Seafish to quantify the risk of modern slavery and forced labour in top-seafood exporters and producers, available at <<https://www.seafish.org/document/?id=f7a7288d-35f5-4b5c-a6bb-6f8f4bd3fc16>>.

133. Priyal Bunwaree, ‘The Illegality of Fishing Vessels Going Dark and Methods of Deterrence’ (2023) *International and Comparative Law Quarterly*, Vol. 72, Issue 1, 179-211, 192.

134. Gavin G. McDonald (et al.), ‘Satellites can reveal global extent of forced labour in the world’s fishing fleet’ (2021) *PNAS* 2021 Vol. 118 No. 3.

135. *Ibid.*, 3.

136. Wilf Swartz (et al.), ‘AIS-based profiling of fishing vessels falls short as a “proof of concept” for identifying forced labour at sea’ (2021) *PNAS* 2021 Vol. 118 No. 19; and Lozano (et al.) (n 4) 3. See also McDonald (et al.) reply to Swartz (et al.), Gavin G. McDonald (et al.), ‘Reply to Swartz et al.: Challenges and opportunities for identifying forced labor using satellite-based fishing vessel monitoring’ (2021) *PNAS* 2021 Vol. 118 No. 19.

features.¹³⁷ These patterns could be considered by States to strengthen their risk analysis for inspection and control purposes.¹³⁸ Accordingly, in the announcement letter for a new scoping study presented by the FAO Secretariat during the 5th session of the Joint FAO/ILO/IMO Working Group on IUU fishing and related matters (Geneva, January 8-12, 2024), the Secretariat noted that “using advancement in data technology, particularly through analysing fishing vessels” behaviours using different information sources, holds significant potential in detecting instances of labour exploitation onboard these vessels.¹³⁹

5. Maritime security, forced labour and fisheries control

There is not a universally agreed-upon definition of ‘maritime security’. As early as 2015, Bueger observed that trying to define this term universally would likely be “an unproductive quest”.¹⁴⁰ This is mostly due to the complexity underlying the abstract qualification of security, including security of and from ‘whom’ or ‘what’ and, in particular, ‘where’ and ‘why’ security is needed. What constitutes security may change over time and adapt to regional contexts, different security actors, specific challenges

137. Fernando Paolo (et al.), ‘Satellite mapping reveals extensive industrial activity at sea’ (2024) *Nature*, Vol 625, 85-91, 85; and Stefan Partelow (et al.), ‘Ocean Governance for Sustainability Transformation’, 13, in Stefan Partelow (et al.), *Ocean Governance. Knowledge systems, policy foundations and thematic analyses* (Springer, 2023).

138. Lozano (et al.) (n 4) 3.

139. FAO Secretariat, ‘Safety and Working Conditions in the Fishery Sector’, FAO/ILO/IMO, Joint Working Group on IUU Fishing and related matters, 5th session, 8-12 January, 2024, Geneva.

140. Christian Bueger, ‘What is Maritime Security?’ (2015) *Marine Policy* 53, 159-164, 163.

and policy objectives of States, depending on the circumstances of the case.¹⁴¹ A universal understanding of security, consequently, is not easy to grasp. Yet, at least two things are clear when we refer to maritime security.

First, security at sea is inherently linked to the use of maritime spaces and resources, their conservation status, and the potential impact that activities could have, either directly or indirectly, on these spaces and resources. This includes security considerations associated with fisheries,¹⁴² such as the security impact of fishing activities conducted using forced labour.

Second, protection from insecurity is a logical and necessary condition for the realization of security at large, whether on land or at sea.¹⁴³ In order for security to exist in practice, the sources of insecurity need to be prevented, removed, or otherwise kept under control. Certain unlawful behaviours, such as piracy, terrorism, marine pollution, and IUU fishing, are generally understood as posing a concrete security threat.¹⁴⁴ These behaviours are connected with specific security interests (e.g., socio-eco-

141. Natalie Klein, 'Maritime Security', 593-4, in Donald D. Rothwell, *The Oxford Handbook on the Law of the Sea* (OUP, 2015).

142. Rosello (n 103); Richards Barnes and Mercedes Rosello, 'Fisheries and Maritime Security: Understanding and Enhancing the Connection', 18, in Malcolm D. Evans and Sofia Galani *Maritime Security and the Law of the Sea. Help or Hindrance?* (Edward Elgar, 2019); Kyle Fawkes (et al.), 'Leveraging International Fisheries Law for Maritime Security in the Anthropocene: Addressing Conflicts in Fisheries', in Pierandrea Leucci and Ilaria Vianello, *ASCOMARE Yearbook on the Law of the Sea. Volume 2: Fisheries and the Law of the Sea in the Anthropocene Era* (Luglio Editore, 2022) 58-59; and Christian Bueger, 'What is Maritime Security?' (2015) *Marine Policy* 53, 159-164, 162.

143. The term 'security' comes from the Latin word *securus*, meaning 'safe' or 'free from danger.'

144. UN General Assembly, Sixty-Third Session, Item 73(a), Oceans and the Law of the Sea, Report of the Secretary General (A/63/63), 10 March 2008, ¶39, 15. See also, Christian Bueger, 'Learning from piracy: future challenges of maritime security governance' (2015) *Global Affairs*, 1:1, 33-42, 35; Klein (n 141) 583 and 590; Rosello (n 103) 52-53; and Ademun-Odeke, 'Challenges of Apprehending and Prosecuting Somali Pirate Leaders and Financial Backers: the *Big Mouth* Case' (2023) 29 *JIML*, 165-183, 173-174.

conomic, environmental, financial, military, territorial), which contribute to shaping the content of a collective security paradigm that affects the lives of people and States. In that sense, maritime security can be described as an optimal state or condition where all the relevant security interests are balanced against the risk posed by the corresponding security threats, including the overall risk resulting from their interaction and evolutionary adaptation.¹⁴⁵ Hence, identifying and managing security threats, as well as understanding their causes and ramifications in modern society and international law is key to achieving a legal order for the seas and the oceans, as purported by UNCLOS.¹⁴⁶ This is where, in the author's view, a positive (achieving a legal order) and negative (eliminating security threats) conceptualization of maritime security eventually meet.

Forced labour in fisheries constitutes a security threat for people and States,¹⁴⁷ particularly due to the nature of this offence and its socio-economic implications. Successfully curbing forced labour in fisheries is likely to decrease overfishing, unfair competition, and conflicts over resource access. It will also improve food security, employment, and transparency throughout the supply chain. Additionally, it will help mitigate the security risk posed by other associated offences, such as human trafficking and IUU fishing, just to mention a few positive outcomes.

Rules on control, inspection, sanctions and enforcement, as well as the use of tracking devices and remote sensing, are useful to address security threats related to fisheries, such as those posed by vessels engaging

145. Bueger (n 140) 39.

146. UNCLOS, PP5: "Recognizing the desirability of establishing through this Convention, with due regard for the sovereignty of all States, a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans, the equitable and efficient utilization of their resources, the conservation of their living resources, and the study, protection and preservation of the marine environment..."

147. Rosello (n 103) 53; Galani (n 98) 330.

in fishing activities with the use of forced labour. The same control rules and tools support the work of Union and national authorities to monitor and enforce compliance with the CFP policy objectives, including its zero-tolerance strategy against IUU fishing.¹⁴⁸ This aspect is also reflected in points 1.2.8 and 1.2.9 of the revised EU Maritime Security Strategy (2023), urging Member States and the European Commission to promote maritime security by reinforcing and coordinating their actions to eliminate forced labour at sea vis-à-vis the fight against IUU fishing.¹⁴⁹

6. Conclusion

We looked at how social fisheries management can be relevant for and covered by the CFP rules, and what the role of fisheries control and enforcement is to ensure compliance with these rules and their objectives. We explored and discussed the new provisions on inspection and sanctioning against forced labour in fisheries, including in the context of the jurisdictional powers provided by UNCLOS. Then, we addressed the possible use of fisheries control tools and technology to further develop the risk analysis for inspection and control purposes, and concluded that enhancing compliance with the CFP can have a positive impact on maritime security, which is understood as a cluster of security interests with a maritime dimension.

Forced labour in fisheries is a global security issue. Effectively eliminat-

148. European Commission, *Farm to Fork Strategy. For a fair, healthy and environmentally-friendly food system* (20 May 2020) 18.

149. European Commission, Annex to the Joint Communication to the European Parliament and to the Council on the update of the EU Maritime Security Strategy and its Action Plan “An enhanced EU Maritime Security Strategy for evolving maritime threats” (JOIN(2023)8 final), 10 March 2023.

ing it requires coordinated action among States, national authorities, and different areas of EU policies, including the CFP. The revised fisheries control system strengthens the collective/EU security paradigm by improving compliance with the CFP, including its social dimension, and by internalizing relevant human rights considerations into the fishery legislative framework.

The new rules help to crack the jurisdictional dilemma (coastal State vs flag State) under UNCLOS and bring order to the normative chaos caused by the pluralism of fishery and non-fishery sources, for the benefit of security overall.¹⁵⁰ Implementation, starting from January 2026, is key. For that, Member States should not only adopt the necessary legislation and notify it to the Commission by 10 April 2026¹⁵¹ but also ensure that fisheries inspectors are duly trained,¹⁵² strengthen inter-service cooperation and coordination (e.g., between fisheries and labour authorities) to ensure the necessary follow-up of any suspected infringement under Article 90(2)(p), and reinforce their data collection and cross-checking system, including by using and, where possible, extending the scope of application of control tools and technology (e.g., VMS, AIS, and CCT-Vs) to detect fishing activities carried out with the use of forced labour. Ensuring the full implementation of the new rules and promoting a human rights-based approach in fisheries will contribute to preserving the human-fish nexus,¹⁵³ upon which the sustainable use of marine biological diversity – and therefore maritime security – depends.

150. Rosello (n 103).

151. Amending regulation 2023/2842, Article 89(3).

152. Ibid., Article 74(5).

153. Chin-Chia Thien (n 1).