Tightening the Net: The Legal Link between Illegal, Unreported and Unregulated Fishing and Transnational Crime under International Law

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Introduction

Fisheries crime is an increasingly significant threat not only to maritime security but also to the sustainability of marine living resources. Although increasingly recognized as a global challenge, its true scope remains difficult to quantify because of the elusive nature of these activities. To date, only anecdotal evidence and a few studies document the existence of certain aspects of fisheries-related crime. More recently, international concerns have escalated with respect to fisheries crime in response to reports on the opportunistic participation of transnational criminal groups in certain fisheries, and more importantly the increasing association with other illicit activities such as narcotics trafficking, arms smuggling, trafficking in people for forced labor, and the use of fishing vessels for acts of piracy at sea and terrorism.

Illegal, unreported and unregulated (IUU) fishing and transnational crime relating to the environment are equally important, but distinct issues. The relationship between IUU fishing and international environmental crime was raised at the ninth meeting of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) and at the meeting of the Conference of Parties to the UN Convention against Transnational Organized Crime (UNTOC) in 2008.1 Divergent views emerged from these meetings on the potential link between illegal fishing and organized crime. Participants decided that further studies are required before such connection could be established.2

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On 19 March 2010, the UN General Assembly (UNGA) adopted Resolution 64/72 on sustainable fisheries where it notes the concerns about possible connections between international organized crime and illegal fishing in certain regions of the world, and encourages States, including through the appropriate international forums and organizations, to study the causes and methods of and contributing factors to illegal fishing to increase knowledge and understanding of those possible connections, and to make the findings publicly available, bearing in mind the distinct legal regimes and remedies under international law applicable to illegal fishing and international organized crime.3

Succeeding meetings at UNGA and UNICPOLOS, as well as other UN forums, have also recognized concerns relating to transnational crime in fisheries.4 This article responds to the ongoing debate on the emergence of this new type of maritime security threat which is evolving to be an important global concern. It revisits the concept of IUU fishing within the context of international fisheries law and highlights the issues associated with categorizing activities that fall within the realm of fisheries management as crimes. It also explores the potential elements of fisheries crime based on concepts of transnational organized crime and environmental crime. The article argues that current practical measures undertaken by States to address the problem highlight potential synergies between distinct bodies of law that may be explored to develop an applicable international legal framework that will adequately address the problem. These areas of convergence are geared towards providing a clear definition and characterization of IUU fishing activities that fall within the ambit of transnational organized crime and environmental crime, strengthened regional cooperation, and amendments to domestic legislation that will enable enforcement authorities to combat fisheries crime.


4 See UNGA and UNICPOLOS meeting reports to date. See also United Nations Economic and Social Council, Commission on Crime Prevention and Criminal Justice, Twenty-Second Session, Item 4 of the Provisional Agenda, Thematic discussion on the challenge posed by emerging forms of crime that have a significant impact on the environment and ways to deal with it effectively, Vienna, 22–26 April 2013.