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TRANSNATIONAL ORGANIZED CRIME IN THE FISHING INDUSTRY

Focus on:
Trafficking in Persons
Smuggling of Migrants
Illicit Drugs Trafficking



UNITED NATIONS
Vienna, 2011

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Executive summary

The study posed the questions whether there is transnational organized crime and other criminal activity in the fishing industry and, if so, what the vulnerabilities of the fishing industry are to transnational organized crime or other criminal activity. The research took the form of a six-month desk review of available literature, supplemented by *ad hoc* consultations and a two-day expert consultation held in Vienna, Austria.

Importantly the study did not set out to tarnish the fishing industry. Rather, the study sought to determine whether criminal activities take place within the fishing industry to the detriment of law-abiding fishers, the legitimate fishing industry, local fishing communities, and the general public alike.

The study considered the involvement of the fishing industry or the use of fishing vessels in trafficking in persons (Chapter 2); smuggling of migrants (Chapter 3); illicit traffic in drugs (Chapter 4); and other forms of crime such as marine living resource crime, corruption, and piracy and other security related crimes (Chapter 5).

Perhaps the most disturbing finding of the study was the severity of the abuse of fishers trafficked for the purpose of forced labour on board fishing vessels. These practices can only be described as cruel and inhumane treatment in the extreme. Fishers are held as *de facto* prisoners of the sea, and the study documents several instances of reported deaths, severe physical and sexual abuse, coercion and general disregard for the safety and working conditions of fishers. **A particularly disturbing facet of this form of exploitation is the frequency of trafficking in children in the fishing industry.**

The study found several reported instances where trafficking in persons on board fishing vessels were linked to marine living resource crimes. Marine living resource crime is defined for the purpose of the study as criminal conduct that may cause harm to the marine living environment; typically offences committed on the basis of contraventions of marine living resource management and conservation regulations. **The study found that transnational organized criminal groups are engaged in marine living resource crimes in relation to high value, low volume species such as abalone.** This criminal activity is also linked to illicit traffic in drugs, particularly ATS and ATS precursors, as a barter arrangement for marine living resources. **The study also found that some transnational fishing operators are engaged in marine living resource crime.** These fishing operations are highly sophisticated with complex incorporation and vessel registration strategies, as well as a high degree of logistical

coordination of vessel support services at sea and the laundering of illegally caught fish on to the market, often through the use of at-sea transshipments and fraudulent catch documentation. Investigation and prosecution of the criminal activities of these transnational fishing operators has proved to be challenging. **There are indications that the fishing licensing and control system is vulnerable to corruption, as is the practice of awarding foreign fleets access rights to fishing grounds in developing States and possibly also the system of allowing foreign corporate entities the right to operate commercial ship register of flag States that are unable or unwilling to enforce their criminal jurisdiction.**

The role of fishing vessels in criminal activities was considered throughout the study. **The study found that fishing vessels are used for the purpose of smuggling of migrants, illicit traffic in drugs (primarily cocaine), illicit traffic in weapons, and acts of terrorism.** Fishing vessels are used as mother ships, i.e. vessels that serve as base stations from which criminal activities take place, as supply vessels for other vessels engaged in criminal activities, or simply as cover for clandestine activities at sea and in port.

The study considered the role of fishers in transnational organized crime at sea and other forms of criminal activities. **The study found that although fishers are often recruited by organized criminal groups due to their skills and knowledge of the sea, they seldom seem to be regarded as the masterminds behind organized criminal activities involving the fishing industry or fishing vessels.** It is therefore unfortunate that fishers, rather than more centrally placed persons in the criminal networks, are likely to be targeted when criminal activities involving fishing vessels or the fishing industry are investigated and prosecuted, particularly in light of the possibility that some of these fishers may be victims of human trafficking.

The study identified a number of vulnerabilities of the fishing industry to transnational organized crime and other forms of criminal activity. The main vulnerabilities identified are as follows:

1. The global reach of fishing vessels, easy access to surplus fishing vessels due to fishing quota restrictions, the legitimate presence of fishing vessels at sea, and the distribution network for fish and fish products create opportunity and legitimate cover for criminal activities.
2. There is a general lack of governance and rule of law in the fishing industry, in particular there is
 - a) a lack of at-sea surveillance of vessel movements and transshipments. Compared to merchant vessels there is no comprehensive and transparent system of fishing vessel tracking or monitoring of their interaction with other vessels at sea;
 - b) a lack of transparency of the identity of the beneficial ownership of fishing vessels and a lack of international records of fishing vessels' identity and history;

- c) a lack of ability or willingness of some flag States to enforce their criminal law jurisdiction; and
 - d) a lack of international endorsement of existing international regulation of the safety of fishing vessels and working conditions of fishers at sea to bring these instruments into force and ensure compliance in port in the same manner as Port State Control (PSC) of merchant vessels.
3. Quota restrictions and declining fish stocks in many regions of the world have led to destitute fishers and fishing communities are deprived of their livelihoods and of an important food source. The socio-economic conditions generated by overfishing may make fishers and fishing communities vulnerable to recruitment into criminal activities.

Abbreviations

AIS	Automatic Identification System
ATS	Amphetamine-type stimulants
BBC	British Broadcasting Corporation
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
EEZ	Exclusive Economic Zone
EJF	Environmental Justice Foundation
EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FOC	Flag of convenience
FONC	Flag of non-compliance
GDP	Gross domestic product
GT	Gross Tonnage
IGO	Intergovernmental organization
ILO	International Labour Organization
IMO	International Maritime Organization
IOM	International Organization for Migration
ISPS	International Ship and Port Facility Security Code
ISS	Institute of Security Studies, South Africa
ITF	International Transport Worker's Federation
IUU	Illegal, unreported or unregulated
LIFDC	Low-income food-deficit countries
LRIT	Long Range Identification Tracking
MAOC (N)	Maritime Analysis & Operations Centre (Narcotics)
MMTF	Mixed Migration Task-Force
MSC	Maritime Safety Committee
mt	metric tons
NEPAD	New Partnership for Africa's Development
NGO	Non-governmental organization
NOREF	Norwegian Peace building Centre

OECD	Organisation for Economic Co-operation and Development
OSCE	Organization for Security and Co-operation in Europe
PSC	Port State Control
RFB	Regional Fisheries Bodies
RFMO	Regional Fisheries Management Organizations
RRRT	Pacific Regional Rights Resource Team
SIREN	Strategic Information Response Network
SOLAS	Safety of Life at Sea Convention
UN.GIFT	United Nations Global Initiative to Fight Human Trafficking
UNCAC	United Nations Convention against Corruption
UNCLOS	United Nations Convention on the Law of the Sea
UNDP	United Nations Development Programme
UNHCR	Office of the United Nations High Commissioner for Refugees
UNIAP	United Nations Inter-Agency Project
UNICEF	United Nations Children's Fund
UNICRI	United Nations Interregional Crime and Justice Research Institute
UNODC	United Nations Office on Drugs and Crime
UNTOC	United Nations Convention against Transnational Organized Crime
VMS	Vessel Monitoring System
WWF	World Wildlife Fund

1. BACKGROUND

1.1 Introduction

The United Nations Office on Drugs and Crime (UNODC) is the guardian of the United Nations Convention against Transnational Organized Crime (UNTOC) and its supplementary Protocols. The role of UNODC is to support Member States in the implementation of these instruments. The Office aims to provide Member States with targeted research on issues that require particular attention. Following a series of issue papers focusing on such diverse topics as: smuggling of migrants by air; combating trafficking in persons in accordance with the principles of Islamic law; organized crime involvement in trafficking in persons and smuggling of migrants; and a short introduction to migrant smuggling, UNODC undertook in September 2010 a study on the occurrence of transnational organized crime in the fishing industry, with a particular focus on three types of organized crimes: trafficking in persons, smuggling of migrants, and illicit drugs trafficking, and links to other forms of criminal activity.

The framework for the research is the United Nations Convention against Transnational Organized Crime and its relevant additional Protocols to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking in Persons Protocol), and against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol).

The Convention defines transnational organized crime as follows:

““Organized criminal group” shall mean a structured group of three or more persons, existing for a period of time and acting in concert with the aim of committing one or more serious crimes or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit.”¹

In addition:

““Serious crime” shall mean conduct constituting an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty.”²

Furthermore, an offence is “transnational” in nature if:

- “(a) it is committed in more than one State;
- (b) it is committed in one State but a substantial part of its preparation, planning, direction or control takes place in another State;
- (c) it is committed in one State but involves an organized criminal group that engages in criminal activities in more than one State; or
- (d) it is committed in one State but has substantial effects in another State.”³

¹ Article 2(a) of the United Nations Convention against Transnational Organized Crime.

² Article 2(b) of the United Nations Convention against Transnational Organized Crime.

³ Article 3(2) of the United Nations Convention against Transnational Organized Crime.

1.2 Terms of reference

Transnational organized crimes committed at sea are a recurrent concern raised in United Nations General Assembly resolutions. General Assembly Resolution 65/37 adopted on 7 December 2010 states:

“Noting with concern the continuing problem of transnational organized crime committed at sea, including illicit traffic in narcotic drugs and psychotropic substances, the smuggling of migrants and trafficking in persons, and threats to maritime safety and security, including piracy, armed robbery at sea, smuggling and terrorist acts against shipping, offshore installations and other maritime interests, and noting the deplorable loss of life and adverse impact on international trade, energy security and the global economy resulting from such activities,

Recognizes the considerable need to provide sustained capacity-building assistance, including on financial and technical aspects, by relevant international organizations and donors to developing States, with a view to further strengthening their capacity to take effective measures against the multiple facets of international criminal activities at sea, in line with the relevant international instruments, including the United Nations Convention against Transnational Organized Crime and the Protocols thereto;”⁴

Concerns are also raised about the possible connections between organized crime and illegal fishing. On 4 December 2009 the United Nations General Assembly adopted Resolution 64/72 on sustainable fisheries where it

“[n]otes 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”.⁵

The fishing industry is a large economic activity, conducted on a global scale by many transparent and law-abiding actors. Nevertheless, the possibility that criminal activities are carried out by individuals working within or making use of the fishing industry generates concerns.

The use of fishing vessels is associated with a number of illegal activities. In 2008, the UNODC report *Drug Trafficking as a Security Threat in West Africa* notes that transshipments between fishing vessels are a common method to traffic drugs in West Africa.⁶ There are also suggestions that fishing vessels are used to smuggle migrants⁷ and weapons,⁸ and for acts of terrorism.⁹

⁴ At para 3 and para 20, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N10/514/76/PDF/N1051476.pdf?OpenElement>.

⁵ At para 61, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/466/15/PDF/N0946615.pdf?OpenElement>.

⁶ UNODC *Drug Trafficking as a Security Threat in West Africa* (2008) 11, available at <http://www.unodc.org/documents/data-and-analysis/Studies/Drug-Trafficking-WestAfrica-English.pdf>.

⁷ See e.g. UNODC *Smuggling of Migrants into, through and from North Africa* (2010) 11-12 and 28,

The present study seeks to establish whether fishing vessels – and the fishers that crew them – are engaged in transnational organized crime and, if so, how they are involved and whether it is possible to determine vulnerabilities which make fishing vessels and certain fishers susceptible to be engaged in transnational organized crime.

A further concern that is raised by a number of United Nations agencies relates to crimes perpetrated by some actors in the fishing industry against their own crews. Reports, from amongst others the International Labour Organization (ILO),¹⁰ the United Nations Inter-Agency Project (UNIAP),¹¹ and the United Nations Children’s Fund (UNICEF)¹² over the last decade suggest that the conditions of crew, including children, working on board fishing vessels, give cause for concern. The problem seems to be, as one NGO report put it, that crew on board fishing vessels are quite literally “out of sight, out of mind” and that the scope for abuse is large.¹³ The study sought to determine whether human trafficking occurs in the fishing industry and the vulnerability of the industry to these crimes.

The current state of the world’s fisheries resources is a further concern raised in particular by the Food and Agriculture Organization of the United Nations (FAO), but also a number of governments and non-governmental organizations (NGOs) around the world. Suggestions are made that marine living resource crimes are perpetrated on a substantial scale and that they involve structured criminal networks. These networks are linked to other forms of transnational organized crime including human trafficking,¹⁴ money laundering,¹⁵ and corruption.¹⁶ Investigators of marine living resource crimes suggest that these criminal fishing operators are difficult to trace and information about their true identity is hidden in financial havens protected by privacy laws and through company structures in multiple jurisdictions, making traceability near impossible.¹⁷

available at http://www.unodc.org/documents/human-trafficking/Migrant_smuggling_in_North_Africa_June_2010_ebook_E_09-87293.pdf.

⁸ See e.g. *Report of the Panel of Experts in Somalia Pursuant to Security Council Resolution 1474* (2003) at para 3 and repeated in para 73.

⁹ At para 122 and The Court of Mumbai *Final Form/Report* at 11-12, available at <http://www.hindu.com/nic/mumbai-terror-attack-final-form.pdf>.

¹⁰ See e.g. Pearson/ILO *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 1)* (2006) at e.g. xxi, available at <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/underpaid-eng-volume1.pdf>.

¹¹ See e.g. Olivie/UNIAP *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand* (2008) 24, available at http://www.no-trafficking.org/reports_docs/commit/commit_cambodia%20deportees.pdf.

¹² See e.g. Surtees/UNICEF *Child Trafficking in Sierra Leone* (2005) 38, available at <http://www.nexusinstitute.net/publications/pdfs/Child%20Trafficking%20in%20Sierra%20Leone.pdf>.

¹³ International Transport Workers’ Federation (ITF) *Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights* (2006), available at <http://www.itfseafarers.org/files/extranet/-1/2259/HumanRights.pdf>.

¹⁴ See e.g. High Seas Task Force *Closing the Net: Stopping Illegal Fishing on the High Seas* (2006) 20, available at <http://www.illegal-fishing.info/uploads/HSTFFINALweb.pdf>.

¹⁵ See e.g. Solomon Island Financial Intelligence Unit *Financial Crime & Money Laundering Risk Assessment* (2008) 5, available at <http://publicintelligence.info/Financial-Crime-and-Money-Laundering-Risk-Assessment.pdf>.

¹⁶ See e.g. Standing “Corruption and Industrial Fishing in Africa” 7 *U4 Issue* (2008) 7.

¹⁷ See e.g. High Seas Task Force *Closing the Net: Stopping Illegal Fishing on the High Seas* (2006) 25, available at <http://www.illegal-fishing.info/uploads/HSTFFINALweb.pdf>

The present study seeks to establish the involvement of transnational organized criminal groups and transnational fishing operators in marine living resource crimes, as well as the vulnerability of the fishing industry to these forms of crimes.

1.3 The study

1.3.1 Object of the study

The study examines transnational organized crime and other forms of criminal activity in the fishing industry. The fishing industry is here understood as the industry engaged in fish capture and aquaculture (fish farming). The main focus of the study is on fish capture, although references are made to aquaculture where relevant. A number of actors make up the fishing industry. A central actor is the fisher, i.e. the person on board the vessel engaged in capture production¹⁸. The fisher may, but need not, be the owner of the fishing vessel. In fact, in many instances the fisher is an employee on board the fishing vessel engaged in fishing activities for the profit of the vessel owner or fishing operator. The vessel “owner” is the person (frequently a legal entity) registered in the flag State as the owner of the vessel. However, in a number of cases this legal entity is a front company and does not reflect the true beneficial owner of the vessel. The true beneficial owner may be anonymous, but is often closely linked to the person overseeing the fishing activity, referred to as the “fishing operator”.

Fishing activities are divided into small-scale or artisanal, commercial and industrial fisheries. The study mainly concerns commercial and industrial fisheries, but artisanal fishing is referred to where relevant. Fishing activities are complex. They often involve vessel registration, fishing licensing, fish capture, at sea supply, refueling, and transshipments, fish processing, trade and distribution. In order to reflect the complexity of fishing activities these activities are referred to as part of the “fishing operations”.

A number of actors are associated with the fishing operation including shipping registries, fish licensing authorities, fishers, fish processing workers and fish processing plant owners and operators, fleet suppliers and refueling service providers, recruitment agencies, fish traders and wholesalers, and fish distributors. The role of these actors in transnational organized crime and other forms of criminal activity is examined in the study and is referred to where relevant.

1.3.2 Research focus

The focus of this study is the involvement of the fishing industry in transnational organized crime and criminal activities. The study poses two main questions: a) whether there is transnational organized crime and other criminal activity in the fishing industry and, if so, b), what the vulnerabilities of the fishing industry are to transnational organized crime or other criminal activity.

¹⁸ FAO Global Capture Production Database Contains the volume of fish catches landed by country or territory of capture, by species or a higher taxonomic level, by FAO major fishing areas, and year for all commercial, industrial, recreational and subsistence purpose.
<http://www.fao.org/fishery/statistics/global-capture-production/en>

The study considers the involvement of the fishing industry in the most relevant forms of transnational organized crime (trafficking in persons, smuggling of migrants, and illicit traffic in drugs and psychotropic substances) and links to other relevant forms of criminal activities (marine living resource crime, corruption, piracy and other security related crimes).

The study has a global reach and considers a range of actors within the fishing industry as well as many different forms of criminal activity. Within this broad context, the objective of the study was to identify and highlight main trends and vulnerabilities to encourage further studies of these phenomena. Importantly the study supplements rather than supersedes the existing research into transnational organized crime and other forms of criminal activity. Since the study does not include empirical research it is beyond its scope to consider the prevalence of transnational organized crime or other forms of criminal activity in the fishing industry.

1.3.3 Sources and methodology

The research was carried out as a desk-study over a six-month period from September 2010 to March 2011. The research consisted of a literature review of relevant United Nations reports, reports by intergovernmental and non-governmental organizations, as well as governmental agencies. These sources were supplemented by studies conducted by researchers at academic institutions published in monographs and journals.

Most criminal activity is dynamic and flexible, yet some forms of crime are more so than others. This is particularly true for “smuggling crimes” such as smuggling of migrants and illicit traffic in drugs and psychotropic substances or weapons, where the *modus operandi* of the criminals and the smuggling routes and flows change in consequence of for instance enforcement efforts or political events (such as the recent surge in smuggling of migrants from Tunisia to Italy). The dynamic and flexible nature of criminal activities often requires that available reports, monographs and journal articles are supplemented to reflect recent trends. This information was acquired through consultations with relevant experts and media reports.

The research was carried out by way of consultations with more than eighty representatives from the fishing industry, governmental agencies, United Nations agencies, IGOs and NGOs, academic research institutions, and the investigative press. A record was made of the most relevant consultations for later reference. An expert consultation was held in March 2011 which included experts representing FAO; Frontex; ILO (via telecom); the International Organization for Migration (IOM); the United Nations Interregional Crime and Justice Research Institute (UNICRI); the Indonesian and Norwegian government; the Institute for Security Studies (ISS, South Africa); Sea-Change Consulting; and UNODC. The consultant researcher attended international conferences on illicit traffic in drugs,¹⁹ trafficking in persons²⁰ and marine living resource crimes²¹ and conducted further consultations at these events.

¹⁹ *Organized Crime, Illicit Drugs and State Vulnerability*, 4 October 2010, NOREF, Oslo, Norway

²⁰ *Human Trafficking: The Nexus between Research and Operative Work*, 25 November 2010, Uppsala University and Council of the Baltic Sea States – Task Force Against Human Trafficking, Uppsala, Sweden.

²¹ *6th International Forum on Illegal, Unreported and Unregulated Fishing*, 13-14 January 2011, Chatham House, London, United Kingdom.

The information gained from these consultations was also supplemented with media reports from investigative journalists and the daily press. Attempts to find other sources to corroborate information found in media reports were made.

The research is based on the most recent literature, with an emphasis on sources from 2008 onwards. Very few sources from before 2005 were taken into consideration, and sources from before 2000 were generally not included.

1.3.4 Research team

The research was undertaken by an independent consultant under the overall guidance and supervision of the Human Trafficking and Migrant Smuggling Team and the designated Researcher of the Studies and Threat Analysis Section (STAS), Division for Policy Analysis (DPA), UNODC.

1.4 Structure of the study

The study consists of six Chapters. Besides the present Chapter, Chapters 2-5 examines the involvement of the fishing industry in trafficking in persons (Chapter 2), smuggling of migrants (Chapter 3), illicit traffic in drugs and psychotropic substances (Chapter 4), and in other forms of criminal activities including marine living resource crime, corruption, piracy and other security related crimes (Chapter 5). Chapter 6 contains a summary of main findings, knowledge gaps, vulnerabilities, and recommendations.

1.5 The fishing industry

It is important to emphasize that the study does not set out to tarnish the reputation of the fishing industry. The fishing industry is a large and indispensable industry, which millions of people depend upon to make a livelihood and a source of valuable nutrition.

1.5.1 Global fishing workforce

In 2008 there were an estimated 44,9 million fishers worldwide.²² Of these, the vast majority were in Asia (85,5 per cent) followed by Africa (9,3 per cent).²³ Employment in the fishing sector grows faster than employment in other traditional forms of agriculture.²⁴ This growth is however limited to low- and middle-income countries. In the most industrialized States rates of recruitment of young people in the industry has fallen significantly. As the FAO points out, the result is that “fishing firms in industrialized countries have begun to look elsewhere when recruiting personnel”.²⁵ The legal framework protecting these workers is a concern raised in this study.

²² FAO *The State of World's Fisheries and Aquaculture* (2010) 6, available at <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

²³ *Ibid* 7.

²⁴ *Ibid*.

²⁵ FAO *The State of the World's Fisheries and Aquaculture* (2008) 25,

The increase in fishers is mainly due to the growth in fish farming. In 2008 about 11 million people – or about a quarter of the total workforce in fishing – were full or part-time fish farmers.²⁶ The vast majority of fishers and fish farmers are small-scale or artisanal. It is difficult to give an exact figure of how many they are as they are not always included in statistics. However, an estimate suggests that about 90 per cent of all fishers and fish farmers are artisanal. These artisanal fishers and fish farmers contribute to half the world's fisheries production for direct consumption.²⁷

In addition to fishers and fish farmers the fishing industry employs a large number of people in secondary sectors such as fish processing, marketing and service industries. FAO estimates that for every fisher there are three persons working in the secondary sectors, which means that 180 million people are employed by the industry as a whole.²⁸

1.5.2 World fishing fleet

The world fishing fleet consists of some 4,3 million vessels.²⁹ These are divided into the non-motorized fleet (smaller crafts without engine propulsion) (41 per cent) and the motorized fleet of engine-powered vessels (including the industrialized fleet of vessels more than 100 GT or more than 24 meters in length) (59 per cent).³⁰ Three quarters of motorized fishing vessels are located in Asia, with the remaining motorized vessels found in predominantly Latin America and the Caribbean (8 per cent), Africa (7 per cent), and Europe (4 per cent).³¹ 86 per cent of the world's motorized fishing fleet is small-sized, i.e. less than 12 meters in length.³² In the Pacific region, Oceania, Europe and North America fishing vessels tends to be larger on average than in other regions of the world.³³

The Pacific region, Oceania, Europe, Latin America and the Caribbean had the vast majority of the approximately 23.000 Lloyd's database registered industrialized fishing vessels and 740 fish carriers in the world at the end of 2007.³⁴ Industrialized fishing vessels frequently have fish processing and reefer capacity. They are therefore often called "factory ships". Fish carriers or fish transport vessels differ from fish capture vessels in that their sole purpose is to freeze and transport fish as opposed to capture production. These fishing vessels are therefore also often referred to as "reefer vessels". At the end of 2007 the United States of America and the Russian Federation had the greatest number of industrialized fishing vessels and the largest fleet in gross tonnage respectively.³⁵ The Russian Federation and China registered the most fish carriers, but the Russian Federation, Panama and Belize

<ftp://ftp.fao.org/docrep/fao/011/i0250e/i0250e.pdf>.

²⁶ FAO *The State of the World's Fisheries and Aquaculture* (2010) 7, available at <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

²⁷ *Love Fisheries: While Stocks Last* (2010) 39.

²⁸ FAO *The State of the World Fisheries and Aquaculture* (2010) 7, available at <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

²⁹ *Ibid* 30.

³⁰ *Ibid* Figure 15 at 31.

³¹ *Ibid*.

³² *Ibid*.

³³ FAO *State of the World's Fisheries and Aquaculture* (2008) 26, available at <ftp://ftp.fao.org/docrep/fao/011/i0250e/i0250e.pdf>.

³⁴ *Ibid* 28. The number of fish carriers does however not take into account cargo vessels used substantially for the same purpose. The current figure is estimated at 26.000 vessels.

³⁵ *Ibid*.

registered most tonnage.³⁶ This is because Chinese fish carriers had less tonnage on average. Although there has been a decline in overall gross tonnage, the number of vessels in the global fishing fleet has remained stable over the last ten years. The decline in gross tonnage is most severe in the case of fish carriers. The new fish carriers are much smaller than previously. Due to overcapacity in fishing fleets, efforts have been made to reduce the number and capacity of fishing vessels and fish carriers.³⁷

It is important to bear in mind that these industrial fishing vessels and fish carriers are on average large – some more than one hundred meters long with an on board crewing capacity of some 125 persons – and larger than many cargo vessels. However, a concern raised in this study is that the international legal framework applicable to the merchant marine to a large degree does not regulate and protect fishing vessels and their crew.

1.5.3 Global fisheries production and world trade

It is estimated that 2009 saw the harvesting of more than 145 million tones of fish.³⁸ Of this, capture production accounts for 90 million tones.³⁹ The world catches have remained relatively stagnant since the late 1980s.⁴⁰ The increase in fish production occurs in the aquaculture industry, particularly in China. Aquaculture production has had an average annual growth rate of 6.6 per cent since 1970 and produced about 55 million tones of fish in 2009.⁴¹

Currently fish provides 1,5 billion people with 20 per cent of their animal protein intake and 3 billion people with 15 per cent of it.⁴² However, not all fish are for human consumption. Only about 81 per cent of the worldwide fisheries production is used for this purpose. Nearly half of this comes from aquaculture production. Most of the remaining 19 per cent of the global catch, or about 27,3 million tones, end up as fishmeal and fish oil mainly to feed predatory fish (such as salmon) in the booming aquaculture industry.⁴³

Bluefin tuna price record January 2011

Some marine living resources are high value commodities. In January 2011 media reported that a price record was set at the famous fish market in Japan:

“A bluefin tuna, prized by sushi aficionados as a high-end treat, sold on Wednesday for a record price of nearly \$400,000 in the year's first auction at Tokyo's Tsukiji fish market... [T]he 342 kg (754 lb) tuna sold for 32.49 million yen (\$396,700), the highest price for a single

³⁶ *Ibid.*

³⁷ FAO *Status of the World Fisheries and Aquaculture* (2008) 29-30, available at <ftp://ftp.fao.org/docrep/fao/011/i0250e/i0250e.pdf>, see also FAO *Status of the World's Fisheries and Aquaculture* (2010) 33-34, available at <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

³⁸ FAO *Status of the World's Fisheries and Aquaculture* (2010) *ibid* 3.

³⁹ *Ibid.*

⁴⁰ Figure 1 *ibid* 4.

⁴¹ *Ibid* at 5 and 3.

⁴² *Ibid* 3-4.

⁴³ Figure 1 *ibid* 3, 9 and 44.

⁴⁴ Lies “Top-of-the-line Tuna Sells for \$400,000 in Japan” *Reuters*, 5 January 2011, available at <http://www.reuters.com/article/2011/01/05/us-japan-tuna-idUSTRE7040QQ20110105>.

fish since record-keeping began in 1999 -- which breaks down to a whopping 95,000 yen (\$1,157) per kg.”⁴⁴

According to the FAO, export of goods by fisheries reached a record US\$ 102 billion in 2008, which is an 11 per cent increase from 2006. Overall export in fish has nearly doubled in the decade between 1998 and 2008.⁴⁵ Due to the overall price-increases, in particular of fuel, fish prices also soared 37 per cent between 2006 and 2008, but have since dropped slightly.⁴⁶

Developing countries (in particular China, Thailand and Vietnam) play a major role in fishery export and re-export. Developing countries provide 80 per cent of the world fisheries production and exported fish for US\$ 50,8 billion in 2008, which was half the value of the world's export.⁴⁷ According to the FAO, developing States export more fish than any other agricultural commodity – and twice as much as the second most exported commodity, coffee.⁴⁸ Fish export is particularly vital for the group of countries defined by the FAO as “low-income food-deficit countries” (LIFDCs), i.e. countries with a particularly low GDP and few nutritious commodities to export.⁴⁹ In 2008 LIFDCs exported fish to the value of US\$ 19,8 billion.⁵⁰

The major importers of fish are Japan, the United States and the European Union (EU). The EU is the largest market in the world, although in 2009 imports seems to have dropped.⁵¹

The above indicates that global capture production has stagnated. The increase in fish production is attributed aquaculture production. A large amount of capture production (often low value species) is now used to feed aquaculture production. At the same time the trade in fish is increasing and remains an important industry, particularly for developing countries. An important consideration for the purpose of this study is the fact that fish is a valuable commodity – and increasingly so.

1.5.4 Decreasing fish stocks

At this point in history the future of global fish stocks is a pressing concern. The majority of the world's fish stocks are currently decreasing. Exploitation of these fish stocks cannot be expanded, and in certain circumstances conservation efforts are urgently needed in order to avoid collapsing fish stocks and depletion.

In 2005 the FAO *Review of the World Marine Fishery Resources* revealed that of the fish stocks or species for which sufficient data was available to make an accurate assessment (approximately 76 per cent of the monitored species – or 80 per cent of the global catch), only 3 per cent were underexploited and 20 per cent moderately exploited;⁵² all of which

⁴⁵ FAO *Status of the World's Fisheries and Aquaculture* (2010) 48, available at <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

⁴⁶ *Ibid* Box 2 at 50 *et seq.*

⁴⁷ *Ibid* 49-50.

⁴⁸ *Ibid* Figure 23 at 53.

⁴⁹ FAO Low-income Food-deficit Countries (LIFDC) – List of 2010 available at <http://www.fao.org/countryprofiles/lifdc.asp>.

⁵⁰ FAO *Status of the World's Fisheries and Aquaculture* (2010) 10, available at <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

⁵¹ *Ibid.*

⁵² FAO/Csirke *Review of the State of the World Marine Fishery Resources* (2005) 7, available at <http://ftp.fao.org/docrep/fao/007/y5852e/y5852e00.pdf>.

were less profitable or low-value species.⁵³ More than half of the fish stocks were fully exploited, meaning that there is no possibility of further expansion of the production. The remaining quarter was found over-exploited – with 7 per cent of the total fish stock depleted altogether.⁵⁴

The 2005 report indicated that there were some signs that the exploitation of fish stocks was decreasing.⁵⁵ However, the revised figures in the 2010 FAO *State of the World's Fisheries and Aquaculture* report show that the category of under- and moderately exploited species now accounts for only 15 per cent in 2008, whereas overexploited and depleted species have increased to 32 per cent in the same time-period. 53 per cent of the world's fish-stocks are at present regarded as fully exploited.

According to the 2005 report the highest incidents of depleted fish stock are found around Europe (in particular the Mediterranean), the Black Sea, and Antarctica. Fish stocks in the northeast Atlantic are principally fully exploited, with a considerable percentage of over-exploited fish stock recovering. The least is known about the exploitation in southwest Atlantic, eastern Indian Ocean and the Caribbean, yet there are reasons to believe that due to lack of monitoring these areas will be susceptible to illegal fishing and thus a high degree of exploitation.⁵⁶

Decreasing fish stocks are closely related to a number of concerns raised in this study. For instance, decreasing fish stocks have forced fishing operators to travel further distances to catch fish or spend more time to fill their cargo holds. More days at sea means that crew costs increase, which is compensated by employing cheaper migrant workers. Migrant workers are more likely to be vulnerable to human trafficking at sea. On the other hand, less fish makes it more valuable, which means that marine living resources are increasingly attracting the attention of transnational organized criminal groups.

The Abuja Declaration on Sustainable Fisheries and Aquaculture

Preamble of the Abuja Declaration on Sustainable Fisheries and Aquaculture, NEPAD "Fish for All Summit" 25 August 2005 reads:

"Recognizing the dependence of millions of our people on fisheries and aquaculture for their livelihoods, for food and nutrition and for economic wellbeing and commerce, and recognizing the importance of fisheries in the social fabric of our communities and in poverty alleviation;

(...)

Gravely concerned by the depletion of fisheries resources, the degradation of aquatic environments and the threats to sustainable fisheries and aquaculture."

⁵³ World Bank/FAO *The Sunken Billions: The Economic Justification for Fisheries Reform* (2009) xix, available at <http://siteresources.worldbank.org/EXTARD/Resources/336681-1224775570533/SunkenBillionsFinal.pdf>.

⁵⁴ FAO/Csirke *Review of the State of the World Marine Fishery Resources* (2005) 7, available at <ftp://ftp.fao.org/docrep/fao/007/y5852e/y5852e00.pdf>.

⁵⁵ *Ibid* 8.

⁵⁶ *Ibid* Figures A1.6 and A1.7 at 7.

Decreasing fish stocks has caused an overcapacity of fishing vessels. These fishing vessels are well suited vehicles for migrant smuggling, illicit traffic in drugs, and piracy, and their unemployed operators possess the necessary knowledge to navigate their coasts.

Depleted fish stocks are likely to significantly affect vulnerable coastal populations. For many of these communities fish is the main source of income and protein supply, and the lack of fish therefore undermines food security. Current prognoses suggest that depletion of fish stocks will intensify in the years to come.⁵⁷

1.5.5 Fishing operations

Larger fishing operations at sea require management in the form of pre-planning, logistic support and trade. This is particularly true for long-distance fishing expeditions where vessels stay at sea for weeks, months or even years at a time. This Section looks at some of the typical arrangement put in place to successfully conduct a long-distance fishing operation.⁵⁸

1.5.5.1 Preparatory stage

Long-distance fishing operations require fishing vessels of a certain size, normally more than 20 meters in length. In Europe fishing vessels are often built quite large as they are designed to replace more than one older vessel. Only fishing operators with fishing rights will order new-builds. The price of a new large trawler is somewhere between US\$ 12 to 100 million depending on the size and equipment on board. As noted above, in Asia fishing vessels are smaller. In this region one fishing operator will typically have ten to twenty smaller fishing vessels in a fleet. As opposed to the larger European vessels that require external finance, Asian fishing vessels are often built on credit against the fleet.

Fishing activities are often license-based. Licenses are issued by States individually or through Regional Fisheries Management Organization (RFMOs) established through FAO or international agreement. Fishing licenses can place restrictions on aspects of the fishing operation such as the species that may be caught, catch quotas, permitted gear, area or season of the fishing operation, and requirements relating to the presence of an international observer or satellite tracking on board the vessel.

Fishing operators can obtain fishing licenses from the flag State in waters within the flag State's jurisdiction. Fishing operators may obtain fishing licenses to fish outside the flag State's jurisdiction, if the flag State allows it. Many flag States will allow fishing vessels to obtain fishing licenses in areas regulated by RFMOs. Some flag States have also negotiated access rights⁵⁹ to fish stocks in the Exclusive Economic Zone (EEZ) of other States, and may issue licenses to its vessels to operate there. Some flag States allow fishing operators to apply for fishing licenses from foreign coastal States directly.

⁵⁷ See e.g. FAO *ibid* at 8-9 and Sumaila and Cheung "Vulnerability and Sustainability of Fish Stocks Worldwide: With Emphasis on Fish Stocks within the Commonwealth" in Bourne and Collins (eds) *From Hook to Plate: The State of Marine Fisheries* (2009) 195 at 206. The effects of overfishing is likely to be further worsened through climate change; *ibid* at 207.

⁵⁸ This Section is largely based on interviews with industry actors.

⁵⁹ See Section 5.2.1.2, below.

Not all fishing activities require a license. A number of States allow unlicensed fishing activities in their waters, typically recreational fishing or small-scale fishing of certain species. Some areas of the high seas and some species on the high seas are not regulated internationally, and thus not subject to a licensing regime. The flag State may however disallow its vessels to engage in unregulated fishing operations.

Many States require that fishing vessels of size are registered in a domestic ship registry. As opposed to the merchant fleet, there is currently no international register of fishing vessels. Registration on a State's ship registry will allow the vessel to sail under the State's flag. Vessels are often de-registered and re-registered in a new State due to a change of ownership or for strategic commercial reasons. Some registries are targeted due to the inability or unwillingness of the flag State to exercise its criminal law enforcement jurisdiction in terms of international law or because they allow front companies to register as fishing vessels owners which makes the true beneficial owner difficult, if not impossible, to identify. The lack of law enforcement facilitates criminal activities. These flag States are therefore referred to as "flags of convenience" (FOC) or "flags of non-compliance" (FONC).⁶⁰ One study estimates that 14 per cent of larger commercial fishing vessels built between 2001 and 2003 were registered under FOC.⁶¹

Many ship registries will require proof of re-registration before the vessel is de-registered to avoid vessels sailing without a nationality. This practice is however not universally applied, and some fishing vessel owners exploit this gap to operate stateless vessels.

1.5.5.2 At-sea-operations including transshipments

Long-distance fishing operations require careful planning and management. Support in the form of refueling (bunkering), supplies of necessities, crew rotations, and transshipment of fish takes place at sea.⁶² Many fishing operators will liaise with these external service providers themselves and larger operators will carry out some of these support functions as part of their business operations. The cost of these support services means that several vessels in a fleet must operate together to make long-distance fishing operations profitable. Because transshipments take place at sea they are often not monitored by law enforcement authorities.

Fish is highly perishable and spoilage begins as soon as it dies. Typically fish is brought on board the vessel and held until sorted. Once sorted or graded, the fish is gutted, bled and washed. Freezing is the oldest and most common method of preservation as it is both safe and keeps fish moist. Fish is normally frozen in 20-22 kg cartons and stored and unloaded or reloaded and transported. Larger fishing vessels often have processing and freezing capacity on board whereas reefer vessels will support smaller fishing vessels. These reefer vessels can prepare and freeze the fish whilst it is transported to port.

1.5.5.3 Trade and processing

⁶⁰ See e.g. High Seas Task Force *Closing the Net: Stopping Illegal Fishing on the High Seas* (2006) 52 *et seq.*, available at <http://www.illegal-fishing.info/uploads/HSTFFINALweb.pdf>.

⁶¹ Gianni and Simpson *The Changing Nature of High Seas Fishing* (2005) 4, available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf>.

⁶² *Ibid* at 36.

Many fishing operators have prior arrangements with buyers to purchase the fish caught. Ownership will often transfer in the moment the fish leaves the rail and is transshipped to the reefer vessel. The fish is then traded whilst it is transported to port. If an agreement has not been made with a buyer before the fish reaches port, then it may be kept on board a vessel until a buyer is located. Partly processed fish is transported (often in several consecutive legs) to a fish processing plant. At the fish processing plant the fish is moderately thawed and filleted and frozen.

Recent trends suggest that fish processing is increasingly taking place in areas of the world where processing or re-processing is cost-effective. According to the 2010 FAO *Status of the World's Fisheries and Aquaculture* report the outsourcing trend reflects “increasing globalization of the fisheries value chain, with the growth of international distribution channels controlled by large retailers”.⁶³ As a result, overseas fishing operations are increasingly coordinating with fish processing plants in developing countries.

Fish processing may also take place on board vessels to increase the fishing operator's profit. Fish processing vessels – factory ships – are often large industrialized vessels that can contain on-board fish processing factories.

For the purpose of this study it is important to note that long-distance fishing operations require a fair amount of pre-planning at the preparatory stage and logistics whilst executed at sea. Widespread use of off-shore bunkering and supply services, as well as transshipments, means that vessels can (and do) stay at sea for prolonged periods of time. Some fishing vessels will only arrive in port for repairs and maintenance. Fishing operations also include a logistical network for the purpose of fish processing and distribution. Capture production must therefore be seen in the context of a chain of events, best described as a “fishing operation”.

⁶³ FAO *State of the World Fisheries and Aquaculture* (2010) 46, available at <http://www.fao.org/docrep/013/i1820e/i1820e.pdf>.

2. TRAFFICKING IN PERSONS

2.1 Introduction

The United Nations legal framework on trafficking in persons (or “human trafficking”) is contained in a supplementary protocol to the United Nations Convention against Transnational Organized Crime, the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Trafficking in Persons Protocol). The Trafficking in Persons Protocol entered into force 29 September 2003 and is widely ratified with 143 Member States.⁶⁴ The aim of the Protocol is to provide a comprehensive legal framework for the prevention, suppression and punishment of human trafficking, as well as to protect and assist victims of human trafficking and promote cooperation between Member States to meet these objectives.⁶⁵

Rules pertaining to exploitation of persons are found in a number of international legal instruments. The added value of the Trafficking in Persons Protocol is that it is a universal instrument that provides the first internationally recognized definition of trafficking in persons.⁶⁶ A major feature of the Trafficking in Persons Protocol is the broad scope of the definition of human trafficking. According to Article 3, trafficking in persons is defined as:

“...the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs[.]”

The definition has three constituent elements: an “act” conducted for the “purpose” of exploitation with the use of particular “means”.

The first constituent element is the “act” involved. Types of conduct which may constitute the “act” as per the definition of the Trafficking in Persons Protocol are: recruitment, transportation, transfer, harbouring, or receipt of persons. The acts of recruitment agencies are included, as is the conduct of fishing vessel owners or operators, as well as senior crew on board fishing vessels.

The second constituent element of the definition of “human trafficking” is the “means” by which people are tricked into the situation of exploitation. The “means” element is a distinguishing feature of human trafficking as opposed to labour exploitation or migrant smuggling, and the definition explicitly negates the victim’s consent to exploitation if any of

⁶⁴ See http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&lang=en.

⁶⁵ Article 2 of the Trafficking in Persons Protocol.

⁶⁶ Preamble of the Trafficking in Persons Protocol.

the “means” are employed by the trafficker.⁶⁷ A list is provided in the definition of the various means employed to effectuate exploitation in the form of human trafficking:

- Threat or use of force or other forms of coercion
- Abduction
- Fraud or deception
- The abuse of power
- The abuse of a position of vulnerability
- The giving or receiving of payments or benefits to achieve the consent of a person having control over another person

These “means” of exploitation may overlap. Common “means” used in the fishing industry are examined in section 2.3.2, below. Trafficking in children is given special mention in the context of the Trafficking in Persons Protocol’s definition of trafficking in persons. According to the Protocol, a “child”, defined as a person under the age of 18, is trafficked regardless of any “means” employed.⁶⁸ The reason is that children are always in a position of vulnerability.

The third constituent element of human trafficking is the extent to which the conduct is committed for an exploitative “purpose”. The Trafficking in Persons Protocol lists forms of exploitation that are included in the definition “at a minimum”. The list is therefore non-exhaustive.

The most frequently reported forms of trafficking listed in the Trafficking in Persons Protocol are that of forced labour and sexual exploitation.⁶⁹ In the fishing industry the most common form of trafficking is trafficking for the purpose of forced labour. The concept of “forced labour” has been shaped in the context of international labour law⁷⁰ and a working definition is found in legal instruments created under the auspices of ILO. In Article 2(1) of the ILO Convention No 29 concerning Forced or Compulsory Labour of 1930 (ILO Forced Labour Convention No 29) “forced or compulsory labour” is defined as

“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.”⁷¹

The notion of exploitation of labour in the definition creates a nexus between the Trafficking in Persons Protocol and the ILO Forced Labour Convention No 29.⁷² In 2007 the ILO Committee of Experts considered the link between the two legal instruments and concluded

⁶⁷ Article 3(b) of the Trafficking in Persons Protocol.

⁶⁸ Article 3(c) read with Article 3(d) of the Trafficking in Persons Protocol; see also ILO/UNICEF/UN.GIFT *Training Manual to Fight Trafficking in Children for Labour, Sexual and Other Forms of Exploitation: Understanding Child Trafficking* (2009), available at http://www.ilo.org/ipecc/areas/Traffickingofchildren/lang--en/WCMS_111537/index.htm.

⁶⁹ See e.g. UNODC/UN.GIFT *Global Report on Trafficking in Persons* (2009) 50, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

⁷⁰ Friesendorf “The Security Sector and Counter-Trafficking” in Friesendorf (ed) *Strategies against Human Trafficking: The Role of the Security Sector* (2009) 17 at 27, available at http://www.acrath.org.au/multimedia/download/var/Strategies_Against_Human_Trafficking-The_Role_of_the_Security_Sector_Vienna&Geneva_Sep2009.pdf.

⁷¹ Article 2(1) of the Forced Labour Convention No 29, available at <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C029>.

⁷² For an analysis of the relationship between the Trafficking in Persons Protocol and the ILO Forced Labour Convention No 29, see UNODC *Model Law against Trafficking in Persons* at 14-17, http://www.unodc.org/documents/human-trafficking/UNODC_Model_Law_on_Trafficking_in_Persons.pdf.

that they overlap with a common focus on the element of exploitation.⁷³ The ILO jurisprudence is thus valuable to the understanding of “forced labour” and useful in the context of the United Nations Convention against Transnational Organized Crime and the Trafficking in Persons Protocol to the extent criminal motivations are present.

Article 2(1) of the ILO Forced Labour Convention No 29 applies to conduct where the person “has not offered himself voluntarily”. The concept of “voluntarily” deserves some further clarification. The initial recruitment can be voluntary and the coercive mechanism to keep a person in an exploitative situation may manifest itself at a later stage. The ILO supervisory bodies have noted that a violation of the Convention occurs when (migrant) workers are induced by deceit, false promises, retention of travel or identity documents, or use of force to remain at the disposal of the employer.⁷⁴ This also means that in cases where an employment relationship was originally the result of a freely concluded agreement, the worker’s right to free choice of employment remains inalienable, that is, a restriction on leaving the employment, even when the worker freely agreed to enter into it, can be considered forced labour.⁷⁵

The forms of human trafficking most emphasized until recently have been the exploitation of the prostitution of others and sexual exploitation.⁷⁶ In the fishing industry, trafficking in persons for the purpose of forced labour is most prevalent, although references are made to trafficking in persons for the purpose of the exploitation of the prostitution of women and children taking place in fishing ports and sexual exploitation of crew on board fishing vessels where relevant.

According to the 2009 UNODC *Global Report on Trafficking in Persons* an increasing number of States have introduced trafficking offences in their penal code since the inception of the Trafficking in Persons Protocol.⁷⁷ Of the 155 States examined by the report, 80 per cent had passed human trafficking legislation by 2008.⁷⁸ The legislative framework is however still relatively new and only 91 States had prosecuted human trafficking offences with 73 States noting at least one conviction.⁷⁹

⁷³ ILO *Eradication of Forced Labour* (2007) 41 para 77, available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_089199.pdf and ILO *The Cost of Coercion* (2009) 5-7, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_106230.pdf.

⁷⁴ ILO *Eradication of Forced Labour* (2007) 20 at para 39, available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_089199.pdf.

⁷⁵ ILO *Eradication of Forced Labour* (2007) 21 at para 40, available at http://www.ilo.org/wcmsp5/groups/public/@ed_norm/@relconf/documents/meetingdocument/wcms_089199.pdf, see also ILO *Guidelines on Human Trafficking and Forced Labour Exploitation* (2005), available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_081999.pdf.

⁷⁶ UNODC *Global Report on Trafficking in Persons* (2009) 6, available at http://www.unodc.org/documents/human-trafficking/Global_Report_on_TIP.pdf and UNODC *Trafficking in Persons: Global Patterns* (2006) 64-65, available at <http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf>.

⁷⁷ UNODC *Global Report on Trafficking in Persons* *ibid* at 8.

⁷⁸ *Ibid*.

⁷⁹ *Ibid*.

2.2 Note on methodology and sources particular to trafficking in persons in the fishing industry

The data on human trafficking in general is sparse and even more so in the context of human trafficking in the fishing industry. Data collection is hampered by a number of factors including varying definitions of what human trafficking is often focusing on sexual exploitation to the exclusion of trafficking for the purpose of forced labour – and the lack of statistics from the justice sectors as most trafficking cases are treated as associated forms of crime (such as a breach of immigration laws).⁸⁰ It is therefore not always possible to confirm whether the available reports and sources describe victims of trafficking for a purpose found in the definition of human trafficking in the Trafficking in Persons Protocol. An important qualification of this study is that the cases referred to include instances of alleged and possible occurrences of human trafficking and as such the references to “victims” in this report will refer to persons that are allegedly subject to exploitation, which is likely to amount to human trafficking if the offence was tried by a court of law. In this regard it was agreed at the expert consultation that an overly restrictive understanding of what constitutes a “victim” to instances where human trafficking had been established through a judicial process would fail to reflect the existence and complexity of the problem as it is experienced in the fishing industry.

Research was also challenging because reports that describe trafficking in persons for the purpose of forced labour often make little attempt to distinguish between the sectors in which the practice takes place. Frequently trafficking for the purpose of forced labour in the fishing industry is included in references to “agriculture” or “manufacture” and the full scale of trafficking in the fishing industry is therefore difficult to assess. In the last few years there has however been a change as researchers, IGOs and NGOs are becoming increasingly aware of not only the extent and severity of human trafficking in the fishing industry, but also the complex issues human trafficking at sea raise for detection and enforcement efforts. A number of reports now place attention on instances of trafficking specifically related to the fishing industry. An important contributory factor to this is the 2006 ILO report *The Mekong Challenge: Underpaid, Overworked and Overlooked* which describes the severe instances of human trafficking and forced labour in the fishing industry compared to other sectors such as manufacture, agriculture, and domestic labour.⁸¹

In this study primary reliance is placed on IGO, NGO and governmental reports in order to determine the occurrence of human trafficking in the fishing industry. The scientific quality of the reports varies, but it is beyond the scope of the present study to verify the information or undertake independent empirical research. Supplementing these reports are judgments, court documents (to the extent that these exist and are obtainable), and academic journal

⁸⁰ UNODC *Trafficking in Persons: Global Patterns* (2006) 65-66, available at <http://www.unodc.org/documents/human-trafficking/HT-globalpatterns-en.pdf> and Bosco, di Cortemiglia and Serojitdinov “Human Trafficking Patterns” in Friesendorf (ed) *Strategies against Human Trafficking: The Role of the Security Sector* (2009) 35 at 36-37, available at http://www.acrath.org.au/multimedia/download/var/Strategies_Against_Human_Trafficking-The_Role_of_the_Security_Sector_Vienna&Geneva_Sep2009.pdf. See also Kangaspunta *Collecting Data on Human Trafficking: Availability, Reliability and Comparability of Trafficking Data* (2007) 27-28.

⁸¹ ILO *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 1)* (2006) at e.g. xxi, available at <http://www2.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/underpaid-eng-volume1.pdf>.

articles. The International Transport Workers' Federation (ITF), an international trade union federation of transport workers' unions, has allowed insight into some of their cases on file involving suspected instances of organized human trafficking. The above is complemented by a large body of media releases from NGOs, the daily press, and investigative journalists describing cases of human trafficking in the fishing industry. The normal caution applies to these sources. Most information is anecdotal. It is however likely that human trafficking in the fishing industry is underreported.⁸²

2.3 Trafficking in persons in the fishing industry

The fishing industry is associated with human trafficking in two distinct contexts. First, migrant labourers and fishers fall prey to human traffickers as victims of trafficking for the purpose of forced labour on board fishing vessels, rafts or fishing platforms, in port, or in fish processing plants. In this instance fishing operators or fish processing operators are creating a demand for victims of trafficking. Second, women and children in fishing ports are vulnerable to organized exploitation of their prostitution by fishers. In the latter instance the demand is less intimate to the fishing industry, but rather related to actors (fishers) that happen to be associated with the fishing industry. The study focused primarily on human trafficking for the purpose of forced labour, as this seems to be the most prevalent form of exploitation in the fishing industry and of a character particular to this industry. Sexual exploitation and exploitation of the prostitution by fishers is however mentioned where relevant.

In the context of trafficking for the purpose of forced labour, this form of exploitation takes place in furtherance of both sea- and shore-based operations. With "sea-based" operations are meant at-sea activities such as capture fisheries on vessels, rafts or fishing platforms, as well as fish farming on at-sea aquaculture installations and fish processing on board fishing vessels. "Shore-based" operations include work in ports, repair yards, and fish processing plants, as well as shore-based harvesting of marine living resources (such as low-tide harvesting of mollusks). The focus in this study is primarily on trafficking in persons on board fishing vessels, due to the many particular issues that arise in this context and the severity of these crimes. Mention is however made of trafficking in persons into shore-based operations where relevant.

The fishing industry is involved in trafficking in persons in many different regions of the world (see section 2.4, below). There are differences between the practices in these regions. The study suggests that practices range from

- children being engaged to work on canoes and rafts in inland artisanal fisheries (Africa)⁸³ or on fishing platforms at sea (Asia);⁸⁴

⁸² Bosco, di Cortemiglia and Serojitdinov "Human Trafficking Patterns" in Friesendorf (ed) *Strategies against Human Trafficking: The Role of the Security Sector* (2009) 35 at 43, available at http://www.acrath.org.au/multimedia/download/var/Strategies_Against_Human_Trafficiking-The_Role_of_the_Security_Sector_Vienna&Geneva_Sep2009.pdf. Bosco *et al* notes a number of reasons for this, including the fact that many States only recently began to (or still do not) recognize forced labour as a form of human trafficking.

⁸³See e.g. Surtees/UNICEF *Child Trafficking in Sierra Leone* (2005) at e.g.38, available at <http://www.nexusinstitute.net/publications/pdfs/Child%20Trafficking%20in%20Sierra%20Leone.pdf>.

⁸⁴See e.g. Davis "E. Other Forms of Exploitation and Trafficking" in Rosenberg (ed) *Trafficking of Women and Children in Indonesia* (2003) 110, available at

- groups of young men and boys working on board commercial (Asia)⁸⁵ or industrial fishing vessels (all over the world);⁸⁶ and
- hundreds of men stationed a far distance off the coast using a mother ship as a base station for fishing operations from smaller boats (particularly off West-Africa).⁸⁷

2.3.1 Exploitation of fishers on board fishing vessels

Human trafficking may take place as a process which includes at least four phases: initial recruitment or abduction, transportation and (perhaps illegal) entry of persons into another country, exploitation, and subsequent laundering of the criminal proceeds.⁸⁸ This is often the case in instances of human trafficking in the fishing industry. However, whereas the recruitment, transportation and laundering phases will be generic to most forms of human trafficking, the exploitation stage of trafficking on board fishing vessels is particular to the industry and it thus warrants further elaboration.

Capture fisheries are labour intensive and victims of trafficking into at-sea operations are expected to take part in the fishing activities. These activities may for instance include the placing and repair of fishing equipment such as nets or lines, or sorting of fish or shellfish in accordance with size or species.⁸⁹ In the fish processing industry victims of trafficking are often required to gut, cut, sort and select, dry, carry, and scrape fish. Shellfish are peeled, sorted and selected, and shells are boiled.⁹⁰ The fish is thereafter packaged, stacked, stored, or carried to shore, for transshipment or further transport on land. Whilst the vessel is in dry dock, the fishers are often expected to paint and repair the vessel.⁹¹

Examples of tasks performed by children in the fishing industry

Examples of tasks performed by children working in the artisanal fishing industry in Senegal:

“In gillnetting operations, children also help haul the nets and clear them of fish. In purse-seining operations, children are required to dive into the water to guide the fish into the net, and this is generally done by those aged between 12 and 13, who have some swimming experience. There is a high risk of drowning due to the long time spent in the water, far away from the adults who are busy dealing with the net. In multi-day ice-carrying vessels, children

http://www.icmc.net/system/files/publication/trafficking_of_women_and_children_in_indonesia_51332.pdf.

⁸⁵ See e.g. Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006), available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

⁸⁶ See the cases referred to in Section 2.4, below.

⁸⁷ EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) 9 <http://www.ejfoundation.org/page682.html>.

⁸⁸ UNODC *Trafficking in Persons: Global Patterns* (2006) 57, available at http://www.unodc.org/pdf/traffickinginpersons_report_2006-04.pdf.

⁸⁹ Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) at 122, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

⁹⁰ *Ibid.*

⁹¹ Bruno/Stella Maris International Service Center “In Search of a New Standard and Foreign Fishers on Board of Taiwanese Fishing Vessels” *Presentation at the Far East Regional Conference, Kaohsiung, 7-11 March 2005*, on file with UNODC.

bait the hooks, fish with hand lines, and haul the long lines. They also help to prepare meals and arrange the fish in the ice-boxes. The particularly harsh working conditions aboard these vessels are reflected in most of the children engaged being above 12 years of age.”⁹²

Examples of tasks performed by children in the Cambodian fishing industry:

“Children and young people engaged in fishing did several different activities. Those who fished on a small boat stayed out at sea for about 10–11 hours, mostly during the night. Others joined larger vessels with refrigeration facilities and worked for longer periods at a time, which can range from two to three days a week or sometimes even more than one or two months. Many more children repaired fishing nets or peeled raw shrimps/crabs on the wharfs. Some peeled shrimps or crabs at home. Children worked at the ports to carry frozen sea products from the boats to trucks to be transported to a factory.

Children in the study elaborated the hazards and injuries related to their work similar to the fishing sector in Kampot. A striking response was that not all working children knew how to swim and that safety devices on boats were almost unknown. Deep-diving using compressed air supplied from the boats and sucked through tube pipes was mentioned.”⁹³

Fishers are often expected to work long hours and in some instances days on end when abundant fishing grounds are reached.⁹⁴ For instance, employment contracts obtained by the ITF stipulate that working hours are more than 18 hours a day.⁹⁵ Excessive working hours is a frequent complaint raised by victims of trafficking at sea.⁹⁶

“Contract of Employment”

In the 2010 *All at Sea* report the EJF refers to a contract of employment between an illiterate Nepalese fisher who signed using his thumb-print and a South East Asian recruitment agency. The main clauses of the contract provide:⁹⁷

The crewmember is employed for three years with a monthly salary of US\$ 200. Three quarters – US\$ 150 – is retained by the Singaporean agency with which the contract is signed. Payments for the first six months of the contract will only be paid when the full contract is completed, i.e. after three years.

The first time the agency will pay a salary to the crewmember is after one year, and then only for the last six months (US\$ 1,200), thereafter the agency will pay US\$ 1,200 every six months “because it is very costly to send salary home every month”. The remaining US\$ 50

⁹² O’Riordan “Senegal: Child Labour: Growing Pains” 44 *SAMUDRA Report* (2006) 8 at 13.

⁹³ Cruz and Ratana *Understanding Children’s Work in Cambodia: Mapping & Costing Current Programmes Targeting the Worst Forms of Child Labour* (2007) 21 at para 68-69, available at http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2008/06/06/000333038_20080606013812/Rendered/PDF/440840WP0BOX321n0Cambodia111PUBLIC1.pdf.

⁹⁴ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 1, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

⁹⁵ A sample of contractual terms is compiled in Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15 at 5-6 paras 13-19, available at <http://www.oecd.org/dataoecd/32/32/31492524.PDF>.

⁹⁶ See e.g. UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 1, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

⁹⁷ The contract can be found in EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) 13, available at <http://www.ejfoundation.org/page682.html>.

per month will be paid by the captain when the vessel is in port, although the vessel is stated to be at sea for six months, a year, or even more at a time.

Repatriation costs are not covered, and the crewmember will be abandoned in the nearest port if the contract is breached. A breach of contract is defined as “own sickness, lazy and rejected by captain etc”.

Working hours are “around 18 hours (sometime more, sometime less)” and there is no overtime pay. Food and accommodation will be provided but noodles and biscuits must be purchased by the crewmember himself: “Seawater will be used for bathing and laundry (sic.) purpose.”

Should the crewmember be unhappy with the arrangement, then the contract states that the crewmember has “fully understood” that “I will not claim back any amount of money I spent for securing this job”, i.e. the recruitment fees.

Based on the above figures the crewmember is expected to “work hard, obediently and diligently” about 19.710 hours over a three-year period with an average pay of US\$ 0,37 an hour. From this the cost of the recruitment fee and repatriation must be deducted (“minimum US\$ 2000”), making the crewmember a possible victim of debt bondage.⁹⁸

Living conditions on board fishing vessel are reported to be abysmal in some circumstances.⁹⁹ Sleeping quarters are often cramped: there are reports of shared bunks with cardboard mattresses stacked less than a meter above one another.¹⁰⁰ Cooking facilities may be unhygienic and food supplies are limited.¹⁰¹ Victims of trafficking for the purpose of forced labour in the fishing industry are reported to have become severely malnourished and fallen ill due to excessive exposure to sun and seawater.¹⁰² Whereas living and working conditions on board merchant vessels is governed by international regulations and Port State Control (PSC) measures, there is currently no equivalent legal framework applicable to fishers and fishing vessels.¹⁰³

Working and living conditions of migrant fishers in Taiwan (province of China)

“Externally the fishing vessels look old and rusty, inside cargo hold and freezers take up most of the space, cabin for the crew are small without ventilation and space to move around, mess room for eating and recreation room are non existent, kitchen and pantries are dirty, water

⁹⁸ ITF notes that these contract often represents a form of “bonded labour”; see Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15 at 5 para 11, available at <http://www.oecd.org/dataoecd/32/32/31492524.PDF>.

⁹⁹ See e.g. *Representation on Behalf of Crewmen ex the Motor Fishing Vessel “Balena” Currently Berthed in Table Bay Harbour by Adv Alan Goldberg to the Organized Crime Unit, National Prosecution Authority, South Africa, 10 June 2009* (on file with UNODC) referred to in Section 2.4.1, below.

¹⁰⁰ EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) at 9, available at <http://www.ejfoundation.org/page95.html#other>.

¹⁰¹ *Ibid* at 10.

¹⁰² Davis “E. Other Forms of Exploitation and Trafficking” in Rosenberg (ed) *Trafficking of Women and Children in Indonesia* (2003) 110 at 110-111, available at http://www.icmc.net/system/files/publication/trafficking_of_women_and_children_in_indonesia_51332.pdf.

¹⁰³ Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15 at 4-5 paras 8-9, available at <http://www.oecd.org/dataoecd/32/32/31492524.PDF>.

tank are rusted, safety equipment such as radio, fire extinguishers, life boat or life jacket are old and sometimes unusable.”¹⁰⁴

A number of reports suggest that working and living conditions of victims on board fishing vessels are brutal compared to other forms of exploitation: in the 2006 *ILO Mekong Challenge: Underpaid, Overworked and Overlooked* report the experiences of migrant workers in four sectors – fishing, domestic work, agriculture and manufacture – was compared. 20 per cent of workers on board fishing vessels and 11 per cent of those in the fish processing sector stated they were forced to work. The report concluded:

“Fishing workers are among the most exploited when compared with other migrant sectors. Working conditions on the fishing boats are even worse than those in fish processing. Being forced to work is not uncommon on fishing boats.”¹⁰⁵

The report also noted that the fishing sector used the highest number of child workers, were more prone to physical and verbal abuse, and gave employees less access to their identity documents than any other sector looked at.¹⁰⁶ A 2001 ILO Rapid Assessment describes boys as young as 13 working on Thai fishing boats and shrimp hatcheries labouring around the clock whilst performing heavy and dangerous tasks. The children overwhelmingly reported that the living conditions were bad in the fishing industry, even when compared to other forms of abusive work such as sex work.¹⁰⁷ A 2008 UNIAP study into human trafficking of Cambodians in Thailand includes a report of similar high frequency of human trafficking on board fishing vessels as compared to other industries.¹⁰⁸

Sexual exploitation of children in the deep-sea fishing industry in Pakistan

“SEHER, a Quetta based NGO, with support from Save the Children UK and Save the Children Sweden sent a fact-finding mission to Gwadar district to study the situation of children employed in deep-sea fishing. The team visited the high concentration fishing communities at Kumadi, Mullah Bund, Koh Ban and Sur Bandar areas. Over the years, the subsistence fishing in Gwadar has been replaced with the commercial fishing, using launches and trawlers. The commercial fishing approach turned the conventional way of fishing from small simple nets to large wired nets, increasing the time span on the sea and from small family business to larger commercial enterprises. The fishing launches have usually 15-20 members crew (having distinct responsibilities), including boys as young as 7-9 years.

¹⁰⁴ Bruno/Stella Maris International Service Center “In Search of a New Standard and Foreign Fishers on Board of Taiwanese Fishing Vessels” *Presentation at the Far East Regional Conference, Kaohsiung, 7-11 March 2005*, on file with UNODC.

¹⁰⁵ Pearson/ILO *The Mekong Challenge Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 1)* (2006) 82, available at <http://www2.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/underpaid-eng-volume1.pdf>.

¹⁰⁶ *Ibid* Chapter 4 “Analysis of Findings Across the Four Work Sectors”.

¹⁰⁷ ILO/Wille *Trafficking of Children into the Worst Forms of Child Labour: A Rapid Assessment* (2001) 58 and 63, available at http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/documents/publication/wcms_bk_pb_10_en.pdf.

¹⁰⁸ Olivie/UNIAP *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand* (2008) 24, available at http://www.no-trafficking.org/reports_docs/commit/commit_cambodia%20deportees.pdf.

Children are usually employed as *Walaeds* ... For a *Walaed*, the age of 9-14 years is basic pre-requisite. Another study by ILO at Gwadar found out that over 80 percent of the currently employed labour force in marine fisheries, within the age of 19 years and above, started their careers as child labourers. Even the currently working child labour started their career much earlier i.e. at the age of 5 years or so.

Launch owners hire children for Rs 1,500-1,800 [currently US\$ 17,7-21] per month and take them into the deep sea for two to three weeks. Once at sea, these children without any parental supervision and protection are at risk of being subjected to physical, emotional and sexual abuse. Interviews with some former *Walaed* revealed that in the camouflage of helping the cook, the children (*Walaed*) are sexually exploited by the adults on board. On some occasions, 5-8 adults may have sex with a single child during the fishing trips, exposing them to the risks of genital trauma and sexually transmitted infections, including HIV/AIDS.”¹⁰⁹ (Footnotes omitted)

2.3.2 Means used for the purpose of exploitation of fishers

As noted above, exploitation of victims of trafficking requires the existence of “means” used to effectuate exploitation. The most common “means” used in the fishing industry are threats of violence, actual or perceived. The available sources suggests that victims of trafficking for the purpose of forced labour on board fishing vessels are frequently subjected to severe physical and psychological abuse.¹¹⁰ Disobedience or lack of effort is often struck down forcefully.¹¹¹ There are a number of reports of physical injuries and deaths induced by senior crew.¹¹² There are sources that suggest that victims at sea have been tossed overboard when sick, injured or dead.¹¹³ Fishers that fall overboard are sometimes not rescued.¹¹⁴ The frequency of deaths is referred to in news reports where claims are made that bloated corpses of foreign fishers are washing up along the coast.¹¹⁵ Fishers report that they are forced to work whilst sick without medical treatment.¹¹⁶ Many fishers suffer sea-sickness.¹¹⁷ Due to

¹⁰⁹ Muhammad/Save the Children Sweden *Commercial Sexual Exploitation of Children: A Situation Analysis of Pakistan* (2005) 49, available at <http://www.wgcsae.org/publications/-artical-CSECPakistanSituationAnalysis.pdf>.

¹¹⁰ See e.g. UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 5, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

¹¹¹ See e.g. UNIAP *Exploitation of Cambodian Men at Sea* (2007) 2, available at http://www.no-trafficking.org/reports_docs/siren/SIREN%20CB-01%20cambodia%20trafficking%20databases.pdf.

¹¹² See for instance box, below; ITF *Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights* (2006) 20, available at <http://www.itfseafarers.org/files/extranet/-1/2259/HumanRights.pdf>; and Browne “Murder at Sea” 35 *Transport International Online* (2009), available at <http://www.itfglobal.org/transport-international/ti35fishers.cfm>.

¹¹³ United States Department of Justice *Trafficking in Persons Report* (2007) 9, available at <http://www.state.gov/documents/organization/82902.pdf>; Gorvett “Traffickers Prey on Cambodian Men” *The New York Times*, 12 January 2009, available at <http://www.nytimes.com/2009/01/12/world/asia/12iht-traffic.1-405492.html>; and Carmichael “Human Traffickers Target Young Cambodian Men for Fishing Industry” *Voice of America*, 28 May 2010, available at <http://www.voanews.com/english/news/asia/Traffickers-Target-Young-Cambodian-Men-94910439.html>.

¹¹⁴ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 5, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

¹¹⁵ Brinkley “Migrant Fishermen Fall Through the Cracks in Thai Trafficking Laws” *Taiwan News*, 5 July 2009, available at http://www.etaiwannews.com/etn/news_content.php?id=994624&lang=eng_news.

¹¹⁶ See box below.

¹¹⁷ Gorvett “Traffickers Prey on Cambodian Men” *The New York Times*, 12 January 2009, available at

their lack of training, often coupled with fatigue due to malnutrition and lack of rest, victims of human trafficking on board fishing vessels are more likely to be injured in the course of fishing operations.¹¹⁸ The violence may also be sexual.¹¹⁹

Another “means” is coercion. In the fishing industry “coercion” may take the form of physical confinement. Fishers are reportedly locked up or chained whilst at sea.¹²⁰ Victims are subjected to threats of financial penalties such as non-payment. They can also be threatened to be reported to the immigration authorities to facilitate deportation.¹²¹

<http://www.nytimes.com/2009/01/12/world/asia/12iht-traffic.1-405492.html>.

- ¹¹⁸ See e.g. Gianni and Simpson *The Changing Nature of High Seas Fishing* (2005) 34, available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf> and Davis “E. Other Forms of Exploitation and Trafficking” in Rosenberg (ed) *Trafficking of Women and Children in Indonesia* (2003) 110 at 110-111, available at http://www.icmc.net/system/files/publication/trafficking_of_women_and_children_in_indonesia_51332.pdf.
- ¹¹⁹ See e.g. Muhammad/Save the Children Sweden *Commercial Sexual Exploitation of Children: A Situation Analysis of Pakistan* (2005) 49, available at <http://www.wgcsae.org/publications/-artical-CSECPakistanSituationAnalysis.pdf> and Solidarity Center *The True Cost of Shrimp* (2008) 19-20, available at http://www.solidaritycenter.org/files/pubs_True_Cost_of_Shrimp.pdf.
- ¹²⁰ Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15 at 7 para 22, available at <http://www.oecd.org/dataoecd/32/32/31492524.PDF>; ITF *Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights* (2006) 22, available at <http://www.itfseafarers.org/files/extranet/-1/2259/HumanRights.pdf> and Bruno/Stella Maris International Service Center “In Search of a New Standard and Foreign Fishers on Board of Taiwanese Fishing Vessels” *Presentation at the Far East Regional Conference, Kaohsiung, 7-11 March 2005*, on file with UNODC.
- ¹²¹ See e.g. Solidarity Center *The True Cost of Shrimp* (2008) 19-20, available at http://www.solidaritycenter.org/files/pubs_True_Cost_of_Shrimp.pdf.

Examples of means of exploitation

The United States of America Department of Justice describes extreme instances of coercion in the *2007 Trafficking in Persons Report*:

“In August 2006, more than 30 Burmese fishermen died from infectious diseases and lack of medical care on fishing vessels found off the coast of Thailand; the bodies of victims were tossed overboard, discarded like common refuse.”¹²²

The ITF refers to the following first-hand accounts in a paper presented at an Organisation for Economic Co-operation and Development (OECD) workshop in 2004:

“A Filipino fisher states:

“I was chained for thirty days, that is for two periods of fifteen days, in a two square meter storeroom. I was not only chained but also beaten up with a baseball bat.”

... [A] Filipino fisher advises:

“We often had to sleep with our work clothes and sometimes wet working clothes. We were denied medical treatment and medicine... We were only permitted to eat what was left after the *** crew had eaten and were left with half finished cups of coffee to drink and food left over... We were required to massage *** officers and crew on a daily basis after our long hours of work. We were punched, kicked and beaten on the head with closed fists by the *** personnel regularly. The *** crew often grabbed our sensitive parts, applied pressure to the extent that we cry in pain. They also squeezed our necks until we fall to our knees”

... Another fisher notes:

“We were taken by force to work even we were sick. We were denied access to medication and treatment... We were given very little food and water. Most often we drink dirty water, so that some of us constantly suffer from severe stomach ache and diarrhea. We work 20 to 22 hours daily but were only allowed some two-hour night sleep... We were hit like animals every time we commit errors in our work...”¹²³

The sea itself makes victims of trafficking for the purpose of forced labour on board fishing vessels vulnerable to be held against their will. One victim is quoted as stating:

“We were always thinking of escaping...[t]here was no way, though. We were powerless. The sea itself was our prison.”¹²⁴

In many instances it has been reported that fishers are required to hand in their identity documents to the captain or senior crew of the vessel. This means that the fisher’s freedom of movement in port may be limited. According to the ILO *Mekong Challenge: Underpaid, Overworked and Overlooked* report “[m]ore than three quarters of those in fishing [examined by the study] could not access their documents or did not know if they could

¹²² United States Department of Justice *Trafficking in Persons Report* (2007) 9, available at <http://www.state.gov/documents/organization/82902.pdf>. See also ITF *ITF Statement on Horrific Death of 39 Burmese Fishers on Thai Fleet*, 19 April 2007, copy on file with UNODC.

¹²³ Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15 at 7 para 22, 24 and 25, <http://www.oecd.org/dataoecd/32/32/31492524.PDF>.

¹²⁴ Gorvett “Traffickers Prey on Cambodian Men” *The New York Times*, 12 January 2009, available at <http://www.nytimes.com/2009/01/12/world/asia/12iht-traffic.1-405492.html>.

access their documents (as they had never asked their employer)".¹²⁵ It is observed in the report that:

"[r]egistered migrants working in the fishing industry are far more likely to be bonded to their employer and the worksite than registered workers in agriculture or manufacturing, due to their inability to obtain their identification documents."¹²⁶

Access to port is often further hampered by international security regulations which require foreign crew to stay on board the vessel whilst in port.¹²⁷ Often the employment contract is also structured so as to deprive the fisher of any payment for services rendered should he decide to leave service on the ship.¹²⁸ Still, there are reports of victims of trafficking for the purpose of forced labour on board fishing vessels that risk their lives to swim to shore when the vessel is passing nearby islands to escape their traffickers.¹²⁹

Trafficking of persons on board fishing vessel in Timor-Leste

According to the 2010 US Department of Justice Trafficking of Persons report, the following account was made from Timor-Leste:

"Male victims are forced to labor on fishing boats with little space, no medical care, and poor food... Victims report traffickers subjected them to threats, beatings, chronic sleep deprivation, insufficient food and fresh water, and total restrictions on freedom of movement - victims on fishing vessels rarely or never went ashore during their time on board."¹³⁰

(Neither the victims nor the fishing vessels were from Timor-Leste.)

Abduction, often of persons already victims of human trafficking, or sale of victims from one human trafficking organization (often a broker or recruitment agency) to another are obvious examples of coercion and frequently reported in the fishing industry.¹³¹

Victims of trafficking at sea are deprived of their freedom of movement. Fishing vessels are equipped to stay for prolonged periods of time at sea and are increasingly fishing at a far

¹²⁵ Pearson/ILO *The Mekong Challenge Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 1)* (2006) at xxii, available at <http://www2.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/underpaid-eng-volume1.pdf>.

¹²⁶ *Ibid.*

¹²⁷ ITF *Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights* (2006) 33-34, available at <http://www.itfseafarers.org/files/extranet/-1/2259/HumanRights.pdf>.

¹²⁸ See contract quoted in EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) 13, available at <http://www.ejfoundation.org/page682.html>.

¹²⁹ See video broadcast by Al Jazeera *Murder at Sea* (2008), available at <http://english.aljazeera.net/programmes/general/2008/08/200882917912777575.html> (Part I) and <http://www.youtube.com/watch?v=VtDJaConQ1w> (Part II).

¹³⁰ United States Department of Justice *Trafficking in Persons Report* (2010) 322, available at <http://www.state.gov/g/tip/rls/tiprpt/2010/>.

¹³¹ Correspondence with ITF regional representatives on file with UNODC. See also e.g. Ellgee "Burmese Trafficking Victims Freed in Raid" *The Irrawaddy*, 13 October 2009, available at http://www.irrawaddy.org/article.php?art_id=16983 and Gorvett "Traffickers Prey on Cambodian Men" *The New York Times*, 12 January 2009, available at <http://www.nytimes.com/2009/01/12/world/asia/12iht-traffic.1-405492.html>.

distance from shore as fish stocks closer to land are becoming depleted in many regions around the world. Food, fuel and other supplies are often transferred to the vessel via supply vessels.¹³² With the possibility of at-sea transshipment a vessel may stay at sea for many years at a time without coming to port. Fishers report that they are traded from vessel to vessel whilst at sea to meet crewing needs.¹³³ Without the possibility of escape, victims of trafficking are held as *de facto* prisoners at sea. There are also reports that large numbers of fishers are kept in “work camps” on board derelict vessels functioning as mother ships some 200 nautical miles off shore.¹³⁴

Fraud and deception often takes place in the form of false promises regarding work conditions or payment.¹³⁵ A frequent example is work contracts that are renegotiated on lesser terms when the victim crosses the border to another jurisdiction.¹³⁶ Another common modus is induced indebtedness, or debt bondage. Debt bondage occurs when victims are subject to forced labour or sexual exploitation caught in a spiral of debt.¹³⁷ Debt bondage is often associated with initial migrant smuggling or recruitment where the victim incurs a debt in the form of a “fee” against future earnings and is thereafter exploited and has the debt increased. The debt increases are frequently done through price adjustments (increasing the price on goods needed by the victim (such as food or travel expenses) and reducing the value of the services provided by the victim) or charging high interest on loans.¹³⁸

“Re-negotiated” employment contracts on lesser terms

“The fisherman was contracted under a Philippines Overseas Employment Agency (POEA) license agreement between Philippines manning agents [deleted] and the “Principle” UK Filipino Manning Agent [deleted]. The fisherman was contracted to work by both companies as a Trawlmaster on US\$1,100 per month for a 48hr week (208 hrs) and within a few weeks of working in the UK his wages were cut to \$550 per month (£1.80 per hour) without his agreement; the ITF has found this practice is a common occurrence and a number of Scottish Manning Agents force fishing crews to sign new and lesser contracts than POEA approved

¹³² See e.g. UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) at 5, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

¹³³ *Ibid.*

¹³⁴ EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) 9, available at <http://www.ejfoundation.org/page682.html>.

¹³⁵ Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) at 132, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf> and ITF *Migrant Workers in the Scottish and Irish Fishing Industry: Forced or Compulsory Labour or Just Plain Modern Day Slavery* (2008) 2-3, available at <http://www.ictuni.org/uploads/67b098da-831b-4ef7-ba01-f5111705d2bc/Migrant%20Fishers%20Report%20nov%20251108.pdf>

¹³⁶ See ITF *ibid* at 5 and Gianni and Simpson *The Changing Nature of High Seas Fishing* (2005) 34, available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf>.

¹³⁷ According to the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery of 1957 “debt bondage” is referred to as a “practice similar to slavery” and defined in Article 1(a) as “the status or condition arising from a pledge by a debtor of his personal services or of those of a person under his control as security for a debt, if the value of those services as reasonably assessed is not applied towards the liquidation of the debt or the length and nature of those services are not respectively limited and defined”.

¹³⁸ See e.g. Solidarity Center *The True Cost of Shrimp* (2008) 21, available at http://www.solidaritycenter.org/files/pubs_True_Cost_of_Shrimp.pdf.

employment contracts when they arrive in Scotland. This practice is also in contravention of Philippines Law and the Philippines Overseas Employment Agency Regulations.”¹³⁹

Traffickers may achieve exploitation through abuse of power by means of their status as employers, dismissing employees at random, removing their rights or privileges, or excluding the victim from future employment opportunities through for instance listing the victim on “blacklists” for non-employable individuals.¹⁴⁰ These “blacklists” are then circulated among recruitment agencies. According to ITF “[b]lacklisting is not only used to alert employers to the “undesirable” qualities of potential recruits, but it is also used for intimidation.¹⁴¹ Traffickers are known to abandon fishers without any financial means in port – leaving it to the victim to find sufficient funds to make their way home or to the home port to collect their payment.¹⁴²

2.3.3 Traffickers

The various phases of the trafficking process often involve different groups of actors – traffickers – to facilitate the trafficking process. In the fishing industry the main actors identified in trafficking for the purpose of forced labour on board fishing vessels are recruiters, senior crew on board fishing vessels, and the fishing company or “operator”. The primary motivation for each of these groups of traffickers is profit. Brokers and recruitment agencies make money from both the victim and the fishing operator for connecting the victim with the vessel and senior crews receive payments from the fishing operator for services rendered or the sale of fish. The main profit is however likely to be gained by the fishing operator or the vessel owner (which could also be the senior crew). Using victims of trafficking for the purpose of forced labour brings down the operating cost of fishing vessels.¹⁴³ The cost savings stems primarily from cutting back on basic insurance, health, and safety measures such as rest period, proper training and accommodation and safety equipment.¹⁴⁴ Lower (or no) wages may make a difference, but this is at times compensated in part by higher wages to senior crew as a result of increased risk associated with unsafe or criminal practices (particularly in the context of vessels engaged in marine living resource crimes).¹⁴⁵

¹³⁹ ITF *Migrant Workers in the Scottish and Irish Fishing Industry: Forced or Compulsory Labour or Just Plain Modern Day Slavery* (2008) 5, available at <http://www.ictuni.org/uploads/67b098da-831b-4ef7-ba01-f5111705d2bc/Migrant%20Fishers%20Report%20nov%20251108.pdf>.

¹⁴⁰ ITF *Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights* (2006) 26, available at <http://www.itfseafarers.org/files/extranet/-1/2259/HumanRights.pdf>.

¹⁴¹ *Ibid.*

¹⁴² *Ibid* at 12.

¹⁴³ OECD *Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing* (2005) 77.

¹⁴⁴ Agnew and Barnes “Economic Aspects and Drivers of IUU Fishing: Building a Framework” in OECD *Fish Piracy: Combating Illegal, Unreported and Unregulated Fishing* (2004) 169 at 180-181.

¹⁴⁵ Agnew and Barnes *ibid.* In legitimate fisheries “labour costs” accounts for about 30-50% of the total operating costs, human trafficking can bring the costs to below 30%. See also OECD *Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing* (2005) 77 and the World Bank/FAO *The Sunken Billions: The Economic Justification for Fisheries Reform* (2009) at 12, available at <http://siteresources.worldbank.org/EXTARD/Resources/336681-1224775570533/SunkenBillionsFinal.pdf>.

A further pull factor is the apparent unavailability of local fishers.¹⁴⁶ Brokers, recruitment agencies and fishing operators are therefore reported to abduct or deceive victims to get hold of crew for fishing vessels.¹⁴⁷

Although variances do exist,¹⁴⁸ human trafficking often appears to require close cooperation between fishing vessel operators and intermediary brokers and recruitment agencies. Recruitment is an important feature of human trafficking as the supply of trafficking victims is not always readily available.¹⁴⁹ Some effort may therefore have to be made in order to locate and recruit potential victims. In order to win the victims' trust, initial recruitment is often carried out by locals who may themselves have been victims of human trafficking or by middlemen scouting in remote villages.¹⁵⁰ These initial and often intermediary brokers assist the victims with transportation to the destination. The service is provided against a fee. According to research conducted by UNIAP in 2009, victims of trafficking for the purpose of forced labour on board fishing vessels in Southeastern Asia are likely to pay between Baht 1.500-2.500 (USD 43-72) to intermediary brokers and transporters.¹⁵¹ The UNIAP study also revealed that brokers (if the same) make an additional Baht 10.000-15.000 (USD 287-431) from selling the victim to boat owners and captains.¹⁵² The brokers' (often inflated)¹⁵³ loan to the victim is transferred to the vessel owner or captain when the victim is signed up.¹⁵⁴

Recruitment of migrant workers into the Canadian fish processing industry

In a recent media story a social worker at the Legal Assistance Windsor, a Canadian legal aid clinic, describes the recruitment of victims of human trafficking in the Canadian fish processing industry in the following manner:

“Typically ... human trafficking and debt bondage involve the trafficker having an agent in another country, Thailand or the Philippines among the most popular, to recruit workers. The

¹⁴⁶ Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) at 153, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>

¹⁴⁷ See Section 2.3.2, above, and Nieva “Human Traffickers Resort to Kidnapping” in *ABS.CBN news.com*, 16 May 2009, available at <http://www.abs-cbnnews.com/pinoy-migration/05/16/09/human-traffickers-resort-kidnapping>.

¹⁴⁸ Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) at 143, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>

¹⁴⁹ Shelley *Human Trafficking: A Global Perspective* (2010) L1546-1553.

¹⁵⁰ See e.g. Gorvett “Traffickers Prey on Cambodian Men” *The New York Times* 12 January 2009, available at http://www.nytimes.com/2009/01/12/world/asia/12iht-traffic.1-405492.html?_r=1

¹⁵¹ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 4, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

¹⁵² *Ibid.* See also Olivie/UNIAP *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand* (2008) 22, available at http://www.no-trafficking.org/reports_docs/commit/commit_cambodia%20deportees.pdf.

¹⁵³ Olivie/UNIAP *ibid* at 20.

¹⁵⁴ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 4, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf. See also ITF *Burmese Trafficking Victims Freed from Thai Vessels*, 15 October 2009, on file with UNODC.

¹⁵⁵ Lajoie “Windsor-Essex Agency Reaches out to Victims of Human Trafficking” *The Windsor Star*, 2 March 2011, available at <http://www.windsorstar.com/news/Agency+reaches+trafficking+victims/4373928/story.html>.

agent, usually a white man to provide a “Canadian face”, makes an offer of employment in Canada and then sells his services to the prospective worker. The fee can be many thousands of dollars that, the worker is assured, can easily be made back once in Canada. Often the workers will mortgage their land or homes or sell their possessions to make the trip and take advantage of “the opportunity”. When they arrive in Canada they soon discover the situation is vastly different.

Third-party traffickers tell them where they must live, usually in overcrowded and terrible housing, told with whom they can and cannot associate, even where they must shop. They are arbitrarily picked up and moved from job to job. The wages are too low to ever pay off their debts.”¹⁵⁵

The recruitment process has regional variances. In South East Asia government officials confirm that the recruiters use aggressive coercion methods such as abductions and the use of drugs.¹⁵⁶ In some instances the victims are promised work in a factory but are subsequently “re-sold” to another broker who sells the victims to a ship operator.¹⁵⁷ These sudden relocations are known to take place at night and there are reports that brokers keep victims in confinement in port before transfer to the vessel can take place. The brokers appear to be both male and female.¹⁵⁸

In other regions around the world the recruitment process seems to be less aggressive. Deception is used by means of employment contracts that are either misrepresented to the (at times illiterate) victim or re-negotiated to the victim on lesser terms once the victim reaches the destination.¹⁵⁹ Employment contracts are necessary to obtain transit visas into port States where the victims will meet the vessel.¹⁶⁰ Recruitment fees are still charged, but the package is presented in a manner that makes the fees seem like a short-term loan and possible to be met by the promised salary.

Fishers and transit visas

Foreign crewmembers wishing to join a vessel or aircraft may apply for transit visas. The visas are often issued on the basis of an employment contract and will stipulate that the crewmember is entitled to stay in the country temporarily and must depart from the country

¹⁵⁶ Nieva “Human Traffickers Resort to Kidnapping” in *ABS.CBN news.com*, 16 May 2009, available at <http://www.abs-cbnnews.com/pinoy-migration/05/16/09/human-traffickers-resort-kidnapping>

¹⁵⁷ Olivie/UNIAP *Identifying Cambodian Victims of Human Trafficking Among Deportees from Thailand* (2008) 18, available at http://www.no-trafficking.org/reports_docs/commit/commit_cambodia%20deportees.pdf.

¹⁵⁸ Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) 153, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

¹⁵⁹ See EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) 13, available at <http://www.ejfoundation.org/page682.html> and ITF *Migrant Workers in the Scottish and Irish Fishing Industry: Forced or Compulsory Labour or Just Plain Modern Day Slavery* (2008) 5, available at <http://www.ictuni.org/uploads/67b098da-831b-4ef7-ba01-f5111705d2bc/Migrant%20Fishers%20Report%20nov%20251108.pdf>.

¹⁶⁰ See e.g. ITF *ibid* at 2.

¹⁶¹ ITF *Migrant Workers in the Scottish and Irish Fishing Industry: Forced or Compulsory Labour or Plain Modern Day Slavery* (2008), available at <http://www.ictuni.org/uploads/67b098da-831b-4ef7-ba01-f5111705d2bc/Migrant%20Fishers%20Report%20nov%20251108.pdf>.

on board the vessel or aircraft.

In a 2008 report the ITF allege that the transit visa system in the UK was abused by fishing operators that allowed migrant workers to stay in the country without proper oversight in breach of the visa conditions.¹⁶¹ The ITF alleged that recruitment agencies and fishing operators actively used transit visas to hire crew that subsequently became victim of exploitation in the UK without “accountability or protection for human and trade union rights”.¹⁶²

It would seem that more knowledge is called for about the role of transit visas in facilitating human trafficking for the purpose of forced labour on board fishing vessels.

Brokers seem to be organized in accordance with the network model.¹⁶³ From the available literature it seems that they vary from entrepreneurial “sole proprietors” to hiding behind the façade of a legitimate recruitment agency.¹⁶⁴ The former is often seen among intermediary brokers in rural areas,¹⁶⁵ whereas the latter seems more prevalent in urban areas.¹⁶⁶ In instances of intermediary brokers these seem to be connected in a looser network and the victims will be “re-sold” to a number of traffickers before employment is taken up.¹⁶⁷ It is likely that many of these intermediary brokers are not aware of their complicity in human trafficking, due in part to the lack of awareness that trafficking for the purpose of forced labour in the fishing industry takes place. There seems to be a great deal of overlap between intermediary brokers that operate as human traffickers and migrant smugglers.¹⁶⁸

Vulnerability of smuggled migrants

“Manning Agents in the Philippines” and Indonesia have been known to fix or falsify papers for the seafarers in general and as a result have a very strong hold over these type of workers, in that they become very reluctant to complain to the authorities, unions or ITF about health & safety, wage and conditions of employment, because the company will tell them they will

¹⁶² *Ibid* at 13.

¹⁶³ UNODC *Results of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries* (2002) 41 *et seq*, available at http://www.unodc.org/pdf/crime/publications/Pilot_survey.pdf.

¹⁶⁴ See e.g. ИОМ ИЗУЧЕНИЕ СИТУАЦИИ И ПРЕДЛОЖЕНИЯ ПО УКРЕПЛЕНИЮ ПОТЕНЦИАЛА ПРОТИВОДЕИ СТВИЯ ТОРГОВЛЕ ЛЮДЬМИ В КАЛИНИНГРАДСКОЙ ОБЛАСТИ (*Counter-trafficking Assessment and Proposals about Counter-trafficking Capacity Building in the Kaliningrad Oblast*) (2006) Section 3.4.1, available at http://iom.fi/files/Publications/2006/trafficking_assessment_2006_rus_and_eng.pdf.

¹⁶⁵ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009), available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

¹⁶⁶ ИОМ ИЗУЧЕНИЕ СИТУАЦИИ И ПРЕДЛОЖЕНИЯ ПО УКРЕПЛЕНИЮ ПОТЕНЦИАЛА ПРОТИВОДЕИ СТВИЯ ТОРГОВЛЕ ЛЮДЬМИ В КАЛИНИНГРАДСКОЙ ОБЛАСТИ (*Counter-trafficking Assessment and Proposals about Counter-trafficking Capacity Building in the Kaliningrad Oblast*) (2006) Section 3.4.1, available at http://iom.fi/files/Publications/2006/trafficking_assessment_2006_rus_and_eng.pdf.

¹⁶⁷ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009), available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

¹⁶⁸ See e.g. ITF *Migrant Workers in the Scottish and Irish Fishing Industry: Forced or Compulsory Labour or Just Plain Modern Day Slavery* (2008) 4, available at <http://www.ictuni.org/uploads/67b098da-831b-4ef7-ba01-f5111705d2bc/Migrant%20Fishers%20Report%20nov%20251108.pdf>.

go to jail if they are found to have false papers and they or their families will be seriously dealt with upon their return to the country including being blacklisted.”¹⁶⁹

Fishing operators frequently use recruitment agencies to coordinate crewing for long-distance fishing operations. It is likely that the recruitment agencies will source their victims through intermediary brokers, but this will vary from place to place. These operations are often more involved and may for instance require the victim to be flown to a foreign port to meet the vessel. In this regard the agencies will facilitate the formal process of issuing the necessary documents and visas to have the victims transferred. By nature these recruitment agencies conduct a sophisticated operation.

Experts point out in consultations that the recruitment agencies are known to exploit the indigence of their victims and may breach their own contractual obligation to pay the full wage upon completion of the contract knowing that the victim lacks sufficient means to pursue the claim in the legal system.¹⁷⁰ Alternatively, some work contracts stipulate that payment is only due upon collection in the home port, leaving it open as to how the victim will raise sufficient funds and obtain a visa to get there. The number of cases of these practices on file with labour organizations such as the ITF gives reason to suspect that some traffickers preempt non-enforcement of the contract and speculate in signing employment contracts on terms of payment that they do not intend to honour.

Senior crew (such as the fishing boat captain, first mate and boatswains) on board fishing vessels function as “enforcers” and are responsible for ensuring order and policing the victims.¹⁷¹ These persons are often recruited by the fishing operators in the flag State or the State of the vessel’s beneficial owner and will be the link between the fishing vessel and the fishing operator. By necessity, the captain has full authority on board the vessel and is protected by the other senior crew. The captain may recruit victims directly or through recruitment agencies personally or they are sourced and placed on the vessel by the fishing operator. It would seem to be quite common that the senior crew and the victims are of different nationalities and that they may not be able to communicate in a common language.¹⁷² In the majority of cases the captain and senior crew physically and verbally abuse the victims into submission. It is reported that victims have seen fellow crewmembers killed or seriously injured at the hands of senior crew.¹⁷³

Although much emphasis is placed in the literature on the abuse meted out by the senior crew it is worth noting that senior crew may be victims of the circumstances they find themselves in and may be unaware that their practices amount to human trafficking. Although it is possible that the fishing operation and the trafficking is organized by the

¹⁶⁹ *Ibid.*

¹⁷⁰ Interview on file with UNODC.

¹⁷¹ Aranowitz, Theuermann and Tyurykanova/OSCE and UN.GIFT *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010) 22, available at <http://www.osce.org/cthb/69014>.

¹⁷² See e.g. Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) 116, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

¹⁷³ See e.g. ITF *Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights* (2006) 20, available at <http://www.itfseafarers.org/files/extranet/-1/2259/HumanRights.pdf> and Browne “Murder at Sea” 35 *Transport International Online* (2009), available at <http://www.itfglobal.org/transport-international/ti35fishers.cfm>.

captain himself,¹⁷⁴ this is less likely to be the case where larger industrialized fishing vessels are involved and the vessels partake in long-distance fishing operations. These operations require considerable start-up capital and shore-based management facilitated by larger fishing operators. Hence, to single out senior crew for their complicity in trafficking would in some circumstances fail to take account of the more systemic exploitation that takes place at the hands of some larger fishing operators within the fishing industry.

Although the literature on the involvement of fishing operators in human trafficking is sparse, existing research shows that it is likely that they deal with the victims at arms length through an incorporated entity.¹⁷⁵ It seems that the fishing operators prefer to out-source dealings with the victims to a recruitment agency. As such the fishing operator will not relate to the victims directly, but will do so through the senior crew on board the vessel and the recruitment agency on shore. The fishing operator will however have to budget for running costs including food and medical supplies and crew wages, and is therefore likely to be alerted to abuse of crew if such should take place.

Whereas targeting senior crew for their role in trafficking of victims for the purpose of forced labour on board fishing vessels may give some relief in individual cases, it is likely that pursuing the larger organizational structure – or what Aronowitz *et al* refer to as the “investors”¹⁷⁶ – will have a more lasting effect. However, it may prove difficult to target criminal fishing operators and the profit they make as information gathered for this study shows it is likely that they will avail themselves of the protection of non transparent corporate structures in jurisdictions that will hide the identity of the ownership interests in the fishing company. The profit gained from their criminal activities will often be laundered through their seemingly legitimate business operations. More research is called for into the role of fishing operators in human trafficking for the purpose of forced labour at sea, how they are structured, and how they launder the proceeds of their criminal activity.

2.3.4 Victims

The victims of trafficking for the purpose of forced labour in the fishing industry will vary according to the form of exploitation and where the exploitation takes place. It would seem that as to the form of exploitation and the kind of work done that men are predominantly trafficked on board fishing vessels. As to the fish processing industry,¹⁷⁷ the victims are often both women and men,¹⁷⁸ whereas women and children (both boys and girls) are trafficked for the purpose of the exploitation of prostitution by fishers.¹⁷⁹

¹⁷⁴ In the *Mekong Challenge: Underpaid, Overworked and Overlooked* report the employers interviewed were owners of seemingly small-scale business enterprises; see Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) at 116, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

¹⁷⁵ Gianni and Simpson *The Changing Nature of High Seas Fishing* (2005) 33-34, available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf>.

¹⁷⁶ Aronowitz, Theuermann and Tyurykanova/OSCE and UN.GIFT *Analysing the Business Model of Trafficking in Human Beings to Better Prevent the Crime* (2010) 22, available at <http://www.osce.org/cthb/69014>.

¹⁷⁷ See e.g. Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) 119, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

¹⁷⁸ *Ibid.*

¹⁷⁹ See e.g. UNICEF *Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in*

The literature often highlights instances of trafficking of children in the fishing industry. This could be due to the attention placed on child labour, although the ILO *Mekong Challenge: Underpaid, Overworked and Overlooked* report suggests that children are targeted for work in the fishing industry.¹⁸⁰ Some sources also refer to children and their parents expressing a need to learn a skill and join a profession, and that the children are actively seeking employment in the fishing industry for that reason.¹⁸¹

The sources suggest that victims are vulnerable to trafficking in the fishing industry due to depleted fish stocks caused by overfishing.¹⁸² As fishers are no longer able to provide for themselves and their families they fall prey to fishing operators involved in industrial fisheries operating further out at sea.¹⁸³ The effect of overfishing on fishing communities ought to be explored further.

Victims of trafficking in East Asia

The following observations are made about victims of trafficking in the East Asian fishing industry:

“Generally they come from poor and undeveloped areas of the country, young with very little education or not at all, the prospective of having a job doesn’t matter how dangerous and difficult it will be, is always better than not having a job at all. Some just graduated from nautical schools accept employment as fishers rather than continue to wait indefinitely for a chance to get a job in the merchant marine or they are joining the fishing vessels to gain experience at sea.”¹⁸⁴

Although many of the victims referred to in the literature are from impoverished backgrounds or are vulnerable due to a lack of protection from their States, this does not hold true in all circumstances. For instance, the IOM notes that male victims from Ukraine and Belarus seem to be more educated and are trafficked when they seek employment opportunities abroad.¹⁸⁵ These victims were deceived by recruitment agencies and fishing operators and trapped once on board the vessel. Concerns are raised that more needs to be known about the victimology of this group as they seem to not view themselves as “victims” and are thus less likely to seek assistance as victims of trafficking.¹⁸⁶

the Pacific: A Regional Report (2006) 47, available at http://www.unicef.org/eapro/Pacific_CSEC_report.pdf.

¹⁸⁰ Pearson/ILO “Chapter 3: Fisheries” in *Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006) 153-155, available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

¹⁸¹ O’Riordan “Senegal: Child Labour: Growing Pains” 44 *SAMUDRA Report* (2006) 8 at 11.

¹⁸² See e.g. EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) <http://www.ejfoundation.org/page682.html>.

¹⁸³ *Ibid.*

¹⁸⁴ Bruno/Stella Maris International Service Center “In Search of a New Standard and Foreign Fishers on Board of Taiwanese Fishing Vessels” *Presentation at the Far East Regional Conference, Kaohsiung, 7-11 March 2005*, on file with UNODC.

¹⁸⁵ Surtees/IOM *Trafficking of Men: A Trend Less Considered: The Case of Belarus and Ukraine* (2008) 28 (in general) and 60, available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-36.pdf; it is unclear whether this also applies to the fishers discussed on page 60.

¹⁸⁶ *Ibid* at 91 *et seq.*

2.4 Main trafficking flows

The data on trafficking flows of victims of forced labour in the fishing industry is limited. However, from the reports that are available and a number of anecdotal news reports it is possible to detect some of the well-documented trafficking patterns as well as point out individual cases which have been picked up by NGOs and the media.

“Source”, “transit” and “destination” countries in instances of human trafficking at sea

Global trafficking flows are often described in the context of “source”, “transit” or “destination” countries.¹⁸⁷ A source country, or country of “origin”, refers to the country in which the victim was recruited. This may not necessarily be the same country as the victim’s nationality. A destination country is normally used to indicate the country where exploitation takes place. The term “transit country” is used to depict a country through which the victim is transported on the route from the source country to the destination country.

The concepts of “source”, “transit” and “destination” countries do not fit easily with human trafficking on board vessels plying the seas. Vessels at sea may for instance be situated on the high seas, and thus outside the geographical territory of a State. As flag States have primary jurisdiction over vessels on the high seas it would seem natural to regard these flag States as destination countries

A victim of trafficking at sea is likely to be recruited either in the country of nationality, the port State of the fishing vessel, or the flag State of vessels from which the victim is transferred at sea. All of these countries may be identified as “source” countries in this study.

Finally, victims of human trafficking on board fishing vessels are transported in and out of harbours and through the territorial sea of coastal States. These States are referred to as transit countries in this study, although the territorial jurisdiction may at times overlap with that of the flag State.

¹⁸⁷ See e.g. UNODC *Global Report on Trafficking in Persons* (2009) 10-11, available at http://www.unodc.org/documents/Global_Report_on_TIP.pdf.

2.4.1. Africa

In Western Africa the most studied occurrence is trafficking of children in the fishing industry on Lake Volta in Ghana.¹⁸⁸ These children are subjected to long work hours, food deprivation, and violence.¹⁸⁹ The children, possibly amounting to thousands, are mainly sourced from local communities and are trafficked internally.¹⁹⁰ A 2007 study suggests that a small percentage (4,2 per cent) of the children who participated (142) were born outside Ghana.¹⁹¹

In a 2005 UNICEF report it was pointed out that child trafficking into the fishing industry in Sierra Leone takes place much the same as in Ghana.¹⁹² Children are primarily used to fish, mend nets, and bail water whilst at sea.¹⁹³ There is also allegation of widespread use of child labour in the fishing industry in Senegal.¹⁹⁴ The working conditions are said to be particularly bad on purse-seiners where children are used as divers to guide fish into the net. Work hours are long, both day and night, and more than half the children in one survey reported that they were beaten and physically abused.¹⁹⁵ In addition, recent reports state that children are subjected to forced labour in the Ugandan fishing industry.¹⁹⁶

¹⁸⁸ Afenyadu “Child Labour in Fisheries and Aquaculture, A Ghanaian Perspective” *Presentation at the FAO Workshop: Child Labour in Fisheries and Aquaculture*, 14-16 April 2010, available at http://www.fao-ilo.org/fileadmin/user_upload/fao_ilo/pdf/WorkshopFisheries2010/WFPapers/DAfenyaduChild_LabourGhana.pdf; IOM “Combating Child Trafficking: Freeing the Children of Ghana” 1 *IOM Newsletter* (2007); IOM “Combating Child Trafficking: Freeing the Fishing Children of Ghana” 2 *IOM Newsletter* (2007); IOM “Combating Child Trafficking: Freeing the Fishing Children of Ghana” 3 *IOM Newsletter* (2007); IOM “Combating Child Trafficking” 1 *IOM Newsletter* (2008); and IOM “Combating Child Trafficking in Ghana: IOM and Its Partners Rescue 36 Children” *IOM Newsletter* (2009); Johansen “Child Trafficking in Ghana” *UNODC Perspectives* (2006), available at <http://www.unodc.org/newsletter/en/perspectives/0601/page002.html> and Brown *A Study on Child Trafficking in Sending Communities of the Central Region of Ghana* (2007), copy on file with UNODC. See also Head “The Menace of Child Trafficking in Ghana” *Ghana Web*, 9 July 2010, available at <http://www.ghanaweb.com/GhanaHomePage/NewsArchive/artikel.php?ID=185771> and “Why Challenging Height’s Work is so Important” *Challenging Heights*, available at <http://www.challengingheights.org/stories.html>.

¹⁸⁹ Field study in Agbenya “Child Labour Trafficking in the Lake Volta Fishery of Ghana: A Case Study of Ogetse in the Krachi West District of the Volta Region” *Master Thesis Submitted to the University of Tromsø* (2009) 60-62, available at <http://www.ub.uit.no/munin/bitstream/10037/1866/2/thesis.pdf>.

¹⁹⁰ Johansen “Child Trafficking in Ghana” *UNODC Perspectives* (2006), available at <http://www.unodc.org/newsletter/en/perspectives/0601/page002.html>

¹⁹¹ Brown *A Study on Child Trafficking in Sending Communities of the Central Region of Ghana* (2007) 24, on file with UNODC.

¹⁹² Surtees/UNICEF *Child Trafficking in Sierra Leone* (2005) 38, available at <http://www.nexusinstitute.net/publications/pdfs/Child%20Trafficking%20in%20Sierra%20Leone.pdf>.

¹⁹³ *Ibid.*

¹⁹⁴ O’Riordan “Child Labour: Growing Pains” 44 *SAMUDRA Report* (2006) 8 at 8.

¹⁹⁵ *Ibid* at 12-13; see also Mathew “Children’s Work and Child Labour in Fisheries” *FAO Workshop: Child Labour in Fisheries and Aquaculture*, 14-16 April 2010, on file with UNODC.

¹⁹⁶ See e.g. Walakira and Byamugisha/ILO and Federation of Ugandan Employees (FUE) *Child Labour in the Fishing Sector in Uganda: A Rapid Assessment* (2008), available at http://www.ilo.org/public/english/dialogue/actemp/downloads/projects/uganda_report_fishing.pdf; FAO “Report of the FAO Workshop on Child Labour in Fisheries and Aquaculture in Cooperation with ILO, Rome, 14-16 April 2010” 944 *FAO Fisheries and Aquaculture Report* (2010) at 11, available at <http://www.fao.org/docrep/013/i1813e/i1813e00.pdf>.

“Mother ships” and crews imprisoned at sea off West Africa

In 2010 the Environmental Justice Foundation (EJF) raised the possibility of trafficking of men on fishing vessels off the West African coast.¹⁹⁷ During investigations into alleged instances of marine living resource crimes in the 200 nautical mile Inshore Exclusive Zone of Sierra Leone the EJF and Greenpeace International came across fishing vessels used as “mother ships”. In one case, the mother ship was an old rebuilt fishing vessel with a flimsy wooden structure containing sleeping quarters for about 200 Senegalese fishers. The fishers slept on cardboard mattresses layered less than a meter above one another. Every day the fishers would leave the mother ship in 40 wooden canoes and return at night.¹⁹⁸

The EJF report from foreign trawlers engaged in marine living resource crimes in Guinean waters:

“[The] men worked long hours in the intense heat, repeatedly lowering the trawl net ... EJF documented extremely unsafe hygiene conditions on many of these vessels, along with unhealthy and hazardous conditions that the crews were forced to work in. A number of men had their passports removed, and were at sea for long periods of time – up to two years of their “contract”. The investigations also revealed how IUU vessels unloaded their catches and were re-supplied at sea by refrigerated fisheries support vessels ..., a process known as “transshipment” and an illegal activity in Guinean waters. Transshipment allows IUU fishing vessels to rarely return to port – effectively imprisoning the crew at sea, and giving them no opportunity to leave the vessel if they are subject to exploitation or abuse”.¹⁹⁹

Attempted mutiny in South Africa

In 2009 eleven Vietnamese fishers were apprehended for an attempted mutiny on board an Asian fishing vessel on the high seas off the South African coast.²⁰⁰ During court proceedings it became clear that the Vietnamese were untrained fishers deceived by their recruitment agency. The fishers had been kept on board the vessel for more than 18 months against their will at which time they were physically and verbally abused, subject to arbitrary fines and erratic payments, expected to work for up to 19 hours a day in difficult and dangerous working conditions, and accommodated in bunks that would fill with seawater.

Although the captain initially laid a charge of attempted mutiny, this was quickly withdrawn and the fishing operator offered to pay for repatriation to Vietnam when the matter was brought to trial. Unfortunately, at that stage the fishers had already suffered a prolonged period of incarceration.²⁰¹

¹⁹⁷ EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010), available at <http://www.ejfoundation.org/page682.html>. Video footage of the conditions of the crew on these vessels is available on the same page.

¹⁹⁸ EJF *ibid* at 9.

¹⁹⁹ *Ibid* at 8.

²⁰⁰ Dolley “Cape Sea Hostage Drama” *IOL News*, 6 May 2009, available at <http://www.iol.co.za/news/south-africa/cape-sea-hostage-drama-1.442361>.

²⁰¹ *Representation on Behalf of Crewmen ex the Motor Fishing Vessel “Balena” Currently Berthed in Table Bay Harbour from Adv Alan Goldberg to the Organized Crime Unit, National Prosecution Authority, South Africa*, 10 June 2009 and correspondence with defense counsel acting for the crew, Adv Alan Goldberg, on file with UNODC.

2.4.2 Asia

The most well documented occurrence of trafficking in persons for the purpose of forced labour in the fishing industry takes place in Southeastern Asia and the main destination country identified is Thailand. The ILO has published a series of reports on migrant labour and trafficking based on studies conducted in the Mekong region comprising of Cambodia, Laos, Burma, Thailand, Vietnam and the Yunnan Province of the People's Republic of China. Of these, Chapter 3, Volume 2 of the report *The Mekong Challenge: Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand* is entirely devoted the fishing industry including fish processing.²⁰² Most victims of human trafficking on Thai fishing vessels are foreign migrants, although there are cases of Thais trafficked within Thailand.²⁰³ Government officials state that Thailand is a source and transit country for men trafficked into the fishing industry in Malaysia and Indonesia.²⁰⁴

Many of the victims of human trafficking in the Thai fishing industry seem to be Burmese. In 2008 Al Jazeera network reported from islands in the Bandar Sea that more than one thousand Burmese victims of human trafficking had swam ashore escaping from fishing vessels in the vicinity.²⁰⁵ The ILO,²⁰⁶ UNIAP,²⁰⁷ and ITF²⁰⁸ have all documented the brutality faced by the Burmese and victims of other nationalities aboard fishing vessels, frequently resulting in deaths and permanent injury.²⁰⁹ According to a 2008 Solidarity Center report Burmese women are trafficked into the fish (shrimp) processing industry.²¹⁰

Besides Burmese, victims of trafficking into the Thai fishing industry are also sourced in Cambodia. In 2007 the United Nations Inter-Agency Project on Human Trafficking in the Greater Mekong Sub-region (UNIAP) published a SIREN Data Sheet detailing the case of ten Cambodian men and one boy trafficked from their home village to work on a fishing vessel in

²⁰² Pearson/ILO "Chapter 3: Fisheries" in *The Mekong Challenge Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 2)* (2006), available at <http://www.no-trafficking.org/content/pdf/ilo-fishing-vol2-eng.pdf>.

²⁰³ Hongthong "New Law on Trafficking: Protection for Male Victims, but Corruption behind "Slave Trade" Still the Main Concern" *The Nation*, 1 October 2007, available at http://www.nationmultimedia.com/2007/10/01/national/national_30050827.php.

²⁰⁴ Statement by Mrs Napa Sethakorn, Deputy Director-General of Department of Social Development and Welfare (DSDW), Ministry of Social Development and Human Security (MSDHS), Thailand, at an ILO Forum in May 2009, quoted in Nieva "Human Traffickers Resort to Kidnapping" in *ABS.CBN news.com*, 16 May 2009, available at <http://www.abs-cbnnews.com/pinoy-migration/05/16/09/human-traffickers-resort-kidnapping>.

²⁰⁵ Available at <http://english.aljazeera.net/programmes/general/2008/08/200882917912777575.html>.

²⁰⁶ Pearson/ILO *The Mekong Challenge Underpaid, Overworked and Overlooked: The Realities of Young Migrant Workers in Thailand (Volume 1)* (2006) at e.g. 83, available at <http://www2.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/underpaid-eng-volume1.pdf>.

²⁰⁷ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 5, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf.

²⁰⁸ Browne/ITF "Murder at Sea" 35 *Transport International Online* (2009), available at <http://www.itfglobal.org/transport-international/ti35fishers.cfm>.

²⁰⁹ See section 2.3.2, above.

²¹⁰ Solidarity Center *The True Cost of Shrimp* (2008) 19-20, available at http://www.solidaritycenter.org/files/pubs_True_Cost_of_Shrimp.pdf. See also Kloer "Burmese Slaves Processed Fish for Export to ... ?" *End Human Trafficking*, 25 November 2009, available at http://humantrafficking.change.org/blog/view/burmese_slaves_processed_fish_for_export_to_.

Songkhla, Thailand.²¹¹ Cambodian men are sold to ship-owners and endure physical abuse and death.²¹²

Laos has also been identified as a source country for men trafficked into the fishing industry the main destination country being Thailand.²¹³ According to a 2006 study²¹⁴ approximately 22,000 persons, including children, from Laos were trafficked over a ten-year period. UNICEF estimates that about 4 per cent of children are trafficked into the fishing industry.²¹⁵

Fishing vessels crewed with victims of forced labour seem to frequent Malaysian waters.²¹⁶ Although Malaysian authorities have been reluctant to intercept these vessels in the past, this is about to change:

“In January 2010, authorities identified their first labor trafficking case in the fisheries industry when the Malaysian Maritime Enforcement Agency intercepted Thai fishing boats off the coast of Sarawak and arrested five Thai traffickers; the case remains pending... [In the case] officials rescued and identified 16 male forced labor victims from four deep-sea trawlers.”²¹⁷

According to recent reports Timor-Leste features as a transit country for men trafficked on board fishing vessels.²¹⁸ Since 2008 the IOM has reported that 17 male victims of trafficking have escaped from fishing vessels and swum ashore in Timor-Leste. The men are Burmese and Cambodian – some were sold to Thai fishing vessel owners and others are victims of forced labour under threat of violence or debt bondage.²¹⁹ Media reports suggest that men from Vietnam²²⁰ and Indonesia²²¹ have been trafficked on board East Asian fishing vessels in New Zealand waters.

²¹¹ UNIAP *Exploitation of Cambodian Men at Sea* (2007), available at http://www.no-trafficking.org/reports_docs/siren/SIREN%20CB-01%20cambodia%20trafficking%20databases.pdf.

²¹² Gorvett “Traffickers Prey on Cambodian Men” *The New York Times*, 12 January 2009, available at http://www.nytimes.com/2009/01/12/world/asia/12iht-traffic.1-405492.html?_r=1.

²¹³ UNIAP *SIREN Human Trafficking Data Sheet: Vientiane Laos PDR* (2008), available at [http://www.afesiplaos.org/upload/assets/_LAO%20SIREN%20data%20sheet%20April%2008%20\(2\).pdf](http://www.afesiplaos.org/upload/assets/_LAO%20SIREN%20data%20sheet%20April%2008%20(2).pdf).

²¹⁴ *Ibid*; referring to Houghton *Situational Analysis of Human Trafficking in the Lao PDR: With emphasis on Savannakhet* (2006) at 9.

²¹⁵ UNICEF *Broken Promises and Shattered Dreams: A Profile of Child Trafficking in Lao PDR* (2004) 8 and 33-34, available at <http://www.unicef.org/media/files/BrokenPromisesFULLREPORT.pdf>.

²¹⁶ UNIAP *Exploitation of Cambodian Men at Sea: Facts About the Trafficking of Cambodian Men onto Thai Fishing Boats* (2009) 1, available at http://www.no-trafficking.org/reports_docs/siren/siren_cb3.pdf:

“Some of the worst exploited are the men and boys who are deceived onto long-haul fishing boats that fish the waters of the South China Sea, including into Malaysian waters.”

²¹⁷ United States Department of Justice *Trafficking in Persons Report* (2010) 224; available at <http://www.state.gov/g/tip/rls/tiprpt/2010/>.

²¹⁸ *Ibid* 322.

²¹⁹ Correspondence with IOM Dili on file with UNODC.

²²⁰ Erickson-Davis and Hance “Sustainability of Antarctic Toothfish Fishery, Legitimacy of Marine Stewardship Council Called into Question” *Mangobay.com*, 5 January 2011, available at http://news.mongabay.com/2011/1223-morgan_msc_toothfish_hance.html and Bowermaster “Slaves on the Seas: Global Fishing Fleets and Human Bondage” *Take Part*, 10 January 2011, available at <http://www.takepart.com/news/2011/01/10/slaves-on-the-seas-global-fishing-fleets-and-human-bondage>.

²²¹ The case of the *Sky 75*: Devlin “Modern Day Slavery: Employment Conditions for Foreign Fishing Crews in New Zealand Waters” 23 *Australian and New Zealand Maritime Law Journal* (2009) 82 at 82.

Abuse of foreign fishers aboard foreign chartered fishing vessels in New Zealand

A recent (April 2011) media story suggests that foreign fishers are being exploited in New Zealand waters.²²² The foreign fishers are hired on board foreign fishing vessels chartered by New Zealand companies to fish their quota in New Zealand waters.

The media story refers to reports of fishers that are paid low wages (in one case as little as US\$ 187 per month), are underfed, work prolonged hours, do not receive adequate medical care when injured or sick, are physically abused, and have their passports withheld from them. The vessels they work onboard are described as old and rusty with inadequate safety equipment such as rescue boats that are not functional. The media story also alleges that recruitment agencies have deprived dependents of their insurance payouts in instances where fishers have lost their lives on board these vessels at sea.

The authors of the 2005 monograph *Trafficking Women and Children in India* alleges that women are trafficked internally for forced labour in the fish processing industry in most coastal states in India (Kerala, West-Bengal, Odisha, Andhra Pradesh, Tamil Nadu and Gujarat).²²³ Human trafficking is widespread in Pakistan. Allegedly somewhere between 15 and 20 million Pakistani are victims of human trafficking, including in the fishing industry.²²⁴ According to the Human Rights Commission of Pakistan at least 50,000 children were believed employed in the “potentially hazardous” Pakistani fishing industry in 2005 (see case-study “Sexual exploitation of children in the deep-sea fishing industry in Pakistan” in Section 3.2.1, above).²²⁵ A 2001 ILO report suggests that the Pakistani fishing industry attracts child trafficking victims from Bangladesh and India.²²⁶ The Solidarity Centre also reports of possible trafficking of children into the Bangladeshi shrimp processing industry,²²⁷ and the media suggest that boys are victims of bonded labour in the fishing industry internally in the country.²²⁸

²²² Field “Slavery at Sea Exposed” *Sunday Star Times*, 3 April 2011, available at <http://www.stuff.co.nz/national/4841777/Slavery-at-sea-exposed>.

²²³ Nair and Sen *Trafficking Women and Children in India* (2005) 491 and 13. See also reference to a High Court of Bombay ruling in *ILO Stopping Forced Labour* (2001) at 14, available at http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_088490.pdf.

²²⁴ Human Rights Commission of Pakistan *State of Human Rights in 2005* (2005) at 230 and Human Rights Commission of Pakistan *State of Human Rights in 2004* (2004) 218, both available at <http://www.hrcp-web.org/archive.html>.

²²⁵ Human Rights Commission of Pakistan *ibid* 250; see also Muhammad/Save the Children Sweden *Commercial Sexual Exploitation of Children: A Situation Analysis of Pakistan* (2005) at 49, available at <http://www.wgcsae.org/publications/-artical-CSECPakistanSituationAnalysis.pdf>.

²²⁶ Tumlin/ILO-IPEC *Trafficking of Children in Asia – A Regional Overview* (2001) at 6, available at <http://www.ilo.org/public/english/region/asro/bangkok/child/trafficking/downloads/jakarta.pdf>.

²²⁷ Solidarity Center *The True Cost of Shrimp* (2008) at 29-30, available at http://www.solidaritycenter.org/files/pubs_True_Cost_of_Shrimp.pdf.

²²⁸ See “Children Work as Slaves in Dublar Char Fish Processing” *The Financial Express*, 29 March 2009, available at http://www.thefinancialexpress-bd.com/more.php?news_id=62407 and “Take Steps to Stop Child Labour at Dublar Char” *Bangladesh2day*, 29 July 2009, available at <http://www.bangladesh2day.com/newsfinance/2009/July/29/Take-steps-to-stop-child-labour-at-Dublar-char.php>.

Trafficking of children into the fishing industry in Indonesia represents some of the first reported instances of trafficking in the fishing industry.²²⁹ The practice was studied by Davis in a 2003 publication *Trafficking of Women and Children in Indonesia* in relation to trafficking of children onto wooden fishing platforms known as *jermal*.²³⁰ A *jermal* is a bamboo structure often situated kilometers from shore. The structure consists of a platform of about 20-40 square meters on stilts and a small wooden hut for sleeping quarters and fish processing plant. Most platforms use lift netting as a method of fish capture.²³¹ In one survey workers on more than 140 *jermals* were interviewed. About 75 per cent of the 8,000 workers on the *jermals* were children, of which one third were under the age of 14.²³² The children surveyed were malnourished, had contracted skin ailments and illnesses such as malaria, were fatigued, worked excessive hours, and were subjected to physical, verbal and sexual abuse.²³³ Instances of deaths have been reported.²³⁴ The children were allegedly paid US\$ 0.38 per day.²³⁵ It has been reported that government authorities have addressed the issue in cooperation with NGOs.²³⁶ There are no recent reports of child labour on the *jermals* and it is unclear whether the practice still continues.²³⁷

The main form of human trafficking in the fishing industry reported in Oceania has been the sexual exploitation of children by fishers on foreign fishing vessels in the Pacific Island States. According to a 2006 UNICEF report foreign fishers on board Asian fishing vessels were involved in sexual exploitation of minors in Kiribati (in particular),²³⁸ but also in Fiji, Vanuatu, the Solomon Islands and Papua New Guinea.²³⁹ There are reports of child victims in Tonga as well.²⁴⁰ Family members are reported to force girls and boys into prostitution for

²²⁹ See e.g. United States Department of Justice *Trafficking in Persons Report* (2001) at 87, available at <http://www.state.gov/documents/organization/4107.pdf>.

²³⁰ Davis "E. Other Forms of Exploitation and Trafficking" in Rosenberg (ed) *Trafficking of Women and Children in Indonesia* (2003) 110 at 110-111, available at http://www.icmc.net/system/files/publication/trafficking_of_women_and_children_in_indonesia_51332.pdf.

²³¹ Von Brandt *Fish Catching Methods of the World* (3 ed, 2005) at 337-341. See also Perusek "Child Labour in the World Economy" 9(4) *New Politics* (2004), available at <http://ww3.wpunj.edu/newpol/issue36/Perusek36.htm#n1>.

²³² Perusek, "Child Labour in the World Economy" 9(4) *New Politics* (2004), available at <http://ww3.wpunj.edu/newpol/issue36/Perusek36.htm#n1>.

²³³ *Ibid.*

²³⁴ Davis "E. Other Forms of Exploitation and Trafficking" in Rosenberg (ed) *Trafficking of Women and Children in Indonesia* (2003) 110 at 110, available at http://www.icmc.net/system/files/publication/trafficking_of_women_and_children_in_indonesia_51332.pdf.

²³⁵ Perusek "Child Labour in the World Economy" 9(4) *New Politics* (2004), available at <http://ww3.wpunj.edu/newpol/issue36/Perusek36.htm#n1>.

²³⁶ See e.g. United States Department of Justice *Trafficking in Persons Report* (2001) 87, available at <http://www.state.gov/documents/organization/4107.pdf>.

²³⁷ See e.g. Mathew "Children's Work and Child Labour in Fisheries" *FAO Workshop: Child Labour in Fisheries and Aquaculture, 14-16 April 2010* at 3, on file with UNODC.

²³⁸ UNICEF *Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in the Pacific: A Regional Report* (2006) 47, available at http://www.unicef.org/eapro/Pacific_CSEC_report.pdf.

²³⁹ *Ibid* at 75 and 108 (implicating Papua New Guinea by inference). See also e.g. Harborow/RRRT *The Pacific's Hidden Trade* (2005), available at http://www.rrrt.org/page.asp?active_page_id=137 and Bohane/Greenpeace International "Prostitution and Pacific Fishing" *Greenpeace*, 13 October 2006, available at <http://www.greenpeace.org/international/en/news/features/fish-and-sex-trade131006/>.

²⁴⁰ United States Department of Justice *Trafficking in Persons Report* (2008) 278, available at <http://www.state.gov/documents/organization/105501.pdf>.

fish, cash, and clothes.²⁴¹ According to an NGO the foreign fishing vessels involved in sexual exploitation of children are partaking in the lucrative tuna fishing in the region.²⁴²

2.4.3 Europe

In Europe there are reports of victims from Russia (Kaliningrad Oblast)²⁴³ and Ukraine²⁴⁴ that are trafficked for forced or bonded labour on fishing vessels. Whereas men from Ukraine are trafficked to Russia Far East, victims in Kaliningrad Oblast are trafficked on board Russian vessels operating out of the port of Kaliningrad.²⁴⁵ In a 2006 report the IOM provides anecdotal evidence of how a group of fishers were deceived and exploited on board a Russian fishing vessel and in the Norwegian fish processing industry. According to IOM the report revealed an “oblast specific form of trafficking”, i.e. trafficking in men at sea, and noted that the “area reveals large-scale deception and violation of human rights up to trade in human beings and slavery.”²⁴⁶

Migrant workers in the United Kingdom and Irish fisheries

In 2008 ITF issued a report with anecdotal evidence of the conditions of migrant workers in the fishing industries in the United Kingdom (Scotland and Northern Ireland) and Ireland.²⁴⁷ The number of migrant workers in the United Kingdom and Irish fishing industry is believed to be considerable - ITF estimates that one thousand Filipino migrant workers are employed by the Scottish fishing industry alone.

According to ITF, Indonesian and Filipino seafarers are subject to excessive work hours without overtime pay, unsafe working conditions which may have been the cause of several deaths, salaries of about a fifth of the local minimum wages (in one case Euro 241 [currently US\$ 357] per month or Euro 0.20 [currently US\$ 0.29] an hour for 10 months of work), recruitment fees and repatriation costs set off against future earnings, and “renegotiations”

²⁴¹ See e.g. UNICEF *Commercial Sexual Exploitation of Children (CSEC) and Child Sexual Abuse (CSA) in the Pacific: A Regional Report* (2006), available at http://www.unicef.org/eapro/Pacific_CSEC_report.pdf and *ibid* at 275-276.

²⁴² Bohane/Greenpeace International “Prostitution and Pacific Fishing” *Greenpeace*, 13 October 2006, available at <http://www.greenpeace.org/international/en/news/features/fish-and-sex-trade131006/>.

²⁴³ ИОМ ИЗУЧЕНИЕ СИТУАЦИИ И ПРЕДЛОЖЕНИЯ ПО УКРЕПЛЕНИЮ ПОТЕНЦИАЛА ПРОТИВОДЕИ СТВИЯ ТОРГОВЛЕ ЛЮДЬМИ В КАЛИНИНГРАДСКОЙ ОБЛАСТИ (*Counter-trafficking Assessment and Proposals about Counter-trafficking Capacity Building in the Kaliningrad Oblast*) (2006) 5, available at http://iom.fi/files/Publications/2006/trafficking_assessment_2006_rus_and_eng.pdf.

²⁴⁴ Surtees/ИОМ *Trafficking of Men: A Trend Less Considered: The Case of Belarus and Ukraine* (2008) 10, 28, 60, 82 and 84, available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-36.pdf.

²⁴⁵ *Ibid* and ИОМ ИЗУЧЕНИЕ СИТУАЦИИ И ПРЕДЛОЖЕНИЯ ПО УКРЕПЛЕНИЮ ПОТЕНЦИАЛА ПРОТИВОДЕИ СТВИЯ ТОРГОВЛЕ ЛЮДЬМИ В КАЛИНИНГРАДСКОЙ ОБЛАСТИ (*Counter-trafficking Assessment and Proposals about Counter-trafficking Capacity Building in the Kaliningrad Oblast*) (2006) Section 3.4.1, available at http://iom.fi/files/Publications/2006/trafficking_assessment_2006_rus_and_eng.pdf.

²⁴⁶ ИОМ *ibid* at 6.

²⁴⁷ ITF *Migrant Workers in the Scottish and Irish Fishing Industry: Forced or Compulsory Labour or Just Plain Modern Day Slavery* (2008), available at <http://www.ictuni.org/uploads/67b098da-831b-4ef7-ba01-f5111705d2bc/Migrant%20Fishers%20Report%20nov%20251108.pdf>.

of employment contracts to the detriment of the seafarer upon arrival. The fishers are threatened with transfer to other vessels or abandonment in port without pay should they object to their conditions.

Although ITF does not take a position on whether these are cases of human trafficking the evidence provided gives reason to suspect that some of these cases may be trafficking in the form of forced labour through debt bondage or coercion.

The tragedy of the Chinese cockle pickers

In 2004 23 Chinese cockle²⁴⁸ pickers drowned when caught by the tide in Morecambe Bay, England.²⁴⁹ During the investigation it became clear that the cockle pickers were smuggled as irregular migrant labourers to England by a snakehead group of Chinese organized criminals specializing in migrant smuggling.²⁵⁰ The survivors told they had paid their traffickers as much as US\$ 31,000, money which was borrowed against future earnings.²⁵¹

The cockle pickers were paid in the region of US\$ 4 per hour, forcing them to risk working in the tidal bay in the dark to repay their debt.²⁵² Although the identified gang master was prosecuted and convicted on charges of manslaughter and conspiracy to violate immigration laws, the case is arguably one of human trafficking in the form forced labour induced by debt bondage.²⁵³

²⁴⁸ Cockles are small shellfish used for human consumption, often as preserves. They are found close to shore in England and Wales and are gathered by raking the sand to expose them during low tide.

²⁴⁹ Gradwell “Lost in Translation: The Use of Interpreters During Operation Lund” 2(2) *The Journal of Homicide and Major Incident Investigation* (2006) 3 at 4-6, available at http://www.npia.police.uk/en/docs/Journal_2.2_2006.pdf.

²⁵⁰ Treverton, Matthies, Cunningham, Goulka, Ridgeway and Wang *Film Piracy, Organized Crime, and Terrorism* (2009) 10-15, available at http://www.rand.org/pubs/monographs/2009/RAND_MG742.appendix.pdf.

²⁵¹ Gradwell “Lost in Translation: The Use of Interpreters During Operation Lund” 2(2) *The Journal of Homicide and Major Incident Investigation* (2006) 3 at 8, available at http://www.npia.police.uk/en/docs/Journal_2.2_2006.pdf.

²⁵² Treverton, Matthies, Cunningham, Goulka, Ridgeway and Wang *Film Piracy, Organized Crime, and Terrorism* (2009) 12, available at http://www.rand.org/pubs/monographs/2009/RAND_MG742.appendix.pdf.

²⁵³ The suggestion is left open in Gradwell “Lost in Translation: The Use of Interpreters During Operation Lund” 2(2) *The Journal of Homicide and Major Incident Investigation* (2006) 3 at 9, available at http://www.npia.police.uk/en/docs/Journal_2.2_2006.pdf.

Crab fishers in the Sea of Okhotsk

In 2008 the IOM reported of 33 Ukrainian men trafficked on two fishing vessels in the Sea of Okhotsk.²⁵⁴ The report states that:

“Rooms on the ship were filled with water to knee level, the men worked long hours every day (allowed to sleep for no more than three hours a night and not every night), food was poor and insufficient, they lacked fresh drinking water (they were sometimes forced to drink salt water or water from icebergs), access to the toilet was limited and they were forced to work when ill. Abuse was exacted against those who complained and few received any payment. They were held in these conditions for a period of between six to ten months, freed only when the Russian border guard service detained the ship...”²⁵⁵

2.4.4 America

Data on human trafficking in the fishing industry in America is sparse and limited to a few anecdotal cases. However, during consultations a number of experts indicated that there is cause for concern that conduct amounting to human trafficking may take place in the fishing industry in the region, particularly on board foreign operated fishing vessels.²⁵⁶

Asians victims rescued in Costa Rica

According to a media release, 36 victims of human trafficking on board two fishing vessels were rescued in the Pacific port of Puntarenas, Costa Rica, in April 2010.²⁵⁷ The victims were from Indonesia, the Philippines, Taiwan (province of China) and China. According to the report, the victims were subject to physical abuse and long work hours of up to 20 hours per day. At the time of their rescue the fishers were underfed and had not been paid. Costa Rican nationals and persons from Taiwan (province of China) are facing charges of human trafficking in connection with the case.

Migrant workers in Canada’s fish processing industry

A Canadian media story from March 2011 describes instances of human trafficking and debt bondage in the fish processing industry exposed by a law clinic at the University of Windsor. The report refers to one woman (S) who was the victim of debt bondage:²⁵⁸

“The 32-year-old woman came to Canada in 2006 after being recruited in her native Thailand.

²⁵⁴ Surtees/IOM *Trafficking of Men – A Trend Less Considered: The Case of Belarus and Ukraine* (2008) at e.g. 60, available at http://www.iom.int/jahia/webdav/site/myjahiasite/shared/shared/mainsite/published_docs/serial_publications/MRS-36.pdf. The geographical location confirmed by Surtees in e-mail correspondence.

²⁵⁵ *Ibid.*

²⁵⁶ Interviews on file with UNODC.

²⁵⁷ Zueras “(In)human Trafficking” *IPS News*, 15 April 2010, available at <http://ipsnews.net/news.asp?idnews=51062>.

²⁵⁸ Lajoie “Windsor-Essex Agency Reaches out to Victims of Human Trafficking” *The Windsor Star*, 2 March 2011, available at <http://www.windsorstar.com/news/Agency+reaches+trafficking+victims/4373928/story.html>.

²⁵⁹ *Ibid.*

She borrowed \$9,000 Canadian to pay an agent for his services in arranging travel and employment. She was told she would be working at a modern plant, using the best technology and that she would be able to repay her debt in less than a year...

She said she worked at fish plants and was forced to use the most primitive tools. She was paid \$9 an hour, the [working] hours were long, and there was no overtime, no vacation time, and no benefits. There was a constant danger of injury as she cut the fish by hand.

[S] was living with between 17 and 30 other workers at any given time in a small rundown house, with one bathroom and a kitchen. The recruiter charged her \$140 every two weeks for rent. She was not allowed to leave and there were house rules to follow. She could not contact people outside her group and lived in constant fear of arrest or deportation.”²⁵⁹

2.5 Links to other forms of crime

Human trafficking in the fishing industry is linked to a number of other forms of criminal activities. Corruption is often referred to as the lubricant for smooth execution of organized crime and ever present in the context of trafficking in persons in the fishing industry.²⁶⁰ Police officers are bribed to look the other way and border guards to let irregular migrants proceed across borders.²⁶¹ Government officials have also been accused of complicity in human trafficking into the fishing industry.²⁶² In 2009 the United States Senate Report on *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand* reported about possible involvement of public officials in selling persons detected as irregular migrants to traffickers for exploitation into forced labour on board fishing vessels in the South East Asian region.²⁶³

Another clear link is that between human trafficking and environmental crimes in the form of marine living resource crimes.²⁶⁴ A reference to this link is found in the 2000 case of the *Camouco* brought before the International Tribunal on the Law of the Sea (ITLOS).²⁶⁵ The case concerned an application for prompt release of a Latin American fishing vessel caught fishing illegally in the French EEZ off the Crozet Islands in the southern Indian Ocean. In closing argument Mr. Doubelle, on behalf of France, stated:

“We must also add that the threats to the environment and to the resources are not perhaps the most serious or tragic consequence of this type of activity. This form of fishing, often a “pirate” form of fishing, goes hand in hand in many instances with physical and economic exploitation of the crew, which is approaching a system of

²⁶⁰ See e.g. Shelley *Human Trafficking: A Global Perspective* (2010) L1668.

²⁶¹ See e.g. Brinkley “Migrant Fishermen Fall Through the Cracks in Thai Trafficking Laws” *Taiwan News*, 5 July 2009, available at http://www.etaiwannews.com/etn/news_content.php?id=994624&lang=eng_news.

²⁶² Pearson “No Sanctuary: Trafficking of Burmese People on the ThaiMalay Border” *Human Rights Watch*, 12 February 2009, available at <http://www.hrw.org/en/news/2009/02/12/no-sanctuary-trafficking-burmese-people-thaimalay-border> and Boyle and Narin “Never-ending Cycle: The Human Cost of Slave labour” *The Phnom Penh Post*, 2 December 2010, available at <http://khmernz.blogspot.com/2010/12/never-ending-cycle-human-cost-of-slave.html>.

²⁶³ US Senate Foreign Relations Committee *Trafficking and Extortion of Burmese Migrants in Malaysia and Southern Thailand: A Report to the Committee on Foreign Relations, United States Senate* (2009) 8-9, available at http://www.burmalibrary.org/docs07/Trafficking_and_Extortion_of_Burmese_Migrants-USCFR.pdf.

²⁶⁴ See Chapter 5, Section 5.1, for a definition of “marine living resource crime”.

²⁶⁵ *The “Camouco” Case (Panama v. France)*, Prompt Release, 7 February 2000, available at http://www.itlos.org/start2_en.html.

slavery. On several occasions over the past three years, the French Navy has intervened to help vessels in need, vessels which were being badly maintained and badly manned by unqualified crews which were often ill, under-fed and living in hygienic conditions which were in some cases indescribable. This form of human exploitation is all the more shocking because it is a source of considerable profit, and this will in itself justify the means used by France to combat this situation within the areas under its jurisdiction. I am not saying that the *Camouco* was in the same situation, but this aspect of the reality, which is very often forgotten, cannot simply be ignored without bearing in mind the risk of leaving the Tribunal in ignorance of one of the most serious consequences of these activities with which the *Camouco* has been associated on several occasions and using the same vessel when it was called the *Merced*.”²⁶⁶

A number of the cases discussed in Section 3, above, are cases of human trafficking on board vessels engaged in marine living resource crimes. For instance, the case of the 33 Ukrainians trafficked on board fishing vessels in the Sea of Okhotsk were reportedly involved in crab poaching²⁶⁷ and the vessels referred to in the EJF *All at Sea* report were all alleged to take part in marine living resource crimes.²⁶⁸

Report by the High Seas Task Force

In the 2006 *Closing the Net* report, the High Seas Task Force observed:

“[t]here are also social costs associated with IUU fishing. On the one hand, IUU fishing adversely and directly affects the livelihoods of fishing communities, particularly in developing countries, by undermining the stocks on which they depend. On the other hand, IUU operators readily take advantage of an endless supply of unskilled labour desperate for income. Rarely subject to effective control by a responsible flag state, they have no incentive to meet international standards on maritime safety and working conditions on ships. There is ample scope to ignore international human rights norms; including abandonment of crew in foreign ports and forced labour.

The case of the Sao Tome and Principe-flagged long liner, *Amur*, provides a graphic, but by no means atypical, illustration. *Amur* left Punta Arenas in October 2000 with a crew of 40 Korean, Spanish, Peruvian, Danish, Indonesian and Chilean nationals on board. The vessel was known to be unseaworthy and most crew members had neither proper contracts nor insurance cover. A few days later *Amur* sank in heavy seas while illegally fishing for toothfish in the exclusive economic zone of the French overseas territory of Kerguelen Island. Fourteen of the crew, including seven Chilean nationals, drowned.”²⁶⁹

²⁶⁶ Mr. Doubelle (France) “Verbatim Record” The “Camouco” case (Application for prompt release) (Panama v. France) 12 (17-32), available at http://www.itlos.org/case_documents/2001/document_en_118.pdf.

²⁶⁷ Blomfield “Ukrainian “Slaves” on Board Crab Fishing Boat” *Telegraph*, 28 December 2005, available at <http://www.telegraph.co.uk/news/worldnews/europe/russia/1506484/Ukrainian-slaves-on-board-crab-fishing-boat.html>.

²⁶⁸ EJF *All at Sea: The Abuse of Human Rights Aboard Illegal Fishing Vessels* (2010) 8 and 9, available at <http://www.ejffoundation.org/page682.html>.

²⁶⁹ Footnotes omitted; High Seas Task Force *Closing the Net: Stopping Illegal Fishing on the High Seas* (2006) 20, available at <http://www.illegal-fishing.info/uploads/HSTFFINALweb.pdf>.

There are a number of reasons why crews on board vessels engaged in marine living resource crimes are more at risk of human trafficking. First, fishing operators involved in marine living resource crimes are already involved in criminal enterprise, and display a commitment to profit seeking and lack of moral judgment. Second, vessels used for marine living resource crimes are often old and unsafe as they run the risk of forfeiture.²⁷⁰ This makes it harder and more expensive for fishing operators to hire qualified crew. Exploitation of forced labour is an option for unscrupulous fishing operators in these circumstances. Third, reports of illegal fishing operations often come from crews. Victims of human trafficking are less likely to produce this form of information to the authorities whilst in port due to strict control of their movements. Fourth, fishing vessels engaged in illegal fishing will conduct operations without the presence of a scientific observer on board.²⁷¹ In many fisheries around the world, the presence of a scientific observer is compulsory. During consultations it was pointed out that these scientific observers have reservations regarding the safety and working conditions on board fishing vessels engaged in legal fishing.²⁷² The point was made that the complete lack of oversight on board fishing vessels engaged in illegal fishing is likely to result in even worse practices.²⁷³ And finally, vessels engaged in marine living resource crime are often registered in States that are unable or unwilling to exercise their criminal law enforcement jurisdiction and that allows owners to hide behind front companies which considerably reduces the risk of detection. According to a fishers union in Chile,

“[t]he crew on IUU fishing vessels often either do not have contracts or, if they do, the contracts are signed by fictitious companies which are impossible to find in cases where there are violations of labor or human rights, or in cases where crew are arrested or vessels sink.”²⁷⁴

Unlike the merchant marine, the international legal framework regulating the safety of fishing vessels and working conditions of fishers lacks sufficient ratifications to be brought into force. A result is that there is currently no system of Port State Control (PSC) of safety and working conditions on board fishing vessels, in contrast to the merchant marine. Fishing operators engaged in trafficking of persons for the purpose of forced labour at sea are therefore often acting with impunity from law enforcement by both flag and port States.

Vulnerability of fishers on board vessels engaged in marine living resource crimes

In *The Social Dimension of IUU Fishing*, the ITF observes:

“The lack of an internationally agreed regime for the enforcement of international minimum standards by port States over large distant water fishing vessels is in itself a problem. However, this is exacerbated in the case of IUU fishing operations, given that many of the vessels are old and badly maintained. The fact that IUU operations can lead to forfeiture of the

²⁷⁰ Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15 at 5 para 9, available at <http://www.oecd.org/dataoecd/32/32/31492524.PDF>.

²⁷¹ See e.g. Swedish FAO Committee *Roving Bandits in Modern Fisheries* (2009) 16-17, available at <http://www.sweden.gov.se/content/1/c6/12/11/81/d99cc30a.pdf>.

²⁷² Interviews on file with UNODC.

²⁷³ *Ibid.*

²⁷⁴ Gianni and Simpson/WWF/ITF *The Changing Nature of High Seas Fishing* (2005) 33-34, available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf>.

vessel means that there are sound economic reasons for using old and unsafe vessels. This has considerable implications for those who serve on such vessels, both in terms of the facilities and amenities that are not available on such vessels, and also in terms of the safety of life at sea.”²⁷⁵

Unfortunately victims on board vessels engaged in marine living resource crimes run the risk of being targeted for criminal activity.²⁷⁶ It is not unheard of that crews on board vessels engaged in illegal activities are incarcerated on charges of marine living resource crimes.²⁷⁷ In some cases the fishing operator will make no attempt to have the crew released, leaving the victims of human trafficking stranded without protection.²⁷⁸ This calls for awareness raising about the plight faced by victims of human trafficking on board fishing vessels engaged in marine living resource crimes. Victims of trafficking in persons on board fishing vessels are likely to be more vulnerable in cases of pirate attacks (see box).

Vulnerability of fishers on board vessels engaged in marine living resource crime in cases of pirate attacks

According to a 2011 media report an Asian registered fishing vessel was captured by pirates in October 2010 and was rescued by a Finnish warship in February this year. The vessel was allegedly fishing in Somali waters without a license at the time of the capture. After the capture, the pirates used the fishing vessel as a mother ship from which they launched pirate attacks. According to the news report, the fishers are considering to sue senior crew for taking them into Somali waters against their will. The owners of the vessel are also alleged to have made little attempt to rescue the crew or to provide for their families whilst they were held captive.²⁷⁹

2.6 Findings

The study found that instances of human trafficking in the fishing industry are reported to take place in most major regions of the world. The few reports that compare findings among trafficking victims in a number of industries conclude that trafficking in persons into the fishing industry is considered severe, particularly that which takes place on board fishing vessels at sea. The available material suggests that particularly trafficking for the purpose of

²⁷⁵ Whitlow/ITF *The Social Dimension of IUU Fishing* (2004) AGR/FI/IUU(2004)15 at 5 para 9, available at <http://www.oecd.org/dataoecd/32/32/31492524.PDF>.

²⁷⁶ Gianni and Simpson/WWF/ITF *The Changing Nature of High Seas Fishing* (2005) 34, available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf>.

²⁷⁷ Bruno/Stella Maris International Service Center “In Search of a New Standard and Foreign Fishers on Board of Taiwanese Fishing Vessels” *Presentation at the Far East Regional Conference, Kaohsiung, 7-11 March 2005*, on file with UNODC.

²⁷⁸ *Ibid.*

²⁷⁹ Ecoterra International “Seized South Korean Fishing Vessel Back in Kenya” Scoop Independent News, 16 February 2011, available at <http://www.scoop.co.nz/stories/WO1102/S00560/seized-s-korean-fishing-vessel-back-in-kenya.htm>.

forced labour on board fishing vessels involves cruel and inhumane treatment in the extreme.

The study of trafficking in persons in the fishing industry shows that the main actors involved in human trafficking for the purpose of forced labour at sea are intermediary brokers, recruitment agencies, senior crew and fishing operators. The involvement, organization and *modus operandi* of the traffickers will vary from region to region and case to case. The traffickers' main motivation seems to be profit, but the lack of seafarers in some regions may also be a contributory cause. The number of victims of human trafficking into the fishing industry varies depending on the form of exploitation and the region. Whereas predominantly young men are trafficked on board fishing vessels, men and women are trafficked into the fish processing industry and women and children (boys and girls) are trafficked for the purpose of sexual exploitation by fishers. Push factors are socio-economic conditions such as poverty and perhaps lack of livelihood due to overfishing. Some victims are simply seeking overseas employment opportunities. Children and parents also view work in the fishing industry as a form of apprenticeship to learn a profession.

As to trafficking flows, some regional variances are discernable. In Africa most reported cases involve children trafficked into the domestic fishing industry with some transnational movement. The most studied occurrence is that of children trafficked into the inland fisheries of Lake Volta. There is anecdotal information about men exploited on board industrial fishing vessel and mother ships off the coast of Africa. The men are Africans and Southeast and East Asians.

Human trafficking in the fishing industry in the Asian region is comparatively well studied. A particularly vulnerable area is Southeastern Asia and the countries situated in and around the Greater Mekong Sub-region. Trafficking into the fish processing industry is also widespread in the region, as well as in Southern Asia. In Southern Asia reports are made of a particularly disturbing practice involving forced labour and sexual exploitation of young boys on commercial deep-sea trawlers. In Oceania human trafficking mainly takes the form of sexual exploitation by the fishing industry. The region seems to be a transit area of (mainly East Asian) fishing vessels crewed with victims that may be trafficked for the purpose of forced labour. Although human trafficking in the Asian fishing industry is quite well reported, grass root NGOs believe they only cover "the tip of the iceberg".²⁸⁰

In Europe reports are made of victims sourced in Eastern Europe/Central Asia who are trafficked into the North Asian and European fishing industry both for the purpose of capture fisheries and fish processing. There has been a trend of employing migrant labourers from East and South-East Asian States into the West and North European fishing industry. These migrant labourers do in some instances end up in forced labour and possibly victims of trafficking in the destination country. The practice may have faded after a change in visa policies within the European Community. These fisheries ought to be monitored, however, as European fishing operators seem to be willing to exchange local fishers with vulnerable Asian migrant workers on contractual terms of the source country or worse. The IOM is in the process of finalizing a report into forced labour among Ukrainian men in (amongst others) the fishing industry. Yet, human trafficking in the European fishing industry, both in capture fisheries and fish processing, is largely underexplored.

²⁸⁰ Interview on file with UNODC.

Very little is known about possible instances of human trafficking in the American fishing industry, although anecdotal cases suggest that trafficking does take place in the region.

Human trafficking in the fishing industry is probably linked to marine living resource crimes. The clandestine nature of these operations makes them more susceptible to human trafficking, and the victims more vulnerable to legal enforcement measures. The victims are also vulnerable to other forms of criminal activity, such as pirate attacks.

It is likely that human trafficking for the purpose of forced labour on board fishing vessels is underreported:

First, the criminal activity is difficult to detect. As ITF put it, fishers are “out of sight, out of mind” whilst at sea and it is therefore less likely that State authorities or NGOs are able to detect criminal activities. Detection will to a large degree hinge on flag States’ control with vessels at sea or port States’ control with vessels arriving in port. However, if the vessel is registered under a flag of convenience (i.e. a flag State that is unable or unwilling to exercise its jurisdiction over the vessel), then the likelihood is that poor labour practices are not monitored and trafficking cases are not picked up by the justice system. In the merchant marine the lack of flag State law enforcement is, to some extent, compensated by Port State Control (PSC) when vessels come to port. However, the fact that there is no international legal framework for the safety or working conditions of fishers on board fishing vessels (in contrast to merchant mariners) means that there is also a lack of effective international PSC of fishing vessels.

Second, there seems to be some indication that fishers are reluctant to view themselves as “victims” of trafficking. It would therefore seem that they are less likely to seek assistance and report instances of trafficking for the purpose of forced labour.

Third, whereas for instance ILO and ITF have focused on forced labour in the fishing industry for some time, the extent to which this practice may amount to human trafficking has only been highlighted in recent years. During consultations with NGOs and governmental authorities it became clear that many key persons that are likely to interact with victims of human trafficking for the purpose of forced labour on board fishing vessels (such as labour unions, fisheries enforcement officials, and scientific observers) are unaware of the fact that the practice could be one of human trafficking. Typically fisheries enforcement officials responded that they are aware that particularly migrant workers on board some of the fishing vessels they inspect seem to be living and working under very poor “slave-like” conditions and seem to for instance be deprived of their identity documents, but that they had never thought of it in the context of human trafficking. Many fisheries officials see it as outside the scope of their mandate to investigate instances of human trafficking. The result is that victims are not identified, instances of trafficking are not investigated, and potential traffickers are not prosecuted. This means that victims of human trafficking are unlikely to be able to benefit from the added protection afforded them by virtue of the Trafficking in Persons Protocol. Experts consulted during the course of the study pointed out that there is a need for increased inter-agency cooperation both within States and between States to effectively prevent and combat human trafficking in the fishing industry.

3. SMUGGLING OF MIGRANTS

3.1 Introduction

UNTOC is supplemented by the Protocol against the Smuggling of Migrants by Land, Sea and Air (Smuggling of Migrants Protocol). The Smuggling of Migrants Protocol has a dual purpose in that it seeks to prevent and combat smuggling of migrants and promote cooperation among Member States, while protecting the rights of smuggled migrants.²⁸¹

Article 3(a) of the Smuggling of Migrants Protocol defines “migrant smuggling” as

“the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person into a State Party of which the person is not a national or a permanent resident.”

Member States to the Smuggling of Migrants Protocol commit to prevent and combat migrant smuggling by criminalizing migrant smuggling conducted in order to obtain a financial or other material benefit;²⁸² cooperate through information exchange, border measures, and the training of qualified personnel;²⁸³ and protect the rights of smuggled migrants.

Part II of the Smuggling of Migrants Protocol concerns smuggling of migrants at sea. According to the Protocol, States are required to cooperate “to the fullest extent possible” to prevent and suppress smuggling of migrants at sea.²⁸⁴ Article 8 of the Protocol describes certain measures States may take to suppress the use of vessels for smuggling of migrants. A State may for instance call upon other States to assist it to suppress the use of a vessel flying its own flag or a stateless vessel for the purpose of migrant smuggling.²⁸⁵ A State may also request authorization from the flag State to take measures against a foreign vessel (which the flag State may grant at its discretion).²⁸⁶ “Measures” include a right to board and search the vessel, as well as to “take appropriate measures with respect to the vessel and persons and cargo on board” if evidence is found that the vessel is engaged in migrant smuggling.²⁸⁷ Flag States are under an obligation to respond expeditiously to requests by other State parties to confirm the nationality of vessels.²⁸⁸ Importantly, the Smuggling of Migrants Protocol provides certain safeguards in Article 9 by requiring States to protect the human rights of the persons on board the vessel as well as protect its cargo, the environment, and the legal and commercial interests of other States involved.²⁸⁹

²⁸¹ Article 2 of the Smuggling of Migrants Protocol.

²⁸² Article 6 of the Smuggling of Migrants Protocol.

²⁸³ See Part III of the Smuggling of Migrants Protocol.

²⁸⁴ Article 7 of the Smuggling of Migrants Protocol.

²⁸⁵ Article 8(1) of the Smuggling of Migrants Protocol.

²⁸⁶ Article 8(2) of the Smuggling of Migrants Protocol.

²⁸⁷ Article 8(2)(a)-(c) of the Smuggling of Migrants Protocol.

²⁸⁸ Article 8(4) of the Smuggling of Migrants Protocol.

²⁸⁹ Article 9(1) of the Smuggling of Migrants Protocol.

3.2 Involvement of the fishing industry in organized migrant smuggling

Media frequently report about the arrival of migrants smuggled in fishing vessels at sea.²⁹⁰ This may suggest that elements of the fishing industry are involved in organized migrant smuggling operations. In this Chapter the involvement of fishers and fishing vessels in migrant smuggling, and the extent to which fishers are understood to be part of organized smuggling operations, is explored.

The 2011 UNODC literature review of migrant smuggling points to four main known areas in which smuggling of migrants takes place at sea:

- Across the Mediterranean and Atlantic into Europe;
- across the Red Sea and the Gulf of Aden into Yemen;
- in the Caribbean and to mainland America;
- from China to the US; and
- from Asia to Australia.²⁹¹

In addition, concerns are raised about migrant smuggling from the Comoros to the French overseas collectivity of Mayotte.²⁹²

The possible involvement of fishers and fishing vessels in the smuggling of migrants on each of these routes are discussed below.

3.2.1 Across the Mediterranean and the Atlantic seaboard into Europe²⁹³

Migrants from Asia and Africa are smuggled across the Mediterranean via four main routes: the eastern Mediterranean route from Turkey to Cyprus and Greece; the mid-Mediterranean route from Libya and Tunisia to Malta and Italy; the western Mediterranean route from Morocco to Spain; and the Atlantic seaboard route from West Africa to the Canary Islands.²⁹⁴ Frontex, the European agency responsible for integrated border management, estimates that migrant flows by sea have decreased significantly the last few years. In January to September 2010 it was reported that 11,766 migrants entered Europe by sea.²⁹⁵ This is a 70 per cent decrease from January to September 2009. There was also a decrease of 43 per cent in overall maritime arrivals from 2008 to 2009.²⁹⁶ Media are reporting that migrants prefer land routes due to the danger associated with voyages at sea,²⁹⁷ but it is likely that other

²⁹⁰ See sources quoted below.

²⁹¹ UNODC *Smuggling of Migrants: Annotated Bibliography of Recent Publications* (2011) 31-35, available at http://www.unodc.org/documents/human-trafficking/Marian/Smuggling_of_Migrants_A_Global_Review.pdf.

²⁹² See e.g. *Cour des Comptes Rapport Public Annuel 2011* (2011) 385, available at <http://lesrapports.ladocumentationfrancaise.fr/BRP/114000083/0000.pdf>.

²⁹³ This Section was written prior to the recent surge in migrant smuggling from Tunisia to Italy and Malta, and these events are therefore not reflected in the Chapter.

²⁹⁴ See e.g. Frontex *Current Situation at the External Borders* (2009), available at http://www.frontex.europa.eu/gfx/frontex/files/frontex_situationmap_externalborders.pdf. See also Monzini *Migrant Smuggling via Maritime Routes* (Working Paper), available at http://www.regione.emilia-romagna.it/west/italiano/formazione/formazione_congiunta/materiali/working_paper_9-2004-CESPI-traff_migranti-ING2.pdf.

²⁹⁵ Available at http://www.frontex.europa.eu/situation_at_the_external_border/art18.html.

²⁹⁶ Frontex *Current Situation at the External Borders* (2009), available at http://www.frontex.europa.eu/gfx/frontex/files/frontex_situationmap_externalborders.pdf.

²⁹⁷ "Dutch Ship Saves Boat People" *Radio Netherlands Worldwide*, 17 January 2011, available at

reasons such as increased border patrols and interceptions are contributory factors.²⁹⁸ This downward trend may however have changed amidst recent reports of an influx of migrants at sea from Tunisia to Lampedusa, Italy.²⁹⁹

There are no comprehensive data on the extent to which fishers are involved in smuggling of migrants at sea across the Mediterranean. As is suggested in the 2010 UNODC literature review *of Smuggling of Migrants Into, Through and From North Africa*³⁰⁰ fishing vessels were used, particularly leaving Tunisia in the 1990s, and more recently from Libya to Italy.³⁰¹ The latter involves old and unseaworthy fishing vessels.³⁰² The report also points to the use of fishing vessels, or *pateras*, from West Africa and Morocco to Spain in the early years of the 2000s, which has since become less frequent due to the risk of detection and accidents at sea.³⁰³ A similar trend can be confirmed by the reports made by Italy, Greece, and Turkey to the IMO Maritime Safety Committee (MSC) in relation to “Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea” made biannually since 2001.³⁰⁴ The table below provides an overview of the total number of incidents reported to the IMO MSC in the period 2001 to 2009 and the reported use of fishing vessels.

<http://www.rnw.nl/english/bulletin/dutch-ship-saves-boat-people>.

²⁹⁸ Such as Frontex” sea border patrol actions *Hera* (focusing on flows of migrants from Senegal and Mauritania to the Canary Islands) and *Nautilus* (focusing on the flows of migrants from Libya to Malta and Italy (Lampedusa)), however cf Mallia *Migrant Smuggling by Sea: Combating a Current Threat to Maritime Security through the Creation of a Cooperative Framework* (2010) 212-222.

²⁹⁹ Frontex “Request for Help over Migratory Pressure in Lampedusa” 15 February 2011, available at http://www.frontex.europa.eu/newsroom/news_releases/art94.html, see also Agnew “Italian minister accuses EU of failing to act over refugees” *The Irish Times*, 15 February 2011, available at <http://www.irishtimes.com/newspaper/world/2011/0215/1224289826679.html>; and Poggioli “Waves Of Migrants From African Unrest Land In Italy” *NPR*, 16 February 2011, available at <http://www.npr.org/2011/02/16/133812383/eu-faces-challenge-of-a-widening-wave-of-migrants>.

³⁰⁰ Available at http://www.unodc.org/documents/human-trafficking/Migrant_smuggling_in_North_Africa_June_2010_ebook_E_09-87293.pdf.

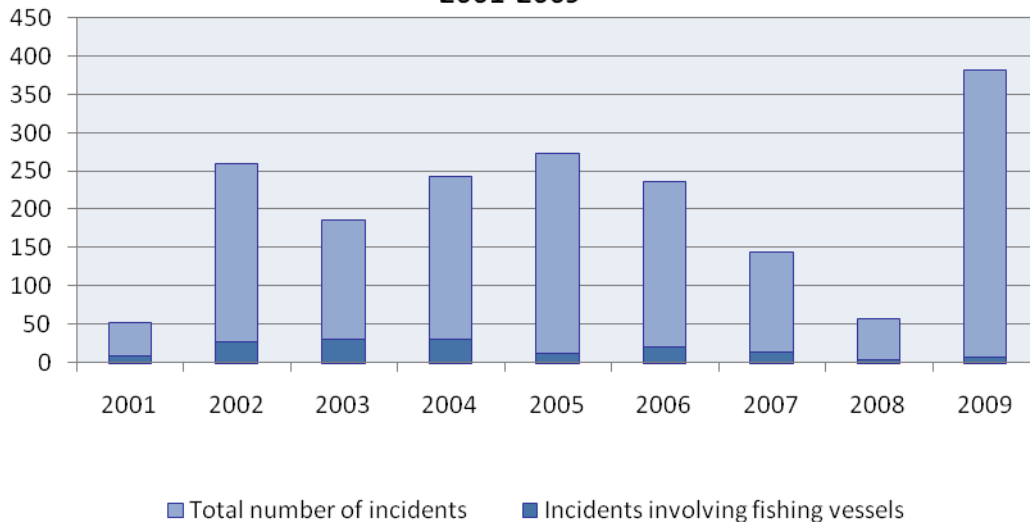
³⁰¹ *Ibid* at 11; see also Tennant and Janz/UNHCR *Refugee Protection and International Migration: A Review of UNHCR’s Operational Role in Southern Italy* (2009) 12, available at <http://www.unhcr.org/4ac35c600.html>.

³⁰² UNODC *ibid*.

³⁰³ *Ibid* at 31.

³⁰⁴ IMO MSC “Unsafe Practices Associated with the Trafficking or Transport of Migrants by Sea First Biannual Report 2010” *MSC.3/Circ.18*, 18 February 2010, available at www.imodocs.com. The IMO reports must be read with caution as they rely on voluntary reports submitted by a few States (primarily Italy, Greece, and Turkey); they mainly refer to shipwrecks, strandings, or interceptions; and they do not always report the details of the vessels. The data does therefore not provide a good basis from which to assess the overall use of fishing vessels in migrant smuggling at sea, but it does give an indication of the prevalence of fishing vessels as opposed to other vessel types.

**Reports to the IMO MSC
by mainly Greece, Italy and Turkey
of vessels involved in
smuggling of migrants at sea
2001-2009**



Source: IMO, documents available at www.imodocs.com.³⁰⁵ “Year” refers to the year reported, not when the incident occurred.

The IMO reports suggest that relatively few fishing vessels are used for smuggling of migrants at sea into Italy and Greece compared to the use of amongst others inflatable boats and smaller engine powered plastic, wooden, or fiberglass boats.³⁰⁶ The reports made since 2008 also suggest that inflatable boats are now favoured modes of transport, particularly from Turkey to Greece. A total of 270 of 376 incidents – or nearly 72 per cent – involved inflatable boats in the 2009-report.³⁰⁷

Fishing vessels do not seem to be frequently used, when they are, they seem to be part of a large smuggling operations. Fishing vessels can carry several hundreds of migrants at a time, whereas the numbers of migrants on board inflatable boats are on average twenty people. For instance, the seven fishing vessels representing less than 2 per cent of the vessels

³⁰⁵ MSC.3/Circ.1, 30 April 2001; MSC.3/Circ.2, 31 October 2001; MSC.3/Circ.3, 30 April 2002; MSC.3/Circ.4, 28 February 2003; MSC.3/Circ.5, 25 July 2003; MSC.3/Circ.6, 31 January 2004; MSC.3/Circ.7, 30 July 2004; MSC.3/Circ.8, 31 January 2005; MSC.3/Circ.9, 31 July 2005; MSC.3/Circ.10, 31 January 2006; MSC.3/Circ.11, 31 July 2006; MSC.3/Circ.12, 29 January 2007; MSC.3/Circ.13, 31 July 2007; MSC.3/Circ.14, 11 January 2008; MSC.3/Circ.15, 24 July 2008; and MSC.3/Circ.17, 2 November 2009.

³⁰⁶ A study by Monzini suggests that of the 113 boats that arrived in Lampedusa in 2007, only 3 were identified as fishing vessels; Monzini “Il Traffico di Migranti per mare verso l’Italia. Sviluppi recenti (2004-2008)” 43 *Working Papers Centro Studi di Politica Internazionale* (2008), available at <http://www.cespi.it/WP/WP43-Traffico-Monzini.pdf>

³⁰⁷ MSC.3/Circ.17, 2 November 2009.

reported to the IMO in 2009 carried 1.300 migrants – or nearly 15 per cent of the total number of migrants reported (8,747) in the reporting period.³⁰⁸

The use of fishing vessels could indicate that fishers are involved in migrant smuggling operations. However, commenting on the crossings from Libya to Italy, Tennant and Jenz (UNHCR) observes that

“the boats are generally unseaworthy vessels which are not intended to be re-used, and are navigated not by professional smugglers, but by one or more of the passengers”.³⁰⁹

There are a couple of exceptions, however. Monzini suggests that strong demand created an alternative migrant smuggling route from Egypt to Sicily in 2007.³¹⁰ According to Monzini, traffickers recruited Egyptian professional fishers due to their navigation skills, using their own fishing vessels.³¹¹ The migrants were transported by fishing vessels out at sea and were then transferred to smaller vessels and left adrift.³¹² Monzini would however seem to support a claim that these fishermen were hired to smuggle migrants on an *ad hoc* basis.³¹³ The use of the Egypt route is believed to have declined in recent years due to strong enforcement action and media campaigns.³¹⁴ Carling describes the involvement of individual fishers in migrant smuggling from Morocco to Spain in a 2007 study.³¹⁵ According to Carling, the smuggling networks are mostly fluid networks of individuals, some of whom seem to be “individual fishermen-turned-smugglers”.³¹⁶

Fishers as rescuers or migrant smugglers?

Recent (2010) media reports are suggesting that fishers are supplementing their income with migrant smuggling due to fishing restrictions,³¹⁷ by amongst others allowing migrants to hide in tuna pens whilst they are being towed into European ports.³¹⁸ The media stories have not been confirmed, although the UNHCR has reported one instance where fishers allowed 26 rescued migrants at sea to cling on to a tuna pen for three days before being picked up by the

³⁰⁸ IMO MSC “Unsafe Practices Associated with the Trafficking or Transport of Migrants at Sea” *MSC.3/Circ.17*, 2 November 2009.

³⁰⁹ Tennant and Jenz/UNHCR *Refugee Protection and International Migration: A Review of UNHCR’s Operational Role in Southern Italy* (2009) at 12, available at <http://www.unhcr.org/4ac35c600.html>.

³¹⁰ Monzini “Il traffico di migranti per mare verso l’Italia. Sviluppi recenti (2004-2008)” 43 *Working Papers Centro Studi di Politica Internazionale* (2008) 33, available at <http://www.cespi.it/WP/WP43-Traffico-Monzini.pdf>.

³¹¹ *Ibid.*

³¹² A similar *modus* is known from Australia, known as the “two-boat procedure”; see Schloenhardt *Migrant Smuggling: Illegal Migration and Organized Crime in Australia and the Asia Pacific Region* (2003) 138.

³¹³ Monzini “Il traffico di migranti per mare verso l’Italia. Sviluppi recenti (2004-2008)” 43 *Working Papers Centro Studi di Politica Internazionale* (2008) 34, available at <http://www.cespi.it/WP/WP43-Traffico-Monzini.pdf>.

³¹⁴ *Ibid* at 35.

³¹⁵ Carling “Unauthorized Migration from Africa to Spain” 45(4) *International Migration* (2007).

³¹⁶ *Ibid* at 22.

³¹⁷ Martin “Leaving Malta” *PRI’s the World*, 31 December 2010, available at <http://www.theworld.org/2010/12/31/leaving-malta/>.

³¹⁸ “Tuna Ranching Said to be Involved with Mafia, Illegal Immigrant Trafficking” *The Malta Independent*, 25 June 2010, available at <http://www.independent.com.mt/news.asp?newsitemid=55376>.

³¹⁹ UNHCR “Mediterranean Boats: UNHCR Thanks Life-saving Crews, Calls on States to Fulfill their

Italian navy.³¹⁹ These migrants were however reportedly rescued by the fishers and not smuggled by them.³²⁰ During expert consultations it was pointed out that a number of fishers were reluctant to rescue migrants in distress at sea for fear of being targeted as migrant smugglers.

There seems to be very little basis upon which to claim that fishers are involved in an organized manner in migrant smuggling into Europe. On the contrary, it would seem that fishing vessels are involved in only a limited number of cases, and that the vessels used are old and unseaworthy navigated by the migrants themselves. However, it cannot be ruled out that fishers are involved on an ad hoc or more organized basis, accepting bribes for transporting migrants to Europe either in vessels or whilst clinging on to tuna pens, but this study has not come across recent confirmed reports of this.

3.2.2 Across the Red Sea and Gulf of Aden to Yemen

According to the UNHCR, migrants are smuggled from Somalia and Ethiopia across the Red Sea and Gulf of Aden to Yemen along three main routes: from Bossaso (Puntland) and Obock in Djibouti (the latter becoming more prominent in later years),³²¹ as well as to a lesser extent from Berbera (Somaliland), to various points along the Yemeni coast.³²² The Mixed Migration Task-Force (MMTF) reports that in 2008 more than 50.000 migrants arrived in Yemen and estimates that the figure for 2009 became significantly higher.³²³

The study has not come across any comprehensive data on the number of fishing vessels used to transport persons across the Red Sea and Gulf of Aden. However, fishing vessels are reportedly used,³²⁴ and the MMTF claims that vessel owners and crew are part of extensive smuggling networks.³²⁵ In Bossaso it is alleged that several hundred people are involved in smuggling networks, including “boat owners, boat crews, restaurant and café owners, telephone centre owners, policemen, businessmen, truck owners, and landlords.”³²⁶ A later report from 2010 confirms the impression that the smugglers are largely organized.³²⁷ The

Obligation” *Briefing Notes*, 1 June 2007, available at <http://www.unhcr.org/cgi-bin/texis/vtx/newsitem?id=4660020820>; Spindler “Between the Devil and the Deep Blue Sea” 148(4) *Refugees* (2007) 20-21; and Østergaard (Rapporteur, Committee on Migration, Refugees and Population, Council of Europe) *Europe’s “Boat People”: Mixed Migration Flows by Sea into Southern Europe* (2008) 2 and 11, available at <http://assembly.coe.int/Documents/WorkingDocs/Doc08/EDOC11688.pdf>.

³²⁰ *Ibid.*

³²¹ Healy and Hill “Yemen and Somalia: Terrorism, Shadow Networks and the Limitations of State Building” 1 *MENAP/AFP Briefing Paper* (2010) 9, available at http://www.chathamhouse.org.uk/files/17575_bp1010_yemensomalia.pdf.

³²² See <http://ochaonline.un.org/OchaLinkClick.aspx?link=ocha&docId=1090134>.

³²³ By September 2009 51.767 migrants had arrived in Yemen. Healy and Hill report that the 2009 figure was 77.802; Healy and Hill “Yemen and Somalia: Terrorism, Shadow Networks and the Limitations of State Building” 1 *MENAP/AFP Briefing Paper* (2010) 9, available at http://www.chathamhouse.org.uk/files/17575_bp1010_yemensomalia.pdf.

³²⁴ See for instance International Centre for Migration Policy Development *The East Africa Migration Routes Report* (2007) 26, available at http://research.icmpd.org/fileadmin/Research-Website/Publications/reports_and_studies/East_Africa_Migration_Routes_Report.pdf.

³²⁵ MMTF *Strategy Paper* (2008) 8, available at <http://www.unhcr.org/4877716c2.html>.

³²⁶ *Ibid.*

³²⁷ Jureidini/MMTF *Mixed Migration Flows: Somali and Ethiopian Migration to Yemen and Turkey Final Report* (2010) 7 and 24, available at

networks are reportedly transnational but not linked to external major transnational organized criminal groups.³²⁸

According to MMTF, agents transport the migrants to the vessel once the vessel owners indicate that they have a vessel available. Puntland police report that there are about 12-14 vessels operating to and from Yemen from Puntland with each vessel departing twice per month on average. According to MMTF vessels carry about 100-120 people and each person pays in the region of US\$ 50-80, although a more recent report suggests that the smugglers now charge in the region of US\$ 150 for sea passages.³²⁹ If a vessel is lost, then the network is allegedly able to purchase a new vessel within the week.³³⁰

Although fishing vessels are used to smuggle migrants across the Red Sea and Gulf of Aden, there are no reports that the smugglers involved are fishers or also engaged in fishing operations. Rather, it would seem that the smugglers are aware that the vessel may be impounded or lost, which would indicate that they would not choose vessels suitable to be used for fishing operations. They would also seem to be so preoccupied with their profitable smuggling operations that engagement in fishing activities would be unlikely. An area left unexplored is the extent to which overfishing and possibly depleted fish stocks in the Gulf of Aden is linked to the availability of fishing vessels and fishers leaving their profession and willing to take part in smuggling operations.

3.2.3 In the Caribbean and to mainland America

According to Thomas-Hope, migrants from the Dominican Republic, Cuba, and Haiti are smuggled to the United States, often via other smaller islands in the Caribbean. Larger vessels, including fishing vessels,³³¹ are used to reach the mainland or the migrants are transferred to smaller vessels and make their last leg to the mainland in these.³³² Thomas-Hope's study is from 2004/2005, but it is supported by recent media reports.³³³

Despite a sharp increase in migrants interdicted by the United States Coast Guard around 2004-2005 (10,899 and 9,455 respectively) the flow has decreased with only 2,088 reported interdictions in 2010.³³⁴ The decrease in reported interdictions can perhaps be seen in the

http://www.drc.dk/fileadmin/uploads/pdf/IA_PDF/Horn_of_Africa_and_Yemen/Mixed%20Migration%20through%20Somalia%20and%20across%20Gulf%20of%20Aden%20-%20Background%20study.pdf.

³²⁸ MMTF *Strategy Paper* (2008) 8, available at <http://www.unhcr.org/4877716c2.html>.

³²⁹ Healy and Hill "Yemen and Somalia: Terrorism, Shadow Networks and the Limitations of State Building" 1 *MENAP/AFP Briefing Paper* (2010) 9, available at http://www.chathamhouse.org.uk/files/17575_bp1010_yemensomalia.pdf.

³³⁰ MMTF *Strategy Paper* (2008) 8, available at <http://www.unhcr.org/4877716c2.html>.

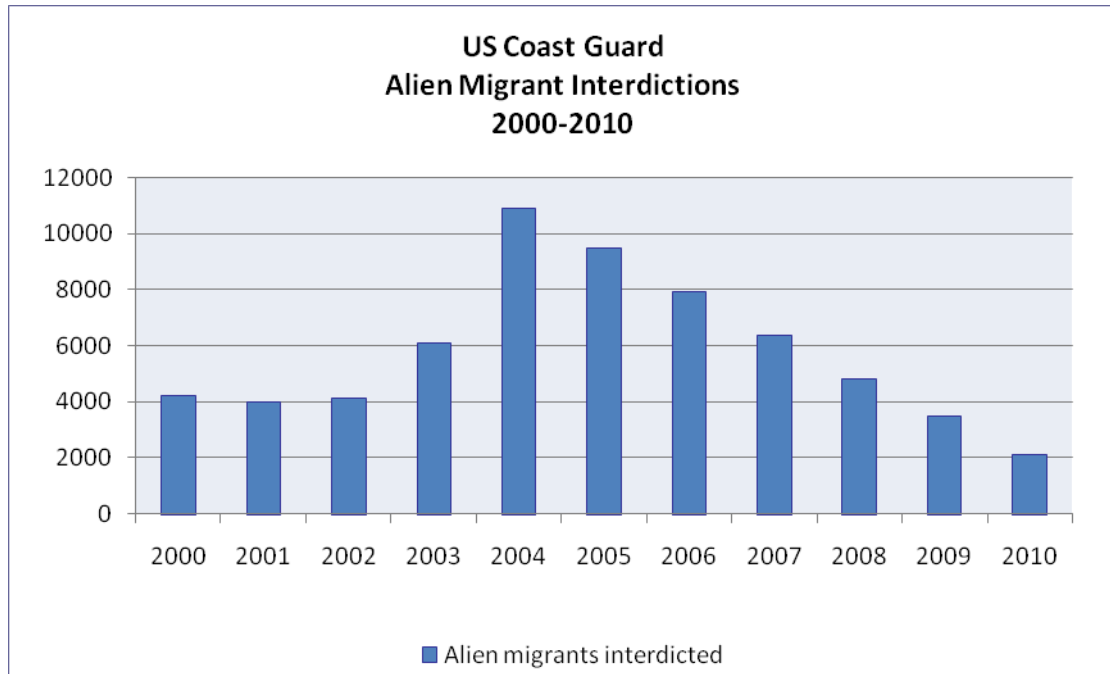
³³¹ See photo-records on United States Coast Guard "Alien Migrant Interdiction: Migrant Interdiction Images", available at <http://www.uscg.mil/hq/cg5/cg531/amio.asp>.

³³² Thomas-Hope "Current Trends and Issues in Caribbean Migration" in *Regional and International Migration in the Caribbean and Its Impact on Sustainable Development: Compendium on Recent Research on Migration in the Caribbean Presented at Caribbean Expert Group Meeting on Migration, Human Rights and Development in the Caribbean 14-15 September 2005 Port of Spain, Trinidad and Tobago* (2005) 53 at 59, available at <http://www.eclac.org/publicaciones/xml/3/23203/L.61.pdf>. The report is from 2004 and it is possible that the smuggling routes have changed since then.

³³³ "TCI Probes Smuggling Ring" *BBC Caribbean*, 31 July 2009, available at http://www.bbc.co.uk/caribbean/news/story/2009/07/090731_haitismuggling.shtml.

³³⁴ Alien Migration Interdiction, available at <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp>. According to United States Coast Guard statistics, 495 migrants arrived by sea by 22 February 2011, indicating that there could be more migrants arriving this year than 2010.

context of an overall decline in smuggling by sea to the United States, now predominantly taking place over land through the United States-Mexico border.³³⁵ However, recent media coverage suggests that tighter border controls have again led smugglers to become more creative, with an increase in the use of small fishing vessels from Mexico to California.³³⁶



Source: The US Coast Guard <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp>.

The figures above do not take account of interdictions by the Bahamian or Turks and Caicos Islanders. The migrants interdicted are predominantly Haitian; in 2010 1,377 Haitians were intercepted, as well as Dominican (140) and Cuban (422).³³⁷ There are indications that migration is turned towards other Caribbean States as well.³³⁸ The vessels used are reported to be operated by networks of smugglers.³³⁹ Little was discovered in this study about the nature of these smuggling networks.

³³⁵ See Chapter 4, Section 4.2.1.1, below.

³³⁶ See Jolly and Hernandez “5 Tries at Boat Smuggling in Week” *The Orange County Register*, 16 April 2010, available at <http://www.ocregister.com/news/border-244386-smuggling-people.html> and Schroder “Smugglers Involved in 2 Deaths Sentenced” *The San Diego Union-Tribune*, 25 February 2011, available at <http://www.signonsandiego.com/news/2011/feb/25/smugglers-involved-in-2-deaths-sentenced/>.

³³⁷ Alien Migration Interdiction, available at <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp>.

³³⁸ UNODC *Smuggling of Migrants: A Global Review of Annotated Bibliography and Publications* (2011) 29, available at http://www.unodc.org/documents/human-trafficking/Marian/Smuggling_of_Migrants_A_Global_Review.pdf, citing Alvarado and Sánchez “Migration in Latin America and the Caribbean: A View from the ICFT/ORIT” 129(4) *Labour Education* (2002).

³³⁹ Thomas-Hope “Current Trends and Issues in Caribbean Migration” in *Regional and International Migration in the Caribbean and its Impact on Sustainable Development: Compendium on Recent Research on Migration in the Caribbean Presented at Caribbean Expert Group Meeting on Migration, Human Rights and Development in the Caribbean 14-15 September 2005 Port of Spain, Trinidad and Tobago* (2005) 53 at 59, available at <http://www.eclac.org/publicaciones/xml/3/23203/L.61.pdf>.

Fishers involved in organized smuggling of migrants from Mexico to the United States

One media report from 2006 suggests that persons claiming to be fishers could be involved in an organized smuggling syndicate that transports Cuban migrants to Mexico.³⁴⁰ According to the media story the smugglers

“[f]or payments of between 3,000 and 5,000 dollars ... pick up Cubans in Cuba or at sea and take them to different locations in the southeastern state of Quintana Roo, on Mexico's Caribbean coast. From there they are taken by boat or land to the United States, for an extra fee.”³⁴¹

Although fishing vessels are reported to be used to transport migrants at sea, this study has not come across literature to suggest that fishers are involved in any organized manner in migrant smuggling in the Caribbean. The available literature and media reports suggest that a link to the fishing industry is not widely recognized, although it cannot be ruled out that such a link exists.

3.2.4 From China to the United States

Chinese migrants are smuggled by sea from China to the United States. The smuggling operations are believed to be organized by highly sophisticated smuggling groups operating out of China, known as snakeheads.³⁴² The use of smuggling routes from China to the United States by sea peaked in the 1990s, but direct landings in the United States have since declined due to United States Coast Guard surveillance and intelligence efforts.³⁴³ The few smuggling operations by sea today mainly involve landings of migrants on United States territory islands such as Guam³⁴⁴ and in Mexico in hope of further transfer to the United States.³⁴⁵

Reports are made that fishing vessels are used by the smugglers.³⁴⁶ According to Zhang, smugglers locate migrants through friends and relatives.³⁴⁷ The network organizes small vessels to transport the migrants to a waiting mother ship at sea, charters the larger mother

³⁴⁰ Cevallos “Networks Smuggle Cubans to U.S. via Mexico” *IPS*, 13 April 2006, available at <http://ipsnews.net/news.asp?idnews=32890>.

³⁴¹ *Ibid.*

³⁴² Zhang *Smuggling and Trafficking in Human Beings: All Roads Lead to America* (2007) 69 *et seq.*

³⁴³ UNODC *Smuggling of Migrants: A Global Review of Annotated Bibliography and Publications* (2011) 34, available at http://www.unodc.org/documents/human-trafficking/Marian/Smuggling_of_Migrants_A_Global_Review.pdf; see also Zhang *ibid.*

³⁴⁴ Guzman “24 People Arrested for Human Smuggling” *Mvariety.com*, 6 January 2010, available at <http://www.mvariety.com/2010010522728/local-news/24-people-arrested-for-human-smuggling.php>.

³⁴⁵ Zhang *Smuggling and Trafficking in Human Beings: All Roads Lead to America* (2007) 72 and UNODC *Smuggling of Migrants: A Global Review of Annotated Bibliography and Publications* (2011) 34, available at http://www.unodc.org/documents/human-trafficking/Marian/Smuggling_of_Migrants_A_Global_Review.pdf.

³⁴⁶ Zhang *ibid.*

³⁴⁷ *Ibid.*

ship to undertake the ocean voyage (a fishing trawler or cargo vessel), and arranges supplies of food and water, as well as hiring of captain and crew.³⁴⁸

Migrant smuggling of Chinese to Guam

A recent example of Chinese migrant smuggling to the United States is the interception and arrest of 24 persons by the Immigration and Customs Enforcement Unit of the United States Department of Homeland Security on 5 January 2010. The vessel – a fishing boat – was spotted and intercepted off the coast of Guam. According to media coverage, two of the 24 were believed to be the organizers of the group.³⁴⁹

Despite the use of fishing vessels and, possibly, fishers to crew and navigate the vessels, it would seem that organized criminal groups external to the fishing industry are coordinating and operating this smuggling route. Whereas fishing vessels are used, so also are cargo and container vessels,³⁵⁰ hence there seems to be no proven correlation between the use of fishers and fishing vessels and organized migrant smuggling from China to the United States.

3.2.5 From Asia to Australia

Migrants, mainly from Afghanistan, the Middle East and North Africa are smuggled at sea to Australia from Indonesia, Malaysia and Papua New Guinea.³⁵¹ Lately there have been a couple of cases reported in the media of Sri Lankans attempting to cross the sea directly to Australia.³⁵²

Fishing vessel used for migrant smuggling from Sri Lanka to Australia

In February 2011 Sri Lankan navy and police reported that they had arrested a vessel disguised as a fishing trawler involved in attempted smuggling of migrants to Australia.³⁵³ According to a news report the investigators had discovered “a well organized syndicate

³⁴⁸ Zhang *ibid* 70-71.

³⁴⁹ Guzman “24 People Arrested for Human Smuggling” *Mvariety.com*, 6 January 2010, available at <http://www.mvariety.com/2010010522728/local-news/24-people-arrested-for-human-smuggling.php>.

³⁵⁰ Zhang suggests that snakeheads are finding migrant smuggling in containers an effective smuggling method; Zhang *Smuggling and Trafficking in Human Beings: All Roads Lead to America* (2007) 73.

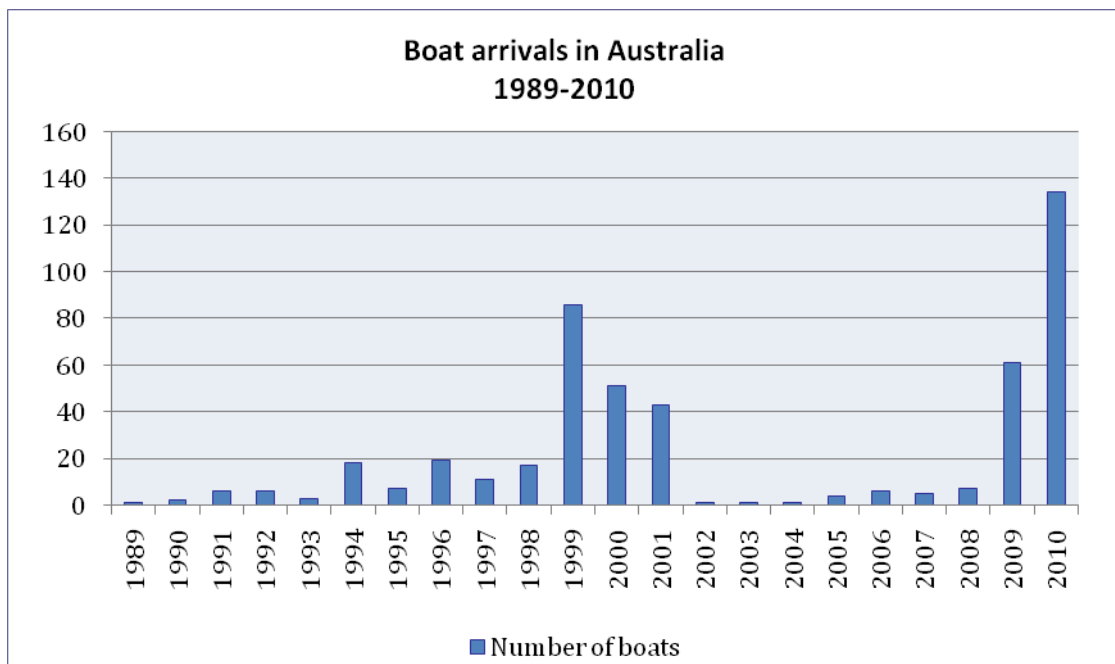
³⁵¹ Crock, Saul and Dastyari *Future Seekers II: Refugees and Irregular Migration in Australia* (2007) 45. See also Schoenhardt “The Business of Migration: Organised Crime and Illegal Migration in Australia and the Asia Pacific Region” 21 *Adelaide Law Review* (1999) 81 at 101.

³⁵² See Berenger “Another Load of Boat People Nabbed off H’tota” *The Sunday Times*, 27 February 2011, available at http://www.sundaytimes.lk/110227/News/nws_11.html; LBO “Boat People: Sri Lanka Navy Foils Smuggling Mission to Australia” *Lanka Business Online*, 21 February 2011, available at http://www.lbo.lk/fullstory.php?newsID=145574770&no_view=1&SEARCH_TERM=48 (same incident); and “IOM Launches Programme against People Smuggling” *tops.lk*, 14 July 2010, available at <http://www.tops.lk/article23554-iom-launches-programme-against-people-smuggling.html>.

³⁵³ Berenger “Another Load of Boat-People Nabbed off H’tota” *The Sunday Times*, 27 February 2011, available at http://www.sundaytimes.lk/110227/News/nws_11.html and LBO “Boat People: Sri Lanka Navy Foils Smuggling Mission to Australia” *Lanka Business Online*, 21 February 2011, available at http://www.lbo.lk/fullstory.php?newsID=145574770&no_view=1&SEARCH_TERM=48.

operating a multi-million rupee human smuggling ring that extends from the south to the east and north, where agents seek clients interested in going overseas”.³⁵⁴ The people smugglers are reported to charge up to \$ 5.000 for transport to Canada, Europe, Australia or New Zealand.³⁵⁵ Vessels take approximately three weeks for the journey from Sri Lanka to Australia.³⁵⁶

According to official Australian sources, boat arrivals peaked at the turn of the century and thereafter declined amidst strict migration policies known as the “Pacific Solution”.³⁵⁷ In recent years (2009 and 2010) boat arrivals have again become more common, reaching unprecedented numbers last year (see tables below).



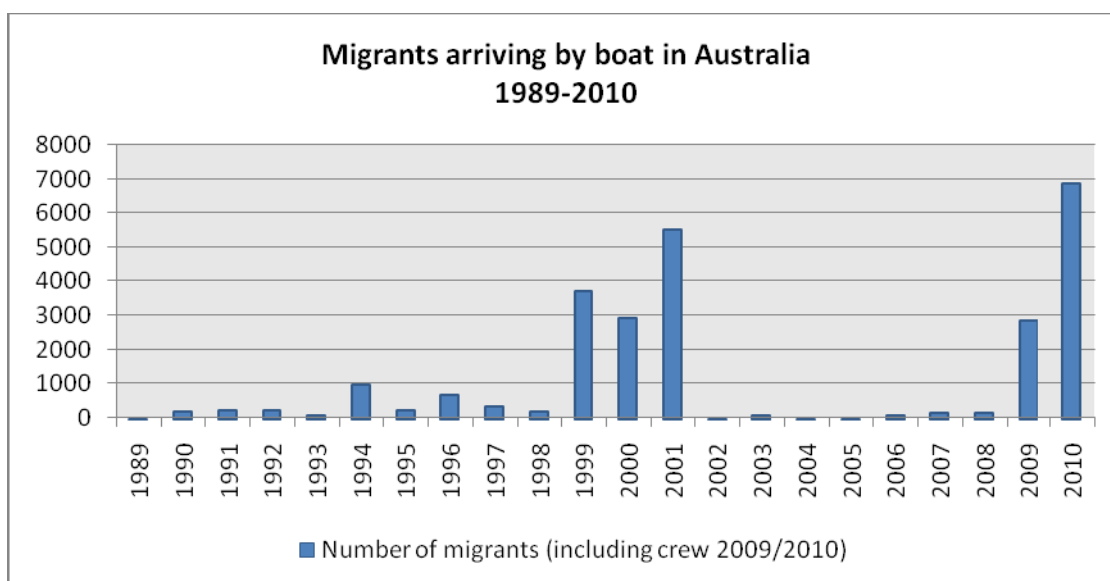
Source: Phillips and Spink “Boat Arrivals in Australia since 1976” Background Note (updated 11 February 2011), available at <http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm>.

³⁵⁴ Berenger *ibid*.

³⁵⁵ LBO “Boat People: Sri Lanka Navy Foils Smuggling Mission to Australia” *Lanka Business Online*, 21 February 2011, available at http://www.lbo.lk/fullstory.php?newsID=145574770&no_view=1&SEARCH_TERM=48.

³⁵⁶ Berenger “Another Load of Boat-People Nabbed off H’tota” *The Sunday Times*, 27 February 2011, available at http://www.sundaytimes.lk/110227/News/nws_11.html.

³⁵⁷ Phillips and Spink “Boat Arrivals in Australia since 1976” *Background Note* (updated 11 February 2011), available at <http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm>. See also Schloenhardt *Migrant Smuggling: Illegal Migration and Organized Crime in Australia and the Asia Pacific Region* (2003) at 84 *et seq*.



Source: Phillips and Spink “Boat Arrivals in Australia since 1976” *Background Note* (updated 11 February 2011), available at <http://www.aph.gov.au/library/pubs/bn/sp/boatarrivals.htm>.³⁵⁸

Migrant smuggling operations by sea to Australia are believed to be highly organized and involve structured criminal groups such as the snakeheads.³⁵⁹ According to one oft-quoted researcher, Schloenhardt, “Chinese and other Asian criminal organizations have been found to be the predominant groups involved in the trafficking of migrants to Australia and throughout the Asia-Pacific region.”³⁶⁰ According to the researchers Crock, Saul and Dastyari the organized criminal groups include smuggling rings from southern China, Singapore, Malaysia, Philippines, Lebanon, Jordan, Thailand, and Indonesia.³⁶¹

The Australian criminologist Tailby refers to the use of fishing vessels as part of the *modus operandi* of migrant smuggling from Indonesia to Australia.³⁶² According to Schloenhardt these vessels are often old and left to be destroyed by Australian authorities.³⁶³ These findings are from 2001 and 2003 respectively, but are supported by recent media reports that there is possibly a more active involvement of fishers in the smuggling operations. In one such report it was alleged that fishing vessels are used to tow unseaworthy vessels out at

³⁵⁸ According to authors 2009 figures “[i]ncludes five deceased at sea 16 April 2009 and 12 deceased at sea 1 November 2009. Arrival figures do not include: 2 arrivals in an “esky” on 17 January 2009; 4 on Deliverance Island with no boat on 29 April 2009; and 78 on board Oceanic Viking intercepted in Indonesian waters in November 2009.” 2010 figures include “[a]rrivals from the boat tragedy on 15 December 2010 where a boat sank on approach to Christmas Island include the 42 people saved and the 30 bodies recovered, but do not include the unknown number of those who drowned, estimated at 18.”

³⁵⁹ Curtis, Elan, Hudson and Collars *Transnational Activities of Chinese Criminal Organizations: A Report Prepared by the Federal Research Division, Library of Congress under an Interagency Agreement with the United States Government* (2003) at 6, available at <http://www.loc.gov/rr/frd/pdf-files/ChineseOrgCrime.pdf>.

³⁶⁰ Schloenhardt “The Business of Migration: Organised Crime and Illegal Migration in Australia and the Asia Pacific Region” 21 *Adelaide Law Review* (1999) 81 at 92.

³⁶¹ Crock, Saul and Dastyari *Future Seekers II: Refugees and Irregular Migration in Australia* (2007) 45.

³⁶² Tailby “Organised Crime and People Smuggling/Trafficking to Australia” 208 *AIC Trends & Issues in Crime and Criminal Justice* (2001) 3.

³⁶³ Schloenhardt *Migrant Smuggling: Illegal Migration and Organised Crime in Australia and the Asia Pacific Region* (2003) 150.

sea so that they can be “rescued” and brought to shore.³⁶⁴ Schloenhardt refers to a similar kind of “two-boat procedure”, whereby migrants are transferred to a derelict vessel on tow at sea.³⁶⁵ A recent media story (July 2010) suggests that the increase in migrant smuggling may be accredited to the tougher stance against marine living resource crimes – forcing fishers to take on migrant smuggling to make a living.³⁶⁶ However, experts point out that fishers are normally the foot soldiers and attention should be focused on persons higher up in the smuggling organization.³⁶⁷

Charges following Christmas Island disaster

On 15 December 2010 nearly 50 of the approximately 90 migrants on board a substandard wooden vessel died when the boat they were smuggled in crashed against the cliffs on Christmas Island.³⁶⁸ The migrants were Kurds, Iraqis and Iranians.³⁶⁹

In January this year media reported that Indonesian authorities had arrested an Australian national of Iranian descent on charges of migrant smuggling.³⁷⁰ According to the media release, the Australian national is believed to be part of a larger syndicate of people smugglers, and “was allegedly involved in sending at least six boats to Christmas Island from West Java between October and December last year, including the vessel that crashed off the rocks on December 15”.³⁷¹

Three Indonesians rescued from the vessel have also been charged with migrant smuggling in Australia.³⁷²

The available sources suggest that fishing vessels are known to be used as part of the *modus operandi* of smuggling operations at sea and that fishers may be involved as transporters (particularly in transporting migrants and transferring these to derelict vessels on tow). However, there are no indications that these fishers are involved in the organized smuggling of migrants other than as transporters hired by external criminal networks to smuggle

³⁶⁴ McPhedran “People Smugglers go Fishing for a New Ploy” *The Daily Telegraph*, 13 October 2010, available at <http://www.dailytelegraph.com.au/news/national/people-smugglers-go-fishing-for-a-new-ploy/story-e6freuzr-1225937857948>.

³⁶⁵ Schloenhardt *Migrant Smuggling: Illegal Migration and Organised Crime in Australia and the Asia Pacific Region* (2003) 138.

³⁶⁶ Parnell “Poachers Turn to Asylum Trade” *The Australian*, 8 July 2010, available at <http://www.theaustralian.com.au/politics/poachers-turn-to-asylum-trade/story-e6frgczf-1225889146247>. As to marine living resource crime in North Australian waters, see Field, Meekan, Buskworth and Bradshaw “Protein Mining the World’s Oceans: Australasia as an Example of Illegal Expansion-and-displacement Fishing” 10 *Fish and Fisheries* (2009) 323.

³⁶⁷ Parnell *ibid.*

³⁶⁸ For a narrative of events, see Australian Customs and Border Protection Service *SIEV 221: Internal Review* (2011), available at <http://www.customs.gov.au/webdata/resources/files/110124CustomsInternalReview.pdf>.

³⁶⁹ BBC “Christmas Island Shipwreck: Indonesia Arrests Man” *BBC News*, 26 January 2011, available at <http://www.bbc.co.uk/news/world-asia-pacific-12286474>.

³⁷⁰ Allard “Man Arrested over Shipwreck Tragedy” *WA Today*, 27 January 2011, available at <http://www.watoday.com.au/national/man-arrested-over-shipwreck-tragedy-20110126-1a5dv.html>.

³⁷¹ *Ibid.*

³⁷² AFP “Indonesians Face Smuggling Charges over Boat Wreck” *Yahoo! Xtra News*, 25 January 2011, available at <http://nz.news.yahoo.com/a/-/world/8708655/indonesians-face-smuggling-charges-over-boat-wreck/>.

migrants. As such, there seems to be little indication of organized involvement of fishers in the smuggling of migrants to Australia.

3.2.6 From the Comoros to Mayotte

The archipelago of Mayotte is a French overseas collectivity situated in the northern Mozambique Channel. According to a French senate report an estimated 16.000 irregular migrants arrive in Mayotte each year, mainly from the Comoros, but also from Madagascar, Tanzania, and Iraq.³⁷³ The main route to Mayotte seems to be across the sea from the Comoros. Migrants from other States also seem to use the Comoros as a transit country for entry into Mayotte.³⁷⁴

Mayotte is situated less than 70 km from the island of Anjouan, which is part of the Comoros archipelago, and can be reached by boat in less than four hours from the Comoros.³⁷⁵ It appears that the main mode of transport is by smaller fishing vessels, known as *kwassas-kwassas*, of some seven meters in length. The *kwassas-kwassas* are small and fast and can pass the coral reefs that surround Mayotte.³⁷⁶

According to the Senate report, very loose networks of vessel owners organize the migrant smuggling.³⁷⁷ The report suggests that the owners of *kwassas-kwassas* may at times operate independently. Locals on Mayotte are believed to be assisting in the smuggling operation.³⁷⁸ Vessel owners are said to solicit migrants on the beaches of Anjouan.³⁷⁹ They also recruit navigators of the vessels, often just hours before departure, at a pay of between 300-400 Euros [US\$ 427-593] (which is an average annual salary on the Comoros).³⁸⁰ There are suggestions that the owners recruit fishers as navigators of the *kwassas-kwassas* as some knowledge of the area is a prerequisite for safe passage.³⁸¹ Each *kwassa-kwassa* can take up to 45 migrants to Mayotte. Each migrant is believed to pay approximately 100-300 Euro (US\$ 142-427) for the crossing. A single crossing may net the smugglers in the region of 10.000 Euros (US\$ 14.234), which is the price of a *kwassa-kwassa*.³⁸² The report also suggests that *kwassas-kwassas* are returning from Mayotte to the Comoros with stolen goods and are partaking in illicit traffic in drugs.³⁸³

³⁷³ Torre “Mayotte: Un Éclairage Budgétaire sur le Défi de l’Immigration Clandestine” 461 *Rapport d’Information* (2007-2008), available at <http://www.senat.fr/rap/r07-461/r07-4615.html#toc99>.

³⁷⁴ *Ibid* at <http://www.senat.fr/rap/r07-461/r07-4613.html#toc66>.

³⁷⁵ *Ibid* and at <http://www.senat.fr/rap/r07-461/r07-4617.html#toc132>.

³⁷⁶ <http://www.senat.fr/rap/r07-461/r07-4617.html#toc132>, *ibid*.

³⁷⁷ *Ibid*.

³⁷⁸ *Ibid*.

³⁷⁹ *Ibid* at <http://www.senat.fr/rap/r07-461/r07-4618.html>.

³⁸⁰ *Ibid*.

³⁸¹ Carayol “Les Enfants Passuers de Mayotte” 84 *Plein Droit* (2010), available at <http://www.gisti.org/spip.php?article1928>.

³⁸² Torre “Mayotte: Un Éclairage Budgétaire sur le Défi de l’Immigration Clandestine” 461 *Rapport d’Information* (2007-2008), available at <http://www.senat.fr/rap/r07-461/r07-4618.html>.

³⁸³ *Ibid*.

The dismantling of an organized migrant smuggling network in Mayotte

According to a news article, in June 2009 the police dismantled an organized migrant smuggling network in Mayotte.³⁸⁴ The operation led to the arrest of 18 persons who were believed to be members of the organized criminal network of migrant smugglers. The organization was alleged to have had a turnover of some 250.000 Euros [US\$ 371,000] and the control of 58 *kwassas-kwassas*.

The news article reports that the smuggling organization used the *kwassas-kwassas* to smuggle migrants, tobacco, cannabis, and skin whitening drugs to Mayotte. The operation was well organized, with accommodation and taxis waiting for the migrants upon arrival in Mayotte. The *kwassas-kwassas* would also return to Comoros with stolen goods sourced from local burglars.

The available sources seem to suggest the organized smuggling operations from the Comoros to Mayotte take place distinct from the fishing activity, even though fishing vessels and fishers are used to smuggle migrants. It appears that organized syndicates use fishing vessels and fishers *ad hoc* due to their availability, suitability and knowledge, and that migrant smuggling is not an activity integrated into the fishing industry in the Comoros or Mayotte *per se*.

3.3 Findings

The study of six areas where migrant smuggling is undertaken at sea (across the Mediterranean and Atlantic into Europe; across the Red Sea and Gulf of Aden into Yemen; in the Caribbean and to mainland America; from China to the United States; from Asia to Australia; and from the Comoros to Mayotte) suggests that fishers are not generally seen to be integral in major organized migrant smuggling groups. There may be instances of fishers accepting bribes to bring migrants into Europe, but there is no suggestion that this is an organized activity by the fishing industry.³⁸⁵ Smuggling of migrants across the Red Sea and Gulf of Aden to Yemen seems to be run by networks of smugglers where the transport leg may – or may not – involve fishers. It seems unlikely that these are fishers that smuggle migrants (or that they are migrant smugglers that also are involved in fishing) as the smuggling activity is fairly intensive leaving little scope for other economic activities (although this cannot be ruled out). In the Caribbean fishing vessels are being used to smuggle migrants, but the involvement of fishers is not mentioned specifically in the literature. The smuggling route from the Comoros to Mayotte involves both fishing vessels and fishers, but there seems to be little indication of organized involvement of the fishing industry in the activity.

³⁸⁴ “Un Réseau “Mafieux” Entre Mayotte et les Comores Indépendantes Démantelé” *Malango Actualite*, 22 June 2009, available at http://www.malango-actualite.fr/article/un_reseau__mafieux__entre_mayotte_et_les_comores_independantes_demantele-5611.htm.

³⁸⁵ The *modus operandi* of migrant smuggling into Europe may have changed in recent months amidst the flow of migrants from North Africa to Malta and Lampedusa, Italy.

The study found reports of the most organized forms of migrant smuggling at sea in and from Asia, and to some extent in Mayotte. The available sources suggest that Chinese snakehead gangs are involved in migrant smuggling from China to the United States via United States Pacific island territories and Mexico. Snakeheads and other organized criminal groups also seem to be involved in migrant smuggling by sea to Australia. The involvement of fishers in these organized criminal groups is however generally perceived to be of an *ad hoc* nature. Their potential role seems to be more as transporters, who, according to Schloenhardt, “stay in contact with the organization through intermediaries who contact them casually”³⁸⁶ and thus not integral to the organization itself.

What the study did find, however, is that many migrant smuggling operations (the Mediterranean routes being perhaps an exception) are dependent upon the availability of seasoned seafarers to navigate the vessel to the destination point. Fishers are by nature of their profession qualified to take on this task. The most likely driver for fishers to become involved in smuggling of migrants is profit. However, it is also likely that the depletion of fish stocks and stricter quota systems are leading some fishers to take on the role of transporters in migrant smuggling operations to make a living.

Depleted fish stocks have also led to an oversupply of fishing vessels that are made available to be used to facilitate migrant smuggling. These vessels are often not registered domestically and there is no international register for fishing vessels. Fishing vessels are often not required to have satellite tracking or other vessel tracking systems. There is also very little transparency of fishing vessel ownership, which means that smugglers can use fishing vessels without being identified. During expert consultations it was pointed out that fishing vessels are probably favoured by migrant smugglers that do not want to be detected, as they are less visible in the sense that they have a natural reason to be at sea.³⁸⁷ More research is called for into the effect of overfishing on fishing communities and the disposal of surplus fishing vessels, as well as the control of fishing vessels and their beneficial ownership.

³⁸⁶ Schloenhardt *Migrant Smuggling: Illegal Migration and Organised Crime in Australia and the Asia Pacific Region* (2003) 122.

³⁸⁷ This will however depend on the region and the modus operandi. In some areas, such as the Mediterranean and migrant smuggling into Australia, a rescue is “staged” and attention is sought. There would however seem to still be a need to stay hidden until the vessel is close enough to shore to be rescued and brought to the target country.

4. ILLICIT TRAFFIC IN DRUGS

4.1 Introduction

Illicit traffic in narcotic drugs and psychotropic substances (“illicit traffic in drugs”) is of major concern to the international community. A key area of international cooperation is centered on efforts to combat illicit traffic in drugs across international borders. The three main international legal instruments that aim to provide measures to combat the use and traffic in narcotic drugs and psychotropic substances are the Single Convention on Narcotic Drugs of 1953, as amended by the 1954 Protocol (1953 Convention); the Convention on Psychotropic Substances of 1971 (1971 Convention); and the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 (1988 Convention). Of these, the 1988 Convention is the most comprehensive legal instrument to facilitate international cooperation and to effectively address the many aspects of illicit traffic in both narcotic drugs and psychotropic substances.

State parties to the 1988 Convention commit to criminalize illicit traffic in narcotic drugs and psychotropic substances. “Illicit traffic” includes the “production, manufacture, extraction, preparation, offering, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance” contrary to the provisions of the 1953 and 1971 Conventions.³⁸⁸ It includes other related activities such as:

- cultivation of plants for the purpose of drug production, contrary to the 1953 Convention;³⁸⁹
- possession or purchase of illicitly trafficked narcotic drugs or psychotropic substances for the purpose of illicit traffic; and³⁹⁰
- involvement in laundering of proceeds through property purchases.³⁹¹

Article 17 of the 1988 Convention contains a specific provision on State cooperation to suppress illicit traffic in drugs by sea.³⁹² Article 17 is largely mirrored in Articles 7 and 8 of the Smuggling of Migrants Protocol, discussed in Chapter 3, Section 3.1. According to Article 17(9) of the 1988 Convention, States are called upon to enter into bilateral or regional agreements to implement Article 17. This is the background to the Council of Europe’s *Agreement on Illicit Traffic at Sea, Implementing Article 17 of the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances* of 1995 (the Agreement). The basic tenet of the Agreement is to further facilitate international cooperation between States suspecting that illicit traffic in drugs at sea is taking place on

³⁸⁸ Article 3(1)(a) of the 1988 Convention.

³⁸⁹ Article 3(1)(a)(ii) of the 1988 Convention.

³⁹⁰ Article 3(1)(a)(iii) of the 1988 Convention.

³⁹¹ Article 3(1)(b) of the 1988 Convention.

³⁹² Article 7 and 8 of the Smuggling of Migrants Protocol was largely based on Article 17 of the 1988 Convention. The latter was based on the provision on State cooperation to suppress illicit traffic in narcotic drugs and psychotropic substances on the high seas contrary to international conventions, prescribed by Article 108 of the Law of the Sea Convention.

board vessels outside their jurisdiction and these vessels” flag States. The system is “authorization-based”, but once the flag State has given its authorization, then the Agreement allows States to take certain actions against the vessel including taking effective control over the vessel, direct and detain it, as well as seize, secure and protect any evidence on board the vessel.³⁹³

Fishing vessels are reportedly used for illicit traffic in drugs.³⁹⁴ This may suggest that some actors within the fishing industry are involved in organized illicit traffic in drugs. This Chapter explores the use of fishing vessels in the illicit traffic of drugs at sea and the possible involvement of fishers or segments of the fishing industry in organized drug trafficking.

4.2 Involvement of the fishing industry in the illicit traffic in drugs at sea

The four main markets for drugs identified by UNODC are cocaine, opiates (mainly heroin), cannabis, and amphetamine-type stimulants (ATS). The available sources suggest that the use of fishing vessels may be common in the context of illicit traffic of cocaine (see section 4.2.1, below). There are a number of sources that suggest that the illegal fishing industry may be involved in the barter of marine living resources against illicit ATS and ATS precursors in some regions of the world (see section 4.2.2, below). *Ad hoc* reference is made to the use of fishing vessels for the purpose of illicit traffic in cannabis and heroin (see sections 4.2.3 and 4.2.4, below).

4.2.1 Involvement of actors in the fishing industry and the use of fishing vessels in the illicit traffic in cocaine

UNODC estimates that the global market in cocaine was US\$ 88 billion in 2008 (range US\$ 80-100 billion).³⁹⁵ According to UNODC, cocaine is consumed by approximately 16 million people worldwide (range 15-19 million).³⁹⁶ Cocaine is mainly sourced in the Andean region (Colombia, Peru and Bolivia).³⁹⁷ An estimated 865 metric tons (mt) of pure cocaine was produced in 2008, which is a decline from previous years.³⁹⁸ Cocaine seizures are increasing, particularly in Latin America.³⁹⁹ It is therefore suggested that only about 500 mt of cocaine reached the market in 2008, of which 480 mt were consumed (the rest stored or lost in transit).⁴⁰⁰ The main markets for cocaine are found in North America (albeit declining) and Europe, with emerging markets throughout Latin America and the Caribbean.⁴⁰¹ Less is known about cocaine consumption in Africa and Asia, but increasing consumption is

³⁹³ Article 9 of the Agreement.

³⁹⁴ See discussion and reference to sources below.

³⁹⁵ UNODC *World Drug Report 2010* (2010) 69, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

³⁹⁶ *Ibid* 67.

³⁹⁷ *Ibid* 65.

³⁹⁸ *Ibid* and Figure 21 at 66.

³⁹⁹ *Ibid* Figure 22 at 67.

⁴⁰⁰ *Ibid* at 70.

⁴⁰¹ *Ibid*.

reported from amongst others Namibia and South Africa.⁴⁰² Cocaine flows are however predominantly directed at North America and Europe.⁴⁰³

4.2.1.1 From the Andean region to North America

Cocaine on the United States market is predominantly sourced in Columbia. The cocaine is transported to the United States from Columbia or via Ecuador or Venezuela. According to the *United States National Drug Threat Assessment* of 2008 the main cocaine trajectories towards the United States are via the East Pacific (66 per cent), the Atlantic (24 per cent) and the Caribbean islands (11 per cent). An estimated 90 per cent of the drugs are brought ashore in Mexico and then taken by land across the United States-Mexico border.⁴⁰⁴ There are recent suggestions that the near exclusive reliance on sea routes may have changed in favour of an increasing use of coastal and land routes.⁴⁰⁵

Cocaine trafficking from the Andean Region to North America is conducted by a number of organized criminal groups taking responsibility for the various segments of the trafficking operations. According to the UNODC *Globalization of Crime*-report, the transport by sea is often organized by smaller criminal groups, mainly of Colombian origin.⁴⁰⁶

The use of fishing vessels is largely regarded as integral to the *modus operandi* of illicit traffic in cocaine at sea to Mexico and the United States.⁴⁰⁷ The role of fishing vessels in drug trafficking in Latin America was pointed out at the *Sixteenth Meeting of Heads of National Drug Law Enforcement Agencies* of Latin America and the Caribbean. In the report from the meeting it was stated that:

“[fishing vessels play] multiple roles in maritime drug trafficking throughout the region, including as transport vessels for point-to-point delivery of cocaine consignments, as transport from offloading mother ships to remote landing sites and

⁴⁰² Hübschle *Organised Crime in Southern Africa: First Annual Review* (2010) 27, available at <http://www.issafrica.org/uploads/OrgCrimeReviewDec2010.pdf>.

⁴⁰³ UNODC *World Drug Report 2010* (2010) 70, Map 6, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴⁰⁴ National Drug Intelligence Centre/United States Department of Justice *National Drug Threat Assessment 2008* (2007) 2-3, available at <http://www.justice.gov/ndic/pubs31/31379/31379p.pdf>.

⁴⁰⁵ Meiners “América Central: Un Actor Emergente en el Narcotráfico” 3(19) *Narcotráfico y Gobernabilidad* (2009), available at <http://idei.pucp.edu.pe/narcotrafico-gobernabilidad-articulos-detalle.php?id=11&boletin=4>, but see also International Narcotics Control Board *Report of the International Narcotics Control Board 2009* (2010) 57, available at http://www.incb.org/pdf/annual-report/2009/en/AR_09_English.pdf.

⁴⁰⁶ UNODC *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010) 88-89, available at http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf.

⁴⁰⁷ There are a number of anecdotal reports that illustrate this. See e.g. International Narcotics Control Board *Report of the International Narcotics Control Board 2009* (2010) 70 and 80, available at http://www.incb.org/pdf/annual-report/2009/en/AR_09_English.pdf; United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control and Strategy Report: Volume I Drug and Chemical Control* (2010) at 244 and 264, available at <http://www.state.gov/documents/organization/138548.pdf>; “USS De Wert Intercepts 3.6 Metric Tons of Cocaine” *Navy.mil*, 23 September 2008, available at http://www.navy.mil/search/display.asp?story_id=39947; “Mexican Navy Seizes 2.4 tons of cocaine” *Latin American Herald Tribune*, 4 May 2010, available at <http://www.laht.com/article.asp?ArticleId=356393&CategoryId=14091>; and Gonzales “Mexican Navy Confiscates 7 Tons of Cocaine” *CNN International*, 15 February 2009, available at <http://edition.cnn.com/2009/WORLD/americas/02/15/mexico.drugs/index.html>.

commercial ports, and as the providers of offshore refueling (*sic*) and provisioning for “go-fast” boats in transit”.⁴⁰⁸

The report is confirmed by a recent police operation against a drug trafficking organized criminal group in Costa Rica.⁴⁰⁹

Costa Rican police dismantles drug trafficking network using fishing vessels

According to the Costa Rican Security Ministry the police authorities dismantled a cocaine smuggling network that used fishing vessels to transport drugs from Ecuador and Colombia to Central America and Mexico in January this year.⁴¹⁰

The police investigations revealed that the maritime routes in the Pacific consist of fishing vessels transporting cocaine from Colombia interacting and transshipping to smaller speedboats along the way.⁴¹¹ These fishing vessels act as “mother ships”. On the Atlantic side speedboats are used to traffic drugs, whereas fishing vessels are used to supply fuel along the way.⁴¹² Costa Rica also noted its concern about the involvement of the fishing fleet in cocaine trafficking at the *Sixty-Fourth General Assembly High-level meeting on Transnational Organized Crime* in 2010.⁴¹³

The use of fishing vessels by Colombian drug syndicate

Another recent example (December 2010) of the use of fishing vessels to traffic cocaine is the case of a former Colombian maritime training instructor who according to a United States police press release pleaded guilty on charges of conspiring to transport thousands of kilograms of cocaine.⁴¹⁴

According to the press release the former maritime training instructor was part of a Colombian drug trafficking syndicate that transported cocaine on board fishing vessels and

⁴⁰⁸ UNODC “Report of the Sixteenth Meeting of Heads of National Drug Law Enforcement Agencies, Latin America and the Caribbean, held in Buenos Aires from 23 to 27 October 2006” *UNODC/HONLAC/2006/5*, 9 November 2006, available at <http://www.unodc.org/pdf/honlea/honlac-2006-5-e.pdf>.

⁴⁰⁹ See also United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control and Strategy Report: Volume I Drug and Chemical Control* (2010) at 218, available at <http://www.state.gov/documents/organization/138548.pdf>.

⁴¹⁰ AP “Costa Rica Says Cocaine Network Used Fishermen to Ship Drugs from South America to Mexico” *The Canadian Press*, 30 January 2011, available at http://www.google.com/hostednews/canadianpress/article/ALeqM5geOnqWA-mOsWWxuGL49XCfrU_91g?docId=5807054 and Fieser and Vélez “Costa Rica: Red de Narcotráfico Usaba Pescadores par Transportar Cocaína” *Diálogo*, 3 February 2011, available at http://www.dialogo-americas.com/es/articulos/rmisa/features/regional_news/2011/02/03/feature-01.

⁴¹¹ Policía Control de Drogas “Acciones de Lucha Contra el Trafico de Drogas”, presentation 27 January 2011, copy on file with UNODC.

⁴¹² *Ibid.* The fishers are often paid in packets of drugs for their services: Godoy “Narco-sharks Replacing Drug-mules” *IPS*, 2 December 2010, available at <http://ipsnews.net/news.asp?idnews=53746>.

⁴¹³ United Nations Department of Public Information “Citing Explosion of Transnational Organized Crime, Secretary General Hails United Nations Anti-Crime Convention as Blueprint to Counteract Threat” *GA/10949*, 17 June 2010, available at <http://www.un.org/News/Press/docs/2010/ga10949.doc.htm>.

⁴¹⁴ “US Police Press Release Report: Former Colombian Maritime Training Instructor and Co-conspirator Plead Guilty to U.S. Drug Charges” *eNews Park Forest*, 3 January 2011, available at <http://www.enewspf.com/latest-news/police-reports/20826-former-col...instructor-and-co-conspirator-plead-guilty-to-us-drug-charges.html>.

⁴¹⁵ *Ibid.*

speedboats to the high seas to be transhipped on board mother ships for shipment to the United States and other countries.

The vessels are stated to have been specially equipped for the job, with “high frequency radios, global positioning system devices, satellite phones, large amounts of fuel, and multiple outboard motors to facilitate the transport of cocaine over long distances on the high seas until the destination or off-loading rendezvous point was reached.”⁴¹⁵

Cocaine seized on board fishing vessel in the Caribbean high seas

According to a 2010 United States Department of Justice media release the United States Coast Guard in cooperation with the Caribbean Corridor Strike Force seized nearly 1.500 kg of cocaine worth about US\$ 46 million from a fishing vessel in May of the same year.⁴¹⁶

The vessel was intercepted and seized off Aruba near Venezuela in the Caribbean. The 26-meter fishing vessel had 66 bales of cocaine hidden inside the ballast water tank. Five Central American crewmembers were apprehended facing charges of drug trafficking.⁴¹⁷

Use of fishing vessels to traffic cocaine out of the United States

Recent media reports suggest that cocaine is also leaving the United States with the assistance of fishing vessels. It is reported that in the Bahamas, customs officials recently (November 2010) alerted the Parliamentary Joint Select Committee on Violence and Gun Crime of the problems experienced with drugs transhipped at sea and brought to shore.⁴¹⁸

According to the customs official, drugs were dropped from yachts with a GPS attached and were believed to be picked up by fishing vessels in the vicinity and taken to port.⁴¹⁹ The vessels would not actually interact, which hampered detection.

In light of the growing Caribbean market for drugs, the Jamaican Minister of Agriculture and Fisheries was also recently reported to voice concern about possible involvement of Jamaican fishers in a drugs-for-guns trade with Haitian gun dealers.⁴²⁰

In the 2007 publication *Drug Smugglers on Drug Smuggling* Decker and Townsend Chapman published the results of a number of interviews with United States drug smugglers on amongst other the *modus operandi* of illicit traffic in drugs. According to the study, fishing vessels and fishers were often integral to the trafficking operation the interviewees took part in.⁴²¹ Although the interviewees were mainly speaking about past experiences from the 1980s and 1990s, it is likely that many of the considerations relating to the *modus*

⁴¹⁶ Department of Justice Press Release “Caribbean Corridor Strike Force Arrests Five, Seizes 1.3 Metric Tons of Cocaine” *Federal Bureau of Investigation San Juan*, 7 June 2010, available at <http://sanjuan.fbi.gov/dojpressrel/pressrel10/sj060710.htm>. See also AP “US Agents Seize Cocaine Cache on Fishing Boat” *ABC News International*, 7 June 2010, available at <http://abcnews.go.com/International/wireStory?id=10849876>.

⁴¹⁷ *Ibid.*

⁴¹⁸ Whittaker “Dealers Offshore Smuggling Scams” *The Bermuda Sun*, 26 November 2010, available at <http://bermudasun.bm/main.asp?SectionID=24&SubSectionID=270&ArticleID=49313>.

⁴¹⁹ *Ibid.*

⁴²⁰ Hines “Report Those Criminals!” *Jamaica Observer*, 29 July 2010, available at http://www.jamaicaobserver.com/westernnews/Report-those-criminals_7834842.

⁴²¹ Decker and Townsend Chapman *Drug Smugglers on Drug Smuggling: Lessons from the Inside* (2007) at e.g. 63.

operandi of the trafficking operations are still relevant. According to the interviewees, fishing vessels were chosen because they are unassuming at sea and easily blend in with the ordinary traffic in and out of harbours.⁴²² A large number of interviewees had a background as fishers and thus both navigational experience and knowledge about fishing operations to create an authentic cover for the clandestine activities.⁴²³ The drug smugglers indicated that they went to great lengths to make the appearance of being engaged in fishing activities to seem innocent to law enforcement officials.⁴²⁴ For instance, they would paint the load line high on the hull to make it appear as their heavy load was normal and they would stack some fish in the cooler and keep bait on deck.⁴²⁵ One interviewee also described how he would invest in fishing equipment to make it look as if the vessel was engaged in fishing activities. During consultations with a senior United States law enforcement official it was pointed out that detailed knowledge of fishing operations such as fishing equipment, fishing grounds, and fishing seasons was key to the successful detection of fishing vessels involved in drug trafficking.⁴²⁶

Drugs are often kept in hidden compartments built into the vessel.⁴²⁷ Yet lately there have also been a number of reports of fish consignments – in particular shark – being used to hide cocaine.⁴²⁸

Cocaine hidden in frozen shark carcasses

In a case highlighted by the media in 2009 a cargo of frozen shark intercepted by Mexican authorities was found to contain cocaine hidden in the shark carcasses.⁴²⁹ The more than 20 shark carcasses contained a ton of cocaine slabs, said to be preserving agents.⁴³⁰ According to media reports, the same year Costa Rican authorities also came across cocaine hidden in the freezing compartment of a van containing shark and red snapper.⁴³¹

As pointed out earlier, direct maritime landings of drugs are not very common in the United States today. Drugs are rather trafficked by land across the United States-Mexico border.

⁴²² *Ibid* at 71; see also United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control and Strategy Report: Volume I Drug and Chemical Control* (2010) at 137, available at <http://www.state.gov/documents/organization/138548.pdf>.

⁴²³ *Ibid* at 101, see also AP “Suspected Drug Lord Held in Guatemala” *Guardian*, 31 March 2011, available at <http://www.guardian.co.uk/world/2011/mar/31/suspected-drug-lord-held-guatemala>.

⁴²⁴ *Ibid* at 71 and 77.

⁴²⁵ *Ibid* at 77.

⁴²⁶ Interview on file with UNODC.

⁴²⁷ National Drug Intelligence Centre, United States Department of Justice “Drug Movements Into and Within the United States” *National Drug Threat Assessment 2010* (2010), available at <http://www.justice.gov/ndic/pubs38/38661/movement.htm#Maritime>.

⁴²⁸ Godoy “Narco-sharks Replacing Drug Mules” *IPS*, 2 December 2009, available at <http://ipsnews.net/news.asp?idnews=53746>; Emmott “Mexico Finds Cocaine Haul Hidden in Frozen Sharks” *Reuters*, 17 June 2009, available at <http://www.reuters.com/article/2009/06/17/us-mexico-drugs-idUSN1631193420090617>; and “Mexico Cocaine “Hidden in Sharks”” *BBC News*, 17 June 2009, available at <http://news.bbc.co.uk/2/hi/8104397.stm>.

⁴²⁹ *Ibid*.

⁴³⁰ *Ibid*.

⁴³¹ Godoy *ibid*.

During consultations a senior United States law enforcement official pointed out that they had experienced that persons previously engaged in illicit traffic of drugs at sea were now engaged in marine living resource crime (including poaching and illegal fishing), as this was perceived to be more profitable and involved lower risk than drug trafficking.⁴³² The British media has recently reported on a similar trend.⁴³³

4.2.1.2 From the Andean region to Europe

Europe is the second largest market for cocaine. The main European markets are found in the United Kingdom, followed by Spain, Italy, Germany and France.⁴³⁴ According to UNODC, most cocaine is transported via Venezuela to Europe.⁴³⁵ There is also a northern trajectory via Venezuela and the Caribbean to Europe. In recent years efforts have been put in place to intercept shipments leaving the Caribbean and entering Spain and the Netherlands. The cocaine flow has therefore been increasingly diverted to Africa,⁴³⁶ in particular West Africa and to a lesser extent Southern Africa. Cocaine on the African routes is mainly transported via Venezuela to West Africa, but research shows it may go via Brazil as well. Shipments to Southern Africa are believed to leave the Americas in Argentina. Maritime arrivals of cocaine enter Europe through the Iberian Peninsula, north through Netherlands and Belgium, and possibly other entry points such as the Balkans.⁴³⁷ Most cocaine entering Europe is trafficked by sea, although transport by air or mail also takes place.⁴³⁸

Cocaine trafficking by sea is to a large degree organized by Colombian organized criminal groups who tend to cooperate with a number of other organized criminal groups operating in Europe and West Africa.⁴³⁹ For instance, cocaine arriving in the United Kingdom is believed to be transported by West African organized criminal groups, including Nigerians and Ghanaians.⁴⁴⁰ In Italy, the maritime transport routes are also believed to be operated by the Calabrian N'drangheta, and lately by the Camorra of Naples and the Sicilian mafia.⁴⁴¹

⁴³² Interview on file with UNODC.

⁴³³ Wheeler "An Organised Crime Gang has been Caught Trying to Smuggle £ 300.000 Worth of Live Fish into Britain" *The Sun*, 20 May 2010, available at <http://www.thesun.co.uk/sol/homepage/news/2980048/Crime-gang-traffics-live-fish-worth-300k-into-Britain.html>.

⁴³⁴ UNODC *World Drug Report 2010* (2010) 83, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴³⁵ *Ibid* Map 6 at 70.

⁴³⁶ See e.g. UNODC *Cocaine Trafficking in West Africa: the Threat to Stability and Development* (2007), available at http://www.unodc.org/documents/data-and-analysis/west_africa_cocaine_report_2007-12_en.pdf; United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control and Strategy Report: Volume I Drug and Chemical Control* (2009) at 356, available at <http://www.state.gov/documents/organization/120054.pdf>; and Lopera "Andean Cocaine Trafficked through West Africa" *Infosurhoy*, 12 January 2010, available at http://www.infosurhoy.com/cocoon/saii/xhtml/en_GB/features/saii/features/main/2010/01/12/feature-04.

⁴³⁷ UNODC *World Drug Report 2010* (2010) 83, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴³⁸ UNODC *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010) 96, available at http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf.

⁴³⁹ *Ibid* 99.

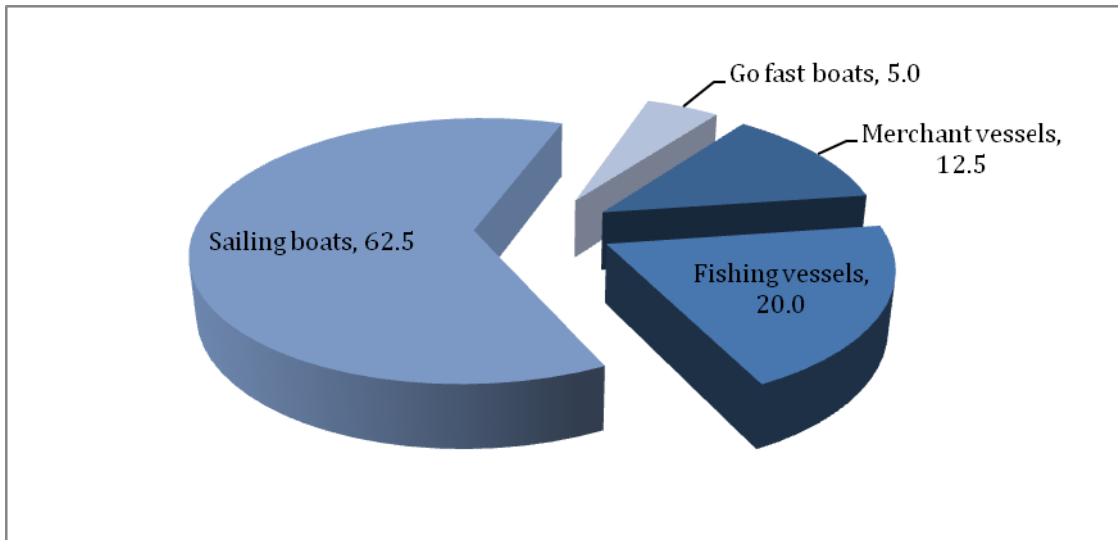
⁴⁴⁰ *Ibid* 100.

⁴⁴¹ *Ibid*. See also United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control and Strategy Report: Volume I Drug and Chemical Control* (2009) at 356, available at <http://www.state.gov/documents/organization/120054.pdf>; and Livesay "Analysis: Italian Mafia

4.2.1.2.1 Direct routes to Europe

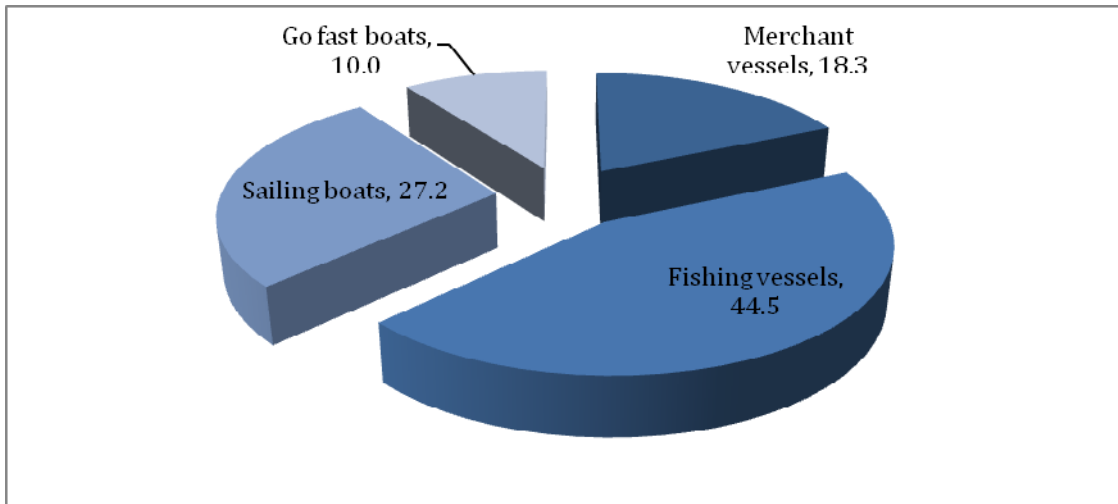
From 2007 to 2010 the European Maritime Analysis & Operations Centre (Narcotics) (MAOC(N)) received intelligence on 40 interruptions and interdictions at sea coordinated by partner countries through MAOC(N).⁴⁴² These maritime operations seized a total of 52,3 tons of cocaine.⁴⁴³

Types of vessels on which cocaine was seized 2007-2010 in percent (total = 40):



Source: MAOC (N)

Cocaine seizures 2007-2010 – Percent of total cocaine seizure according to type of vessel (total = 52,3 tons):



Source: MAOC (N)

Brokering Mexican Drug Trade” *Global Post*, 6 May 2010, available at <http://www.globalpost.com/dispatch/worldview/100505/italian-mafia-drug-trade>.

⁴⁴² MAOC(N) *JOCC Summary* (2007-2010) (2011), on file with UNODC and correspondence with MAOC(N) on file with UNODC.

⁴⁴³ *Ibid.*

According to the data, cocaine was mostly seized on board sailing vessels. However, more cocaine was seized on board fishing vessels than any of the other vessel types. In other words, fishing vessels seem to have the potential to carry larger amounts of cocaine than other vessels transporting cocaine at sea (on average 1.150 kg). According to MAOC(N) the fishing vessels were predominantly flagged in South America (75 per cent) and in West Africa (12,5 per cent). The rest were not flagged or their flag State was unknown.⁴⁴⁴

United Kingdom navy seizes £ 240 million worth of cocaine on board fishing vessel

According to a media report, in September 2009 the United Kingdom navy seized about 5.500 kg of cocaine worth approximately £ 240 million (US\$ 386,6 million) on board a fishing vessel in the Caribbean.⁴⁴⁵ The 42-meter fishing vessel had the cocaine hidden in compartments under the ship's regular stores beneath a concrete floor and steel panels. It took the navy crew 24 hours to search the vessel, and the floor had to be broken up and unbolted to expose the cocaine. The cocaine was seized and the fishing vessel sunk.⁴⁴⁶

"Mafia Gallega"

In August 2008 Spanish and Uruguayan police authorities dismantled a drug trafficking syndicate known as the "Mafia Gallega" during "Operación Huracán".⁴⁴⁷ According to media reports, the syndicate was operating a drug trafficking route from Rio de la Plata to the Iberian coast.⁴⁴⁸ In the first operation, 2.200 kg of cocaine transshipped on the high seas was discovered when the fishing vessel entered Spain. The second operation revealed 300 kg of

⁴⁴⁴ *Ibid.*

⁴⁴⁵ "Royal Navy Seizes Record Cocaine Haul Worth £240m – then Sinks Drug Boat" *Mail Online*, 28 September 2009, available at <http://www.dailymail.co.uk/news/article-1216581/Royal-Navy-seizes-record-cocaine-haul-worth-240m--sinks-drug-boat.html>.

⁴⁴⁶ *Ibid.*

⁴⁴⁷ "Operación Huracán: Garzón Sorprende de Nuevo y Deja en Libertad con Cargos al "Pituro"" *El Correo Gallego*, 9 August 2008, available at <http://www.elcorreogallego.es/index.php?idMenu=5&idEdicion=970&idNoticia=331280>; "Frozen Fish Narcotics Export Ring Busted in Montevideo Port" *Merco Press*, 17 August 2008, available at <http://en.mercopress.com/2008/08/17/frozen-fish-narcotics-export-ring-busted-in-montevideo-port>; and "Español Acusado de Narco Será Extraditado" *El País*, 3 October 2008, available at http://www.elpais.com.uy/08/10/03/pnacio_373471.asp.

⁴⁴⁸ "Uruguay Extradita al Arousano José Nogueira, Deteino Como Jefe de una Red de Narcotráfico" *La Voz de Galicia*, 10 October 2008, available at http://www.lavozdegalicia.es/lavozdelaemigracion/2008/10/10/0003_7213353.htm?utm_source=busca_voz&utm_medium=buscavoz.

⁴⁴⁹ "Frozen Fish Narcotics Export Ring Busted in Montevideo Port" *Merco Press*, 17 August 2008, available at <http://en.mercopress.com/2008/08/17/frozen-fish-narcotics-export-ring-busted-in-montevideo-port>

cocaine stacked amongst fish in a container on its way to Europe.⁴⁴⁹ The head of the Uruguayan Anti Drugs Office was quoted in a news article as stating that transport by sea is an area of “most concern” and that the fishing industry is a sector in which there are “more opportunities”. In the opinion of the Uruguayan police:

“[c]ontainers with frozen fish are ideal for smuggling since dogs can't sniff the narcotics and there are fears that if left open for too long it could spoil the cargo”.

Shortly after the arrest the NGO Oceana issued a press release linking the fishing vessels owned by the suspected drug trafficking syndicate to marine living resource crimes (illegal capture of toothfish and shark).⁴⁵⁰

Law enforcement officials consulted during the study confirmed that hiding drugs in fish carcasses and among fish is probably a favoured method because the drugs are so difficult to detect. The strong smell would challenge drug detector dogs to find drugs hidden in fish. It was also suspected that drug traffickers would freeze down the consignments to very low temperatures to further hamper physical inspection. Detection is thus stymied by the fact that the fish would have to be thawed to confirm the presence of drugs, which would result in damage to the cargo and a potential claim for compensation should the suspicion prove unfounded. Law enforcement officials were therefore thought to be hesitant to inspect consignments of frozen fish.⁴⁵¹

4.2.1.2.2 Routes via West Africa to Europe

Drug trafficking along the West African trajectory has increased significantly over the last decade.⁴⁵² The trend is explained by a combination of decreasing demand for cocaine in North America and an increasing demand in Europe; the geographical position and internal instability in the West African region; and enforcement efforts focused on the transport routes from Latin America and the Caribbean directly to Europe.⁴⁵³

According to the UNODC *World Drug Report 2010* a *modus operandi* of Colombian organized criminal groups is to transport cocaine on “mother ships” to West Africa. There are suggestions that small local fishing vessels that do not raise suspicion are used to transport

⁴⁵⁰ Oceana “Oceana Exposes Galician Connections Between Cocaine, Illegal Fishing and Shark Catches” *Oceana*, 20 August 2008, available at http://www.oceana.org/europe/media/press-releases/press_release/0/843/. See also “Liberan el Barco del Acudado de Narco” *El Pais*, 27 August 2008, available at http://www.elpais.com.uy/08/08/27/pnacio_366265.asp.

⁴⁵¹ Interview on file with UNODC. The mayor of Parañaque City in the Philippines is reported to have raised a similar concern, ie that “illegal drugs are stuffed inside the bellies of newly-caught fish and smuggled via the city’s shores”; Aurelio “Parañaque to Tightly Guard Coastal Areas vs Drug Smuggling” *Philippine Daily Inquirer*, 29 July 2008, available at <http://newsinfo.inquirer.net/breakingnews/metro/view/20080729-151446/Paraaque-to-tightly-guard-coastal-areas-vs-drug-smuggling>.

⁴⁵² UNODC *Cocaine Trafficking in Western Africa: Situation Report* (2007) 6, available at <http://www.unodc.org/documents/data-and-analysis/Cocaine-trafficking-Africa-en.pdf>. Despite a downward trend in 2009, a number of seizures were again made in West Africa in mid-2010; see International Narcotics Control Board *Report of the International Narcotics Control Board of 2010* (2011) 52, available at <http://www.incb.org/incb/en/annual-report-2010.html>.

⁴⁵³ UNODC *ibid*; UNODC *Cocaine Trafficking in Western Africa: The Threat to Stability and Development* (2007) 11 *et seq*, available at http://www.unodc.org/documents/data-and-analysis/west_africa_cocaine_report_2007-12_en.pdf; and Ellis “West Africa’s International Drug Trade” 108(431) *African Affairs* (2009) 171 at 173.

the cocaine from the American coast or islands to the mother ships that lay waiting outside the territorial jurisdiction of the coastal State. In some cases the cocaine is also dropped at sea and picked up by mother ships. Reports suggest that the mother ships are predominantly African fishing vessels modified for drug storage.⁴⁵⁴ The vessels carry African crew, but have often a Latin American “controller” on board.⁴⁵⁵ The mother ship transports the cocaine to West Africa where it is transhipped for further transport with (amongst others) smaller fishing vessels to destination markets in Europe.⁴⁵⁶

UNODC has identified two main “transshipment hubs” in West Africa: one taking place in the Eastern Central Atlantic around Guinea and Guinea-Bissau, including Cape Verde, Senegal and Gambia, the other found in the Gulf of Guinea, including Ghana, Togo, Benin and Nigeria.⁴⁵⁷ There are suggestions that the Eastern Central Atlantic transshipment hub is part of a “Lusophone connection” between drug trafficking routes from Brazil to Guinea-Bissau and from Guinea-Bissau to Portugal.⁴⁵⁸ There are however indications that the Lusophone connection has become less prevalent in later years.⁴⁵⁹

A 2008 Integrated Regional Information Networks (IRIN) report from Guinea-Bissau suggests that local fishers are increasingly involved in drug trafficking due to rising fuel prices and lower profitability of fishing.⁴⁶⁰ Fishers explain they are recruited into drug trafficking due to their knowledge of the coastal areas.⁴⁶¹ Dwindling fish stocks because of amongst others marine living resource crimes has been a great concern in the Eastern Central Atlantic over the last decade. According to the FAO *State of the World Fisheries and Aquaculture 2010*-report, most fish stocks in the Eastern Central Atlantic are fully- or overexploited.⁴⁶² These waters are also estimated to have the highest level of marine living resource crimes in the world.⁴⁶³ According to a 2009 study, 37 per cent of fish caught in the Eastern Central Atlantic are lost to illegal fishing each year.⁴⁶⁴ NGOs report that organized marine living resource crimes take place on industrial-sized foreign flagged fishing vessels in the region.⁴⁶⁵ It is estimated that local fishers along the Eastern Central Atlantic coast are

⁴⁵⁴ UNODC *Drug Trafficking as a Security Threat in West Africa* (2008) 11, available at <http://www.unodc.org/documents/data-and-analysis/Studies/Drug-Trafficking-WestAfrica-English.pdf>.

⁴⁵⁵ *Ibid.*

⁴⁵⁶ See e.g. United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control and Strategy Report: Volume I Drug and Chemical Control* (2010) at 253, available at <http://www.state.gov/documents/organization/138548.pdf>. It would seem that since 2009 traffickers have shifted their *modus operandi* in favour of trafficking drugs by light airplanes and couriers into Europe; see International Narcotics Control Board *Report of the International Narcotics Control Board of 2010* (2011) 52, available at <http://www.incb.org/incb/en/annual-report-2010.html>.

⁴⁵⁷ UNODC *World Drug Report 2010* (2010) 84, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴⁵⁸ UNODC *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* (2010) 97-98, available at http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf.

⁴⁵⁹ *Ibid.* 99-100.

⁴⁶⁰ “Guinea-Bissau: Fishermen Turn to Trafficking as Fish Profits Drop” *IRIN*, 29 July 2008, available at <http://www.irinnews.org/report.aspx?ReportID=79507>.

⁴⁶¹ *Ibid.*

⁴⁶² FAO *State of the World Fisheries and Aquaculture* (2010) at 40-41, available at <http://www.fao.org/docrep/013/i1820e/i1820e00.htm>.

⁴⁶³ Agnew et al “Estimating the Worldwide Extent of Illegal and Unreported Fishing” 4(2) *PLoS ONE* (2009) Table 2, available at <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0004570>.

⁴⁶⁴ *Ibid.*

⁴⁶⁵ See e.g. EJF *Pirate Fish on Your Plate: Tracking Illegally-caught Fish from West Africa into the*

deprived of fishing resources valued in the region of US\$ 265 to 506 million each year due to amongst others marine living resource crimes.⁴⁶⁶ Further studies ought to be carried out to assess the relationship between overfishing and the involvement of fishers in illicit traffic in drugs in coastal communities in West Africa.

A UNODC 2008 study suggests that unstable governments and low risk of detection makes transshipments in the Bay of Guinea advantageous due to the probability that illicit traffic in drugs is carried out with impunity.⁴⁶⁷ A number of cocaine seizures have for instance been made in Ghana and there are suggestions that cocaine is stockpiled in the country for further shipments.⁴⁶⁸

Experiences from Ghana suggest that organized criminal groups are taking advantage of the fish processing industry to hide drugs among fish products and make use of the fish distribution and retail network.⁴⁶⁹

Use of fishing company as cover for illicit traffic in drugs (1)

In a 2007 article in *Global Crime*, Aning refers to the use of a cannery and a fishing company “as cover for operations”.⁴⁷⁰ According to Aning,

“the group involved had actually registered a fishing company, had trawlers and cold stores that engaged in legitimate fishing business but that also provided the legitimate cover under which massive amounts of drugs could be trafficked to Europe and North America.”⁴⁷¹

Use of fishing company as cover for illicit traffic in drugs (2)

Anecdotal evidence of the use of fishing companies to facilitate drug trafficking is also found in the Gambia.⁴⁷² According to the United Kingdom-based Serious Organised Crime Agency (SOCA) Gambian police seized 2.100 kg of cocaine worth hundreds of millions of dollars in 2010.⁴⁷³ The cocaine was found in a concealed underground bunker at a warehouse belonging to a fishing company.⁴⁷⁴

European Market (2007), available at <http://www.ejfoundation.org/pdf/EJF%20pirate%20fish.pdf>.

⁴⁶⁶ Agnew et al “Estimating the Worldwide Extent of Illegal and Unreported Fishing” 4(2) *PLoS ONE* (2009) Table 1, available at <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0004570>.

⁴⁶⁷ UNODC *Drug Trafficking as a Security Threat in West Africa* (2008) 5, available at <http://www.unodc.org/unodc/en/press/releases/2008-10-28.html>.

⁴⁶⁸ *Ibid* 12 and fn 15.

⁴⁶⁹ Repackaging of drugs in Ghana is also noted in United States Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control and Strategy Report: Volume I Drug and Chemical Control* (2010) at 305, available at <http://www.state.gov/documents/organization/138548.pdf>.

⁴⁷⁰ Aning “Are there Emerging West African Criminal Networks? The Case of Ghana” 8(3) *Global Crime* (2007) 193 at 200.

⁴⁷¹ *Ibid* 201. See also “Whitish Substance was Pure Cocaine – Standards Board Official” *Ghana Web*, 16 February 2007, available at <http://mobile.ghanaweb.com/wap/article.php?ID=118678>.

⁴⁷² “SOCA Helps Secure Record West African Cocaine Haul” *SOCA*, 9 June 2010, available at <http://www.soca.gov.uk/news/237-soca-helps-secure-record-west-african-cocaine-haul>; and “Record Haul of Cocaine Seized in Gambia” *CNN*, 10 June 2010, available at <http://edition.cnn.com/2010/WORLD/africa/06/09/gambia.cocaine.bust/>.

⁴⁷³ *SOCA ibid*.

⁴⁷⁴ *Ibid*.

The available sources on illicit traffic in drugs in West Africa seem to indicate that fishing vessels, fishers and the fish processing industry in West Africa are involved in illicit traffic of cocaine. There are suggestions that the fishing industry is being actively pursued to further the aims of criminal organizations and that seemingly legitimate fishing operations are used to hide illegal activities. However the available literature does not provide sufficient data to conclude on the extent to which illicit traffic in cocaine takes place on board fishing vessels or the extent to which fishers or fishing companies are involved in the criminal activity.

4.2.2 Involvement of the fishing industry in the illicit traffic of ATS and ATS precursors

The market in amphetamine-type stimulants (ATS) is booming, but currently there is too little knowledge about the presence of different ATS, their precursor chemicals, the manufacturing process, illicit traffic, or markets.⁴⁷⁵ Unlike most other drugs, ATS are synthetic substances often manufactured *in situ* and are not very difficult to produce. The precursors are not cultivated like opiates or coca leaves, and they are therefore not geographically bound. Precursors are known to change subject to availability. Profits are made from illicit traffic of precursors as well as the drug itself.⁴⁷⁶

ATS smuggled on board fishing vessels

According to a 2011 media release South Korean police arrested 13 people believed to be part of an Asian organized crime syndicate involved in the trafficking of ATS from North to South Korea.⁴⁷⁷ Allegedly the police seized 5,95 kg of methamphetamines with an estimated street value of US\$ 17,5 million. The story suggests that the drugs were trafficked into South Korea “on ships disguised as fishing trawlers”.⁴⁷⁸

A well-known instance of illicit traffic in methamphetamine related to the fishing industry is found in the illegal abalone trade in South Africa.⁴⁷⁹ Abalone, in South Africa often referred to as *perlemoen*, is a large marine snail. Abalone meat is valuable on the Asian market, where

⁴⁷⁵ UNODC *World Drug Report 2010* (2010) 96, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴⁷⁶ *Ibid* at 95.

⁴⁷⁷ “Mobsters Held in Smuggling of N.Korean Drugs” *The Chosunilbo*, 7 February 2011, available at http://english.chosun.com/site/data/html_dir/2011/02/07/2011020701038.html.

⁴⁷⁸ *Ibid*.

⁴⁷⁹ See e.g. Gastrow “Triad Societies and Chinese Organised Crime in South Africa” 48 *ISS Occasional Papers* (2001), available at <http://www.iss.co.za/pubs/papers/48/48.html>; Cederrand “Abalone: An Analysis of the Current Situation and Recommendation for a New Management Regime” 13 *SADC Working Paper* (2003) at e.g. 4, available at <http://www.mcs-sadc.org/Publications/WP12%20Abalone%20Study.pdf>; South African Press Association “MCM Warns of Serious Escalation in Perlemoen Poaching” 21 November 2002 in Malan “Monitoring, Control and Surveillance in South Africa” 9 *SADC Working Paper* (2002); Reeve “Enforcement: Challenges and Lessons Learned” in *The Growth and Control of International Environmental Crime, Chatham House Workshop 10-11 December 2007* at 24; Brick, Muchapondwa and Visser “Abalone Poaching, Methamphetamine Use, Criminal Activity in South Africa and the Associated Implications for Resource Management” (unpublished draft, 2009); and Hübschle *Organised Crime in Southern Africa: First Annual Review* (2010) 50, available at <http://www.issafrica.org/uploads/OrgCrimeReviewDec2010.pdf>.

it is believed to be an aphrodisiac.⁴⁸⁰ At present the kilogram price of abalone is estimated to be about US\$ 143 of which the poacher receives about US\$ 36. The market for abalone meat in South Africa is relatively small and most abalone is trafficked to Asia. Large Asian organized criminal groups are involved in abalone poaching. These syndicates are known to hire local organized criminal groups as middlemen who sign up local fishers to carry out the actual poaching. South Africa has banned abalone harvesting since 2008 due to overfishing and illegal capture. Many fishers have lost their livelihood and are therefore vulnerable to be recruited as poachers.⁴⁸¹ The middlemen provide the Asian organized crime syndicates with abalone in exchange for drugs, primarily precursors for methamphetamines, but also cocaine and heroin.⁴⁸² The availability of crystal methamphetamines (in South Africa known as “tik”) has exploded in recent years and it is having devastating effects on many communities, particularly in the Cape Town region.⁴⁸³ Hübschle, a senior researcher at the South African-based Institute of Security Studies (ISS), describes the abalone and methamphetamine nexus in South Africa as a “marriage of convenience”:

“A highly valued delicacy in Hong Kong and surrounds, abalone ... from the coast of South Africa has traditionally been bartered for the ingredients for “tik”, brought in from Asia. This straight exchange of commodities leaves no paper trail, as there is no exchange of money, making it harder to track criminals involved in such dealings.”⁴⁸⁴

A similar *modus operandi* has also been reported in relation to abalone poaching in New Zealand and Australia.⁴⁸⁵

During consultations in the course of the study an expert observed that fishing vessels may contain methamphetamine laboratories on the high seas where they can operate relatively undisturbed and easily distribute drugs, possibly via smaller fishing vessels.⁴⁸⁶

The South African experience suggests that some segments of the fishing industry – particularly the illegitimate industry – may be operating closely with transnational organized criminal groups involved in illicit traffic in drugs. In this instance the marine living resource itself is a commodity against which precursors of methamphetamines and drugs are being bartered. The case suggests that the high value of abalone acts as a driver of illicit traffic in drugs. Abalone poaching is examined in further detail in the context of marine living resource crime in Chapter 5, below.

⁴⁸⁰ Cederrand *ibid* at 5.

⁴⁸¹ Hübschle during expert consultations.

⁴⁸² Hübschle *Organised Crime in Southern Africa: First Annual Review* (2010) 49 and 50, available at <http://www.issafrica.org/uploads/OrgCrimeReviewDec2010.pdf>.

⁴⁸³ See e.g. UNODC ““Tik”: Crystal Meth in Cape Town” 13 June 2008, available at <http://www.unodc.org/unodc/en/frontpage/tik-meth-in-cape-town.html>.

⁴⁸⁴ Hübschle *Organised Crime in Southern Africa: First Annual Review* (2010) at 30, available at <http://www.issafrica.org/uploads/OrgCrimeReviewDec2010.pdf>.

⁴⁸⁵ Interview with New Zealand lead investigator in the fisheries compliance team; and Tailby “The Illegal Market in Australian Abalone” 225 *Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice* (2002) 3, available at <http://www.aic.gov.au/publications/current%20series/cfi/21-40/cfi028.aspx>.

⁴⁸⁶ Interview on file with UNODC. See also Martin *Report on Foreign Fishing Vessel Security Issues in the Pacific Island Region* (2005), available at <http://www.spc.int/coastfish/en/publications/digital-library.html>.

4.2.3 Involvement of actors in the fishing industry and the use of fishing vessels in the illicit traffic in cannabis

The UNODC *World Drug Report 2010* states that cannabis is the most widely used illicit substance in the world.⁴⁸⁷ An estimated 129 to 191 million people have tried cannabis at least once during 2008.⁴⁸⁸ The drugs are produced by either drying the flowers and leaves of the cannabis plant (marijuana or cannabis herb) or by collecting the cannabis resin and drying it (hashish) or extracting the oil (hash oil). Cannabis is smoked in cigarettes or water pipes. The cannabis plant is often produced locally (increasingly indoors) and is consumed throughout the world.⁴⁸⁹

Fishing vessels have been associated with illicit traffic in cannabis from North Africa to Europe. According to a 2004 study, fishing vessels were regularly intercepted carrying cannabis from Morocco to Europe in the 1990s.⁴⁹⁰ At the time it was estimated that the vessel owner could earn approximately € 40.000 (US\$ 57.000) for a shipment to Europe and that “[f]ishing companies from Galicia, Gibraltar and Ireland, as well as Dutch transport companies, [were] renowned for their involvement in the illegal trade with Morocco.”⁴⁹¹ In the study it is also observed that drug money played an important role in the economic development of amongst others the fishing industry in Morocco and that proceeds from drug trafficking were laundered through the purchase of fishing vessels – which was also providing infrastructure for drug trafficking.⁴⁹² More recently, a report suggests that large shipments of hashish are transported to Spain, Italy and France from Algeria and Lebanon using fishing vessels.⁴⁹³

Europol seizes 8.000 kg of cannabis on board fishing vessel

In 2005 Europol seized 8.000 kg of cannabis on board a fishing vessel from Morocco destined for the British market.⁴⁹⁴ The drug traffickers had been under investigation for some time and the vessel was seized in open waters off the coast of Spain. The vessel’s crew from Britain, Estonia and Spain were arrested. Additional arrests were made in Glasgow, Scotland in connection with the case.⁴⁹⁵

⁴⁸⁷ UNODC *World Drug Report 2010* (2011) 194, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴⁸⁸ *Ibid.*

⁴⁸⁹ UNODC *World Drug Report 2010* (2011) 183-184, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴⁹⁰ Van der Veen “The Trans-Mediterranean Drug Complex: Drug Trade, Drug Control and the Prospects for Instituting Social, Political and Economic Rights” 9(3) *Mediterranean Politics* (2004) 515 at 522.

⁴⁹¹ *Ibid.*

⁴⁹² *Ibid* at 524.

⁴⁹³ US Department of State, Bureau for International Narcotics and Law Enforcement Affairs *International Narcotics Control Strategy Report: Volume I* (2010) at 115 and 377, available at <http://www.state.gov/documents/organization/138548.pdf>.

⁴⁹⁴ Europol “Fishing Boat Boarded in Open Water and 8 Tonnes of Cannabis Confiscated” *Europol Press Release*, 7 June 2005, available at <http://www.europol.europa.eu/news/pr050607.htm?page=news&news=pr050607.htm>.

⁴⁹⁵ *Ibid.*

Fishing communities turn to drug trafficking

Traditional fishing communities in Spain are increasingly becoming deprived of a livelihood due to quota restriction as a result of overfishing.⁴⁹⁶ The media reports from these traditional fishing communities that young men are no longer able to take up the profession. The police estimate that in one badly affected fishing community about 10 per cent of the population (predominantly young men) are involved in trafficking of hashish, which arrives by means of small motorized vessels along the beach at night.⁴⁹⁷

4.2.4 Involvement of fishing vessels in the illicit traffic in heroin

As the most lucrative of the opiates, the heroin trade is valued at US\$ 55 billion. There are an estimated 15 million users of opiates worldwide, heroin being the drug of choice. Heroin is created from morphine that is extracted from poppy plants. On the market heroin is sold as a white or brown powder, or as a black tarry referred to as “black tar heroin”.

Heroin is sourced in Afghanistan, the Golden Triangle (mainly Myanmar), and Latin America (Columbia and Mexico). The main source country is Afghanistan, which is estimated to produce about 90 per cent of the heroin on the market.⁴⁹⁸ Afghanistan is believed to have produced slightly less than 7.000 tons of opium in 2009, which is a decline from the top year of 2007 when Afghanistan provided more than 8.000 tons to the market. Annual opium production in 2009 was still much higher than what it had been up until 2006.⁴⁹⁹

In 2008 nearly half the world’s heroin was consumed in Europe (including the Russian Federation). The Russian Federation was the State with the highest estimated consumption of heroin in the world at about 70 metric tons (mt). Within the rest of Europe, the highest numbers of consumers are found in the United Kingdom (about 19 mt), Italy (about 18 mt), France (about 10 mt), and Germany (about 7 mt).⁵⁰⁰ By way of comparison it is assumed that about 20 mt were used in the United States and Latin America consumed about 5 mt as a whole.⁵⁰¹ Other large markets include China (13 per cent of the global market), Pakistan (6 per cent), the Islamic Republic of Iran (5 per cent) and India (5 per cent).⁵⁰² Africa as a continent has a small part of the total market (about 7 per cent),⁵⁰³ but consumption is becoming more prevalent here as well.⁵⁰⁴

UNODC has identified three main heroin trajectories:

⁴⁹⁶ Escudero “Fishing Ban Increases Drug-trafficking” *CafeBabel.com*, 13 October 2006, available at <http://www.cafebabel.co.uk/article/18395/fishing-ban-increases-drug-trafficking.html> and de Waal “Spanish Fishing Town Thrives on Hash Trade” *NRC Handelsblad*, 8 March 2010, available at http://www.nrc.nl/international/article2499292.ece/Spanish_fishing_town_thrives_on_hash_trade.

⁴⁹⁷ *Ibid.*

⁴⁹⁸ UNODC *World Drug Report 2010* (2010) 37-38, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁴⁹⁹ *Ibid* 38 (Figure 5).

⁵⁰⁰ *Ibid* 41.

⁵⁰¹ *Ibid.*

⁵⁰² Figure 7 *ibid.*

⁵⁰³ *Ibid.*

⁵⁰⁴ See e.g. Hübschle *Organised Crime in Southern Africa: First Annual Review* (2010) 31, available at <http://www.issafrica.org/uploads/OrgCrimeReviewDec2010.pdf>.

- “the northern route” from Afghanistan through Central Asia to the Russian Federation and Europe via eastern Europe;
- “the Balkan route” from Afghanistan via the Islamic Republic of Iran, Turkey, south-eastern Europe to western and central Europe; and
- “the southern route” from Afghanistan through Pakistan and then branching off to the Middle East and Africa to a number of destinations including Europe, Africa, Asia and the United States and Canada.⁵⁰⁵

Heroin is also trafficked from the Golden Triangle (predominantly Burma) to East Asia, South East Asia and Oceania (the Asian Routes).⁵⁰⁶ The Balkan, the southern and the Asian routes involve illicit traffic of heroin by sea. As seen from the discussion below, this study found very few instances of heroin trafficked on board fishing vessels or by fishers or fishing companies.

The Balkan route involves traffic at sea primarily on the leg from Albania across the Adriatic to Italy and, to a lesser extent, from Turkey to Greece and Italy.⁵⁰⁷ In recent years a northern trajectory has also appeared on this route which involves a sea leg from Turkey across the Black Sea to Ukraine.⁵⁰⁸ A small amount of heroin is also transported directly by sea from Turkey to western European States.⁵⁰⁹

Involvement of the Italian mafia in illicit traffic of heroin using fishing vessels

According to a 2008 Canadian news report, a suspected former leader of the Calabrian N'drangheta was arrested in Toronto, Canada. The news report states that according to the Canadian court documents the former leader was believed to have monopolized the fishing industry along the Ionian coast and forced local fishers to hand over their catches, as well as exerted influence to traffic drugs along the coast.⁵¹⁰ According to another media story, the suspected former mafia leader was believed to use local fishing boats in the 1990s to traffic heroin from Turkey to Italy.⁵¹¹

Illicit traffic in heroin across the Adriatic is linked to Balkan organized criminal groups.⁵¹² The 2008 UNODC report *Crime and Its Impact on the Balkans* suggests that heroin is

⁵⁰⁵ UNODC *World Drug Report 2010* (2010) 47 *et seq.*, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁵⁰⁶ *Ibid* 46.

⁵⁰⁷ *Ibid* 55.

⁵⁰⁸ *Ibid* 56, see also UNODC Subcommittee on Illicit Drug Traffic and Related Matters in Near and Middle East “Statistics on Drug Trafficking in Near and Middle East, South-, West, and Central Asia and Worldwide” *UNODC/SUBCOM/44/2*, 19 October 2009 at 14, available at http://www.unodc.org/documents/commissions/subcom/SUBCOM-2009/UNODC_SUBCOM_44_2_E_.pdf.

⁵⁰⁹ *Ibid*.

⁵¹⁰ Reilly “Alleged Italian Mafia Boss Held Pending Hearing” *The Star*, 11 August 2008, available at <http://www.thestar.com/news/canada/article/476479> and Hertz “Suspected Mob Boss Arrested North of Toronto” *Posted Toronto*, 8 August 2008, available at <http://network.nationalpost.com/np/blogs/toronto/archive/2008/08/08/suspected-mob-boss-arrested-north-of-toronto.aspx>.

⁵¹¹ Hertz *ibid*.

⁵¹² UNODC *Crime and Its Impact on the Balkans and Affected Countries* (2008), available at http://www.unodc.org/documents/data-and-analysis/Balkan_study.pdf. See also e.g. Senator Maritati

smuggled on ro-ro vessels transporting vehicles and go-fast boats across the Adriatic, and not fishing vessels.⁵¹³ From the (limited) available literature it would seem that fishing vessels or fishers are not noticeably involved in illicit traffic in heroin across the Adriatic.

Heroin on the southern route is trafficked from Afghanistan through Pakistan to a wide number of destinations around the world. Shipments by sea are made through the ports of Gwadar, Karachi or Qasim or smaller fishing ports along the Makran coast.⁵¹⁴ According to UNODC, the most common mode of transport is cargo containers.⁵¹⁵ During expert consultations it was pointed out that drugs were probably predominantly transported by air on the southern routes to Africa, as transport by sea (particularly fishing vessels) would be slow.

Heroin trafficked on board fishing vessels in Kenya

A recent case suggests that fishing vessels may also be used on the southern route. According to media reports, in March this year Kenyan officials seized more than 100 kg of heroin as it was offloaded from a fishing vessel in the port of Mombasa.⁵¹⁶ The heroin was allegedly concealed in dog food packaging.⁵¹⁷ According to the media reports, three Kenyans, two Iranians and a Pakistani were arrested in connection with the seizure.⁵¹⁸

As stated above, heroin from the Golden Triangle is predominantly trafficked towards East, South East Asia, and Oceania and even to Japan and the US.⁵¹⁹ According to a 2009 study, fishing vessels are used as part of the *modus operandi* on the sea legs of the trafficking routes.⁵²⁰ The study does not however provide any indication as to why fishing vessels are used or if there are any reasons to believe that fishing operators are taking part in organized illicit traffic in heroin.⁵²¹

“Report: Organised Crime in the Balkans with Reference to Albania” 16 November 2002, available at <http://www.cespi.it/Rotta/Ascod-criminalità/maritati.PDF>; Michaletos “Shape of the Albanian Organised Crime” *Research Institute for European and American Studies*, 29 July 2009, available at <http://www.rieas.gr/research-areas/global-issues/balkan-studies/332.html> and operation “LABI” Direzione Investigativa Antimafia, available at http://www.interno.it/dip_ps/dia/pagine/2009_operazioni_rilievo.htm.

⁵¹³ UNODC *ibid* at 59-60.

⁵¹⁴ UNODC *World Drug Report 2010* (2010) 60, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf.

⁵¹⁵ *Ibid.*

⁵¹⁶ “Kenya Charges Six Men over Heroin Grab” *Reuters Africa*, 28 March 2011, available at <http://af.reuters.com/article/topNews/idAFJOE72R0MJ20110328>; “Kenya Police Seize Heroin Valued at \$5 Mln” *Reuters Africa*, 25 March 2011, available at <http://af.reuters.com/article/topNews/idAFJOE72O0LF20110325>; and (largely repeated in) “Pakistani among Six Charged in Kenya over Heroin Grab” *The News*, 29 March 2011, available at <http://www.thenews.com.pk/TodaysPrintDetail.aspx?ID=4961&Cat=13&dt=3/29/2011>.

⁵¹⁷ “Kenya Police Seize Heroin Valued at \$5 Mln” *Reuters Africa*, 25 March 2011, available at <http://af.reuters.com/article/topNews/idAFJOE72O0LF20110325>.

⁵¹⁸ *Ibid.*

⁵¹⁹ UNODC *World Drug Report 2010* (2010) 46, available at http://www.unodc.org/documents/wdr/WDR_2010/World_Drug_Report_2010_lo-res.pdf and Hastings “Illicit Flows in the Hong Kong-China-Taiwan Triangle” 45(2) *Issues & Studies* (2009) 185 at 213.

⁵²⁰ Hastings *ibid* at 212, 214 and 215.

⁵²¹ *Ibid.*

Heroin traffickers using fishing vessels from China to Taiwan

In a journal article, Hastings refers to a recent heroin trafficking case from Zhangzhou, China, involving fishing vessels:

“In one interesting case, a gang of smugglers led by two Taiwanese ... brought thirty-nine packets of heroin from Myanmar into Shenzhen, in Guangdong, in September 2007 and sold four packets there. They then transported the rest to Zhangpu, in Fujian Province, where they had a fishing boat ready to take it to Taiwan for sale. When the Chinese police caught them on October 18, they found that the network extended from Zhuhai, near Macao, to Fujian and Taiwan, and included at least eight Taiwanese, five mainland Chinese, a van, and two fishing boats.”⁵²²

4.3 Findings

The study examined the use of fishing vessels and the involvement of fishers or fishing operators in illicit traffic in narcotic drugs or psychotropic substances. The reference to fishing vessels, fishers, fish distributors or fish operators was most prevalent in the context of illicit traffic in cocaine and ATS, including ATS precursors.

Fishing vessels seem to be part of the *modus operandi* of cocaine trafficking to North America, to Europe, and to Europe via West Africa. According to MAOC(N) data, fishing vessels are not the vessel type most frequently interdicted or disrupted with cocaine, but the few fishing vessels that are interdicted or disrupted often carry large quantities of the drug. There is no comparative data on the use of fishing vessels on the other cocaine trajectories. Concerns have been raised internationally about the use of fishing vessels by drug trafficking organizations. The concerns are evidenced by a number of recently dismantled syndicates suggesting that fishing vessels are used as part of the *modus operandi* of illicit traffic in cocaine. Anecdotal reports of illicit traffic in drugs using fishing vessels were found in the context of ATS, cannabis and heroin, albeit to a lesser extent.

Fishing vessels seem to perform various functions in trafficking in drugs at sea. First, larger fishing vessels function as mother ships, i.e. as a base station from which smaller vessels traffic drugs to-and-from. Second, fishing vessels function as support vessels for go-fast boats in need of fuel and supplies on the trafficking route. Third, smaller fishing vessels traffic drugs in and out of harbours in smaller quantities, frequently transshipping drugs to mother ships outside the territorial jurisdiction of the coastal State.

Fishing vessels are presumably well suited as mother ships and supply vessels as they are fitted to traverse long distances and can stay at sea for prolonged periods of time. The size and construction of fishing vessels make them “economical” in the sense that they can be refitted to carry large quantities of drugs. In contrast to merchant vessels, fishing vessels are not required to carry Automatic Identification System (AIS)-transceivers (although for their own safety they often do; but with the possibility of switching them off) and satellite tracking by Vessel Monitoring Systems (VMS) has limitations in that it is only required by some flag States (often on a limited number of vessels) and the information is kept by the flag State and not readily available to the coastal (or other) State. Fishing vessels can thus avoid

⁵²² Hastings *ibid* at 213-214.

surveillance at sea and conduct at-sea transshipments with less fear of detection than a merchant vessel. This is particularly so because drug seizures during transshipments on the high seas require a considerable amount of pre-planning and intelligence in order to obtain the authorization of the flag State to take action against the vessel (see Article 17 of the 1988 Convention).⁵²³

Smaller fishing vessels are also well suited as transport vessels in and out of harbours. Fishing vessels belong to the normal picture in harbours and at sea and are therefore less likely to raise suspicion if the operation is carefully planned. Drug traffickers seem to go to great lengths to make the vessel appear as if legitimate fishing operations are taking place. During expert consultations it was also pointed out that drug traffickers were known to schedule trafficking operations in and out of harbours to certain shifts and thereby exploit corrupt harbour officials.

It was observed during expert consultations that the prevention of illicit traffic in drugs on board fishing vessels at sea requires extensive cooperation between law enforcement agencies within a country and between countries. It was pointed out that law enforcement officials working in different sectors (police, coast guards, and fisheries enforcement units) often fail to communicate or are hampered by confidentiality considerations. A further problem raised was the lack of transparency in the fishing industry. Vessels are often registered in States that are unable or unwilling to enforce their criminal jurisdiction. There is no global registry of fishing vessels at present (unlike the IHS Fairplay register of merchant vessels) and there is a lack of transparency in relation to the beneficial ownership of fishing vessels. Fishing vessels can easily change name, ownership and register, which may hamper intelligence gathering on drug trafficking operations.

The study also found indications that fishers are actively recruited to take part in drug trafficking operations. However, it seems clear that, as in the case of migrant smuggling, fishers are not generally perceived to be part of the organized criminal activity. Rather they appear to be recruited on an *ad hoc* basis. The literature suggests that fishers are targeted due to their professional skills as both fishers and navigators to give the illicit trafficking operations the pretense of legitimate fishing activity. There are anecdotal reports from West Africa, South Africa and Europe that fishers and coastal communities turn to drug trafficking to earn a living when fishing is no longer an option due to overfishing and depleted fish stocks. Such a link would need to be studied further.

The study has found anecdotal evidence of the use of fishing companies, fish processing plants and fish distribution networks to act as storage facilities and legitimate covers for transport of drugs. Frozen fish is for instance believed to be an ideal cover for drugs as drug detection dogs find it hard to detect the presence of drugs in fish and the fish would often have to be thawed (and potentially ruined) to make detection possible. An option is then to x-ray the fish consignment, but that is often difficult when for instance the fish is stored in freezer units on board the vessel. As fish is a very valuable commodity, the potential claim for compensation could be large should a consignment be ruined due to an unfounded suspicion. The study by van der Veen suggests that some fishing operators launder proceeds from illicit traffic in drugs through investments in fishing infrastructure.

⁵²³ UNODC *Cocaine Trafficking in West Africa: A Situation Report* (2007) 8, available at <http://www.unodc.org/documents/data-and-analysis/Cocaine-trafficking-Africa-en.pdf>

There are also reasons to be alert to the possibility that some fishing operators may be involved in illicit traffic in drugs. During experts consultations it was observed that a general lack of transparency in the fishing industry as to vessel identity and ownership structures (often involving a number of jurisdictions) makes it difficult to target actors in the fishing industry suspected of criminal activity through intelligence-led policing. Further studies are recommended to ascertain the involvement of fishing operators in illicit traffic in drugs.

Finally, the South African experience with illicit traffic in methamphetamine and ATS precursors shows that marine living resources may potentially be a driver for drug trafficking *per se*. In this instance the market for methamphetamines is closely associated with the illegal fishing operation. Due to overfishing and depleted fish stocks it is likely that marine living resources will become increasingly valuable in the future. It is therefore not unlikely that States with valuable marine living resources will become the target of criminal organizations involved in illicit traffic in drugs in the years to come.⁵²⁴

⁵²⁴ Another example is the cooperation between the Russian “poaching mafia” and Chinese groups; Berry, Curtis, Elan, Hudson, and Kollars “Transnational Activities of Chinese Crime Organizations” 7(3) *Trends in Organized Crime* (2002) 39 *et seq.*, available at <http://www.loc.gov/rr/frd/pdf-files/ChineseOrgCrime.pdf>.

5. LINKS TO OTHER FORMS OF CRIME

5.1. Environmental crime

UNODC has recently identified environmental crime as an emerging crime.⁵²⁵ Environmental crime is largely profit-driven. According to the United Nations Development Programme (UNDP):

“environmental crime is a big and increasingly lucrative business – a multi-billion dollar global enterprise. Local and international crime syndicates worldwide earn an estimated US\$ 22-31 billion dollars annually from hazardous waste dumping, smuggling proscribed hazardous materials, and exploiting and trafficking protected natural resources. Illegal international trade in “environmentally-sensitive” commodities such as ozone depleting substances (ODS), toxic chemicals, hazardous wastes and endangered species is an international problem with serious consequences: it directly threatens human health and the environment, contributes to species loss, and results in revenue loss for governments. Moreover, illegal trade in such commodities strengthens criminal organizations that also traffic in drugs, weapons and prostitution.”⁵²⁶

Due to the increased pressure on natural resources it is likely that environmental crime will become even more prevalent in the future. The concern is particularly acute in developing countries, as these States are often dependent upon the revenue gained from natural resources. Moreover, developing countries are often vulnerable to environmental crimes due to conflict, lack of governance or corruption.

Although there are some inconsistencies attached to the definition of “environmental crime”,⁵²⁷ for the sake of clarity, in this report environmental crimes are defined as criminal conduct that may have negative consequences on the environment.⁵²⁸ From the perspective of criminal law – following the principle of legality or *nullum crimen sine lege* – environmental crimes are contraventions of pre-existing laws sanctioning illegal conduct with criminal penalties, typically based on environmental management regulations. UNODC categorizes environmental crimes as one of two forms:

⁵²⁵ UNODC “Activities of the United Nations Office on Drugs and Crime to Address Emerging Forms of Crime” CTOC/COP/2010/3, 4 August 2010, available at http://www.unodc.org/documents/treaties/organized_crime/COP5/CTOC_COP_2010_3/CTOC_COP_2010_3_E.pdf.

⁵²⁶ UNDP “Green Customs Initiative Targets Environmental Crime” UNDP Online Press Release, 14 Nov 2005, available at <http://www.unep.org/Documents.Multilingual/Default.asp?DocumentID=457&ArticleID=5030&l=en>.

⁵²⁷ Bricknell “Environmental Crime in Australia” 109 Australian Institute of Criminology Reports Research and Public Policy Series (2010) at 2-4, available at <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp109.aspx>. Note the broad understanding of environmental “harm” as “crime”.

⁵²⁸ See e.g. Heckenberg “Studying Environmental Crime: Key Words, Acronyms and Sources of Information” in White (ed) *Environmental Crime: A Reader* (2009) 9 at 12.

a) illicit trafficking in natural resources (“natural resource crimes”), whereby natural resources are harvested, transported, trafficked or traded in contravention of environmental protection laws or nature conservation or management regulations; or

b) illicit trafficking in ozone depleting substances and hazardous waste (“pollution crimes”) associated with deliberate illegal transport or dumping of hazardous waste, or trafficking or release of ozone-depleting gasses.⁵²⁹

“Illegal fishing” is defined as “environmental crime” by UNODC and a number of NGOs and academic commentators.⁵³⁰ “Illegal fishing” was also identified as a “new trend in crime” in the Salvador Declaration of the Twelfth United Nations Congress on Crime Prevention and Criminal Justice in 2010.⁵³¹

“Illegal fishing” is often referred to as illegal, unreported or unregulated (IUU) fishing. Whereas most IUU fishing is environmental crime, the concept is difficult to apply for the purpose of the present study. IUU fishing is a concept that has emerged in the context of FAO soft law to counter non-compliance with fisheries management regulations, particularly by vessels operating under flags of convenience. Many fishing vessels engaged in IUU fishing do so by avoiding conservation and management rules and regulations, but they do not necessarily operate in contravention of them. In other words, the term “IUU fishing” includes conduct that is not necessarily illegal. The concept of IUU fishing is also potentially problematic because its focus is largely on the activities of fishing vessels. From a crime perspective this focus may become too narrow since criminal activities may arise in the context of for instance aquaculture. The definition does not seem to include criminal activities up- and downstream of the illegal fishing activities such as money laundering, corruption, document fraud or handling of stolen goods. For the purpose of this study it would therefore seem more apt to refer to criminal conduct that may impact negatively on the marine living environment as “marine living resource crimes”.⁵³²

⁵²⁹ UNODC The Globalization of Crime: A Transnational Organized Crime Threat Assessment (2010) 149, available at http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf and UNODC “Activities of the United Nations Office on Drugs and Crime to Address Emerging Forms of Crime” CTOC/COP/2010/3 4 August 2010 at 9 para 36, available at http://www.unodc.org/documents/treaties/organized_crime/COP5/CTOC_COP_2010_3/CTOC_COP_2010_3_E.pdf.

⁵³⁰ UNODC The Globalization of Crime *ibid*; Environmental Investigative Agency Environmental Crime: A Threat to Our Future (2008), available at http://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf; Bricknell “Environmental Crime in Australia” 109 Australian Institute of Criminology Reports Research and Public Policy Series (2010) 1, available at <http://www.aic.gov.au/documents/2/1/1/{211B5EB9-E888-4D26-AED4-1D4E76646E4B}.rpp109.pdf>; Elliott “Transnational Environmental Crime in the Asia Pacific: an “Un(der)securitized” Security Problem?” 20(4) The Pacific Review (2007) 499 at 502; and Heyman and Brack Royal Institute of International Affairs Workshop Report International Environmental Crime: The Nature and Control of Environmental Black Markets (2002) 5, available at http://www.chathamhouse.org.uk/files/3050_riia_environmental_crime_workshop_report.pdf.

⁵³¹ UNODC “Activities of the United Nations Office on Drugs and Crime to Address Emerging Forms of Crime” CTOC/COP/2010/3 4 August 2010 at paras 162 and 290, available at http://www.unodc.org/documents/treaties/organized_crime/COP5/CTOC_COP_2010_3/CTOC_COP_2010_3_E.pdf.

⁵³² The extent to which marine living resource crimes also qualify as “transnational organized crime” for the purpose of the United Nations Convention against Transnational Organized Crime depends on whether the conduct in question meets the definition of transnational organized crime in Article 3 read with Article 2(a)-(c) of UNTOC. One of the requirements is that the crime is “serious”, in the sense that the conduct constitutes “an offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty” (Article 2(b) of the UNTOC). When considering this requirement, it

In domestic legislation marine living resource crimes are often offences established on the basis of contraventions of marine living resource management and conservation regulations. These offences are frequently regarded as predicate offences of crimes such as money laundering, corruption, document fraud or handling of stolen goods. States are free to create marine living resource regulations within their Exclusive Economic Zone (EEZ) although they are often also bound by international agreements that impose management and conservation regulations. The main international agreements are found in the body of FAO soft law and specific agreements negotiated within the context of Regional Fisheries Bodies (RFBs); the Convention on Biological Diversity; and the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

The negative consequences of marine living resource crimes are significant. In pure economic terms, the value of fish lost to criminal activities alone is suggested to be between US\$ 10-23,5 billion annually.⁵³³ Besides loss of profits, States also lose revenue and income they would otherwise have gained through taxes, duties, and economic growth through legitimate investments and employment. The trade in illegally captured, harvested or farmed marine living resources disrupts the market and may lower the price of legal commodities to the detriment of legitimate fishers and farmers.⁵³⁴ Fishers are affected through negative adjustments of fishing quotas established by national authorities with a view to manage fish stocks and ensure sustainability due to amongst others illegal activities.

Marine living resource crimes have severe impacts on the *environment*. As discussed in Chapter 1, Section 1.5.4, overfishing is already a real threat to world fish stocks and the trend suggests an escalation of fully- and overexploited fish stocks in the future. The consequence is that marine ecosystems are being disrupted, the result of which is difficult to predict. Although overfishing is largely a result of inadequate marine living resource management, an important contributory factor is marine living resource crimes.

Finally, marine living resource crimes *impact on societies*. Profiteering criminals prey on poor and unstable States and exploit their weaknesses, such as weak governance and lack of transparency. As with most forms of organized crime, marine living resource crimes is often also closely associated with corruption and money laundering,⁵³⁵ which undermine the proper function of the State and perpetuate problems of weak governance. Moreover, marine living resources are an important source of animal proteins for a large part of the population, particularly in developing states. Depleting fish stocks severely affects food security; potentially further undermining the governance of these States.⁵³⁶

may be relevant to keep in mind the provisions contained in Article 73 of the Law of the Sea Convention (LOSC) on arrest or detention of foreign vessels and their crews.

⁵³³ Agnew et al “Estimating the Worldwide Extent of Illegal Fishing” 4(2) PLoS ONE (2009) 1 at 1, available at <http://www.plosone.org/article/info:doi/10.1371/journal.pone.0004570>.

⁵³⁴ Putt and Anderson “A National Study of Crime in the Australian Fishing Industry” 76 Australian Institute of Criminology Research and Public Policy Series (2007) at 23, available at <http://www.aic.gov.au/documents/5/D/6/%7B5D6D36A1-3D6F-47BA-82AC-56DA79114CA6%7Drpp76.pdf>.

⁵³⁵ See e.g. Guevara, Willson and Rey “The Black Market in Bluefin” in International Consortium of Investigative Journalists/Centre for Public Integrity Looting the Seas, available at <http://www.publicintegrity.org/treesaver/tuna/>.

⁵³⁶ See e.g. The Brenthurst Foundation “Maritime Development in Africa: An Independent Specialist’s Framework” 3 Discussion Paper (2010) 5, available at http://us-cdn.creamermedia.co.za/assets/articles/attachments/28769_brenthurst_paper_2010_03.pdf.

A 2010 Brenthurst Discussion Paper summarizes the situation in Africa as follows:

“The African fishing industry is widely considered to be in crisis, with over-fishing and a lack of investment threatening its long-term future. Annual exports worth around US\$ 3 billion, a reliance of approximately 10 million Africans on deriving an income from fishing and the dependence of some 200 million people on fish as a source of inexpensive protein provide an indication of the importance of this industry to the continent. The World Fish Center estimates that in 2006 the fishing grounds of the three primary West African fishing states, Mauritania, Senegal and Guinea-Bissau, lost approximately US\$ 140 million worth of fish to IUU-fishing. The same estimate put the loss to sub-Saharan Africa at around US\$ 1 billion, and has critically depleted fish stocks...”⁵³⁷

5.1.1 Marine living resource crimes

Not all forms of marine living resource crimes should be considered transnational organized crime. Bricknell divides offenders of marine living resource crimes in three groups: the ignorant, the opportunist, and the habitual or repeat offender.⁵³⁸ It is the latter category that is of concern from a transnational organized crime point of view.

There is no literature that provides an overview or estimate of the extent to which transnational organized criminal groups commit marine living resource crimes. There is however a number of instances where the literature suggests that transnational organized criminal groups may have been involved in marine living resource crimes. The link between the fishing industry and transnational organized crime is two-fold. First, there are instances where major transnational organized criminal groups are believed to be involved in marine living resource crimes. An example is abalone poaching. Second, in some instances transnational fishing operators are committing organized marine living resource crimes. An example is the illegal Patagonian toothfish fishery in the Southern Ocean. Each is discussed below.

5.1.1.1 Abalone poaching and the involvement of transnational organized criminal groups

Abalones are large marine gastropod mollusks (edible sea snails) belonging to the *haliotidae* family and *haliotis* genus. Abalones are found in most coastal waters around the world, but the most sought after species are predominantly found in colder seas off northern America, Australia, Japan, New Zealand and South Africa. “Chilean abalone” (or “loco”) is found off the coast of Chile and Peru. Loco is a large marine gastropod and resembles abalone, but is a member of the *muricidae* family (rock snails) and not *haliotidae*.

⁵³⁷ Ibid at 20.

⁵³⁸ Bricknell “Environmental Crime in Australia” 109 Australian Institute of Criminology Research and Public Policy Series (2010) 75, available at <http://www.aic.gov.au/publications/current%20series/rpp/100-120/rpp109.aspx>.

Abalone is a highly sought after shellfish delicacy. It is estimated that about 39.600 metric tons (mt) of abalone reached the market in 2007, but demand still outstrips supply.⁵³⁹ A large proportion of abalone on the market is farmed by the aquaculture industry. Commensurate with increasing demand, the amount of farmed abalone nearly tripled from 2005 to 2007, with an estimated world production of 26.000 mt in 2007. In the same time-period capture of wild abalone declined slightly, from 10.146 mt to 9.200 mt. The remaining 4.400 mt of abalone is sourced illegally.⁵⁴⁰ Abalone is primarily imported by Asian countries, where it is consumed amongst others due to a belief that abalone has properties that delays senility and increases fertility.⁵⁴¹

Research suggests that most poached abalone is sourced in South Africa.⁵⁴² In a 2003 report commissioned by the Southern African Development Community (SADC), Cederrand warned that South African abalone stocks are “seriously depleted” and “far below the “safe biological mass”“.⁵⁴³ In the report it was observed that the state of abalone stocks is the result of “excessive exploitation, in particular by poaching”.⁵⁴⁴ Since then abalone poaching has increased significantly. From 2004 to 2007 it is estimated that the market in illegally caught South African abalone nearly doubled from 850 mt to more than 2.000 mt.⁵⁴⁵ As of 2008 South Africa banned all wild abalone capture.⁵⁴⁶

Abalone poaching in South Africa involves cooperation between local fishers often deprived of a livelihood (such as legitimate abalone harvesting) due to overfishing,⁵⁴⁷ local organized criminal groups involved in drug dealing, and Asian transnational organized criminal groups that trade methamphetamines for abalone to sell to the Asian market.⁵⁴⁸ The Asian transnational organized criminal groups are regarded as the masterminds behind the poaching operation.⁵⁴⁹

⁵³⁹ Cook and Gordon “The World Abalone Market and Economic Reasons for Environmental Accreditation” Presentation at the Abalone Aquaculture Dialogue, South Africa 16-17 February 2009, available at <http://www.worldwildlife.org/what/globalmarkets/aquaculture/WWFBinaryitem11677.pdf>.

⁵⁴⁰ Ibid.

⁵⁴¹ Brick, Muchapondwa and Visser “Abalone Poaching, Methamphetamine Use, Criminal Activity in South Africa and the Associated Implications for Resource Management” (2009?) 3 fn 3 (unpublished version), on file with UNODC.

⁵⁴² Ibid.

⁵⁴³ Cederrand “Abalone: An Analysis of the Current Situation and Recommendations for a New Management Regime” 12 SADC Working Paper (2002) 6, available at <http://www.mcs-sadc.org/Publications/WP12%20Abalone%20Study.pdf>.

⁵⁴⁴ Ibid at 7.

⁵⁴⁵ Cook and Gordon “The World Abalone Market and Economic Reasons for Environmental Accreditation” Presentation at the Abalone Aquaculture Dialogue, South Africa 16-17 February 2009, available at <http://www.worldwildlife.org/what/globalmarkets/aquaculture/WWFBinaryitem11677.pdf>.

⁵⁴⁶ Brick, Muchapondwa and Visser “Abalone Poaching, Methamphetamine Use, Criminal Activity in South Africa and the Associated Implications for Resource Management” (2009?) 2 (unpublished version) on file with UNODC. Legal abalone production takes place through the aquaculture industry.

⁵⁴⁷ Hauck and Sweijd “A Case Study on Abalone Poaching in South Africa and Its Impact on Fisheries Management” 56 ICES Journal on Marine Science (1999) 1024 at 1028.

⁵⁴⁸ Brick, Muchapondwa and Visser “Abalone Poaching, Methamphetamine Use, Criminal Activity in South Africa and the Associated Implications for Resource Management” (2009?) 2 (unpublished version) on file with UNODC.

⁵⁴⁹ Hübschle Organised Crime in Southern Africa: First Annual Review (2010) 58, available at <http://www.issafrika.org/uploads/OrgCrimeReviewDec2010.pdf>.

In a 2010 Institute of Security Studies-report, Hübschle describes the sophistication of poaching operations in South Africa.⁵⁵⁰ The actual poaching involves a group of divers, often local fishers,⁵⁵¹ transported on rubber ducks around the near shore to a carefully selected location. Investigative efforts are hampered by dummy-runs and counter-surveillance. The divers use crowbars to remove the abalone from the seabed and gather them in nets which are often left floating below the surface with a self-illuminating label attached to them. At night the nets of abalone will not be seen from the shore, but are detected by vessels at sea that come to collect the abalone.

The abalone is transferred to local organized criminal groups, who act as middlemen, and is delivered by the middle men to transnational organized criminal groups. The local organized criminal group receives methamphetamines from the Asian transnational organized criminal group in exchange for the abalone. The abalone is then taken to a processing plant run by the transnational organized criminal group where it is gutted, chemically preserved, dried or canned (if fresh), sealed in plastic and packaged. According to Hübschle, most abalone is sent inland to Gauteng, and is often hidden among legal consignments.⁵⁵²

A case presently before the Cape High Court concerns a container with abalone worth approximately US\$ 1,6 million that was seized with the assistance of Interpol. The abalone was found in the container as part of a legal consignment of frozen pilchards.⁵⁵³ 19 persons are prosecuted in the case, two of which are Asians that are believed to be the masterminds behind the criminal activity. It is suggested that abalone is sent to neighbouring countries with laxer trade restrictions and thereafter returned to South Africa as a shipment “in transit” in order to avoid scrutiny by South African law enforcement officials.⁵⁵⁴ Another *modus operandi* is to supplement legal consignments of abalone with illegally caught abalone and transport it before further investigations can be made.⁵⁵⁵

In a 1999 study Hauck describes how South African police enforcement units became aware of the scale of involvement of Asian organized criminal groups in abalone poaching in the 1990s.⁵⁵⁶ According to Hauck, the element of transnational organized crime is the complicating factor in abalone poaching in South Africa.⁵⁵⁷ In particular, Hauck states that

“[the] Triads, with their international networks, are key to the continuing profitability of marine poaching. They provide an unsaturated demand for the product, with the money and the process of ensuring success. They treat their buyers

⁵⁵⁰ Ibid.

⁵⁵¹ Although Raemaekers and Britz note that in the Eastern Cape poachers are more often unemployed with little traditional fishing experience; Raemaekers and Britz “Profile of the Illegal Abalone Fishery (Haliotis Midiae) in the Eastern Cape Province, South Africa: Organised Pillage and Management Failure” 97 Fisheries Research (2009) 183 at 187.

⁵⁵² Hübschle Organised Crime in Southern Africa: First Annual Review (2010) 56-57, available at <http://www.issafrica.org/uploads/OrgCrimeReviewDec2010.pdf>.

⁵⁵³ In *S v Chao*, referred to in Hübschle, *ibid*.

⁵⁵⁴ Hübschle *ibid* 30-31 and 57.

⁵⁵⁵ *Ibid* 57.

⁵⁵⁶ Hauck “Regulating Marine Resources in South Africa: The Case of the Abalone Fishery” *Acta Juridica* (1999) 211.

⁵⁵⁷ *Ibid*.

well to ensure a constant supply of the product their culture demands. However, due to the secretive nature of these syndicates and the precision with which they work, police find it difficult to intervene in their operations.”⁵⁵⁸

In 2001 Gastrow also commented on the links between marine living resources crimes relating to abalone (as well as shark fins) in South Africa and particular Asian organized criminal groups.⁵⁵⁹ According to Gastrow these groups are branching off into corruption, money extortion, violence and kidnappings.⁵⁶⁰

Violence by Asian organized crime syndicates in South Africa

In 2010 South African media reported that three Asians were attacked with swords in the Western Cape in what was referred to as “a mafia-style hit”. One of the three died from the injuries. The police suspected that an Asian person carried out the attack. Hübschle at the Institute for Security Studies linked the attack to Asian organized crime syndicates in South Africa. According to Hübschle:

“Chinese organized crime has been active for many, many years. Initially there were always indications they were involved in the *mandrax* deals and then they got increasingly involved in abalone”.⁵⁶¹

Australia is home to one of the most productive wild abalone stocks in the world⁵⁶² and is also believed to be the second largest supplier of poached abalone.⁵⁶³ In a report prepared in 2002 for the Australian Institute of Criminology (AIC), Tailby and Gant describe the *modus operandi* of abalone poaching in substantially the same manner as Hübschle, above:⁵⁶⁴ Abalone is collected by groups of divers (individuals, extended families or groups of licensed divers) who hide their catch using a buoy for it then to be collected and transported to a processing facility. The abalone is processed by registered or back-yard processors and exported in cans or bags, and made available through the Australian or Asian black-market.⁵⁶⁵ Local outlawed motorcycle gangs and Asian organized criminal groups are

⁵⁵⁸ Ibid 220.

⁵⁵⁹ Gastrow “Triad Societies and Chinese Organised Crime in South Africa” 48 ISS Occasional Paper (2001), available at <http://www.iss.co.za/pubs/papers/48/48.html>.

⁵⁶⁰ Ibid, see also Berry, Curtis, Elan, Hudson and Kollars “Transnational Activities of Chinese Crime Organizations: A Report Prepared under an Interagency Agreement by the Federal Research Division, Library of Congress” 7(3) Trends in Organized Crime (2002) 19 at 43-44, available at <http://www.loc.gov/rr/frd/pdf-files/ChineseOrgCrime.pdf>.

⁵⁶¹ Raubenheimer “ISS Sheds Light on Chinese Gang Activity in SA Following Murder” Eye Witness News SA, 8 November 2010, available at <http://www.eyewitnessnews.co.za/articleprog.aspx?id=52456>.

⁵⁶² Putt and Anderson “A National Study of Crime in the Australian Fishing Industry” 76 Australian Institute of Criminology Research and Public Policy Series (2007) 14, available at <http://www.aic.gov.au/publications/current%20series/rpp/61-80/rpp76.aspx>.

⁵⁶³ Cook and Gordon “The World Abalone Market and Economic Reasons for Environmental Accreditation” Presentation at the Abalone Aquaculture Dialogue, South Africa 16-17 February 2009, available at <http://www.worldwildlife.org/what/globalmarkets/aquaculture/WWFBinaryitem11677.pdf>.

⁵⁶⁴ Tailby and Gant “The Illegal Market in Australian Abalone” 225 Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice (2002), available at available at <http://www.aic.gov.au/publications/current%20series/cfi/21-40/cfi028.aspx>.

⁵⁶⁵ See also Palmer Report on Illegal Fishing for Commercial Gain or Profit in NSW (2004) 24 at para 26, available at <http://pandora.nla.gov.au/pan/45301/20041013-0000/www.fisheries.nsw.gov.au/com/pdf/Black-Market-Report.pdf>.

identified as possible actors involved as buyers and distributors of the poached abalone.⁵⁶⁶ Tailby and Gant also report suspected links to illicit drug markets.⁵⁶⁷ A 2007 Australian countrywide survey of crime in the Australian fishing industry found that “[s]ome organized criminal activity is already evident in high value, low volume fisheries such as abalone, and with illegally obtained shark fins”.⁵⁶⁸

Abalone syndicate in Australia

In February 2011 the Australian police operation labeled “Fusion” successfully uncovered a large-scale organized abalone poaching syndicate.⁵⁶⁹ According to the police report, the poaching syndicate targeted remote parts of New South Wales through an “intricate system of dive locations, abalone theft, surveillance techniques, storage locations, transport operations and illegal trade in Sydney”.⁵⁷⁰ Police seized more than 380 kg of abalone worth an approximately AU\$ 60.000 (US\$ 62.313) during the operations.⁵⁷¹

The involvement of organized criminal groups in abalone poaching is also reported from New Zealand,⁵⁷² another large source country of poached abalone (or “paua”) to the Asian market.⁵⁷³ In the explanatory note to the New Zealand Gangs and Organised Crime Bill 10-1 (2009), the Ministry of Justice notes in relation to *paua* poaching as follows:

“Paua smuggling is also a significant area for organised criminality. The largest paua poaching operation in recent years, undertaken in May 2008, resulted in 65 arrests. Members of one gang dived for the paua which was on-sold and distributed to retailers by another organised group in a different region. Organised criminal poaching and distribution impacts on the legitimate commercial sector (with a

⁵⁶⁶ Tailby and Gant “The Illegal Market in Australian Abalone” 225 Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice (2002) 3, available at <http://www.aic.gov.au/publications/current%20series/cfi/21-40/cfi028.aspx> and Putt and Nelson “Crime in the Australian Fishing Industry” 366 Australian Institute of Criminology Trends & Issues in Crime and Criminal Justice (2008) 5, available at <http://www.aic.gov.au/documents/5/2/8/%7B5281BDAF-257E-44CD-9BE8-F2D97F2E7413%7Dtandi366.pdf>.

⁵⁶⁷ Tailby and Gant *ibid* and Putt and Nelson *ibid*.

⁵⁶⁸ Putt and Anderson “A National Study of Crime in the Australian Fishing Industry” 76 Australian Institute of Criminology Research and Public Policy Series (2007) 28, available at <http://www.aic.gov.au/publications/current%20series/rpp/61-80/rpp76.aspx>.

⁵⁶⁹ New South Wales Police Release “Operation Fusion Nets Abalone Trafficking Ring” NSW Police Online, 23 February 2011, available at http://www.police.nsw.gov.au/news/latest_releases?sq_content_...G9saWNlM5zdy5nb3YuYXUIMkZtZWRpYSUyRjE1NDUzLmh0bWwmYWxsPTE%3D and Bucci “Coast Men Charged over Abalone Trafficking” Canberra Times, 24 February 2011, available at <http://www.canberratimes.com.au/news/local/news/general/coast-men-charged-over-abalone-trafficking/2085743.aspx>.

⁵⁷⁰ NSW Police Release *ibid*.

⁵⁷¹ *Ibid*.

⁵⁷² See New Zealand Parliamentary Counsel Office Explanatory Note to the Gangs and Organised Crime Bill 10-1 (2009) at “Status Quo and Problem”, available at <http://www.legislation.govt.nz/bill/government/2009/0010/15.0/DLM1815401.html>.

⁵⁷³ Cook and Gordon “The World Abalone Market and Economic Reasons for Environmental Accreditation” Presentation at the Abalone Aquaculture Dialogue, South Africa 16-17 February 2009, available at <http://www.worldwildlife.org/what/globalmarkets/aquaculture/WWFBinaryitem11677.pdf>.

market totaling [NZ]\$390 million for paua quota and [NZ]\$621 million for lobster quota in 2007) and the value this represents to the New Zealand economy through their export values of, respectively, [NZ]\$58 million and [NZ]\$121.7 million. The Police believe that *paua* poaching is sometimes used to fund other criminal activities such as the supply of illicit drugs.”⁵⁷⁴ (NZ\$ 1 = approx. US\$ 0,75)

Operations “Pacman” and “Paid”, New Zealand

New Zealand Ministry of Fisheries has targeted large transnational organized crime groups involved in abalone poaching in two major operations in the last decade, known as operation “Pacman” (2001/2002) and “Paid” (2008).⁵⁷⁵ According to a senior New Zealand enforcement official, each operation resulted in up to a hundred persons charged with serious crimes and a number of persons receiving high penalties in the form of fines and prison sentences. Interestingly, a similar *modus operandi* to that seen in South Africa and Australia is also evident in the New Zealand context: divers are hired on an individual basis or as part of a local criminal gang. The diving takes place at night, and the *paua* is distributed to large Asian organized criminal groups via middlemen. The *paua* is processed in New Zealand before being trafficked to the Asian market.

The two police operations revealed that different organized criminal groups were involved in the first and the second operation. It is suspected that the *modus operandi* of trafficking *paua* to Asia in earlier years involved adding a bag of *paua* to the luggage of participants in large tour groups, whereas in later years bulk packaging in tins with false labels have become more common. During operation Paid it was also revealed that drugs were being used as currency in exchange for poached *paua*.

The experiences from Australia, New Zealand and South Africa suggest that high value marine living resources such as abalone are targeted by transnational organized criminal groups. The literature and expert consultations also suggest that abalone poaching involves cooperation between transnational and local organized criminal groups; they have a fairly similar *modus operandi* in different jurisdictions; they involve the same markets; and they seem to a certain degree linked to illicit traffic in drugs.

5.1.1.2 Involvement of transnational fishing operators in organized marine living resource crimes

⁵⁷⁴ See New Zealand Parliamentary Counsel Office Explanatory Note to the Gangs and Organised Crime Bill 10-1 (2009) at “Links to Serious Crime”, available at <http://www.legislation.govt.nz/bill/government/2009/0010/15.0/DLM1815401.html>.

⁵⁷⁵ Interview on file with UNODC. See also Ministry of Fisheries Press Release “Fisheries Officers Smash Major Paua Poaching Ring” Scoop Independent News, 27 May 2008, available at <http://www.scoop.co.nz/stories/PO0805/S00444.htm>; “Fisheries, Police Bust Illicit \$1.3m Paua Operation” New Zealand Herald, 27 May 2008, available at http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10512789; “More Early-morning Paua Poaching Raids” The Dominion Post, 28 May 2008, available at [http://www.stuff.co.nz/dominion-post/news/wellington/461382\[21.07.2010](http://www.stuff.co.nz/dominion-post/news/wellington/461382[21.07.2010); and Ministry of Fisheries “Operation Pacman” Ministry of Fisheries Internet, 13 March 2002, available at <http://www.fish.govt.nz/en-nz/Press/Press+Releases+2002/March+2002/Operation+Pacman.htm>.

Whereas the study of abalone poaching in Australia, New Zealand and South Africa suggests that large transnational organized criminal groups are involved in marine living resource crimes, there is reason to believe that some transnational fishing operators are involved in organized marine living resource crimes.

The expression “transnational fishing operator” is understood as fishing operators that operate in more than one jurisdiction due to for instance the corporate structures of the fishing operator (often in financial havens); the nationalities of the beneficial owners of the vessel; the countries in which fishing vessels are registered; the area in which fishing vessels are undertaking fishing operations; or the nationality of crews on board fishing vessels.

A pertinent example is the involvement of transnational fishing operators in the illegal Patagonian toothfish fishery in the Southern Ocean. The Patagonian toothfish (or Chilean sea bass) is a large fish species living at depths below 50 meters in the Southern Oceans in southern Chile and Argentina and around islands in the sub-Antarctic oceans.⁵⁷⁶ The Patagonian toothfish is vulnerable to overfishing as it lives up to the age of 50 and only matures sexually from 6 to 9 years of age. Fish stocks take between 4,5 to 14 years to double.⁵⁷⁷ The species is a sought after and valuable commodity due to its taste and high levels of Omega 3 fatty acids.

Commercial toothfish fisheries only started in the early 1990s as a result of dwindling fish stocks elsewhere. By 1998 Patagonian toothfish was nearly extinct.⁵⁷⁸ Over the last decade Patagonian toothfish fisheries have been under strict and effective regulation and control by the Secretariat and the Scientific Committee of the Convention of the Conservation of Antarctic Marine Living Resources (CCAMLR).⁵⁷⁹ Whereas estimated illegal catch of toothfish was about 30.000 tones in 1997, it is now down to 1.000-2.000 tons a year. According to the CCAMLR Secretariat, fishing vessels involved in illegal toothfish fishing have been reduced from about 55 less than ten years ago to 5-10 active vessels today.⁵⁸⁰ Most illegal activity takes the form of offences such as fishing without a license or fishing in excess of quota, out of season or with disallowed fishing gear.

As part of the concerted effort to protect the remaining stock of Patagonian toothfish, governments, licensed and law abiding fishing operators and NGOs conducted targeted investigations of operators suspected to be engaged in illegal fishing activities (the “toothfish investigations”).⁵⁸¹ Although these investigations did not lead to major convictions (partly because of the transnational nature of the crimes), they did provide some insight into the *modus operandi* of organized marine living resource crime operations committed by transnational fishing operators.

The toothfish investigations suggest that fishing operators engaged in marine living resource crimes register their vessels in so-called “convenience registries” or “open registries”, i.e. registries in flag States that are unable or unwilling to exercise their enforcement jurisdiction

⁵⁷⁶ FAO Patagonian Toothfish (*Dissostichus Eleginoides*), available at <http://www.fao.org/docrep/006/y5261e/y5261e09.htm>.

⁵⁷⁷ Ibid.

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibid.

⁵⁸⁰ Ibid.

⁵⁸¹ The information presented in this Section about the toothfish investigations is based on Court documents, interviews with experts, and published and unpublished reports. Some of these sources will not be revealed to avoid incrimination of actors or informants.

and that allows non transparent ownership structures which hampers investigative efforts. In a 2009 study published by Österblom *et al* the flag States of IUU listed vessels from the CCAMLR area (i.e. vessels operating in contravention of fishery regulations) in the time period 1995 to 2009 were compared.⁵⁸² The research concluded that fishing operators involved in marine living resource crimes were highly adaptable and abused weak and “convenient” registries actively to avoid flag State enforcement jurisdiction.⁵⁸³

Experts are concerned about what they refer to as “flag hopping”, i.e. when a vessel is registered with a new flag State to gain a new identity and thereby avoid targeted enforcement action.⁵⁸⁴ Other known measures taken by fishing operators to circumvent law enforcement efforts include naming more than one vessel with the same name and operating these vessels with the same fishing license or hiding or painting over the name of the vessel to make it anonymous.⁵⁸⁵

Modus operandi of flag hopping

The following case-study compiled by Stop Illegal Fishing illustrates the *modus operandi* of flag hopping by transnational fishing operators:

“On the 19th of December 2010 Australian fisheries officers on-board the patrol vessel “Ocean Protector” detected a fishing vessel in the Southern ocean. The port of [L] was written on the stern of the vessel, a [West African] flag was also flying at the stern but no flag was flying on the mast, the location where a vessel must fly its flag of registration when at sea. The call sign ... was visible on both sides of the vessel identifying the vessel as the fishing vessel “[Z]”, a vessel which had been listed on the CCAMLR IUU vessel list since 2007 and as a result had recently been deregistered from the [West African] register by their Authorities.

The Australian officers radioed to the vessel and notified the Master of their intention to board and inspect the vessel as it was not flying a flag (in the correct location) when first encountered as required under UNCLOS Article 110 1 (d) and thus the vessel was without nationality. The Master agreed to the inspection, but requested the inspection team to wait until they were ready to receive them. The vessel was stopped for the majority of the communication due to engine failure.

While the patrol vessel was waiting for permission to board, the crew of the fishing vessel hoisted the [West African State’s] Flag up the mast, to signify that the vessel was registered to [the flag State]. The patrol vessel informed the Master of the fishing vessel that they had been informed that the vessel has been deregistered by [the West Africa State’s] authorities, and they would therefore still like to proceed with the inspection of the vessel.

The Master agreed to the inspection, but again requested some more time to prepare. The crew then took to the deck again, this time to paint the name “[L]” onto the side of the vessel

⁵⁸² Österblom, Sumila, Bodin, Sundberg and Press “Adapting to Regional Enforcement: Fishing Down the Government Index” 5(9) PLoS ONE (2010) e12832, available at <http://www.plosone.org/article/info%3Adoi%2F10.1371%2Fjournal.pone.0012832>.

⁵⁸³ Ibid.

⁵⁸⁴ See e.g. Balton “IUU Fishing and State Control over Nationals” AGR/FI/IUU/RD(2004)2, available at <http://www.oecd.org/dataoecd/58/28/31426742.PDF>.

⁵⁸⁵ EJF Pirate Fish on Your Plate (2007) at 9, available at <http://www.ejfoundation.org/pdf/EJF%20pirate%20fish.pdf>.

and to change the flag on the mast to [an Asian flag], thus now declaring the vessel to be registered to [that flag State].

The Master had originally stated that he had stopped the vessel due to an engine failure, but the Australian fisheries officers reported that the fishing vessel had in fact been attempting to hide the port side of the vessel while the crew were painting over the name “[Z]” on the bow as well as [L] on the stern of the fishing vessel.

The Australian officers communicated to the Master of the fishing vessel that this sudden name and flag change made an inspection highly relevant, but no answer was received and minutes later the vessel steamed off.”⁵⁸⁶

Another facet of the *modus operandi* of transnational fishing operators engaged in marine living resource crimes evidenced by the toothfish investigations is the use of front companies in multiple jurisdictions and with untraceable ownership structures. According to a 2003 OECD report a number of commercial registries⁵⁸⁷ offer “packages” so that vessel owners can retain their anonymity.⁵⁸⁸ This is done by incorporating a front company that will be registered on the ship register as the “owner” but which is in fact owned and controlled with for instance bearer shares by another company.⁵⁸⁹ Numerous corporate structures are possible and can include several corporate owners or chains of corporate owners spread over a number of jurisdictions. These jurisdictions will typically be so-called “financial havens”, which protect information on the company registers with privacy or secrecy laws or attorney-client privilege.⁵⁹⁰ A number of law enforcement officers interviewed as part of the study pointed out that transnational fishing operators involved in organized marine living resource crimes are frequently impossible to trace or identify.⁵⁹¹

Non-transparent ownership structures of vessels registered under flags of convenience

Gianni and Simpson observes that:

“[m]ost FOC vessels are registered to fictitious or shell companies, often “located” in the country that has issued the flag. Since the owners of FOC vessels often deliberately try to maintain a “legally invisible link” between themselves – the “beneficial owner” – and the company publicly listed as the registered owner of a vessel, the name, nationality and country of residence of the true owner is usually carefully hidden.”⁵⁹²

⁵⁸⁶ Per Erik Bergh/Stop Illegal Fishing “Ex-Togolese Fishing Vessel Changes Flag in the High Seas”, available at http://www.stopillegalfishing.com/sifnews_article.php?ID=66.

⁵⁸⁷ As to the distinction between “commercial registry” and “flag State” see section 5.2.1.3, below.

⁵⁸⁸ OECD/Maritime Transport Committee Ownership and Control of Ships (2003), available at <http://www.oecd.org/dataoecd/53/9/17846120.pdf>. See also United Nations General Assembly Oceans and the Law of the Sea Consultative Group on Flag State Implementation Report of the Secretary-General A/59/63 at para 188, available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N04/261/59/PDF/N0426159.pdf?OpenElement> and Financial Action Task Force/OECD The Misuse of Corporate Vehicles, including Trusts and Company Service Providers (2006), available at <http://www.fatf-gafi.org/dataoecd/30/46/37627377.pdf>.

⁵⁸⁹ OECD/Maritime Transport Committee Ownership and Control of Ships (2003) *ibid*.

⁵⁹⁰ *Ibid*.

⁵⁹¹ If not de facto, at least de jure; interviews on file with UNODC.

⁵⁹² Gianni and Simpson go on to point out that variances do exist. Gianni and Simpson The Changing Nature of High Seas Fishing (2005) 15, available at <http://www.wwf.org.uk/filelibrary/pdf/flagsofconvenience.pdf>.

Due to the considerable logistical backup required (see Chapter 1, Section 1.5.5.2, above), most long-distance fishing operations take place in a fleet. Suspicions were raised in relation to the toothfish investigations that a large portion of the criminal activity seen in the Southern Oceans was connected to a small core group of transnational fishing operators. For instance, a number of law enforcement officials suspected that vessels caught engaged in marine living resource crimes were often “sacrificed” by the fleet to allow the rest of the vessels to escape.⁵⁹³ These experts were concerned that as vessel owners are not traceable, neither are repeat offenders. This makes it nearly impossible to target vessels operating illegally in the same fleet. A result is that the transnational fishing operators suspected of being involved in the illegal toothfish fisheries are operating in other seas under new vessel names, flag, and corporate ownership structures today. The Ministry-led Task Force on IUU Fishing on the High Seas (High Seas Task Force) noted in its 2006 report *Closing the Net* as follows:

“In the Southern Ocean (...) organised syndicates play cat and mouse with authorities. The movements of patrol boats are monitored by spies and reported to the illegal fleet. Communication between vessels of the same fleet is kept to a minimum to avoid detection. If an interdiction is inevitable, older, less valuable, vessels are sacrificed to protect more valuable ones. Ownership structures involving multiple front companies are used to keep details from boat crews as well as authorities. Operational instructions for the illegal fleet are passed down through front companies with vessel masters often not knowing who their real employers are.”⁵⁹⁴

The FAO is currently in the process of establishing a Global Record of fishing vessels and fish carriers, which is likely to contribute to increased transparency in the fishing industry and improve law enforcement.⁵⁹⁵

Finally, the toothfish investigations revealed that fishing operators engaged in marine living resource crimes make use of transshipments on the high seas to avoid scrutiny in port. By transferring fish from one vessel to another the fishing operator can launder illegally caught fish with “legal” fish and thereby circumvent quota and licensing regulations.⁵⁹⁶ It would seem that transshipments are often hard to detect due to the lack of adequate surveillance and vessel tracking of fishing vessels. During interviews with experts it was observed that this *modus operandi* is quite common in relation to marine living resource crimes by transnational fishing operators in other fisheries as well.

⁵⁹³ Interviews on file with UNODC; see also the High Seas Task Force *Closing the Net: Stopping Illegal Fishing on the High Seas* (2006) 25, available at http://www.oecd.org/document/42/0,3746,en_39315735_39313060_39397482_1_1_1_1,00.html.

⁵⁹⁴ High Seas Task Force *ibid.*

⁵⁹⁵ See e.g. Report of the FAO Technical Consultation to Identify a Structure and Strategy for the Development and Implementation of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels 8-12 November 2010, available at <http://www.fao.org/docrep/013/i1938e/i1938e00.pdf>.

⁵⁹⁶ See e.g. EJF *Pirate Fish on Your Plate* (2007) 4, available at <http://www.ejfoundation.org/pdf/EJF%20pirate%20fish.pdf>.

The Paloma V: Omunkete Fishing (Pty) Ltd v Minister of Fisheries (No2)

An illustration of transshipments and coordinated fleet activity is provided by the New Zealand High Court judgment in the *Paloma V*-case.⁵⁹⁷ The *Paloma V* was a fishing vessel suspected of operating in breach of CCAMLR management regulations by amongst others having interacted with IUU listed fishing vessels:

“In the course of the inspection the *Paloma Vs* computers were removed. The respondents [the Minister of Fisheries and the Minister of Foreign Affairs and Trade] say this was with the consent of the applicant [Omunkete Fishing] and there is no evidence of any resistance to this. (Indeed the evidence indicates that those on board were cooperative throughout.) Once off the vessel, clones of the computer records were made and the computers were returned and re-installed in the vessel. From his review of the computer records, the officer in charge says that it appeared that:

- a) There were a number of photographs that showed the *Paloma V* interacting or resupplying with a known IUU listed vessel, the *Chilbo San 33*.
- b) There were emails outlining that the *Paloma V* had been involved in the refueling and resupplying of a number of IUU listed vessels, including the event listed in paragraph a) above.
- c) There were various spreadsheets and documents that were titled with the names of other IUU listed vessels.
- d) There were documents for crew (e.g. passports and personal vessel work log books) showing they had recently worked on IUU listed vessels.”⁵⁹⁸

The *modus operandi* observed as a result of the toothfish investigations suggests that organized marine living resource crimes are committed by some transnational fishing operators. The investigations revealed that these fishing operators conduct criminal activities behind the veil of highly sophisticated transnational corporate structures and require a large degree of logistical and operational coordination. It would for instance seem that organized marine living resource crimes mirror to a large extent the corporate structuring often involved in tax evasion and money laundering. Importantly, the outcome of the toothfish investigations suggests that law enforcement officials are often unable to adequately investigate and prosecute marine living resource offences and the masterminds behind the organized criminal activity, due in part to the transnational nature of the crimes committed and the lack of transparency in the fishing industry.

Links to other forms of crime (1): money laundering in the Pacific Islands

Marine living resource crimes are also likely to be a predicate offence of money laundering. A 2008 *Financial Crime & Money Laundering Risk Assessment* from the Solomon Islands suggests that environmental crimes (including marine living resource crimes) are the third most frequent predicate offences of money laundering in the Pacific.⁵⁹⁹

⁵⁹⁷ *Omunkete Fishing (Pty) Ltd v Minister of Fisheries (No 2)* High Court of New Zealand CIV 2008-485-1310, available at <http://www.maritimelaw.org.nz/0608.html>.

⁵⁹⁸ *Ibid* at para 46.

⁵⁹⁹ Solomon Island Financial Intelligence Unit *Financial Crime & Money Laundering Risk Assessment* (2008) at 5, available at <http://publicintelligence.info/Financial-Crime-and-Money-Laundering-Risk-Assessment.pdf>.

Links to other forms of crime (2): tax and customs crime and money laundering in Norway

In February 2011 the Norwegian Tax Administration disclosed the result of an operation targeting Norwegian fishing operators.⁶⁰⁰ The operation involved about 600 controls of actors in the fishing industry undertaken by the Tax Administration in cooperation with Norwegian police, customs and Fishery Administration. On the basis of the operation, the Tax Administration estimates that in the fishing industry income tax was not declared on approximately US\$ 216 million (mainly due to a failure to declare income derived from sale of fish licenses), estate tax was not declared on about US\$ 325 million, and VAT on an estimated US\$ 1,73 million was not paid.⁶⁰¹

According to the Tax Administration the operations revealed instances of what they regard as transnational organized criminal activity to hide profits and ownership details.⁶⁰² Actors both up-stream and down-stream of the fishing operation are involved.

In 2010 a Norwegian Court sentenced two persons to two years and 120 days of imprisonment respectively on charges of money laundering. According to a media report, the one person attempted to launder US\$ 800.000 obtained as a result of marine living resource crimes through the account of the other. The instigator, a fish trader, was also barred from establishing an independent enterprise for life.⁶⁰³

5.1.2 Findings

The available material suggests that marine living resource crimes are committed by transnational organized criminal groups. The example referred to in this study is the involvement of Asian organized criminal groups in abalone poaching in amongst others Australia, New Zealand and South Africa. These transnational organized criminal groups liaise with local organized criminal group who act as middlemen between the transnational organized criminal group and the poachers. Poached abalone is often bartered for drugs.

The study also found that some transnational fishing operators are engaged in organized marine living resource crimes. The example used is that of illegal fishing of Patagonian toothfish in the Southern Ocean. The *modus operandi* of the identified transnational fishing operators suggests that they conduct illicit operations in a highly sophisticated manner. Commonly these operators register their vessels in convenience registries to avoid law enforcement and incorporate front companies in financial havens to remain anonymous and untraceable. In this manner they can conduct large-scale illegal fishing operations at a minimum of risk. The fishing operation itself seems to be well organized with fleets of vessels conducting at-sea support services and transshipments to circumvent and evade law enforcement.

Marine living resource crimes are believed to be prolific due to a number of *drivers*. A main driver is the *market demand* for fish. As noted in Chapter 1, whereas fish stocks are gradually

⁶⁰⁰ Interviews with senior tax officer in charge; see also Dugstad and Aartun “Tre Milliarder Undratt Skatt” Dagens Næringsliv, 7 February 2011, on file with UNODC.

⁶⁰¹ Ibid.

⁶⁰² Ibid.

⁶⁰³ Dugstad and Aartun *ibid*.

dwindling due to overfishing, the market demand for fish is increasing. Market demand is driven by a larger global population (particularly in developing countries dependent upon fish as a source of food); a wealthier global population (such as the emerging markets in Asia); health-conscious consumerism;⁶⁰⁴ and fashionable tastes.⁶⁰⁵

Expanding markets are coupled with the profitability of marine living resource crimes. The over-exploitation and depletion of popular commercial fish stocks makes the remaining specimens valuable, which again create an incentive for criminal groups to target these species.⁶⁰⁶ As was noted in Chapter 1, Section 1.5.3, a single Bluefin tuna fetched a record US\$ 396,700 in January this year. The World Wildlife Fund (WWF) has warned about the impending extinction of Bluefin tuna for some time,⁶⁰⁷ and a great deal of controversy arose during last year's international quota negotiations.⁶⁰⁸ At the same time it is important to keep in mind that marine living resource crimes are also carried out by artisanal and small-scale fishers that revert to illegal fishing to supplement a meager income.⁶⁰⁹

The profitability of marine living resource crimes is coupled with a relatively *low risk of detection*. Many states are unable to prioritize marine living resource crimes due to the cost of surveillance and enforcement, but also due to weak governance caused by conflict or corruption.⁶¹⁰ Some States are therefore unable or unwilling to effectively govern the seas under their jurisdiction. Yet, even wealthy and stable States with a marine living resource protection policy agenda are finding it challenging to effectively monitor and prosecute crimes occurring out of sight at sea. The current regulatory framework makes it hard to detect and prosecute criminal activities at sea, both due to geographical restrictions on prescriptive and enforcement jurisdiction, but also due to a lack of ownership transparency and the availability of flags and ports of convenience, i.e. flag and port States that are unable or unwilling to exercise their criminal law enforcement jurisdiction. Moreover, increasing globalization makes enforcement complex, demanding a high degree of coordination not only between agencies within a country, but also between governmental agencies across State borders.

Another important driver of marine living resource crime at sea is opportunity. The fishing industry is characterized by many small business ventures that compete for quotas and that are vulnerable to market liberalism through a globalized seafood trade. Due to quota restrictions fishing is often seasonal and may therefore attract individuals engaged in small-

⁶⁰⁴ OECD Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing (2005) at 38.

⁶⁰⁵ For instance the demand for toro, the fatty underbelly of Bluefin tuna; see Willson and Canet "A Mediterranean Feeding Frenzy" in International Consortium of Investigative Journalists/Center for Public Integrity Looting the Seas at 4, available at <http://www.publicintegrity.org/treesaver/tuna/02-a-mediterranean-feeding-frenzy.html>.

⁶⁰⁶ See e.g. Bricknell "Environmental Crime in Australia" 109 Australian Institute of Criminology Research and Policy Series (2010) 76, available at <http://www.aic.gov.au/documents/2/1/1/%7B211B5EB9-E888-4D26-AED4-1D4E76646E4B%7Drpp109.pdf>.

⁶⁰⁷ See e.g. http://wwf.panda.org/what_we_do/footprint/smart_fishing/target_fisheries/bluefin_tuna/.

⁶⁰⁸ Quotas are negotiated through the International Commission for the Conservation of Atlantic Tunas (ICCAT). See e.g. "Mediterranean Countries Resist Lower Quotas at Paris Fisheries Meeting" 10(21) Bridges Trade BioRes 22 November 2010, available at <http://ictsd.org/i/news/biores/96746/>.

⁶⁰⁹ See e.g. "Zambia: 60 People Nabbed over Fish Ban" Lusaka Times, 23 January 2011, available at <http://www.lusakatimes.com/2011/01/23/60-people-nabbed-fish-ban/> where 31 people have so far been convicted and sentenced to between one and three years of hard labour.

⁶¹⁰ See Section 5.2, below.

scale criminal activity.⁶¹¹ The overcapacity in the fishing fleet (caused in part by subsidies) has caused capital to be tied up in infrastructure which is not income producing due to quota restrictions.⁶¹² The result is that vessels are left unused when out of season. However, the vessel owner can with relative ease re-flag these vessels to a flag of convenience and embark on illegal activities in distant waters whilst waiting for the next licensed fishing season. A further problem is resale of second-hand fishing vessels. As these vessels have little, if any, second-hand value there are suspicions that some of these vessels are sold to subsidiaries of the fishing operator established in a financial haven.⁶¹³ These vessels then continue fishing – this time illegally – supplementing the business income of the fishing operator. A combination of legal and illegal activities is probably not uncommon in the fishing industry.

Finally, a driver of marine resource crime is explained through the rational behaviour of human beings to exploit the environment, referred to as the “*tragedy of the commons*”. The lack of rational incentives to avoid environmental harm is further fueled by the absence of reliable data on fishing operations. Without such data, suspicions that dishonesty is widespread create incentives for some operators to engage in criminal activities.⁶¹⁴

5.2 Corruption

The main international anti-corruption instrument is the United Nations Convention against Corruption. The Convention against Corruption covers five main areas: prevention;⁶¹⁵ criminalization and law enforcement measures;⁶¹⁶ international cooperation;⁶¹⁷ asset recovery;⁶¹⁸ and technical assistance and information exchange.⁶¹⁹ The Convention against Corruption applies to a number of different forms of corruption, such as bribery of national public officials;⁶²⁰ bribery of foreign public officials and officials of public international organizations;⁶²¹ trading in influence;⁶²² abuse of functions;⁶²³ and various acts of corruption in the private sector.⁶²⁴

⁶¹¹ Putt and Anderson “A National Study of Crime in the Australian Fishing Industry” 76 Australian Institute of Criminology Research and Public Policy Series (2007) 22, available at <http://www.aic.gov.au/documents/5/D/6/%7B5D6D36A1-3D6F-47BA-82AC-56DA79114CA6%7Drpp76.pdf>.

⁶¹² See for instance Rey “Diving into the Tuna Ranching Industry” in International Consortium of Investigative Journalists/Center for Public Integrity Looting the Seas 4, available at <http://www.publicintegrity.org/treesaver/tuna/03-diving-into-the-tuna-ranching-industry.html>.

⁶¹³ Interview on file with UNODC.

⁶¹⁴ Swedish FAO Committee Roving Bandits in Modern Fisheries (2009) 17, available at <http://www.sweden.gov.se/sb/d/11682/a/121181>. See also at Willson and Canet “A Mediterranean Feeding Frenzy” in International Consortium of Investigative Journalists/Center for Public Integrity Looting the Seas 7-8, available at <http://www.publicintegrity.org/treesaver/tuna/02-a-mediterranean-feeding-frenzy.html>, for an example from the Bluefin tuna fisheries.

⁶¹⁵ Chapter II of the United Nations Convention against Corruption.

⁶¹⁶ Chapter III of the United Nations Convention against Corruption.

⁶¹⁷ Chapter IV of the United Nations Convention against Corruption.

⁶¹⁸ Chapter V of the United Nations Convention against Corruption.

⁶¹⁹ Chapter VI of the United Nations Convention against Corruption.

⁶²⁰ Article 15 of the United Nations Convention against Corruption.

⁶²¹ Article 16 of the United Nations Convention against Corruption.

⁶²² Article 18 of the United Nations Convention against Corruption.

⁶²³ Article 19 of the United Nations Convention against Corruption.

⁶²⁴ See e.g. Articles 21 and 22 of the United Nations Convention against Corruption.

5.2.1 Corruption and the fishing industry

Despite being both valuable and sought after, natural resources are often referred to as a “curse” for the countries that have them. Since the 1980s it has become increasingly clear that the presence of valuable and sought after natural resources is often linked to negative economic, social and political consequences in the countries where they are found. Whereas abundant oil or mineral fields tend to improve the general welfare of the population of some countries, a large number of developing States with valuable natural resources spiral into conflict, economic stagnation, income gaps, and authoritarianism leading to human rights violations such as a lack of freedom of speech or gender inequality. Although it is unclear what causes the resource curse, corruption is often referred to as a contributing factor.⁶²⁵

Marine living resources are probably not an exception. At this point in history exploitation of most commercially valuable marine living resources are (and must be) carefully managed and conserved as the sizable global fishing infrastructure coupled with technological advancement would otherwise empty the oceans of the remaining living resources. The fact that marine living resources are limited and valuable makes attempts at marine living resource management and conservation vulnerable to corruption.

The available literature suggests that corruption may take place in relation to a number of different aspects of fishing operations. First, there are suggestions that corrupt dealings may be involved in the allocation of fishing licenses and the control with fisheries management compliance regulations such as quota or gear restrictions through monitoring and inspection (Section 5.2.1.1). Second, questions are raised as to the regime of access rights in developing countries. “Access rights” are negotiated between (often) developed countries and countries unable to exploit their own marine living resources. Concerns are raised about the extent to which these agreements are transparent and unfettered by corruption (Section 5.2.1.2). Third, during expert consultations it was pointed out that corporate entity that run the ship registers on behalf of flag States may in some cases have obtained these rights by means of corruption. These registers appear to be widely used to undermine the transparency of some parts of the fishing industry and the ability of fisheries management and conservation authorities to enforce marine living resource regulations (Section 5.2.1.3).

5.2.1.1 Corruption relating to fishing operations

Licensing schemes are common regulatory tools to manage and conserve natural resources. In the fishing industry, licenses are issued in terms of quotas set on the basis of scientifically assessed estimates of the sustainable exploitation in an area. The licensing process and scientific quotas may be vulnerable to undue influence and bribery.

Hanich and Tsamnyi suggest in a 2009 study that fisheries officials in some Pacific Islands States were suspected of corruption in relation to the issue of fishing licenses.⁶²⁶ According to Hanich and Tsamnyi fishing licenses in these states were issued without oversight and accountability. They also allege that there are proven instances of Ministers and senior fisheries officials that have diverted license fees into personal bank accounts. Fishing license “favours” exist, whereby fishing licenses are issued on generous conditions disregarding the

⁶²⁵ Standing “Corruption and Industrial Fishing in Africa” 7 U4 Issue (2008) 7.

⁶²⁶ Hanich and Tsamnyi “Managing Fisheries and Corruption in the Pacific Island Region” 33 Marine Policy (2009) 386 at 388.

recommended fishing gear restrictions or restrictions on by-catch in the area against a fee. In some instances fishing licenses are issued privately, without official registration, or licensing fees are collected cash without proper accounting procedures.⁶²⁷

Cost of corruption in relation to Solomon Island fish licenses

A 2005 audit of the Solomon Island Department of Fisheries and Marine Resources revealed considerable losses due to corruption and fraud in relation to fishing licenses. According to the audit, the estimated loss was in the region of SBS 70,4 million (US\$ 9 million). The main finding of the audit was summarized as follows:

“Many serious shortcomings including breaches in the law and the Tuna Management Plan. Non-compliance with the Public Finance and Audit Act, Financial Instructions and General Orders. Breakdowns in procedures and practices as well as major deficiencies in internal controls have left the Department of Fisheries and Marine Resources open to fraud and corruption. Inadequate processes for collection of fishing license (*sic.*) fees resulted in major shortfalls in revenue.”⁶²⁸

In a 2008 study, Standing examines corruption during fishing licensing processes in predominantly Africa.⁶²⁹ According to Standing, licenses are at times issued by officials with a direct interest in the fishing industry, often fishing vessel owners or partners in fishing vessel operations, as well as persons associated with the fishing industry such as shipping agents.⁶³⁰ Standing also points out that conflict of interest is particularly acute where licenses are issued on the basis of joint ventures between foreign and local fishing operators. It is observed that foreign fishing operators would fare well if they partner with locals with political influence, as local corrupt officials are more likely to have knowledge of fishing licensing processes and may influence law enforcement of illegal activities.⁶³¹

Conflict of interest and fish licenses

Standing refers in the 2008 to a case in which the director of the Maritime Authority in a Pacific islands State was also the shipping agent for a particular group of Asian fishing vessels. It is alleged that he donated two trucks to the Department of Fisheries on the same day as the Asian fishing vessels obtained licenses to operate in an area using gear in contravention of previous fisheries management regulations.⁶³²

⁶²⁷ Ibid.

⁶²⁸ Solomon Islands Government “An Auditor-General’s Insight into Corruption in Solomon Islands Government” 48 National Parliament Paper (2007) 10, available at <http://www.oag.gov.sb/OAG%20REPORTS/2007%20REPORTS/An%20Auditor%20General's%20Insights%20into%20Corruption%20in%20SIG%20-%20October%202007.pdf>.

⁶²⁹ Standing “Corruption and Industrial Fishing in Africa” 7 U4 Issue (2008).

⁶³⁰ Ibid at 16.

⁶³¹ Ibid at 17.

⁶³² Ibid at 16.

Corruption may also take place during monitoring and enforcement of compliance of fish licenses. For instance, in accordance with fisheries management regulations a number of States require the presence of a scientific observer on board fishing vessels operating with a fishing license. However, as Standing points out, these observers are at times poorly paid and are thus easily coerced by means of bribes and threats during their prolonged period of time on board the vessel.⁶³³ At times they are paid directly by the fishing operator. Standing observes:

“Their interactions on board ships may be highly stressful – they are expected to perform the function of an external regulator while also having to live and socialise among the crew.”⁶³⁴

Control with licensing requirements is also conducted in port. The available sources suggest that in the same manner as flag States are regarded as “convenient” (i.e. unable or unwilling to exercise their law enforcement jurisdiction), so are ports.⁶³⁵ These “ports of convenience” are known to be unable or unwilling to enforce fisheries management and conservation regulations. Questions are asked as to the extent to which corruption facilitates lax enforcement of fishing quotas and licensing requirements in these ports.⁶³⁶

Marine living resource crime and corruption in South African fisheries

In 2001 the Maritime and Coastal Management (MCM) of the South African Department of Environmental Affairs and Tourism received an anonymous tip about large-scale illegal harvesting of rock lobster and capture of toothfish.⁶³⁷ Investigations by the South African organized crime unit revealed that a fishing operator had traded over 660 tons of illegally harvested rock lobster and was caught with 2.844 kg of Patagonian toothfish and about 18 tons of rock lobster in a container bound for the United States.⁶³⁸ The investigations also revealed that the fishing operators had bribed a large number of fisheries officers to falsify catch documentation.⁶³⁹

In South Africa fourteen fisheries officials were found guilty of having collected bribes. The fishing operator was also charged and entered into a plea bargaining with the South African government to pay a fine of approximately US\$ 1,2 million and forfeit two fishing vessels and the content of the container with fish bound for the United States.⁶⁴⁰

In the United States the director of the South African fishing operator and the two presidents

⁶³³ *Ibid* at 19 .

⁶³⁴ *Ibid* at 19.

⁶³⁵ See e.g. EJF *Pirate Fish on Your Plate* (2007), available at <http://www.ejfoundation.org/pdf/EJF%20pirate%20fish.pdf>.

⁶³⁶ Standing “Corruption and Industrial Fishing in Africa” 7 U4 Issue (2008) 20. See also Hanich and Tsamnyi “Managing Fisheries and Corruption in the Pacific Islands Region” 23 *Marine Policy* (2009) 286 at 389 and the cases mentioned therein.

⁶³⁷ Hauck and Krause “Fisheries Compliance in South Africa: A Decade of Challenges and Reform 1994-2004” 30 *Marine Policy* (2006) 74 at 75.

⁶³⁸ Standing “Corruption and Industrial Fishing in Africa” 7 U4 Issue (2008) 20.

⁶³⁹ Standing *ibid* 20 and Hauck and Krause “Fisheries Compliance in South Africa: A Decade of Challenges and Reform 1994-2004” 30 *Marine Policy* (2006) 74 at 76.

⁶⁴⁰ *United States of America v. Arnold Maurice Bengis, Jeffrey Noll, and David Bengis*, US Court of Appeals, 2nd Circ., Docket No. 07-4895-cr (handed down 4 January 2011) 4.

⁶⁴¹ *Ibid* 5.

⁶⁴² *Ibid* 6. The exact amount will be determined by the district court.

of the two United States based corporations that imported, processed, packed and distributed the fish within the United States on behalf of the South African fishing operator were charged under the Lacey Act. In 2004 they were sentenced to imprisonment and forfeited all together US\$ 13,3 million to the United States government.⁶⁴¹

In a second case upheld by the United States Court of Appeals on 4 January this year the three were ordered to also pay restitution for the illegally caught rock lobster based on market value. The estimated restitution amount is nearly US\$ 62 million, which will be paid to the South African government.⁶⁴²

Corruption in the Japanese/Russian fisheries

In February 2011 Japanese and Russian fisheries agencies met to discuss alleged bribery of Russian fisheries officials.⁶⁴³ According to recent (2010) media reports four Japanese companies have bribed Russian fisheries officials to turn a blind eye to quota violations.⁶⁴⁴ The quotas were set in terms of a Russian-Japanese fisheries management agreement entered into amidst fears of depleting fish stocks. In January 2011 the media reported that Japanese governmental tax investigations revealed bribes to the amount of 500 million yen (in excess of US\$ 6 million) paid by the Japanese companies to the Russian fisheries officials in order to exceed the quotas set in terms of the agreement.⁶⁴⁵

5.2.1.2 Corruption relating to fishing fleets' access rights

Whereas the United Nations Convention on the Law of the Sea provides coastal States with enhanced control over marine living resources in the 200 nautical miles exclusive economic zone (EEZ), it also requires coastal States to utilize its resources to the full – or allow other States to do so. Article 62(2) of the Convention on the Law of the Sea reads:

“The coastal State shall determine its capacity to harvest the living resources of the exclusive economic zone. Where the coastal State does not have the capacity to harvest the entire allowable catch, it shall, through agreements or other arrangements and pursuant to the terms, conditions, laws and regulations referred to in paragraph 4, give other States access to the surplus of the allowable catch...”

Whereas the fishing industries in developed countries have largely been able to harvest the allowable catch in the EEZ, the situation has been different in developing countries with less established industrial fisheries. A number of (more) developed States have therefore negotiated access to surplus stocks, or “access rights”, with developing states, often against

⁶⁴³ “Japan: Fishing Firms “Bribed Russia Border Guards”” AsiaOneNews, 27 December 2010, available at <http://www.asiaone.com/News/Latest+News/Asia/Story/A1Story20101227-254961.html> and “Japanese, Russian Agencies to Discuss Alleged Bribery of Border Guards” AsiaOne, 23 January 2011, available at <http://www.asiaone.com/print/News/Latest%2BNews/Asia/Story/A1Story20110123-259748.html>.

⁶⁴⁴ “Breaking Rules Common Practice when Fishing in Russian Waters” Asahi.com, 1 February 2011, available at <http://www.asahi.com/english/TKY201101310227.html>.

⁶⁴⁵ “4 Japanese Fishing Companies Grounded for Exceeding Quotas in Russia” Japan Today, 26 January 2011, available at <http://www.japantoday.com/category/business/view/4-japanese-fishing-companies-grounded-for-exceeding-quotas-in-russia>.

an annual fee.⁶⁴⁶ The idea has been that these fees should be used to invest in local fisheries, so that these may take greater part in the capture production over time.⁶⁴⁷

Access rights have however become controversial for a number of reasons.⁶⁴⁸ As Standing points out, there are suggestions that the income produced by granting access rights has had an adverse influence on marine living resource management and conservation policies. For instance, the income accrued from access rights may in some cases have led to the licensing of too many vessels, which undermines responsible fisheries management, or licensing conditions have been negotiated in contravention of State regulations prohibiting transshipments at sea or to the detriment of local fishing operators.⁶⁴⁹ There are also allegations that access rights in some parts of the world are negotiated using bribes or even promises and withdrawals of donor funding of for instance infrastructure developments.⁶⁵⁰ Investigations into possible instances of corruption in relation to access agreements are however hampered by the lack of transparency in the negotiation process.⁶⁵¹ Standing observes that:

“[a]ccess agreements signed between [African, Caribbean and Pacific] countries and several Asian countries and fishing associations are kept entirely confidential, meaning citizens of these countries have no idea how many boats are allowed access to their waters, what terms and restrictions are put in place and how much revenue is being generated. There is no participation from local citizens into the negotiation of these agreements either.”⁶⁵²

5.2.1.3 Corruption relating to ship registers and transparency and accountability of actors in the fishing industry

The Law of the Sea Convention (LOSC) provides the international legal framework for governance of the seas. The LOSC divides the world oceans into maritime zones in which States have varying degrees of jurisdiction. Central principles underlying the LOSC are the “freedom of the high seas” and its corollary, the primary jurisdiction of flag States over vessels flying their flags.⁶⁵³ It follows that the default rule is that the flag State has criminal enforcement jurisdiction over vessels flying its flag.⁶⁵⁴ It is thus the flag State that bears the primary responsibility to investigate and prosecute crimes committed on board its vessels or by its vessels.

The rule of flag State responsibility is built on the presumption that flag States are able and willing to exercise their jurisdiction over vessels on their register when they return home to

⁶⁴⁶ Standing “Corruption and Industrial Fishing in Africa” 7 U4 Issue (2008) 11.

⁶⁴⁷ Ibid.

⁶⁴⁸ See also Ilnyckyj “The Legality and Sustainability of European Union Fisheries Policy in West Africa” MIT International Review (2007), available at <http://web.mit.edu/mitir/2007/spring/fisheries.html>.

⁶⁴⁹ Standing “Corruption and Industrial Fishing in Africa” 7 U4 Issue (2008) 11 et seq.

⁶⁵⁰ Ibid.

⁶⁵¹ Ibid. See also Sumaila and Jacquet “When Bad Gets Worse: Corruption and Fisheries” Draft, available at <http://www.southchinasea.org/docs/Corruption%20&%20fisheries.pdf> and Standing *ibid* at 13.

⁶⁵² Standing The Benefits and Limits of Transparency: Some Considerations on the Reform of the European Union’s Common Fisheries Policy (2010) 6. Draft article commissioned by the Coalition for Fair Fisheries Arrangements, Brussels: <http://www.cape-cffa.org/spip.php?rubrique12>. (Quoted with permission of the author).

⁶⁵³ Article 92(1) of the LOSC.

⁶⁵⁴ Ibid.

port. It is also presumed that the flag State is the State most likely to have a vested interest in surveillance, investigation and prosecution of crimes committed on board or by vessels on its register. However, it is today largely regarded as common practice that a number of flag States are either unable or unwilling to adequately exercise their criminal enforcement jurisdiction over vessels flying their flag. Criminal acts committed on board vessels registered in these flag States (such as human trafficking or marine living resource crimes) are in these instances frequently conducted with impunity.

Impunity is facilitated by a number of flag States that allow ship owners to maintain anonymity, because they allow vessels to be registered with untraceable ownership due to transnational corporate structures in jurisdictions where ownership information is protected by privacy or secrecy laws. As noted in Section 5.1.1.2, above, a number of fishing operators engaged in marine living resource crimes make use of financial havens to hide beneficial ownership and, according to a recent tax investigation, conduct wide-scale tax crime. By shielding beneficial ownership coastal States and other interested parties are rendered unable to conduct targeted surveillance and gather important intelligence data. According to law enforcement officials interviewed during the study the practice is also seen to significantly hamper enforcement and prosecution of criminal activities.⁶⁵⁵

The literature suggests that the potential profit gained by operating a vessel in a flag State which is unable or unwilling to exercise its enforcement jurisdiction or provide ship owners with intractable ownership structures is potentially large. In the publication *Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing* the OECD notes that a major driver of marine living resource crime is “the incompleteness and inadequate application of the current international legal framework” by a number of flag States which put fishing vessels on their register “beyond the reach of national and international regulations”.⁶⁵⁶ The OECD concludes:

“In sum, by circumventing national and international conservation measures, the advantage of [these fishing] vessels is that they can produce more, and obtain higher revenues, than when complying with the rules”.⁶⁵⁷

In other words, a fishing operator that can operate without concern for fisheries management regulations or labour standards could obtain a considerable competitive advantage.

The potential competitive advantage obtained through registering fishing vessels in flag States that are unwilling or unable to exercise their enforcement jurisdiction or that allows vessels to be registered with anonymous ownership structures raises some concern as to the manner in which these flag States’ registries are operated. A number of experts in both the fisheries and maritime sector consulted during this study pointed to the fact that some of the worlds’ largest ships registries are operated by corporate entities with close connections to the shipping industry. The websites of some of these commercial registries suggest that the registries are run by corporate entities with the head office situated in (more) developed countries with seemingly little connection to the Maritime Administration of the flag State.

⁶⁵⁵ Interview on file with UNODC

⁶⁵⁶ A further driver identified by the OECD is overcapacity in the fishing fleet; OECD *Why Fish Piracy Persists: The Economics of Illegal, Unreported and Unregulated Fishing* (2005) 97.

⁶⁵⁷ *Ibid.*

These experts are worried about the extent to which some of these commercial registries may be taking advantage of the vulnerability of developing States. Experts consulted raised the point that some of these corporate entities may be exerting undue influence or even payment of bribes in order to establish a commercial shipping registry in order to take advantage of the potential profit obtained through the inability or unwillingness of the flag State to ensure transparency, oversight and criminal law enforcement over vessels on their registry. Experts informed also that some of these flag States appear to be willing to outsource their international representation and decision making capacity to some of these foreign corporate entities. Further research is however needed into the relationship between commercial registries and flag States, as well as the representation of foreign corporate entities in international decision-making bodies to verify these suspicions.

Sierra Leone International Ship Registry (SLISR)

Upon becoming aware of the limited revenue obtained from its registry and the comparatively grave and costly damage caused by foreign fishing vessels flying its flag, the Sierra Leonean government recently de-registered its foreign fishing fleet. Sierra Leone International Ship Registry (SLISR) is operated out of New Orleans, USA.

In a news report the Sierra Leonean Minister of Fisheries and Marine Resources is quoted stating:

“[T]he [Sierra Leone International Ship Registry] in New Orleans reported that over a period of five (5) years 90 fishing vessels flying the Sierra Leone Flag fetched a total of US\$ 46,243.05... This average at less than US\$10,000 per year and when viewed in the context of damages to income, livelihoods, good faith and trust of local Sierra Leone fisherman, this can be considered a negligible sum, totally unequal to the true economic costs to Sierra Leone or the environmental costs of IUU activities to our country.”⁶⁵⁸

During expert consultations it was informed that the official in charge of negotiating the contract between the New Orleans-based corporate entity that ran the Sierra Leone International Ship Registry and the Sierra Leone Maritime Administration has subsequently been charged with multiple counts of corruption.⁶⁵⁹

Allegations of “improprieties” in the Dunn Commission Report, Liberia

In 2008 the Government of Liberia appointed an Ad-hoc Independent Commission to investigate certain claims of improper behaviour in relation to the renewal of the license of the Liberian International Ship and Corporate Registry (LISCR), a dual shipping and corporate registry with Head Office in Virginia, USA, to operate the Liberian Registry. The

⁶⁵⁸ Bandu “In Sierra Leone, Government Bans International Registration for Ships” *Awareness Times*, 9 November 2010, available at http://news.sl/drwebsite/publish/article_200516692.shtml. See also “Salone suffers \$30m loss to illegal fishing activities” *Awoko*, 3 November 2010, available at <http://www.awoko.org/2010/11/03/salone-suffers-30m-loss-to-illegal-fishing-activities/>

⁶⁵⁹ Press Release “The Executive Director of Sierra Leone Maritime Administration Indicted for Corruption, 2 February 2011”, available at <http://www.cocorioko.net/?p=7347>. It has not been possible to verify whether any of the counts relate to the contractual relationship with SLISR.

LISCR is currently one of the world's largest ship registers and in 2010 the register listed more than 3.500 vessels.⁶⁶⁰ The Commission headed by Dunn concluded that certain e-mail correspondence made publically available was false and that there was no evidence to suggest that senior government officials had accepted bribes.⁶⁶¹ However, the Commission concluded that they found indications of improprieties on behalf of a number of key persons involved in the negotiations.⁶⁶² As regarding the decision to renew the LISCR contract, the Commission concluded:

"The Government of Liberia's resolve to renew the LISCR contract though understandable, seems not to have been the best procedure to adopt in light of scandals involving certain LISCR executives including the allegations of gunrunning in Liberia and other parts and the possible concealment of revenues that should have accrued to Liberia from the maritime program."⁶⁶³

In this regard, the commission noted the "acute criticism" of the current LISCR contract from amongst others the Commissioner of the Bureau of Maritime Affairs who had authored a study which "among many criticisms, charges LISCR with non-adherence to provisions of the agreement including its failure to disclose the initial and existing shareholders of LISCR as well as its shareholder dividend records."⁶⁶⁴

The Commission made (amongst others) the following recommendations:

"1. Our investigation of the LISCR/GOL negotiations led us to a brief review of the history of the Registry as established in the 1940s and the evolution of that history especially during the last quarter century of instability and war in Liberia. Some of the information uncovered in the course of the investigation is quite troubling in terms of how they bear adversely on the interest and the image of our nation. To address this situation, the Commission recommends that a National Task Force be created by the President of Liberia, preferably led by her, for the purpose of revisiting the Maritime Program in order to realize the program's full contemporary potential in the national interest.

...

4. That the Anti-Corruption Commission be requested to pursue the following matters that the Ad Hoc Independent Commission was unable to bring to term:

- The problematic respective roles of [Y] and [Z] regarding the LISCR contract renewal negotiations.
- The role of [company C] in unduly attempting to influence the LISCR contract renewal negotiations. This includes alleged payments and funds transfers.
- The inconclusive (or ongoing) approach by the GOL to the U.S. government for assistance in the investigation of the LISCR matter, under the terms of the United

⁶⁶⁰ "Liberian Flag Doubles in Ten Years as Ship Numbers Reach 3500" Maritime Directory, 2 February 2011, available at <http://www.maritimedirectory.com/mt/newsread.asp?l=e&ID=1242>.

⁶⁶¹ Ad Hoc Independent Commission on the E-mail Saga Report of the Ad-hoc Independent Commission on the E-mail Saga (2009) 2, available at http://www.emansion.gov.lr/doc/DUNN_COMMISSION_Updated.pdf.

⁶⁶² Ibid at 3-4 and 25.

⁶⁶³ Ibid.

⁶⁶⁴ Ibid at 10.

⁶⁶⁵ Ibid at 27.

Nations Convention Against Corruption to which both countries are parties.”⁶⁶⁵

Although the LISCRC does not register fishing vessels, the Dunn Commission report highlights the vulnerability of the systems of commercial registries in developing States to corruption.

5.2.2 Findings

The available literature and the experts consulted during the course of the study suggest that corruption is associated with the issuance of fishing licenses and licensing conditions, as well as control and inspection of compliance with licenses. It would seem that licensing systems are vulnerable to corruption in general, and that there is a lack of attention to the adverse consequences brought about by exceeding fishing quota restrictions, such as overfishing and potentially depleted fish stocks with the result that local fishers may be deprived of their livelihood. The large profits involved in marine living resource exploitation would seem to make fisheries officers vulnerable to attempted bribes and undue influence from some actors in the fishing industry. Also, activities at sea mainly take place out of sight, and corrupt dealings are thus less likely to be suspected or detected by the public.

The available literature also suggests that access rights to surplus fishing grounds may be negotiated in circumstances of undue influence or in the context of payments of bribes. The increasing value of marine living resources in light of overfishing suggests that care must be taken to ensure the parties to these agreements are guided by legitimate motivations. However, the study found that concerns are raised about the lack of transparency surrounding these agreements and the manner in which they seem to adversely impact on fishing policy and local fishing communities.

As seen in Section 5.1.1.2, above, a common *modus operandi* of marine living resource crime – and other forms of criminal activity such as trafficking for the purpose of forced labour at sea – is registration of fishing vessels in States that are unable or unwilling to exercise their law enforcement jurisdiction or that facilitates anonymous ownership which hampers investigations and prosecutions. Shipping registries are in some States operated by corporate entities, i.e. commercial registries. Many of these commercial registries are associated with flag States that are unable or unwilling to exercise their criminal enforcement jurisdiction. There would seem to be a possibility that these corporate registries could be involved in corrupt dealings or attempts at impropriety to obtain a license to run the register in order to take advantage of the flag State’s inability or unwillingness to ensure for instance criminal law enforcement. Corrupt relations between commercial shipping registers and flag States may have a potentially detrimental effect on the proper functioning of the international legal framework pertaining to the law of the sea, as well as investigations and prosecutions of transnational organized crime and marine living resource management and conservation efforts.

5.3 Piracy and other security related offences

In recent years the issue of piracy has been put high on the agenda amidst an increase in the number of pirate attacks of vessels in vulnerable regions of the world. Piracy is defined in the United Nations Convention on the Law of the Sea. Article 101 of Convention states:

“Definition of piracy

Piracy consists of any of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;
- (c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

According to the 2010 UNODC *Globalization of Crime* report, piracy is either directed at stealing the vessel and cargo or at kidnapping the crew against a ransom.⁶⁶⁶ In recent years the latter has become the most prevalent”.⁶⁶⁷

5.3.1 Nexus between the fishing industry and piracy

The UNODC *Globalization of Crime* report points out that piracy may be linked to the fishing industry in the sense that pirate activities in Somalia are believed to have developed within the Somali fishing industry as a result of illegal fishing in Somali waters.⁶⁶⁸ According to the 2003 *Report of the Panel of Experts on Somalia, pursuant to Security Council Resolution 1474*:

“[t]he once thriving Somali fisheries industry has deteriorated into a “free for all” among the worlds” fishing fleets. For over a decade, hundreds of vessels from various Member States have continuously fished Somali waters in an unreported and unregulated manner, as documented in numerous reports on the subject. This has had far reaching consequences and may already have had a disastrous effect on the sustainable management of Somali marine resources.”⁶⁶⁹

Although it does not seem to be a proven connection, the nexus between piracy and marine living resource crime is referred to in amongst others the *Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia* of 19 January 2011:

“One of the reasons advanced for the large-scale development of piracy off the coast of Somalia is the need for the Somali population to protect its territorial waters and marine resources against illegal fishing, uncontrolled degassing and dumping of toxic waste by foreign vessels. As early as 1997, a United Nations assessment mission led by

⁶⁶⁶ UNODC The Globalization of Crime: A Transnational Organized Crime Threat Assessment (2010) 193, available at http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf

⁶⁶⁷ Ibid.

⁶⁶⁸ Ibid at 196.

⁶⁶⁹ At para 141.

Mr. Mahdi Gedi Qayad had warned the international community about the consequences of such practices and had recommended that a mechanism should be established for monitoring and protecting Somali's territorial waters. The absence of State structures capable of protecting the country's marine resources and combating the criminal practices of the pirates led to the resurgence of piracy, especially starting in 2005, in the aftermath of the tsunami which devastated the Puntland coastline between Hafun and Garacad, ruined 18,000 households, and revealed the scale of toxic waste which had been dumped off the Somali coast".⁶⁷⁰ (Footnotes omitted)

Proposal number 17 of the report suggests that an international committee is established to investigate the occurrence of environmental crimes in Somali waters. Proposal number 15 aims at empowering the Somalis to regulate and exploit their natural resources, including marine living resources.

A number of sources focus on the extent to which marine living resource crimes in Somali waters contribute to the surge in pirate activities and the suggested support for piracy by Somalis in general. In the 2009 Organization of the African Union *Decision on the Report of the Peace and Security Council on Its Activities and the State of Peace and Security in Africa* the Assembly expresses "its serious concern at the mounting insecurity in the maritime spaces around Africa, and Somalia in particular, and strongly condemns all illegal activities in these regions, including piracy, illegal fishing and dumping of toxic waste".⁶⁷¹ In November 2010, a senior Somali official was reported in the media to have stated that "illegal fishing and dumping of toxic waste" is a larger problem than piracy.⁶⁷² According to a BBC report a recent Somali bill to outlaw piracy was blocked amidst claims that pirates were acting as "unofficial coast guards" protecting the coast from marine living resource crimes.⁶⁷³ The observation is repeated by amongst others the 2003 *Report of the Panel of Experts on Somalia, pursuant to Security Council Resolution 1474*,⁶⁷⁴ Silva,⁶⁷⁵ The Brenthurst Foundation;⁶⁷⁶ Mwangura (East African Seafarers' Assistance Programme);⁶⁷⁷ and Fentaw.⁶⁷⁸

The nexus between marine living resource crimes and piracy is also highlighted in the context of a possible spread of pirate activities. Interviews with regional experts suggested that vigilante groups based in fishing communities may currently be in formation in the Bay

⁶⁷⁰ Report of the Special Adviser to the Secretary-General on Legal Issues Related to Piracy off the Coast of Somalia, 19 January 2011 (translated from French) at 12.

⁶⁷¹ Decision on the Report of the Peace and Security Council on Its Activities and the State of Peace and Security in Africa Doc.Assembly/AU/6(XIII) at para 18.

⁶⁷² Ahmed "Somalia: Navy Chief Confirms Illegal Fishing and Waste Dumping in Somalia Coast" RBC Radio, 8 November 2010, available at <http://www.raxanreeb.com/?p=70712>.

⁶⁷³ BBC "Somalia Anti-piracy Law: MPs Block Law Banning 'Heroes'" News Africa, 20 January 2010, available at <http://www.bbc.co.uk/news/world-africa-12214940>.

⁶⁷⁴ Report of the Panel of Experts in Somalia, pursuant to Security Council Resolution 1474 (2003) para 147-148.

⁶⁷⁵ Silva "Somalia: State Failure, Piracy, and the Challenge to International Law" 50 Virginia Journal of International Law (2010) 533 at 560.

⁶⁷⁶ The Brenthurst Foundation "Maritime Development in Africa: An Independent Specialist's Framework" 3 Discussion Paper (2010) at 19, available at <http://www.polity.org.za/article/maritime-development-in-africa-an-independent-specialists-framework-july-2010-2010-07-26>.

⁶⁷⁷ Sea Piracy and Pirate Fishing in Somalia, on file with UNODC.

⁶⁷⁸ Fentaw "Anarchy, Terrorism, and Piracy in Somalia: Revisited" American Chronicle, 16 December 2010, available at <http://www.americanchronicle.com/articles/view/204842>.

of Guinea as a result of depleted fish stocks due to marine living resource crimes.⁶⁷⁹ In a response to these and related concerns of criminal activity, the International Maritime Organization (IMO) recently initiated an integrated coast guard project in terms of which coast guards in 24 West African states are linked to combat a number of criminal activities occurring off the coast, including illicit traffic in drugs, marine living resource crimes, and piracy.⁶⁸⁰

Besides the possible link between marine living resource crimes and piracy, it would also seem that pirates attack fishing vessels to use these as “mother ships” from which to launch pirate attacks at sea. A recent media report (February 2011) suggests that vessels engaged in marine living resource crimes may be particularly vulnerable to pirates as little effort is made at rescuing the vessel and crew.⁶⁸¹ As seen above, crew onboard vessels engaged in marine living resource crimes are susceptible to human trafficking and are thus particularly vulnerable as they are forced into pirate-ridden areas and lack protection by the vessel owner when captured by the pirates.⁶⁸²

Piracy in South East Asia and the link to overfishing and the vulnerability of fishers

Liss, a researcher into maritime piracy in South East Asia and Bangladesh at Murdoch University, Australia, makes a clear link between *inter alia* socio-economic and environmental preconditions and piracy in South East Asia:

“Over-fishing, pollution and the ensuing poverty of fishers and their families, as well as the division of the ocean into different national zones and jurisdictions, impacts directly upon the occurrence of piracy in Southeast Asia in two different ways. Firstly, the impoverishment of fishers due to declining catches and rivalry among fishers can be a factor in pushing fishermen towards supplementing their meager incomes by conducting pirate attacks. Secondly, due to increased competition for fish stocks and the division of the sea into maritime zones under national jurisdiction, fishers – especially those fishing illegally in foreign waters – have in some areas become easy prey for pirates.”⁶⁸³

5.3.2 Involvement of fishing vessels in security-related offences

In the 2003 *Report of the Panel of Experts in Somalia Pursuant to Security Council Resolution 1474* the Panel observed that “the preferred method of sanctions busting is to transport weapons in a small fishing vessel or concealed in an aircraft’s cargo hold”.⁶⁸⁴ According to the Expert Panel, Somalia’s fleet of traditional *dhow*s (mostly

⁶⁷⁹ Interview on file with UNODC.

⁶⁸⁰ O’Neill “IMO to Tackle Coastal Piracy” Lloyd’s List, 2 October 2010, available at <http://www.opensourcesinfo.org/journal/2007/10/3/imo-to-tackle-coastal-piracy.html>.

⁶⁸¹ Ecoterra International “Seized South Korean Fishing Vessel Back in Kenya” Scoop Independent News, 16 February 2011, available at <http://www.scoop.co.nz/stories/WO1102/S00560/seized-s-korean-fishing-vessel-back-in-kenya.htm>.

⁶⁸² See also *ibid*.

⁶⁸³ Liss “The Roots of Piracy in Southeast Asia” Essay based on a paper presented at Australia and Asia: Issues in Global Security, University of Western Australia, 17 August 2007, available at <http://www.nautilus.org/publications/essays/apsnet/policy-forum/2007/the-roots-of-piracy-in-southeast-asia>.

⁶⁸⁴ Report of the Panel of Experts in Somalia Pursuant to Security Council Resolution 1474 (2003) at para 3 and repeated in para 73.

motorized vessels with a cargo capacity of 50-750 tons) has been supplemented by a group of smaller fishing vessels:

“Small (5-20 meter), relatively fast, fiberglass craft, motor driven boats that were originally designed for fishing, are found sailing between the coast of Yemen and the northern Somali coast. These also sail between the northern coast of Kenya and southern Somalia and have become the vessel of choice for moving individuals or small groups of people and arms to and from Somalia. These vessels can sail quickly (overnight), and undetected, from Yemen to the remote Somali coast and if challenged can claim to be travelling to or from Somali fishing grounds. Vessels such as these were used by the perpetrators of the November 2002 terrorist attacks near Mombasa, Kenya, on at least two occasions for transport between Kenya and Somalia: the MV Midrasah in April 2002 and the MV Sauda in December 2002.”⁶⁸⁵

A 2007 joint UNODC and World Bank report also suggests that fishing vessels are part of the *modus operandi* of firearm smuggling in the Caribbean.⁶⁸⁶ There are media reports of alleged “guns-for-drugs” trade involving fishing vessels in the region.⁶⁸⁷ According to a 2009 study by Hastings, fishing vessels have been caught gunrunning in the East China Sea.⁶⁸⁸ There are also anecdotal media reports of illicit traffic in firearms on board fishing vessels between Taiwan (province of China)⁶⁸⁹ and the Philippines.⁶⁹⁰

Fishing vessels and trafficking in weapons

According to 2010 media reports, a fishing vessel was seized off the coast of Yemen carrying a limited supply of machine guns and night binoculars. Fourteen crewmembers from India and Somalia were apprehended.⁶⁹¹ Yemeni officials are quoted as linking the seizure to possible terrorist activities by Yemen’s al-Qaida sub-group.⁶⁹²

⁶⁸⁵ Ibid para 122.

⁶⁸⁶ UNODC and the World Bank “Crime, Violence, and Development: Trends, Costs, and Policy Options in the Caribbean” Report No. 37820 (2007) at 101 and 130, available at http://www.unodc.org/pdf/research/Cr_and_Vio_Car_E.pdf.

⁶⁸⁷ Hines “Report those Criminals!” Jamaica Observer, 29 July 2010, available at http://www.jamaicaobserver.com/westernnews/Report-those-criminals_7834842.

⁶⁸⁸ Hastings “Illicit Flows in the Hong Kong-China-Taiwan Triangle” 45(2) Issues & Studies (2009) 185 at 202.

⁶⁸⁹ AFP “181 Smuggled Guns Seized” The Straits Times, 27 September 2009, available at http://www.straitstimes.com/Breaking%2BNews/Asia/Story/STISStory_435037.html and “Gun Smuggling Operation on Boat is Busted” The China Post, 27 September 2010, available at <http://www.chinapost.com.tw/taiwan/local/kaohsiung/2009/09/27/226344/Gun-smuggling.htm>.

⁶⁹⁰ Evangelista “Documents: PNP Officers Work with Gun Smugglers” Manila Standard Today, 5 March 2007, available at <http://www.manilastandardtoday.com/2007/mar/5/news2.htm>.

⁶⁹¹ “Fishing Vessel Seized off Yemen Carrying Weapons” Yemen Post, 10 May 2010, available at <http://www.yemenpost.net/Detail123456789.aspx?ID=3&SubID=2169> and AP “Yemen Seizes Fishing Boat Carrying Automatic Weapons, Night Vision Goggles” News 88.9, 9 May 2010, available at <http://www.news889.com/news/world/article/53040--yemen-seizes-fishing-boat-carrying-automatic-weapons-night-vision-goggles>.

⁶⁹² AP ibid.

In the 2008 terrorist attack in Mumbai, the terrorists entered Indian territorial waters and hijacked an Indian fishing trawler, the M.V. *Kuber*, to transport the terrorists and arms closer to Mumbai from where the terrorists entered Mumbai using inflatable dinghies.⁶⁹³

5.3.3 Findings

The available literature suggests that large-scale marine living resource crimes may be causally linked to piracy. Fishing vessels are targeted by pirates and used as “mother ships” for pirate activities. The information gathered in the course of the study and experts consultations offer grounds to believe that fishing vessels and crew involved in marine living resource crimes are particularly vulnerable in cases of pirate attacks.

Reports suggest that fishing vessels are used for the purpose of illicit traffic in guns and furtherance of terrorist acts in some regions of the world. One source indicate that fishing vessels are used due to their ability to “blend in” among legitimate fishing vessels and that less effort is made to monitor these vessels at sea. It was pointed out by experts during consultations that a particular problem is the lack of satellite tracking of fishing vessels, which hampers surveillance of fishing vessels that may be engaged in gunrunning and acts of terrorism at sea. A further problem seems to be the lack of transparency of vessel and ownership identity in the fishing industry.⁶⁹⁴

⁶⁹³ The Court of Mumbai Final Form/Report at 11-12, available at <http://www.hindu.com/nic/mumbai-terror-attack-final-form.pdf>.

⁶⁹⁴ See e.g. OECD/Maritime Transport Committee Ownership and Control of Ships (2003), available at <http://www.oecd.org/dataoecd/53/9/17846120.pdf>.

6. SUMMARY AND RECOMMENDATIONS

6.1 Summary of main findings

This study posed the questions (a) whether there is transnational organized crime and other criminal activity in the fishing industry and, if so, (b) what the vulnerabilities of the fishing industry are to transnational organized crime or other criminal activity. The research took the form of a six-month desk study of available literature, supplemented by *ad hoc* consultations with individuals and organizations, as well as a two-day expert consultation held in Vienna, Austria.

As the research was conducted as a desk study there was limited opportunity to gather empirical data. This means for instance that the study was mostly unable to determine the prevalence of transnational organized crime in the fishing industry.

The study considered the involvement of the global fishing industry in most relevant forms of transnational organized crime (trafficking in persons, smuggling of migrants and illicit traffic in drugs and psychotropic substances) and links to other relevant forms of criminal activity (marine living resource crime, corruption, piracy and other security related crimes). The relatively short time period and the amount of material to be covered meant that the study had to focus on main trends and vulnerabilities, leaving more detailed analyses to future studies. This study focused on the involvement of the fishing industry in transnational organized crime and criminal activities by asking how or in what capacity the fishing industry is involved in these activities, and why the fishing industry is susceptible to crime. As such, the study supplements rather than supersedes the existing research into transnational organized crime and other forms of criminal activity.

It is important to emphasize that the study did not set out to tarnish the reputation of the fishing industry. As seen in Chapter 1, Section 1.5, the global fishing industry plays an indispensable role as a supplier of essential nutrition, and is critical to food security in many vulnerable regions around the world. It is also important to keep in mind that the fishing industry is a large employer: FAO estimates that nearly 180 million people are employed as fishers or in secondary industries relating to fishing activities. Fishers are engaged in one of the most dangerous occupations in the world: the loss of lives of fishers is much higher than many other comparable industries.⁶⁹⁵ The fishing industry is a major food provider, which a large part of the global population depends upon as their livelihood.

Rather, this study sought to determine whether criminal activity takes place within the fishing industry to the detriment of law-abiding fishers, the legitimate fishing industry, local fishing communities and the general public alike. The study sought to find out amongst others whether there are grounds to believe that fishers are vulnerable to criminal acts perpetrated against them; whether the fishing industry is involved in smuggling operations including smuggling of migrants and illicit traffic in weapons and drugs – or merely

⁶⁹⁵ See e.g. ILO “Improving Living and Working Conditions in the Fishing Sector – 96th Session of the International Labour Conference” ILO, 29 May 2007, available at http://www.ilo.org/global/about-the-ilo/press-and-media-centre/press-releases/WCMS_082685/lang--es/index.htm.

vulnerable to be used for these purposes by organized criminals; and whether criminal activities and corruption may be undermining the sustainability of the fishing industry as a whole.

The study raises a number of issues that give cause for concern. Perhaps the most disturbing finding of the study was the severity of abuse fishers trafficked for the purpose of forced labour on board fishing vessels are subjected to. The available literature and consultations with experts during the study suggest that trafficking victims on board fishing vessels are exposed to cruel and inhumane treatment in the extreme.⁶⁹⁶ They are held as *de facto* prisoners of the sea, with little opportunity of escape. Their living and working conditions are abysmal and weaknesses, illnesses or complaints are forcefully punished. Some anecdotal reports suggest that victims of forced labour are at times murdered and their bodies disposed of at sea.

In a global market place, the fish these men have caught working more than 18 hours a day every day for years on end for salaries of often as little as \$200 per month (if at all), whilst frequently caught in a web of debt and extortion, could potentially be served on any dinner plate anywhere in the world. The trend seems to move towards increasing use of migrant workers in traditional fishing communities in developed countries. Both developed and developing States have reason to be alert to the possibility of human rights abuses, forced labour and trafficking in persons in the fishing and fish processing industry, both on land and off their coasts. The lack of awareness of the plight of fishers trafficked for the purpose of forced labour on board fishing vessels means that they are not provided the protection and assistance available to trafficking victims.

The study found that marine living resources have become a high profit, low risk target for criminals. "Marine living resource crime" is a criminal conduct that may have negative consequences on the marine living environment. Typically, marine living resource crimes are offences against marine living resource management and conservation regulations. A number of States regard marine living resource crimes as the predicate offences of up- and downstream crimes such as money laundering, corruption, handling of stolen goods and tax- and customs fraud.

The study found that there is a link between fishing vessels engaged in marine living resource crimes and trafficking in persons for the purpose of forced labour on board fishing vessels. This link gives cause for particular concern regarding the lack of oversight and accountability of fishing operators engaged in marine living resource crime. It also highlights the need to protect victims of human trafficking from law enforcement actions against marine living resource crimes.

The study observed that transnational organized criminal groups have become engaged in the trade of high value, low volume marine living resources such as abalone. The involvement of transnational organized criminal groups in marine living resource crime is disturbing, as they seem to amongst others be associated with other forms of criminal activities such as drug trafficking and violence. These syndicates solicit the services of artisanal fishers and unemployed divers as poachers and local criminal groups as middlemen, with whom they barter abalone for drugs, particularly ATS and ATS precursors. The use of these drugs is believed to have devastating effects on local communities. The

⁶⁹⁶ See Chapter 2.

ecological environment is also harmed: Poaching is about to permanently deplete abalone stocks in some of the most affected regions. The fact that marine living resources are becoming more valuable due to over-exploitation means that the involvement of transnational organized crime syndicates in marine living resource crimes is likely to intensify.

The study examined transnational fishing operators that are offenders of organized marine living resource crimes. The outcome of this study points towards the fact that transnational fishing operators involved in marine living resource crimes targeting valuable fish stocks can be highly organized. They are for instance often structured as sophisticated transnational corporate groups and use finance havens to hide the identity of the beneficial owners. In this regard marine living resource crimes draw parallels to other forms of financial crime such as money laundering and tax evasion. Illegal fishing operations seem to be large and complex in the sense that they involve fleets of fishing vessels that share the same supply, crewing and refueling services. These vessels also conduct transshipments of illegally captured fish at sea. Illegally captured fish is typically added to legally captured fish and laundered on to the market by means of incorrect catch documentation or through evading or bribing fisheries inspectors in port.

It appears that corruption facilitates marine living resource depletion. Bribery of fisheries inspectors in port or fisheries management officials to issue licenses with too high quotas or on conditions adverse to management and conservation objectives is a prevalent concern in some regions. Sustainable management and conservation of marine living resources is dependent on reliable data and adherence to quota and gear restrictions. As such, corruption harms the very core of local and regional fisheries management and conservation regimes. The negotiations of “access right” agreements points to the vulnerability of States in possession of valuable natural resources, and the lack of transparency and possibility of corruption in these negotiations may explain why these agreements are believed to have had an adverse effect on the local fishing industry and the sustainable management of marine living resources in some States.

Another issue raised by the study is the role of fishing vessels in criminal activities at sea. Fishing vessels are used for the purpose of smuggling of migrants, illicit traffic in drugs (primarily cocaine), illicit traffic in weapons, and acts of terrorism. In this context it is particularly disturbing to note that there is no proper oversight with the ownership of fishing vessels internationally. Second hand fishing vessels are also readily available due to surplus infrastructure brought about by a declining fish stocks. A further concern is the fact that there is no comprehensive system of tracking fishing vessels interaction with other vessels at sea, in contrast to merchant vessels.

As noted above, fishing vessels engaged in criminal activities are often registered in States that are unable or unwilling to exercise their criminal enforcement jurisdiction or that allow fishing vessel owners to remain anonymous through the registration of for instance shell companies as owners on the ship register. The lack of ownership transparency and the inability or unwillingness of some flag States to exercise their law enforcement jurisdiction undermines the criminal law enforcement of transnational organized crimes such as human trafficking and hampers investigation and prosecution of persons involved in transnational organized criminal groups. For this reason it is particularly disturbing to note that developing States are targeted by corporate entities from more developed States with the aim to set up a shipping register in vulnerable States and avail themselves of the benefits and

competitive advantages that are gained from amongst others the inability or unwillingness of these States to exercise their law enforcement jurisdiction. The study found recent indications that some of the flag States targeted by these corporate entities are concerned about the possibility that corruption may have been involved in the contractual negotiations when establishing these commercial registers.

The role of fishers in criminal activities was considered throughout the study. However, the study found that although fishers are often recruited by organized criminal groups on the basis of their skill and local knowledge of the sea they are seldom seen as the masterminds behind the criminal activity. At the same time 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. This is particularly unfortunate in circumstances where fishers are held as victims of trafficking for the purpose of forced labour on board fishing vessels.

The study also found suggestions that fishers are involved in criminal activities due to declining fish stocks in many regions of the world. Overfishing, brought about by failed management and conservation efforts, facilitated by corruption, and reinforced by marine living resource crimes, has caused serious depletion of fish stocks. The effect of overfishing on fishing communities that depend on fishing to make a living or as a valuable source of food may contribute to the vulnerability of fishers to criminal activity. There are suggestions that the desperation of some of these fishing communities may be the cause of piracy in Somalia and South East Asia, and experts consulted in the course of this study indicate that vigilante groups in vulnerable West African fishing communities may also be in formation due to marine living resource crimes taking place undeterred off their coast.

6.2. Main gaps in the current knowledge about transnational organized crime in the fishing industry

There are a number of issues identified by this study that require further research. A main gap identified throughout the research is empirical studies on the extent to which the fishing industry, actors within the fishing industry or fishing vessels are involved in transnational organized crime. In the context of human trafficking of fishers for the purpose of forced labour on board fishing vessels, most sources are anecdotal. The few empirical studies that exist of this form of criminal activity are limited in size and geographical reach. It would also seem that human trafficking in the fishing industry is referred to as trafficking in for instance the agriculture or manufacture industry. This is unfortunate, as human trafficking for the purpose of forced labour on board fishing vessels at sea raise issues of particular relevance to the fishing industry. Further research is required into trafficking in persons on board fishing vessels for the purpose of forced labour and efforts should be made to specify instances of human trafficking in the fishing industry as distinct from trafficking in for instance the agriculture or manufacture industries.

The available literature on human trafficking in the fishing industry seems to focus on offenders such as the recruiters and the senior crew. The demand is however created by fishing operators that relate to a market of fish traders and consumers. More needs to be understood about the role and *modus operandi* (such as incorporation strategies) of fishing operators involved in human trafficking for the purpose of forced labour on board fishing vessels; the benefit they accrue from the criminal activity; and the link between human

trafficking and marine living resource crime. More needs to be known about the manner in which market mechanisms influence fishing operators' decision to exploit fishers for the purpose of forced labour, as well as the ability of States and consumers to influence fishing operators' decisions.

The information available on smuggling of migrants is sparse in general and even more so in the context of migrant smuggling syndicates' use of fishing vessels and recruitment of fishers. More sources are obtainable in relation to the use of fishing vessels and the involvement of actors within the fishing industry in relation to illicit traffic in drugs, in particular cocaine. Whereas this study did not find that the fishing industry is involved in smuggling of migrants or illicit traffic in drugs in a significant manner, the study did find suggestions that actors within the fishing industry – particularly fishers – are involved on an *ad hoc* basis and that fishing vessels are used in furtherance of these criminal activities. The same seems to be the case in the context of illicit traffic in weapons and acts of terrorism. This study came across indications that fishers are inclined to turn to criminal activity due to declining fish stocks because of overfishing, caused by amongst other marine living resource crimes. Marine living resource crime is for instance cited as a cause of the recent surge of pirate activities off the Horn of Africa. More needs to be learned about the impact of depleting fish stocks, the loss of livelihoods and of an important food source on fishers and coastal communities, and the inclination of fishers and coastal communities to engage in criminal activities. Moreover, depleting fish stocks has led to a surplus of fishing vessels, but too little is known about the activities these vessels are put to when they are no longer used as part of fishing operations.

This study found indications that corruption is undermining marine living resource management and conservation efforts in relation to issuance and control of fishing licenses, quota and gear restrictions (amongst others), and may be undermining negotiations of access right agreements between more developed countries and developing countries. More needs to be learned about corruption in relation to the issuance and control of fishing licenses, quota and gear restrictions and the negotiation of access agreements, as well as how corruption in these contexts can be prevented and combated.

Finally, the study found suggestions that the negotiations between commercial registers and flag States is vulnerable to corruption. As noted above, flag States hold a central role in the governance of the seas (including criminal law enforcement) and in ensuring compliance with marine living resource management and conservation efforts. The outcome of the study points towards the fact that dishonest motivations may influence flag States in their agreements to allow commercial registers to operate their shipping register which in turn could potentially undermine the international legal framework of law of the sea and sustainable marine living resource management and conservation. More needs to be learned about the relationship between commercial registers and flag States, the negotiations between commercial registers and flag States, and the mandate these commercial registers have to represent the flag State internationally and the interests which they then represent.

6.3 Main vulnerabilities of the fishing industry to transnational organized crime and other criminal activity

The main motivation of criminals is profit. The essential vulnerability to any criminal activity is thus the greed, need or ignorance of profit-seeking individuals. However, whereas profit is generic to criminal activities, certain vulnerabilities are most peculiar to criminal activities relating to the fishing industry or fishing vessels.

6.3.1 Vulnerabilities related to opportunity

Globalization creates complex linkages between international actors or States and increases the profit-making potential and opportunity of transnational organized criminal groups. The effect of globalization is also felt in the fishing industry. The fishing industry is global in the sense that fishing vessels and fishing operators can gain access to the world's oceans and ports. All vessels have access to the high seas, and vessels may traverse EEZs and have the right of innocent passage of territorial seas. The transnational mobility of fishing vessels creates opportunity for criminal offences involving for instance transport of drugs, migrants and weapons. Irregular migrants, illicit drugs, weapons, and victims of trafficking can be transhipped at sea, further facilitating movement over long distances.

Fish and fish products may provide a good cover for illicit traffic in drugs, as drug detection dogs find it hard to smell drugs among fish products and detection often requires thawing of valuable cargo. Fish is traded using a network of distributors which may further facilitate effective transport and distribution of drugs.

This study also found a number of references to the use of fishing vessels and fishing companies as a cover for criminal activities. The argument was that fishing vessels do not give rise to suspicion and will easily blend in with legitimate activities at sea. In many regions second hand fishing vessels will be inexpensive and easy to acquire as overfishing has led to depleted fish stocks and surplus fishing infrastructure.

6.3.2 Vulnerabilities related to governance and rule of law

The study identified vulnerabilities pertaining to governance and rule of law in primarily four contexts. First, there seem to be a lack of at-sea surveillance of fishing vessels at sea and their transshipments. Second, a recurrent issue throughout the study is the lack of transparency in the fishing industry in relation to identification of vessels and vessel ownership. Third, law enforcement in the fishing industry seem to be lacking due to the inability or unwillingness of flag States to exercise their law enforcement jurisdiction. And last, fishers appear to be inadequately protected from exploitation on board fishing vessels at sea due to a lack of enforceable regulation of the safety and working conditions of fishers.

6.3.2.1 Vulnerabilities related to at-sea surveillance of vessel movements and transshipments

In recent years Intelligence-led Policing (ILP) has emerged as a resource effective investigative tool to ensure targeted investigation and enforcement of criminal activities. ILP relies on data gathering through surveillance to make risk analyses. States are known to assign the task of fisheries management surveillance to national or regional Coast Guard

organizations. Depending on the requirements of the State or region, at-sea surveillance may be performed by small naval vessels, patrol boats that frequent the State's coastal area to detect marine living resource crimes, smuggling, piracy or irregular immigration. The focus, at least in the outer areas of the EEZ, will often be on fisheries compliance and fishery officers will be conducting the visits.

Although the inspections made by these patrol boats have a deterrent effect, in particular if they make unannounced visits, they require considerable infrastructure and resources to maintain effective control in large and often distant areas.⁶⁹⁷ To complement physical patrols and make them more resource efficient, FAO recommends that flag States use a Vessel Monitoring System (VMS). VMS is a satellite-based vessel tracking system which provides information about fishing vessel identity and activity. Importantly VMS applies to all vessels involved in fishing, i.e. fishing vessels and fish carriers. The VMS equipment (an antenna and transceiver) is positioned on board the vessel and these submit the information via a number of different satellite service providers (such as Argos, Inmarsat, Iridium, Orbcomm and Qualcomm) to a shore based Fisheries Monitoring Center (FMC) in the flag State. VMS information is sent to the flag State only and sharing between States takes place through bilateral agreements and must be requested on a case-by-case basis.

From a general law enforcement perspective the main limitations associated with VMS is that the information is owned by flag States and may not be easily shared, it is voluntary for flag States to implement, and it is mainly a fisheries management tool and not geared towards general crime prevention. A further limitation is that VMS data is not at present readily available to be shared with the tracking systems in the rest of the merchant fleet, AIS and LRIT,⁶⁹⁸ established by the IMO. Fishing vessels' interaction with other vessels is therefore not always monitored.

6.3.2.2 Vulnerabilities related to a lack of transparency

In addition to physical vessel surveillance it is important to have access to information about the identity of the persons involved in suspicious activity in order to effectively target, investigate and prosecute transnational organized crime. Transnational organized crime in the fishing industry will often manifest itself through fishing vessel activity. However, this study found that fishing operators engaged in illegal activities at sea are able to exploit secrecy laws in finance havens to hide the identity of the beneficial or real owners of vessels. During consultations the lack of ownership transparency was repeatedly pointed out as one of the greatest obstacles to investigations of illegal activities at sea including instances of transnational organized crime.

Typically beneficial ownership interests in vessels are hidden by registering vessels in flag States that allow a foreign-owned entity to be registered as owner of the vessel. In 2003 the OECD published the report *Ownership and Control of Ships* detailing the practice of

⁶⁹⁷ See e.g. Cacaud "Legal Issues Relating to Vessel Monitoring Systems" Regional Workshop on Fisheries Monitoring, Control and Surveillance, 29 June-3 July 1998 at 3.

⁶⁹⁸ Automatic Identification System and Long Range Identification Tracking, established in terms of Chapter V of the Safety of Life at Sea Convention (SOLAS).

anonymous beneficial ownership of vessels.⁶⁹⁹ Some of the main findings of the report are repeated here:

- It is very easy, and comparatively inexpensive, to establish a complex web of corporate entities to provide very effective cover to the identities of beneficial owners who do not want to be known.
- While some ship registers actively facilitate and promote anonymity for reluctant owners, the principal mechanisms are not the registers themselves, but the corporate mechanisms that are available to owners to cloak their identity.
- These corporate mechanisms are freely available in many jurisdictions, they are quite legal, and will provide a properly incorporated international business corporation that can transact business almost anywhere in the world (but generally not in the country of incorporation).
- From the perspective of the ship-registering process, the most important single feature that facilitates anonymity of individuals is the ability (quite sensible from a commercial perspective) of corporations to be registered as owners of vessels.
- The most common and effective mechanisms that can provide anonymity for beneficial owners include bearer shares, nominee shareholders, nominee directors, the use of intermediaries to act on owners' behalf and the failure of jurisdictions to provide for effective reporting requirements.
- The most common institutional devices used to create corporations are private limited companies, and international business corporations (IBCs). Other devices such as trusts, foundations and partnerships may also be used.⁷⁰⁰

According to the OECD,

“...the normal procedure would be to use a multi-layered approach, employing a variety of methods, spread over a number of different jurisdictions. Such corporate arrangements are common in the off-shore sector, and any investigators, be from taxation authorities, law enforcement agencies, security forces or others will find the cloaking processes almost impenetrable”.⁷⁰¹

In the merchant marine several measures have been taken to improve transparency. Chief among these are the IMO “identification number schemes”. IMO currently requires all passenger vessels of more than 100 GT and all cargo vessels of more than 300 GT to have and display an IMO ship identification number.⁷⁰² In addition, flag States may require companies and registered vessel owners to obtain IMO identification numbers.⁷⁰³ The IMO identification numbers stay the same regardless of change of ownership, flag or name. The numbers are assigned by a private company (IHS Fairplay), which maintains a history of the numbers in a database accessible by the public.⁷⁰⁴

Fishing vessels are not included in the IMO identification number schemes. FAO is however currently developing a Global Record of the fishing fleet based on the expertise available at IMO and IHS Fairplay. The Global Record is likely to become a significant contribution to transparency in the fishing industry if it attains member State endorsement and compliance.

⁶⁹⁹ See also Financial Action Task Force/OECD The Misuse of Corporate Vehicles, including Trusts and Company Service Providers (2006), available at <http://www.fatf-gafi.org/dataoecd/30/46/37627377.pdf>.

⁷⁰⁰ OECD/Maritime Transport Committee Ownership and Control of Ships (2003) at 3, available at <http://www.oecd.org/dataoecd/53/9/17846120.pdf>.

⁷⁰¹ Ibid 12 at 62.

⁷⁰² Regulation XI-1/3.1-3.2 of SOLAS read with resolution A.600(15) (IMO Ship Identification Number Scheme).

⁷⁰³ Regulation XI/3-1 of SOLAS.

⁷⁰⁴ Available at <http://www.ihsfairplay.com/>.

It is envisaged that the Global Record will be implemented gradually and eventually provide a worldwide database on information pertaining to the identity of fishing vessels and their owners, safety records, and legal and illegal fishing activities.⁷⁰⁵

6.3.2.3 Vulnerabilities related to criminal enforcement jurisdiction

A further impediment to effective enforcement of transnational organized crime and other forms of criminal activities in the fishing industry is the inability or unwillingness of flag States to exercise their criminal enforcement jurisdiction. These flag States – often referred to as “flags of convenience” (FOCs) – are targeted by corporate entities and unscrupulous fishing operators because they are amongst others unlikely to investigate and prosecute criminal activities.

The principles of “freedom of the high seas” and its corollary, the exclusive jurisdiction of flag States over vessels flying their flags, have long established roots in international law of the sea.⁷⁰⁶ The default rule is that the flag State has criminal enforcement jurisdiction over vessels flying its flag.⁷⁰⁷ It is thus the flag State that bears the primary responsibility to investigate and prosecute crimes committed on board its vessels. Effective enforcement of criminal activities at sea will therefore to a great extent depend on the willingness and ability of the flag State to enforce its criminal jurisdiction.

The failure of flag States to meet their international obligations has put the legal framework of ocean governance under strain. The impediments to law enforcement and prosecution associated with FOCs have prompted the international community to develop and strengthen alternative forms of State enforcement jurisdiction. In the context of the merchant marine a solution has been found by supplementing flag State jurisdiction with port State jurisdiction.

Port State jurisdiction is a pragmatic solution taking advantage of territorial jurisdiction of port States over their ports and internal waters. Port States have no right under the LOSC to prosecute for failure to comply with required standards whilst at sea. However, they have the right to set conditions upon which entry to port may be accepted. Merchant vessels are currently subject to regional Port State Control (PSC) regimes to ensure that vessels meet international safety requirements when they arrive in port. During PSC the vessels’ compliance with a large number of international safety and labour instruments is examined.⁷⁰⁸ Non-compliance is enforced through detentions and banning from ports throughout the region.⁷⁰⁹

PSC does not apply to fishing vessels. On the other hand, FAO has recently introduced Port State Measures (PSM) for fishing vessels in the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSM IUU). The

⁷⁰⁵ Report of the FAO Technical Consultation to Identify a Structure and Strategy for the Development and Implementation of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels 8-12 November 2010 at Figure 1 at 5, available at <http://www.fao.org/docrep/013/i1938e/i1938e00.pdf>.

⁷⁰⁶ Article 92(1) of the LOSC.

⁷⁰⁷ Ibid.

⁷⁰⁸ As an example, see Section 2.1 of the Paris Memorandum of Understanding (MOU), available at http://www.parismou.org/Organization/2010.12.27/Memorandum_of_Understanding.htm. A list of 72 certificates and documents examined during the initial PSC is provided in Annex 10.

⁷⁰⁹ See e.g. Sections 3.4 and 4 of the Paris MOU.

focus of the PSM IUU is however limited to combat IUU fishing,⁷¹⁰ and not for instance the safety or working conditions of crew on board fishing vessels.

6.3.2.4 Vulnerabilities related to the lack of regulation of safety and working conditions on board fishing vessels

ILO estimates that 24.000 fishers lose their lives every year.⁷¹¹ The situation is particularly perilous for victims of trafficking for the purpose of forced labour on board fishing vessels, children as well as adults.

The main international legal instrument governing safety of life at sea is the Safety of Life at Sea Convention (SOLAS). SOLAS contains comprehensive and detailed regulations of the safe construction, operation, and equipment of vessels, and provides for regular independent surveys to ensure that the provisions are met.⁷¹² These surveys are undertaken by independent “classification societies” that issue certificates of compliance or “class”. Class certificates are a pre-condition in most commercial transactions and to obtain (at times compulsory) insurance and access to port. SOLAS also include the International Safety Management (ISM) Code in Chapter IX. The ISM Code obliges ship owners to ensure that a safety management system is in place for each individual vessel to ensure the safe operation of the vessel and accident reporting. ISM code compliant vessels are issued a certificate. ISM certificates are a condition for entry to port.

The IMO Convention on Standards of Training, Certification and Watchkeeping of Seafarers (the STCW Convention) regulate working conditions on fishing vessels further. The STCW Convention was subject to major revision in June 2010 and these revisions will enter into force in 2012. Among the new provisions are reviewed conditions for work hours and rest, occupational health and the medical fitness standards of seafarers.

Fishing vessels are generally excluded from SOLAS and excluded entirely from the STCW Convention. To fill this gap the IMO has established two industry specific legal instruments; the Torremolinos Protocol of 1993 (“SOLAS” for fishing vessels) and the Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel Convention (STCW-F Convention) of 1995.⁷¹³ The Torremolinos Protocol and the STCW-F Convention have not been widely ratified and are not yet in force.⁷¹⁴ In their place FAO, ILO and IMO have created a number of voluntary guidelines including the Code of Safety for Fishermen and Fishing Vessels; Voluntary Guidelines for the Design, Construction and Equipment of Small Fishing Vessels; and the Document for Guidance on the Training and Certification of Fishing Vessel Personnel. In 2007 the ILO established a binding legal instrument, the ILO Work in Fishing Convention (No. 188) with the aim to

“ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service;

⁷¹⁰ See Preamble of the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, available at <http://www.fao.org/Legal/treaties/037t-e.pdf>.

⁷¹¹ FAO “Safety at Sea in the Fisheries Sector” COFI/2011/Inf.14 at para 2, available at <http://www.fao.org/cofi/24073-0b05ca83759231cbb528622d1c8b4a269.pdf>.

⁷¹² Chapter I, Part B, of the SOLAS.

⁷¹³ Chapter III of the annex to STCW-F.

⁷¹⁴ List of ratifications as of 31 December 2010 was 17 (Torremolinos Protocol) and 14 (STCW-F Convention), available at <http://www.imo.org/About/Conventions/StatusOfConventions/Pages/Default.aspx>.

accommodation and food; occupational safety and health protection; medical care and social security”

The Work in Fishing Convention (No. 188) has one ratification to date and is not yet in force. The fact that the Torremolinos Protocol, the STCW F Convention and the Work in Fishing Convention are not brought into force means that fishers are not afforded the same protection as other seafarers at sea.

6.3.3 Vulnerabilities related to socio-economic conditions

A recurrent issue throughout the study is the vulnerability of fishers and fishing communities due to overfishing and declining fish stocks. As pointed out in Chapter 1, there are an estimated 44,9 million fishers worldwide and approximately 180 million people are employed by the fishing industry as a whole.⁷¹⁵ 3 billion people receive 15 per cent of their animal protein intake from fish,⁷¹⁶ and the reliance on fish as a source of valuable nutrition is particularly strong in developing countries. As noted above, more needs to be learned about the extent to and manner in which overfishing and marine living resource crime affects fishers and fishing communities. In particular, there are indications that fishing communities severely affected by marine living resource crimes may be compelled into criminal activities such as piracy, illicit traffic in drugs, marine living resource crimes and migrant smuggling to make a living.

6.3.4 Vulnerabilities related to social acceptance

The study found a few instances where the fishing industry was believed to be vulnerable to criminal activities due to social acceptance of these crimes.

One such instance is trafficking of children for the purpose of forced labour, particularly into artisanal fishing activities. It would seem that parents and children often believe that it is beneficial for children to become engaged in fishing activities “to learn a profession” despite the fact that this is dangerous work.

It is alleged that parts of the fishing industry in some areas are so accustomed to acting in breach of the rules in relation to quotas limitations, catch documentation and gear restrictions, that contraventions of marine living resource management and conservation regulations is habitual in the industry *per se*.⁷¹⁷

6.4 Recommendations

6.4.1 Reduce profit

Crime is profit-driven. Creating awareness among importers and consumers about the abuse of fishers and the effect of marine living resource crimes on the environment, societies, and the economy may reduce the market and the profitability of these forms of criminal activities.

⁷¹⁵ FAO The State of the World Fisheries and Aquaculture (2010) 7, available at <http://www.fao.org/docrep/013/i1820e/i1820e00.htm>.

⁷¹⁶ Figure 1 *ibid* at 3, 9 and 44

⁷¹⁷ Interview on file with UNODC.

Awareness must be coupled with traceability and transparency. The most successful actions against marine living resource crimes have been through cooperation with legitimate market actors. Transparency and traceability of fish through catch documentation schemes and effective policing will improve the profitability of legitimate actors and create an incentive for further targeting of criminals engaged in marine living resource crimes.

At present many States will not issue fishing licenses to fishing operators that have been involved in marine living resource crimes. The competitive advantage gained by fishing operators involved in human trafficking for the purpose of forced labour on board fishing vessels may give reason to deny these fishing operators fishing licenses, which may further undermine the profitability of the criminal activity.

Profit is also gained from the competitive advantage of registering fishing vessels in flag States that are unable or unwilling to investigate and enforce criminal activities taking place on board fishing vessels (such as human trafficking) or by fishing vessels (such as marine living resource crimes). Corporate entities target these States due in part to their inability or unwillingness to effectively investigate and prosecute the large fleets commercial registers amass on their registers. Improved law enforcement capacity and prosecutorial assistance in these States, as well as awareness raising of the potentially high cost and low benefit involved in outsourcing the operation of shipping registers to corporate entities may undermine the willingness of States to enter into these agreements and the profitability of the arrangement (see also 6.4.3.2 and 6.4.3.3, below).

6.4.2 Reduce opportunity

Fishing vessels are used as vehicles for crime. At present there is a surplus of inexpensive second-hand fishing vessels in many regions of the world due to declining fish stocks. Owners have often invested in the income earning potential of these vessels. Attention needs to be paid to the extent to which these vessels are used for criminal activities such as illicit traffic in drugs, migrant smuggling, and illicit traffic in weapons or marine living resource crimes. In particular, the sale of these vessels to companies with untraceable beneficial owners coupled with registration under flags of convenience ought to be carefully monitored.

6.4.3 Increase risk

The study found that transnational organized crime or criminal activity in the fishing industry or using fishing vessels is frequently a low risk activity. A number of actions could be taken to increase the risk of using fishing vessels or engaging in transnational organized crime or other criminal activity in the fishing industry:

6.4.3.1 Improve intelligence gathering

A major weakness in the current regime is the lack of data available for intelligence gathering. Intelligence gathering is important to ensure targeted and resource effective policing. Whereas merchant vessels are monitored using AIS and LRIT, fishing vessels are frequently left unmonitored. This means that there is often a gap in the monitoring of interaction between fishing vessels and between fishing vessels and merchant vessels. Transshipments of for instance drugs or weapons at sea are therefore difficult to detect and target. In addition, the lack of transparency of beneficial ownership and the absence of a

global record of fishing vessels make it difficult to target the activities of criminals and their fleet.

Whereas the real challenge is to ensure implementation of the existing legal framework or strengthen it, in the interim improved intelligence gathering can also be achieved through targeted and coordinated policing efforts. This would require that vessel surveillance skills be improved, that relevant information about vessel movements is exchanged, and that this information is coupled with data about vessel ownership and history.

6.4.3.2 Improve investigations

Transnational organized criminal groups are by nature difficult to investigate, and it would seem that the lack of transparency of fishing vessel identity and ownership makes it even harder in the context of the fishing industry. At the moment it would seem that fishers are often targeted for their complicity in crimes taking place on board fishing vessels, whereas the criminal activity is likely to have been organized by transnational organized crime syndicates and transnational fishing operators. Increased effort must be made to target the masterminds behind the criminal activity.

The sophistication with which many of these criminal activities are carried out demands specialist training and improved capacity to carry out targeted operations and investigations. It is recommended that resources are made available to improve capacity in the investigation of transnational organized crime taking place at sea and in particular on board fishing vessels or using fishing vessels. Importantly, investigators must be able to coordinate with other State agencies so that information flows are facilitated between for instance customs and immigration officials, anti-drug trafficking investigators, fisheries management officers, financial crime investigators, tax authorities, coast guards and other law enforcement agencies. The transnational nature of these crimes and the criminal groups involved means that joint efforts must be made to improve inter-agency cooperation and information flows between States, as well as within and between regions.

In a number of cases it is the flag State that has jurisdiction to ensure investigation of criminal activities on board fishing vessels and by fishing vessels. Some flag States, particularly developing States where the register is outsourced to a corporate entity, are either unable or unwilling to investigate alleged criminal activity on board fishing vessels or by fishing vessels flying their flag. Flag States that are unable to investigate alleged criminal activity on board fishing vessels or by fishing vessels on their registry ought to be provided financial assistance and expertise in order to adequately meet their international obligations. Recent events in Sierra Leone suggests that awareness raising of the potentially high cost in the form of criminal activities or marine living resource depletion and comparatively little gain from revenues may make flag States more reluctant to outsource their international shipping registry to foreign corporate entities.

6.4.3.3 Improve law enforcement and prosecution

Successful prosecution of transnational organized crime requires the existence of dedicated and specific enabling legislation. Both the United Nations Convention against Transnational Organized Crime and the United Nations Convention against Corruption require States to ensure that criminal activities such as trafficking in persons, migrant smuggling, money

laundering and corruption are criminalized. The effort to criminalize these forms of conduct must be supported and tailored to the particular challenges faced by prosecuting transnational organized crime taking place at sea and in the fishing industry.

Efforts should also be made to criminalize marine living resource crimes to ensure that transnational fishing operators are prosecuted and that the economical, environmental and societal impact of marine living resource crimes committed by amongst other transnational organized criminal groups are duly recognized by the criminal justice system. The competency gained through exchange of good practices.

Resources and assistance ought to be provided to flag States that are unable to prosecute transnational organized crime. This may further undermine the profit and competitive advantage fishing vessels registered in these flag States currently enjoy from their ability to gain profit from criminal activity. Awareness raising may also help convince flag States that are unwilling to prosecute criminal offences conducted by fishing vessels on their register to ensure criminal prosecutions (see above).

6.4.4 Raise awareness

The social acceptance of some forms of criminal activity such as trafficking in children for the purpose of forced labour and habitual marine living resource crimes may be negated to some extent by targeted campaigns to raise awareness about the harmful and costly nature of these activities.

Awareness raising is a powerful tool to undermine the profitability of criminal activities such as human trafficking and marine living resource crimes, as well as the profit gained through the registration of fishing vessels in flag States that are unwilling to exercise their criminal enforcement jurisdiction.

6.4.5 Enhance international cooperation

The study illustrates that transnational organized crime and other forms of criminal activity in the fishing industry are multifaceted and complex. The criminal activity takes place at the intersection of diverse international legal frameworks and institutional competencies. However, the issues raised in this study illustrate the need for closer collaboration between international agencies such as FAO, IMO, UNODC and other relevant agencies and organizations to address *inter alia* the plight of victims of human trafficking at sea; the use of fishing vessels for the purpose of crime; the recruitment of fishers into criminal activities; and the harmful effects of marine living resource crimes and corruption.

6.4.6 Further research

This study identified a number of areas in which further research is recommended (see section 6.2, above). In short, further research is recommended into

- the occurrence of trafficking of men for the purpose of forced labour on board fishing vessels, including identification of cases of trafficking specific to the fishing industry;
- the role and *modus operandi* of fishing operators in human trafficking and the link between human trafficking and marine living resource crimes;

- the effect of depleting fish stocks on fishers and fishing communities and the manner in which declining fish stocks, the loss of livelihoods, and an important food source may be related to criminal activities in these communities and the availability of fishing vessels to facilitate crimes; and
- corruption in the context of the issuance of fishing licenses and quota and gear restrictions; access right agreements; and agreements to allow corporate entities to operate commercial shipping registries on behalf of developing States.



UNODC

United Nations Office on Drugs and Crime

For more information about the work of UNODC against human trafficking and migrant smuggling contact:

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