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The Need for Rigor in the Fisheries Space - Why the Term "IUU Fishing" is a Hindrance

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Abstract

The term "IUU Fishing" has become colloquially synonymous with bad action in the fisheries space. To confront both the sustainability and the security implications of IUU Fishing, however, there is a critical need for greater rigour in defining and dissecting the problem sets so that meaningful solutions can be pursued. Illegal fishing, unreported fishing and unregulated fishing are each distinct issues. At the operational level, the actors who can address illegal fishing are usually maritime law enforcement agencies. But the same navies, coast guards and marine police forces that address illegal fishing have little ability to do anything about unregulated fishing. That is the purview of legislatures and regulatory agencies. So even as a bucket of three seemingly related matters, "IUU Fishing" is a problematic term that combines issues that must be addressed by different actors. Yet beyond illegal, unreported, or unregulated fishing, there are also other fisheries issues that are being mislabeled as "IUU Fishing," making it difficult to recognize their true nature, and thus find effective measures to tackle them. Drug trafficking on a fishing vessel, money laundering through the fishing sector, or using a fishing vessel to collect intelligence on a state's maritime agencies are all outside of the ambit of "IUU Fishing," but are certainly undesirable. In the Caribbean for example, criminal cartels are exploiting gaps between the actors and agencies focused on sustainability and those that are focused on security. As a result, fisheries crimes – both on the water and in the financial record books – undermine the credibility and the integrity of the fishing sector despite not having a direct impact on fish stocks. That degradation of the region's fisheries space has also opened the door to state actors who are looking for inroads to gain strategic presence in the region. As a result, the Caribbean must become more rigorous in recognizing the spectrum of undesirable fishing-related activities throughout the maritime domain, and working within and between governments to combat them.

KEYWORDS: IUU Fishing, Fisheries Crime, Legal and Policy Frameworks, Institutional Gaps, Cooperation

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1. INTRODUCTION

One of the most important topics in environmental conservation, especially in the maritime space, is the global fight against illegal, unreported, and unregulated fishing. Known by the acronym "IUU," these three different categories of concern have been merged into one phenomenon and now represent an almost infinite array of undesirable fisheries activities that go far beyond the term's original meaning. While colloquial "mission creep" may not seem significant, the problem with the blurring of different issues and the gradual evolution of an acronym as a catch-all term is that failing to use specificity in articulating the problem can obscure options for how to solve it. The absence of rigour in distinguishing between illegal fishing, unreported fishing and unregulated fishing, in favour of a term that covers all three has also led to an absence of rigour in recognizing and understanding when something may involve the fishing sector, seem similarly undesirable, but may not be any of those three sorts of activities. Complicating matters further, focusing on sustainability without including the law enforcement agencies can create an operational gap that can then be exploited by nefarious actors.

Different regions face different challenges in the fisheries space, but looking globally, there are at least seven different categories of concern. The first three, of course, are illegal, unreported, and unregulated fishing. The fourth is fisheries crime, which often gets a mention, even when being lumped in with IUU fishing. The remainder, however, as less recognized. State protected illicit fishing has grown in recent years and has taken on different modalities. Hybrid aggression involving fishing vessels is a newer concern where states are creating intentional ambiguity as to whether the purpose of a fleet is peaceful fishing or a less-than-peaceful mission. And finally, at least one state has articulated a strategy to use its distant water fishing fleet for strategic presence to obtain "rights and interests" in the world's oceans.

The fisheries of different regions, the national and regional capacity, the main nefarious actors, and the region's geography all play a role in determining which of the seven categories of concern may be most prominent in any given place. In the Pacific Islands, for example, a keen focus on the fishing sector and extensive monitoring of fishing vessels has limited the chances for drug traffickers to use the fishing sector to move drugs. By contrast, in the Caribbean, fishing vessels are one of the favorite method for trafficking, making fisheries crime a critical challenge there. In Southeast Asia, hybrid aggression, using what look like fishing vessels, appears in the news each week, while in much of Africa, illegal, unreported and unregulated fishing are leading concerns. State protected illicit fishing is appearing in different forms in different places, and most of the world is experiencing the presence of distant water fleets. No region is immune from any of these concerns, however, so it is vital that all maritime actors be more rigorous in recognizing the issues as they arise so that they can recognize how to martial an effective response. Simply labeling all undesirable fishing activities "IUU Fishing" hinders the ability to recognize the problems and truly resolve them.

2. CATEGORIES

Categories 1-3: IUU Fishing

While much has been written about illegal, unreported, and unregulated fishing, a simple question sheds light on why the catch-all term "IUU" is problematic: Who can solve each of the three problems? Illegal fishing is best addressed on the water by maritime law enforcement agencies in cooperation with the fisheries agency. Unreported fishing is primarily addressed by the fisheries agency that oversees the licensing and reporting requirements. And unregulated fishing is a legislative concern where a mix of marine science and regulatory drafting functions are needed. There is limited role, if any, for a navy or coast guard in dealing with unregulated fishing, despite having the lead operational role in illegal fishing, and legislators are highly

unlikely to ever be involved in an on-the-water interdiction. Having all three of these categories under one term can therefore confuse the issue of who needs to be involved in resolving the specific issue at hand. At the same time, colloquial usage of "IUU" has muddied the discourse such that it is used to cover things like high seas fishing which, while possibly unsustainable and thus undesirable, are often not illegal, unreported, or unregulated.

Ironically, however, there are also a variety of activities that are often overlooked when discussing IUU fishing that are, in fact, part of the concern. Enshrined in law by the International Tribunal for the Law of the Sea in the Virginia G case, the bunkering (or refueling) of a vessel engaged in IUU fishing becomes illegal. Such an offense can be interdicted in the exclusive economic zone (EEZ) of a state – the area where the state's authority is limited to regulation of the living and non-living marine resources. In other words, as a matter of law, the aiding and abetting of IUU fishing is also an offense that falls under the broader heading of IUU fishing. The starting point must be illegal, unreported, or unregulated fishing, but any vessel – even a tanker or a supply vessel – that supports that activity may become guilty of that same offense. Indeed, bunkering in the EEZ is only illegal either when the oil is sanctioned, or when the vessel receiving the fuel is engaged in IUU fishing.

Being rigorous in examining this threefold concern, therefore, is not just about excluding issues like those below that are often uncritically lumped into the term IUU fishing. It is also about ensuring that issues – like the subordinate concerns of aiding and abetting – are not overlooked or inadvertently excluded.

Category 4: Fisheries Crime

One of the concerns that most frequently gets lumped under the term "IUU Fishing" despite being a different phenomenon is that of fisheries crime. Whereas illegal fishing is fishing that is in some way violating the law, fisheries crime is a violation of the law that does not involve actual fishing. Fisheries crime is the use of the fishing sector for the commission of other crimes – like trafficking or smuggling. The two may be linked – for example, the use of forced labor of enslavement of people on fishing vessels would be fisheries crime. In such instances, the vessel may both be engaging in illegal fishing, at the same time as committing a separate criminal offense that would still be a crime regardless of whether the vessel fished. Generally, though, IUU Fishing is a sustainability concern, whereas fisheries crime tends not to directly affect sustainability. Fundamentally, one is about fish and the other is about using the fishing sector for illicit purposes.

Usually, the discourse on distinguishing different sorts of unlawful and undesirable fisheries activities ends with these first four categories – the triple headed hydra of IUU fishing plus fisheries crime. A closer look, however, reveals that there are at least three additional categories of concern that need to be recognized. As is the case with IUU fishing, being clear in understanding the issue is a prerequisite for determining who can resolve it and what they can do to be effective in changing the situation in favor of greater sustainability, security, and stability.

Category 5: State Protected Illicit Fishing

Several motivations – the most obvious of them being access to resources – have led some states to use different aspects of the state apparatus to protect illegal, unreported or unregulated fishing by vessels flying its flag or owned by its nationals. While this concern is not free-standing – as in, there must be some illicit activity by a fishing vessel, as well – it is a separate concern from that foundational offense. Usually, states will protect their illicit fishing with one of five main tools: (1) Physical Protection, (2) Diplomatic Pressure, (3) Development Leverage, (4) Audible Silence, or (5) Corruption.

Physical protection is the most obvious form of this concern. States may deploy their law enforcement or military assets to another state's EEZ to prevent that coastal state from interdicting their vessels. In other words, state A may try to physically stop state B from boarding or arresting fishers from state A, even when they are fishing illegally in state B's waters. This has been happening more frequently, and tends to raise tensions between the states, well above the level of maritime enforcement agencies. Diplomatic pressure also uses state assets, but in a more coercive way, relying on diplomats and diplomatic relations to protect the illicit fishing activities. Development leverage may be the most coercive of all the approaches, where the IUU fishing is effectively excused on account of development aid. Essentially the donor is asking – directly or indirectly – for the state to turn a blind eye to illicit and unsustainable fishing in exchange for aid projects. Audible silence is almost the inverse: it is the unwillingness to take responsibility and act when a state's fishing fleet is exposed for undesirable or unlawful behavior. And finally, corruption can come in many forms. In some cases, it can mean that even after an arrest, vessels are let free on account of corrupt practices by one state to another. In other cases, officials may be bought off to ensure that a certain company or fleet of vessels do not garner the attention of law enforcement. And in others, licenses can be bought that make what should be illegal activity "legal" on paper.

When one state is working to enforce its sovereign rights over the living marine resources of the EEZ, and another sovereign state – by whatever means – is undermining those rights, tensions are bound to rise. This category of concern can really diminish the rule of law and lead to other concerns well beyond the sphere of fisheries or even maritime security.

Category 6: Hybrid Aggression

As much of the maritime world has entered the so-called "grey zone" where things are more than peaceful but less than an outright war, we have seen fishing vessels being used in increasingly novel ways. Hybrid aggression in the maritime domain can be seen to have four or five key elements. It is when (1) a state with a conventional force chooses to use unconventional action in a manner. In other words what makes it "hybrid" is that there is a split between the traditional action arms of the state and the action that is being taken. A non-state actor cannot engage in hybrid aggression, as even similar looking activity would not be hybrid for lack of a conventional force. That unconventional activity in turn creates (2) implausible deniability – in other words we all pretty much know who did the action, but cannot conclusively hold them responsible straight away. There is always (3) an illegal act, and (4) the activity is scalable depending on the response. Sometimes, but not always, there will be a (5) strategic communications campaign to control the narrative. Increasingly, this activity is involving fishing vessels, but the activity is not IUU fishing, fisheries crime, or state protected illicit fishing.

The People's Armed Force Maritime Militia (PAFMM) is effectively a fleet of fishing vessels that seem to be under the command and control of the People's Republic of China and that do not engage in much, if any, actual fishing. Instead, they have been used for such activities as swarming the Philippines Coast Guard to try to block it from resupplying a Philippines vessel on Second Thomas Shoal. The status of the PAFMM vessels is not clear – are they sovereign vessels immune from law enforcement interdiction or civilian vessels that can be arrested? If a PAFMM vessel is fishing in another state's EEZ, can that coastal state even board it? These unanswerable questions are what allow for these fishing vessels to be used as a tool for hybrid aggression. The blurred distinction as to the character of the vessels means that what seem to be fishing vessels can be used by the state instead of its navy, with implausible deniability, to violate another country's sovereignty (an illegal act) in a scalable manner. This is clearly not IUU fishing, or fisheries crime, and it is not about the state protecting illicit fishing. It is a different category of concern, and we need to recognize it as such.

Category 7: Strategic Presence

Fishing vessels are increasingly being used for their presence, as well as for fishing. Whether it is to collect intelligence, lay claim to territorial rights, advance new technology platforms, or build arguments concerning sovereign rights, even over parts of the high seas, fishing fleets, and particularly distant water fishing fleets have taken on roles that transcend their ability to harness living marine resources. In fact, Chinese doctrine around the use of its distant water fishing fleet specifically advances the notion that "occupying brings about rights and interests." So all states should recognize that regardless of the fishing activities of a fleet, there may be additional objectives as to why a particular fleet may be present in any given area. It may be for the living marine resources, but there may be complementary or ulterior strategic aims that are accomplished by having the fleet either in the EEZ or just outside the EEZ of another state. It may not be IUU fishing, fisheries crime, state protected illicit fishing or hybrid aggression, but it may still be undesirable and worthy of enhanced scrutiny.

3. CONCLUSION

Fishing vessels are the most abundant actors on the 70% of the earth's surface that is covered in water. It is a given, therefore, that some of them will engage in undesirable activities. The nature of that concerning activity is expanding, but our discourse around it has remained relatively unchanged. Calling all of it "IUU Fishing" or even going one step further to note the existence of "Fisheries Crime" is insufficient to fully diagnose the challenges that most states and regions face. By not being rigourous in examining the problem, it becomes impossible to solve that problem. In fact, the blind spots created by the lack of adequate diagnostics can also be further exploited by nefarious actors – both state and non-state – thereby compounding the sustainability and security challenges in the maritime space. To safeguard the health and sustainability of the marine environment and maintain the rule of law in the maritime domain, we must apply ever-greater rigour in recognizing and addressing the increasingly complex uses of the fishing sector in ways that negatively impact coastal states and global security.

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