

## **LABOUR STANDARDS ON FISHING VESSELS: A PROBLEM IN SEARCH OF A HOME?**

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*There is increasing international concern over working and living conditions for crew on fishing vessels, especially those that spend months at sea in international waters. To date, the international community has approached the problem in a piecemeal and limited fashion. Three United Nations specialised agencies have been involved to some extent in developing appropriate labour standards for fishing vessels. Action has been taken at the regional level, including in the Pacific, and the issues are increasingly coming to the attention of human rights organisations. These efforts have emphasised the responsibility of the flag state to ensure safe and decent working conditions on its vessels but have also highlighted the complementary roles of coastal states, port states and market states within their jurisdictional limits to exert pressure on flag states to ensure they fulfil their responsibilities.*

*This article examines the ways in which international and regional organisations have sought to address the problem of labour standards on fishing vessels. It highlights the deficiencies of a functionalist theory of international organisations, where concerns over whether an issue falls within the mandate of the organisation can be used as a justification for limited action, and evaluates the response to these deficiencies. In light of the fragmented approach to date, the article turns its attention to the value of a multilateral, cooperative and coordinated approach that links global, regional and private initiatives. This seeks a home for the problem of how to ensure that crew on board fishing vessels have decent work and living standards.*

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### I THE PROBLEM OF LABOUR STANDARDS ON FISHING VESSELS

International concern over appalling working and living conditions on fishing vessels has amplified over the last decade. Fishing vessels in the industrial fishing sector often spend long periods at sea, fish in international waters or within more than one jurisdiction and tranship catch at sea without returning to port. They operate largely beyond the reach of state authorities. There have been documented instances of unsafe work environments, non-payment of wages and

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human rights abuses inflicted on fishermen.<sup>1</sup> Evidence has been collected of these practices in coastal fisheries in Asia;<sup>2</sup> on chartered vessels within the exclusive economic zone of New Zealand;<sup>3</sup> and in industrial fishing operations.<sup>4</sup> There is evidence of significant abuse of crew, poor living and working conditions in some fisheries, as well as deceptive and coercive recruitment practices which amount to forced labour.<sup>5</sup> Owners and masters of fishing vessels seek to tie fishermen to vessels in a sector where working conditions are difficult and dangerous and where the sector is systemically short of workers.<sup>6</sup> Indeed, the prevalence of forced labour and trafficking in the fisheries sector is rated as severe despite all the international, governmental and private sector initiatives to address labour exploitation.<sup>7</sup>

There is an acknowledged link between poor labour conditions on board fishing vessels and the vessels' involvement in illegal, unreported and unregulated ('IUU') fishing.<sup>8</sup> There is also an identified link between fishing and organised crime, drug trafficking and human trafficking.<sup>9</sup> All of these practices are driven by the decline in stocks and overcapacity in the global fishing

<sup>1</sup> See especially Ian Urbina, *The Outlaw Ocean: Journeys across the Last Untamed Frontier* (Alfred A Knopf, 2019); Environmental Justice Foundation, *All at Sea: The Abuse of Human Rights aboard Illegal Fishing Vessels* (Report, 2010) <[https://ejfoundation.org/resources/downloads/report-all-at-sea\\_0\\_1.pdf](https://ejfoundation.org/resources/downloads/report-all-at-sea_0_1.pdf)>, archived at <<https://perma.cc/LZ6N-2ZG3>>.

<sup>2</sup> Annuska Derks, 'Migrant Labour and the Politics of Immobilisation: Cambodian Fishermen in Thailand' (2010) 38(6) *Asian Journal of Social Science* 915; Supang Chantavanich, Samarn Laodumrongchai and Christina Stringer, 'Under the Shadow: Forced Labour among Sea Fishers in Thailand' (2016) 68 *Marine Policy* 1; Human Rights Watch, *Hidden Chains: Rights Abuses and Forced Labor in Thailand's Fishing Industry* (Report, January 2018) <<http://www.hrw.org/report/2018/01/23/hidden-chains/rights-abuses-and-forced-labor-thailands-fishing-industry>>, archived at <<https://perma.cc/5YSQ-L29Z>>; International Organization for Migration, *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry* (Report, 2016) <<https://www.iom.int/sites/default/files/country/docs/indonesia/Human-Trafficking-Forced-Labour-and-Fisheries-Crime-in-the-Indonesian-Fishing-Industry-IOM.pdf>>, archived at <<https://perma.cc/7CA3-BPZU>>.

<sup>3</sup> Christina Stringer et al, 'Not in New Zealand's Waters, Surely? Linking Labour Issues to GPNs' (2014) 14(4) *Journal of Economic Geography* 739; Christina Stringer, D Hugh Whittaker and Glenn Simmons, 'New Zealand's Turbulent Waters: The Use of Forced Labour in the Fishing Industry' (2016) 16(1) *Global Networks* 3.

<sup>4</sup> Peter Vandergeest, 'Law and Lawlessness in Industrial Fishing: Frontiers in Regulating Labour Relations in Asia' (2018) 68(229–230) *International Social Science Journal* 325; International Transport Workers' Federation, *Out of Sight, Out of Mind: Seafarers, Fishers & Human Rights* (Report, June 2006).

<sup>5</sup> Chantavanich, Laodumrongchai and Stringer (n 2); Stringer et al (n 3) 745–50; Human Rights Watch (n 2) 94–100.

<sup>6</sup> Vandergeest (n 4) 329–30.

<sup>7</sup> International Labour Office, *Caught at Sea: Forced Labour and Trafficking in Fisheries* (Report, 2013) <[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_214472.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_214472.pdf)>, archived at <<https://perma.cc/ZW55-BR42>>.

<sup>8</sup> Alastair Couper, Hance D Smith and Bruno Ciceri, *Fishers and Plunderers: Theft, Slavery and Violence at Sea* (Pluto Press, 2015) 78–94; William D Moreto et al, 'The Convergence of CAPTURED Fish and People: Examining the Symbiotic Nature of Labor Trafficking and Illegal, Unreported and Unregulated Fishing' (2020) 41(6) *Deviant Behavior* 733.

<sup>9</sup> United Nations Office on Drugs and Crime, *Transnational Organized Crime in the Fishing Industry: Focus on: Trafficking in Persons Smuggling of Migrants Illicit Drugs Trafficking* (Report, 2011) <[http://www.unodc.org/documents/human-trafficking/Issue\\_Paper\\_-\\_TOC\\_in\\_the\\_Fishing\\_Industry.pdf](http://www.unodc.org/documents/human-trafficking/Issue_Paper_-_TOC_in_the_Fishing_Industry.pdf)>, archived at <<https://perma.cc/A49G-QY9W>>.

industry. Vessel owners and operators seek to remain competitive by increasing effort, exceeding catch limits, misreporting catches and cutting operating costs, including by reducing expenditure on crew pay, safety and living conditions.<sup>10</sup>

The issue of ensuring decent conditions for those working on fishing vessels is not new. For the last decade and more, international intergovernmental and non-governmental organisations, researchers and journalists have documented instances of abuse, shone the light on human rights abuses in international waters and sought to galvanise international action to address labour conditions on fishing vessels. However, progress has been slow. The issue has proven to pose real challenges for the international community. There are insufficient legal rules to address the issue and inadequate enforcement of those rules that do exist. Jurisdictional issues are challenging, and this hinders the ability of states to take effective action. Not only is there insufficient awareness of the problem, but it often takes place out of sight. Victims of poor labour conditions and abuse rarely complain. This is due in part to isolation at sea, potential intimidation by fishing masters and the consequences meted out on family by recruiters of fishing crew.<sup>11</sup> Complaint mechanisms are lacking and where complaints are made, they may be discounted as merely workplace employment issues.<sup>12</sup>

A range of approaches have sought to address labour conditions on fishing vessels. Various United Nations specialised agencies have each been involved to some extent in developing appropriate standards for labour conditions on fishing vessels. The issues are also increasingly coming to the attention of human rights bodies and regional fisheries management organisations ('RFMOs'). The responsibility of the flag state has been emphasised, and the buying power of market states has enabled pressure to be exerted on flag states to take corrective action. Other approaches include extending the application of coastal state laws to fishing vessels, empowering port states to inspect fishing vessels in their ports and pressuring seafood buyers to ensure that they source fish only from vessels operating under safe and decent working conditions.

This article examines the efficacy of these approaches. It consists of four Parts. Part II explores the existing international legal frameworks and rules responding to the need to address labour conditions on board fishing vessels. The discussion places an emphasis on industrial fishing vessels that operate in international waters and in waters under the jurisdiction of third states but is also relevant to fisheries operations which take place exclusively within the exclusive economic zone of a coastal state. It considers the action that has been taken to date in international and regional organisations to develop rules in this area and the nature and extent of those rules. Part III identifies the deficiencies in the current legal framework that have resulted in a failure to adequately address labour conditions on fishing vessels. Although the issues are complex and multifaceted, the fragmented and siloed approach to addressing them has not

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<sup>10</sup> David Tickler et al, 'Modern Slavery and the Race to Fish' (2018) 9 *Nature Communications* 4643:1–9, 2; Jessica L Decker Sparks and Leslie K Hasche, 'Complex Linkages between Forced Labor Slavery and Environmental Decline in Marine Fisheries' (2019) 18(2) *Journal of Human Rights* 230, 236–40.

<sup>11</sup> Stringer et al (n 3) 748–9, 754; Chantavanich, Laodumrongchai and Stringer (n 2) 6.

<sup>12</sup> Stringer, Whittaker and Simmons (n 3) 17.

proved to be effective. Part IV outlines the measures taken to respond to these deficiencies. These include efforts at greater inter-agency collaboration, coastal state action, a shift in the narrative towards breach of human rights norms and increasing recourse to private sector initiatives. Part V identifies a potential alternative home for the problem, based upon cooperative and coordinated action through the UN.

## II INTERNATIONAL AND REGIONAL ORGANISATIONS AND THE INTERNATIONAL LEGAL FRAMEWORK

The legal and jurisdictional framework for addressing labour conditions on board fishing vessels is centred on art 94(1) and art 94(3) of the *United Nations Convention on the Law of the Sea* ('UNCLOS').<sup>13</sup> These articles place responsibility on the flag state of a vessel for, inter alia, 'administrative, technical and social matters' on the vessel, for ensuring safety at sea, and for 'the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments'.<sup>14</sup> Much of the international discourse on labour conditions on fishing vessels focuses on the question of how to enhance mechanisms to ensure that the flag state properly fulfils its flag state responsibilities and how states may exercise complementary jurisdiction.

Three main UN specialised agencies have developed binding and non-binding instruments to address labour standards on fishing vessels: International Labour Organization ('ILO'); International Maritime Organization ('IMO'); and Food and Agriculture Organization of the United Nations ('FAO'). Other international organisations are also involved in the issue to some extent, including the United Nations Office on Drugs and Crime ('UNODC'), the International Organization for Migration ('IOM'), and the UN human rights bodies. Increasingly, the issue is being addressed by RFMOs.

The ILO is the only tripartite UN agency that brings together governments, employers and workers to set labour standards, develop policies and devise programmes to promote decent work for all people. For close to a century, the ILO has worked to address forced labour and slavery-like practices, including in the fishing industry, commencing with the 1930 ILO *Convention on Forced and Compulsory Labour* ('*Forced Labour Convention*').<sup>15</sup> This is one of the most widely ratified conventions with 179 ratifications.<sup>16</sup> The *Forced Labour Convention* requires parties to suppress the use of forced or compulsory labour and to enforce prohibitions of such practices as criminal offences.<sup>17</sup> The *Protocol of 2014 to the Forced Labour Convention, 1930* ('*Protocol to the Forced Labour Convention*'), which entered into force in November 2016, seeks to address the

<sup>13</sup> *United Nations Convention on the Law of the Sea*, opened for signature 10 December 1982, 1833 UNTS 397 (entered into force 16 November 1994) arts 94(1), (3) ('UNCLOS').

<sup>14</sup> *Ibid.*

<sup>15</sup> *Convention concerning Forced or Compulsory Labour*, opened for signature 28 June 1930, 39 UNTS 55 (entered into force 1 May 1932) ('*Forced Labour Convention*').

<sup>16</sup> 'Ratifications of C029: Forced Labour Convention, 1930 (No 29)', *International Labour Organization* (Web Page) <[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312174](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312174)>, archived at <<https://perma.cc/8UN7-YTWM>>.

<sup>17</sup> *Forced Labour Convention* (n 15) arts 1(1), 25.

gaps in the implementation of the 1930 Convention.<sup>18</sup> The parties are to take effective action to suppress forced or compulsory labour through a three-pronged approach: through prevention and eliminating its use; through protection of victims and the provision of remedies such as compensation; and through sanctioning the perpetrators of forced or compulsory labour.<sup>19</sup>

The ILO has been engaged in promoting decent working conditions on board ships and fishing vessels, including through the adoption of international instruments. The *Maritime Labour Convention* of 2006 establishes minimum international requirements for seafarers' employment and working conditions although fishing vessels are specifically exempt from the Convention.<sup>20</sup> This gap in scope was filled to a large extent by the *ILO Convention concerning Work in the Fishing Sector* ('*Work in Fishing Convention*'), and its accompanying *Recommendation concerning Work in the Fishing Sector*, both of which came into force in November 2017.<sup>21</sup> The *Work in Fishing Convention* seeks to ensure decent work in fishing and — together with the *Protocol to the Forced Labour Convention* — should provide a comprehensive framework for regulating working conditions and protecting migrant workers on foreign flagged vessels operating in distant fisheries. It places overall responsibility for working conditions on the owner of the fishing vessel, while skippers are responsible for the safety of fishers on board and for the safety of the vessel.<sup>22</sup> It contains a broad range of requirements relating to crewing, including that workers have periodic medical examinations and are fit to perform their duties, have adequate rest, adequate quality and quantity of nutritional food and potable water, healthy accommodation, and training in occupational safety and health awareness.<sup>23</sup> Fishers should also have signed work agreements, receive regular payment of wages and be repatriated when their agreements expire.<sup>24</sup>

In many respects the *Work in Fishing Convention* parallels the *Maritime Labour Convention*. However, with only 19 ratifications,<sup>25</sup> it does not have sufficient parties to be considered a 'generally accepted' international regulation to which states are required to conform under art 94(5) of *UNCLOS*.<sup>26</sup> Thailand is the only Asian country to have become party to the *Work in Fishing Convention*, although ratification is also being considered in Indonesia, a large

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<sup>18</sup> *Protocol of 2014 to the Forced Labour Convention, 1930*, opened for signature 11 June 2014, 53 ILM 1227 (entered into force 9 November 2016).

<sup>19</sup> *Ibid* art 1(1).

<sup>20</sup> *Maritime Labour Convention*, opened for signature 23 February 2006, 2952 UNTS 3 (entered into force 20 August 2013) art II(4).

<sup>21</sup> *Convention concerning Work in the Fishing Sector*, opened for signature 14 June 2007 (entered into force 16 November 2017) ('*Work in Fishing Convention*'); International Labour Organization, *Recommendation concerning Work in the Fishing Sector*, 96<sup>th</sup> sess, Agenda Item 4, 14 June 2007.

<sup>22</sup> *Work in Fishing Convention* (n 21) art 8.

<sup>23</sup> *Ibid* arts 10–14, 25–31.

<sup>24</sup> *Ibid* arts 16–21, 23.

<sup>25</sup> 'Ratifications of C188: Working in Fishing Convention, 2007 (No 188)', *International Labour Organization* (Web Page) <[https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312333](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312333)>, archived at <<https://perma.cc/HX4W-B8XS>>.

<sup>26</sup> *UNCLOS* (n 13) art 94(5).

home country of migrant fishers.<sup>27</sup> None of the major distant water fishing nations are party.<sup>28</sup> This is significant given the emphasis in the Convention on the primacy of flag state jurisdiction for enforcement purposes. Widespread ratification of the *Work in Fishing Convention* would enhance the powers of states, flag states, coastal states and port states to take action to improve living and working conditions on fishing vessels.<sup>29</sup> However, despite the apparent flexibility permitted in implementing the Convention, states have been reluctant to become party. Among the reasons cited to date for the lack of ratifications are the increased scrutiny that ratification would bring, the difficulty of effective enforcement, the cost burden of effective implementation and the limitation of requirements on living conditions to new vessels.<sup>30</sup> There may also be concern over the prescriptive nature of some of its provisions which may pose implementation challenges.<sup>31</sup>

While the ILO deals with the persons on board fishing vessels, the IMO is responsible for ensuring the safety of the vessels themselves, including fishing vessels. The 1974 *International Convention for the Safety of Life at Sea* ('*SOLAS*') sets out the conditions for the safe operation of vessels, but, like the *Maritime Labour Convention*, it exempts fishing vessels other than fish processing or factory ships, from its scope.<sup>32</sup> The IMO addresses labour standards on fishing vessels through two main avenues.

First, it establishes minimum standards for the construction of fishing vessels to help address the conditions on board vessels through the *Cape Town Agreement*.<sup>33</sup> The *Cape Town Agreement* is not yet in force and has only 16 parties.<sup>34</sup> However, impetus for the ratification of the Agreement was achieved at

<sup>27</sup> Mi Zhou, Arezka Hantyanto and Jeffry Irvandi, 'Indonesia and the Work in Fishing Convention, 2007 (No 188): A Comparative Analysis' (Working Paper, International Labour Organization, 2019).

<sup>28</sup> It is noted that Chinese Taipei, which is not able to ratify the *Work in Fishing Convention*, is working towards compliance with its requirements: Mina Chiang and Kimberly Rogovin, 'Labor Abuse in Taiwan's Seafood Industry & Local Advocacy for Reform' (Briefing Paper, Global Labor Justice — International Labor Rights Forum, December 2020) 12 <<https://laborrights.org/sites/default/files/publications/Labor-Abuse-in-Taiwan-Seafood-Industry-Local-Advocacy-for-Reform.pdf>>, archived at <<https://perma.cc/5Y3W-EB6Y>>.

<sup>29</sup> Vasco Becker-Weinberg, 'Time to Get Serious about Combating Forced Labour and Human Trafficking in Fisheries' (2021) 36(1) *International Journal of Marine and Coastal Law* 88, 93, 109, 112–13.

<sup>30</sup> Stanford Center for Ocean Solutions and Stanford Law School, *The Outlaw Ocean: An Exploration of Policy Solutions to Address Illegal Fishing and Forced Labor in the Seafood Industry* (Report, September 2020) 82–3 <[https://www-cdn.law.stanford.edu/wp-content/uploads/2020/09/outlawocean\\_fullreport2-F20.pdf](https://www-cdn.law.stanford.edu/wp-content/uploads/2020/09/outlawocean_fullreport2-F20.pdf)>, archived at <<https://perma.cc/3LRU-6HZ3>>.

<sup>31</sup> See, eg, *Report of the Ministerial Inquiry into the Use and Operation of Foreign Charter Vessels* (Report, February 2012) 73 [396]. <<https://www.mpi.govt.nz/dmsdocument/4008/direct>>, archived at <<https://perma.cc/23EA-K6QL>> ('*Report of the Ministerial Inquiry*').

<sup>32</sup> *International Convention for the Safety of Life at Sea*, opened for signature 1 November 1974, 1184 UNTS 278 (entered into force 25 May 1980) annex ch 1 pt A reg 3.

<sup>33</sup> *2012 Cape Town Agreement on the Implementation of the Provisions of the 1993 Torremolinos Protocol relating to the 1977 International Convention for the Safety of Fishing Vessels*, opened for signature 11 October 2012 (not yet in force) ('*Cape Town Agreement*').

<sup>34</sup> 'Peru Accedes to the 2012 Cape Town Agreement on Fishing Vessel Safety', *International Maritime Organization* (Web Page, 2 March 2021) <<https://www.imo.org/en/MediaCentre/Pages/WhatsNew-1588.aspx>>, archived at <<https://perma.cc/VAY5-8JGJ>>.

a 2019 conference, hosted by the IMO and Spain, during which 48 states indicated their resolve to see the Agreement come into force by October 2022.<sup>35</sup> The *Cape Town Agreement* is significant because once it is in force, fishing vessels falling under the scope of the Agreement will be subject to port state control, thereby enabling a port state to inspect and exercise jurisdiction over a vessel.<sup>36</sup>

Second, the IMO sets minimum standards for training and certification of senior crew on seagoing fishing vessels greater than 24 metres in length through the 1995 *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel* ('*STCW-F*'), which entered into force on 29 September 2012.<sup>37</sup> The *STCW-F* does have broad participation;<sup>38</sup> nevertheless, a review of the *STCW-F* is currently underway in the IMO with the aim of enhancing minimum requirements for basic safety training for all fishing vessel personnel.<sup>39</sup>

The third UN specialised agency engaged with labour conditions on fishing vessels is the FAO. It deals specifically with fisheries and has attempted to make some inroads towards improving labour conditions on fishing vessels. In 2011 it adopted a comprehensive *Code of Conduct for Responsible Fisheries*, which covers the full range of expected conduct for the management and conduct of fishing operations.<sup>40</sup> The Code explicitly refers to safety of fishing vessels in art 6.17, where it is stated that

States should ensure that fishing facilities and equipment as well as all fisheries activities allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations.<sup>41</sup>

Article 8.1.5 expands on this by requesting that states ensure the adoption of health and safety standards for fishing operations which 'should be not less than the minimum requirements of relevant international agreements on conditions of work and service'.<sup>42</sup> Moreover, art 8.4.1 also requests that states ensure 'fishing

<sup>35</sup> 'IMO Fishing Vessel Treaty Gets Major Boost at Historic IMO-Led Ministerial Conference', *International Maritime Organization* (Web Page, 23 October 2019) <<https://www.imo.org/en/MediaCentre/PressBriefings/Pages/25-Torremolinos-Conference.aspx>>, archived at <<https://perma.cc/XD5N-BNMB>>.

<sup>36</sup> The Pew Charitable Trusts, 'The Cape Town Agreement Explained: How One International Treaty Could Combat Illegal Fishing and Save Lives' (Issue Brief, October 2018) 8 <[https://www.pewtrusts.org/-/media/assets/2019/09/ctaexplained\\_brief.pdf](https://www.pewtrusts.org/-/media/assets/2019/09/ctaexplained_brief.pdf)>, archived at <<https://perma.cc/S4YZ-HJ85>>.

<sup>37</sup> *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel, 1995*, adopted 7 July 1995 (entered into force 29 September 2012) ('*STCW-F*').

<sup>38</sup> *STCW-F* has 33 parties: International Maritime Organization, *Status of IMO Treaties: Comprehensive Information on the Status of Multilateral Conventions and Instruments in Respect of Which the International Maritime Organization or Its Secretary-General Performs Depositary or Other Functions* (Report, 29 September 2021) 426 <<https://wwwcdn.imo.org/localresources/en/About/Conventions/StatusOfConventions/Status%20-%202021.pdf>>, archived at <<https://perma.cc/3GQW-QD7H>>.

<sup>39</sup> Dennis O'Neill, 'IMO Sets Out Better Conditions for Seafarers', *Marine Professional* (online, 19 March 2021) <<https://www.imarest.org/themarineprofessional/on-the-radar/item/5996-imo-sets-out-better-conditions-for-seafarers>>, archived at <<https://perma.cc/H74S-45CX>>.

<sup>40</sup> Food and Agriculture Organization of the United Nations, *Code of Conduct for Responsible Fisheries* (1995).

<sup>41</sup> *Ibid* art 6.17.

<sup>42</sup> *Ibid* art 8.1.5.

is conducted with due regard to the safety of human life'.<sup>43</sup> The Code is non-binding but is widely referred to as a basis for the proper management of international fisheries.

The FAO has been increasingly concerned over social and labour conditions in the fishing industry. In 2018 the FAO Committee on Fisheries ('COFI') recommended that draft guidance be developed to advance social sustainability in the fishing industry, in cooperation with relevant stakeholders and in line with international rules respecting human rights and principles, and relevant standards of the ILO.<sup>44</sup> A draft *Guidance on Social Responsibility in Fish Value Chains* was submitted in 2019, but not agreed upon by COFI because it was viewed as obligatory and included prescriptive language.<sup>45</sup> Nevertheless, COFI has accepted the link between labour conditions and sustainable fisheries and in February 2021 adopted the *2021 COFI Declaration for Sustainable Fisheries and Aquaculture* which seeks to promote the attainment of safe, healthy and fair working conditions for all in the fisheries sector.<sup>46</sup>

In addition to these main organisations, there are a number of other international organisations which have a role in addressing labour standards on fishing vessels from a human rights and migrant labour perspective. These include the UNODC.<sup>47</sup> The UNODC is the Secretariat of the Conference of the Parties to the 2000 *United Nations Convention against Transnational Organized Crime* and its protocols: the *Trafficking Protocol* and the *Migrant Smuggling Protocol*.<sup>48</sup> The *Trafficking Protocol* is one of the most widely ratified conventions with 178 parties, while the *Migrant Smuggling Protocol* has 150 parties.<sup>49</sup> These instruments seek to address human trafficking and smuggling aboard vessels from a comprehensive perspective. In addition, a range of other

<sup>43</sup> Ibid art 8.4.1.

<sup>44</sup> Food and Agriculture Organization of the United Nations, *The State of World Fisheries and Aquaculture: Sustainability in Action* (Report, 2020) 119.

<sup>45</sup> Aaron Orlowski, 'FAO's Guidelines for Human Rights in Fishing Delayed after Pushback' *SeafoodSource* (online, 10 April 2020) <<https://www.seafoodsource.com/news/environment-sustainability/fao-s-guidelines-for-human-rights-in-fishing-delayed-after-pushback>>, archived at <<https://perma.cc/UUM4-VTXU>>.

<sup>46</sup> Food and Agriculture Organization of the United Nations, *2021 COFI Declaration for Sustainable Fisheries and Aquaculture*, 34<sup>th</sup> sess, 1 February 2021, 6 [13].

<sup>47</sup> See especially United Nations Office on Drugs and Crime, *Global Report on Trafficking in Persons* (Report, 2020).

<sup>48</sup> *United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 2225 UNTS 209 (entered into force 29 September 2003); *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 2237 UNTS 319 (entered into force 25 December 2003) ('*Trafficking Protocol*'); *Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime*, opened for signature 15 November 2000, 2241 UNTS 507 (entered into force 28 January 2004) ('*Migrant Smuggling Protocol*').

<sup>49</sup> 'Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime', *United Nations Treaty Collection* (Web Page) <[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-a&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-a&chapter=18&clang=_en)>, archived at <<https://perma.cc/3DK8-4GYS>>; 'Protocol against the Smuggling of Migrants by Land, Sea and Air, Supplementing the United Nations Convention against Transnational Organized Crime', *United Nations Treaty Collection* (Web Page) <[https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-12-b&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-12-b&chapter=18&clang=_en)>, archived at <<https://perma.cc/86WV-6VNT>>.



organisations, including the UN High Commissioner for Refugees, UN Special Rapporteur on Trafficking in Persons, Especially Women and Children, UN Global Initiative to Fight Human Trafficking, the IOM and INTERPOL, play a role in seeking to address human trafficking.

Added to the mix of international agencies are RFMOs, which have a role in conservation and management of fish resources within their area of competence and in the recognised link between IUU fishing and poor labour conditions on fishing vessels.<sup>50</sup> However, even though most distant water fishing operations take place within the management areas of RFMOs only one has specifically addressed labour standards on board fishing vessels in international waters. In 2018 the Western and Central Pacific Fisheries Commission ('WCPFC') adopted a non-binding *Resolution on Labour Standards for Crew on Fishing Vessels*.<sup>51</sup> This encourages members and cooperating non-members to ensure fair working conditions on board for all crew working on their flag fishing vessels, including fair terms of employment, decent living and working conditions and decent and regular remuneration.<sup>52</sup> They are also encouraged to work with any entities involved in recruitment of crew,<sup>53</sup> to exercise effective jurisdiction and control over vessels flying their flag, and to exercise due diligence to improve and enforce requirements regarding labour conditions on board fishing vessels.<sup>54</sup>

The Resolution was the initiative of members of the Forum Fisheries Agency ('FFA') who were concerned to address human rights abuses on fishing vessels operating in the Pacific.<sup>55</sup> It was also partly driven by the interest of Pacific states in increasing the participation of their labour force in the crewing of vessels that catch highly migratory fish stocks in their waters. However, the adoption of the Resolution was not without controversy. A number of distant water fishing nations expressed the view that the WCPFC was not the appropriate venue to discuss the issue, largely due to questions over whether the issue fell within the mandate of the Commission.<sup>56</sup> A marker was laid down that a binding measure may not be acceptable in future.<sup>57</sup> The issue was again discussed by the Commission at its meeting in 2020. Although the same concerns were again expressed by some members, the Commission agreed to intersessional work being conducted to promote discussion among members and enable the sharing of information on labour standards.<sup>58</sup> The focus of this

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<sup>50</sup> Marcus Haward and Bianca Haas, 'The Need for Social Considerations in SDG 14' (2021) 8 *Frontiers in Marine Science* 632282:1–6, 2.

<sup>51</sup> Western and Central Pacific Fisheries Commission, *Resolution on Labour Standards for Crew on Fishing Vessels*, Res 2018-01, 15<sup>th</sup> reg sess, 10–14 December 2018. The author was Legal Advisor to the WCPFC at the time.

<sup>52</sup> *Ibid* art 2.

<sup>53</sup> *Ibid* art 3.

<sup>54</sup> *Ibid* art 4.

<sup>55</sup> Letter from Tapaeru Herrmann, Chair, Forum Fisheries Committee, to Feleti Teo, Executive Director, Western and Central Pacific Fisheries Commission, 9 November 2018 <<https://www.wcpfc.int/doc/wcpfc15-2018-dp13/draft-resolution-labour-standards-crew-fishing-vessels>>, archived at <<https://perma.cc/Y2XH-PP2E>>.

<sup>56</sup> Western and Central Pacific Fisheries Commission, *Summary Report*, 15<sup>th</sup> reg sess, 10–14 December 2018, 21 [114].

<sup>57</sup> *Ibid*.

<sup>58</sup> Western and Central Pacific Fisheries Commission, *Summary Report*, 17<sup>th</sup> reg sess, 8–15 December 2020, 61–4 [291]–[311]; 66–7 [321]–[322].

intersessional work has now shifted towards improving crew conditions on fishing vessels.<sup>59</sup> Other RFMOs also recognise the growing importance of the issue. For example, the panel which undertook a formal performance review of the South Pacific Regional Fisheries Management Organisation highlighted the need to engage with this topic due to increasing global interest.<sup>60</sup> It has been suggested that the gap in governance of labour standards on fishing vessels can be met through increasing the role of RFMOs.<sup>61</sup> However, other than WCPFC, there has been little success in pursuing these issues in other RFMOs.

This brief review has highlighted the fragmented approach to addressing labour standards on fishing vessels. Different international and regional organisations operate under different mandates, each seeking to address a separate part of the problem. The limits of the current approach, including its fragmentation, are addressed in the following section.

### III THE LIMITS OF A FRAGMENTED AND FUNCTIONAL APPROACH TO ADDRESSING LABOUR STANDARDS

It should be emphasised that each of the various international and regional agencies involved in seeking to address labour standards on fishing vessels is making best efforts to address the issue within its mandate. The problem is not with the lack of individual effort of organisations but with the fragmentation of these efforts and the difficulty of dealing with the issue in a coherent and holistic way.

The theory of international organisations is traditionally based upon functionalism — the idea that international organisations exist in order to exercise functions delegated to them by member states, and states cooperate in order to give effect to certain functions.<sup>62</sup> The review of the applicable international instruments and organisations engaged in seeking to address labour standards on fishing vessels highlights the deficiencies with a functional approach to such international issues. The tension between state sovereignty and the function of international organisations creates a situation where members of an organisation may question the competence of the organisation to deal with a particular matter.<sup>63</sup> A functional approach is not able to respond effectively to cross-cutting issues and produces international legal rules which are fragmented and lack coherence. It has, in the words of Jan Klabbers, ‘passed its sell-by-date’.<sup>64</sup>

In part this is due to the very multifaceted nature of the problem. The international legal norms with respect to conditions on board vessels are based

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<sup>59</sup> Western and Central Pacific Fisheries Commission, *Update from Co-Chairs on Intersessional Work to Improve Crew Labour Standards*, Doc No WCPFC18-2021-DP07, 18<sup>th</sup> reg sess, 22 November 2021.

<sup>60</sup> Penelope Ridings et al, *Report of the South Pacific Regional Fisheries Management Organisation Performance Review Panel* (Report, 1 December 2018) 51–2 [225].

<sup>61</sup> Haward and Haas (n 50) 3.

<sup>62</sup> Jan Klabbers, *An Introduction to International Organizations Law* (Cambridge University Press, 3<sup>rd</sup> ed, 2015) 3–4.

<sup>63</sup> Henry G Schermers and Niels M Blokker, *International Institutional Law: Unity within Diversity* (Brill Nijhoff, 6<sup>th</sup> rev ed, 2018) 19–24 [15]–[21].

<sup>64</sup> Jan Klabbers, ‘Transforming Institutions: Autonomous International Organisations in Institutional Theory’ (2017) 6(2) *Cambridge International Law Journal* 105, 119.

on flag state responsibility and control. It is incumbent on the flag state to construct vessels with appropriate standards, to ensure that the owners and masters of vessels adopt and apply proper labour standards on vessels, and to verify and enforce compliance with those standards. Yet flag state enforcement is frequently lacking, particularly, but not only, on vessels flagged to countries with poor compliance records. In many cases crew on fishing vessels find positions through recruiters or brokers in their home countries.<sup>65</sup> Yet the home state may not regulate manning or recruitment agencies, leaving their nationals subject to unscrupulous dealers. The capacity of other states to exercise jurisdiction in respect of labour conditions and abuses on fishing vessels, including coastal states, port states and home countries of crew, may be limited.

The issue is not necessarily due to a lack of international agreements but more to the lack of binding rules applicable to a large number of flag states and, importantly, inadequate compliance with those international instruments that are applicable.<sup>66</sup> There are very few ratifications of the major international treaties designed to address labour standards. Even if the international rules exist, there is an apparent inability or unwillingness on the part of flag states or other states with potential jurisdiction over such vessels to monitor compliance or enforce those rules.<sup>67</sup> This is compounded by the use of flags of convenience to avoid more stringent legal requirements. There is also little demonstrated push to enforce the rules at a national level.

There is a tendency for the complex jurisdictional issues to be used as a justification for inaction.<sup>68</sup> The flag state cannot exercise jurisdiction over persons outside its control, such as recruiters or brokers in the home country of fishing crews. It has also proved difficult to take action against the agencies involved in the recruitment of migrant fishers.<sup>69</sup>

The effectiveness of international labour standards depends on the degree to which these standards are incorporated into domestic legislation and enforced by domestic authorities. The fact that the exploitation of fishers takes place outside the territorial jurisdiction of a state and within the jurisdiction of the flag state poses evidentiary and jurisdictional challenges. It is difficult to investigate incidents which take place on board vessels in distant waters. Crew may be intimidated and not wish to come forward due to potential retribution. Fishers on distant water fishing vessels spend long periods at sea and may not visit their home countries or other ports very frequently. This may place them at the mercy of the vessel master and severely limits their ability to protest their treatment. Even where crew do protest, other countries face jurisdictional challenges in taking action in response.

As a result of this, attention has turned to whether other states, in particular port states, may also play a role in raising and applying minimum standards. The nine regional memoranda of understanding on port state control are geared

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<sup>65</sup> Stringer, Whittaker and Simmons (n 3) 12.

<sup>66</sup> Azmath Jaleel and Devinder Grewal, 'A Perspective on Safety and Governance Issues of Fishing Vessels' (2017) 31(1) *Ocean Yearbook Online* 472, 493.

<sup>67</sup> Stringer et al (n 3) 753–4.

<sup>68</sup> Sallie Yea, 'Human Trafficking and Jurisdictional Exceptionalism in the Global Fishing Industry: A Case Study of Singapore' (2022) 27(1) *Geopolitics* 238.

<sup>69</sup> *Ibid* 250.

towards inspections of ships for safety standards and pollution and do not provide an easy vehicle for inspections relating to labour conditions on board.<sup>70</sup> However, the ILO *Work in Fishing Convention* provides optional port state jurisdiction for states that are party to the Convention to investigate, report on and take steps to rectify alleged violations of the Convention on ships in its ports, even in cases where the flag state of the ship in question has not ratified the Convention.<sup>71</sup> The same potential occurs with the *Cape Town Agreement* which provides minimum standards for accommodation and other conditions on fishing vessels. If more states ratified these two treaties, it could open up the possibility of using port state measures on the basis of the ‘no more favourable treatment’ requirement.<sup>72</sup>

Another fundamental issue is that the existing legal instruments keep the issues of human rights and labour abuses in the fishing sector and IUU fishing separate from each other with little coordination between the various agencies involved.<sup>73</sup> This is compounded because labour standards are usually managed by the labour ministry, while fisheries ministries do not have the power, expertise or mandate to deal with labour issues.<sup>74</sup> There is a fragmented approach to the development of international rules and a resulting lack of coherence between the rules. The rules have been developed in silos and are inadequate to address a multifaceted problem which often takes place in areas where jurisdiction is difficult to exercise.

The functional approach to international organisations, where each agency is only able to take action within its specific mandate, and states are reluctant to expand the scope of an agency’s mandate, is the biggest impediment to effectively addressing labour standards on fishing vessels. The following section examines the responses that have been used to respond to these deficiencies.

#### IV INITIAL RESPONSES TO THE LIMITS OF FUNCTIONALISM

The limits of functionalism and the results of fragmentation have led to four different responses. First, efforts have been made to ensure greater collaboration between different international agencies. Second, some coastal states have adopted measures and increased oversight of vessel and crew conditions on foreign vessels licensed to fish in their waters. Third, there has been a shift of the narrative surrounding labour standards towards human rights norms. Fourth, there has been increasing recourse to governmental and private sector initiatives

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<sup>70</sup> See, eg, *Memorandum of Understanding on Port State Control in the Asia-Pacific Region*, opened for signature 1 December 1993 (entered into force 1 April 1994).

<sup>71</sup> George P Politakis, ‘From Tankers to Trawlers: The International Labour Organization’s New Work in Fishing Convention’ (2008) 39(2) *Ocean Development and International Law* 119, 125–6.

<sup>72</sup> Jaleel and Grewal (n 66) 500.

<sup>73</sup> ‘Tragedy in the Marine Commons: The Intertwined Exploitation of Ocean Ecosystems and Fisheries Workers’, Submission to the Special Rapporteur on Human Rights and the Environment <<https://www.ohchr.org/Documents/Issues/Environment/Biodiversity/CoalitionNGOs.pdf>>, archived at <<https://perma.cc/35GR-2KEW>>.

<sup>74</sup> See, eg, Dorien Braam, Mi Zhou and Arezka Ari Hantyanto, ‘Indonesia’s Fisheries Human Rights Certification System: Assessment, Commentary, and Recommendations’ (Working Paper, International Labour Organization, 19 July 2019) 9–10.

which aim to use the power of the market to dis-incentivise poor labour practices on fishing vessels. This section examines each of these in turn.

The limits of functionalism have led to enhanced cooperation between the relevant international organisations, including through the Joint FAO/ILO/IMO Ad Hoc Working Group on IUU Fishing and Related Matters, known as the Joint Working Group ('JWG'). The ILO joined the JWG in 2019. At its Fourth Session the JWG recommended that the Secretariats of the three organisations 'work together to increase understanding of the relations between IUU fishing and severe human rights abuses and exploitation in the fisheries and seafood sector'.<sup>75</sup>

The JWG has initiated workshops in Asia and Africa, which have brought governments, NGOs and industry players together to develop plans of action to address the issues, and have led to the *Manila Call for Action* and the *Mahé Call for Action* in 2019.<sup>76</sup> The coordination of actions among states and with RFMOs to ensure decent work and safety at sea in the fisheries sector was one of the recommendations from the *Mahé Call for Action*.<sup>77</sup> Technical support to promote action to address labour standards and to promote ratification of the relevant international agreements is available from various international organisations but has not been effective in addressing the lack of political will to support ratification. The danger also is that international organisations continue to operate in silos even with acknowledgement of the need to cooperate with others. For example, work within the FAO on international standards for human rights, labour conditions, and social responsibility in the seafood industry lost momentum in part because of concern that the ILO *Work in Fishing Convention* adequately covered the issues.<sup>78</sup>

A second approach has focussed on the role of coastal states in regulating licensed fishing vessels within their waters under art 62(4) of *UNCLOS*.<sup>79</sup> Some coastal states have adopted legislation which enables licences to be declined where vessels or operators have engaged in mistreatment of crew.<sup>80</sup> Regional arrangements and mechanisms have also been used to help lift labour standards on fishing vessels. The FFA has implemented a set of harmonised minimum terms and conditions ('MTCs') under which vessels are licensed to fish within the exclusive economic zone of the Pacific Island countries. In May 2019, the FFA incorporated into the MTCs minimum standards for labour conditions by which vessels must abide in order to obtain a fishing license, and which are

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<sup>75</sup> Committee on Fisheries, Food and Agriculture Organization of the United Nations, *Safety at Sea and Decent Work in Fisheries and Aquaculture*, 34<sup>th</sup> sess, FAO Doc COFI/2020/Inf.14.1 (April 2020) 6 [30] ('*Safety at Sea*').

<sup>76</sup> Food and Agriculture Organization of the United Nations, *Joining Forces in the Fisheries Sector: Promoting Safety, Decent Work and the Fight against IUU Fishing* (Issue Brief, 2019); Food and Agriculture Organization of the United Nations, *Joining Forces in the Fisheries Sector: Promoting Safety, Decent Work and the Fight against Illegal, Unreported and Unregulated (IUU) Fishing* (Issue Brief, 2020) ('*Mahé Call for Action*').

<sup>77</sup> *Mahé Call for Action* (n 76) 6.

<sup>78</sup> Orłowski (n 45).

<sup>79</sup> *UNCLOS* (n 13) art 62(4).

<sup>80</sup> See *Fisheries (Conservation and Management) Ordinance 2005* (Falkland Islands) Ordinance No 14 of 2005, s 44(7); *Fisheries Management (Amendment) Act 2015* (Papua New Guinea) No 1 of 2015, ss 25(2), 41A(1)(d), 41B(1)(d); *Marine Resources (Amendment) Act 2017* (Tuvalu) s 12, amending *Marine Resources Act 2008* (Tuvalu) s 18.

largely based on the requirements of the *Work in Fishing Convention*.<sup>81</sup> In a parallel development, the Southwest Indian Ocean Fisheries Commission ('SWIOFC') has adopted voluntary guidelines according to which licensed foreign fishing vessels, and all vessels authorised to make port visits, comply with the minimum international labour standards, as reflected in the *Work in Fishing Convention*.<sup>82</sup> In this situation, it is the coastal state, as the state which licenses vessels to fish within its waters, that can enforce its licence conditions.<sup>83</sup> In this way the MTCs provide an incentive for licensed vessels to improve minimum conditions to protect fishing vessel crews. However, they do not address the issue of human rights abuses on the high seas.<sup>84</sup>

The third development has been the shift of attention towards legal norms which are of fundamental importance and evocative of the strength of moral and legal sentiment against human rights abuses. Increasingly, the conditions on some fishing vessels are being framed as forced labour, modern-day slavery or human trafficking.<sup>85</sup> An ILO survey showed that in 2013, 16% of surveyed Thai workers on long haul boats were deceived or coerced into working on boats against their will.<sup>86</sup>

The ILO *Forced Labour Convention* defines forced labour 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'.<sup>87</sup> According to the ILO, modern slavery refers to 'situations of exploitation that a person cannot refuse or leave because of threats, violence, coercion, deception, and/or abuse of power'.<sup>88</sup> This is similar to the *Trafficking Protocol's* definition of trafficking in persons.<sup>89</sup> However, it is not always clear whether a particular practice meets the legal definitions of forced labour or human trafficking found in the international legal instruments.<sup>90</sup> Christina Stringer and colleagues assessed the labour practices on certain fishing vessels against the ILO indicators of human trafficking for forced labour and placed particular relevance on whether a person

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<sup>81</sup> Forum Fisheries Agency, *The Harmonised Minimum Terms and Conditions for Access by Fishing Vessels* (Terms and Conditions, May 2019).

<sup>82</sup> Southwest Indian Ocean Fisheries Commission, Food and Agriculture Organization of the United Nations, *Final Approval of the Guidelines on Minimum Terms and Conditions (MTC) for Foreign Fisheries Access in the SWIOFC Region*, FAO Doc SWIOFC/WPCCTF/19/Inf 5 E (29 September 2019) art 24.

<sup>83</sup> See Camille Goodman, *Coastal State Jurisdiction over Living Resources in the Exclusive Economic Zone* (Oxford University Press, 2021).

<sup>84</sup> Natasha Batista et al (n 30) 100–1.

<sup>85</sup> Environmental Justice Foundation, *Sold to the Sea: Human Trafficking in Thailand's Fishing Industry* (Report, 2013); Environmental Justice Foundation, *Slavery at Sea: The Continued Plight of Trafficked Migrants in Thailand's Fishing Industry* (Report, 2014); Human Rights Watch (n 2).

<sup>86</sup> International Labour Organization, *Employment Practices and Working Conditions in Thailand's Fishing Sector* (Report, 2013) 46. In more recent analysis, Peter Vandergeest and Melissa Marschke suggest that most fish workers actively choose to work in these fisheries, although they do not always have full information about their choices: Peter Vandergeest and Melissa Marschke, 'Beyond Slavery Scandals: Explaining Working Conditions among Fish Workers in Taiwan and Thailand' (2021) 132 *Marine Policy* 104685:1–8, 7.

<sup>87</sup> *Forced Labour Convention* (n 15) art 2(1).

<sup>88</sup> International Labour Organization and Walk Free Foundation, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Report, 2017) 9.

<sup>89</sup> *Trafficking Protocol* (n 48) art 3.

<sup>90</sup> International Labour Office (n 7) 14.

is able to exit the situation and the conditions of exit.<sup>91</sup> In the case of vessels that fish in distant waters and seldom call at port, crew are not able to easily exit their situation.

The narrative around trafficking and slavery has been effective in drawing worldwide attention to the serious labour issues in certain fisheries. For example, scrutiny of the Thai fishing industry and the identification of instances of forced labour in a number of studies<sup>92</sup> led in 2014 and 2015 to legislative changes in Thailand which produced some improvement.<sup>93</sup> This was also the result of concerted action taken by governments. Both the European Union and the US downgraded Thailand due to forced labour issues in the fisheries sector.<sup>94</sup> In 2015 the EU issued a ‘yellow card’ to Thailand through its alert system to address IUU fishing. This was lifted in 2019 due to changes to Thailand’s fisheries management and its work on human rights abuses and forced labour in the fisheries sector.<sup>95</sup> The US is able to take action through identifying countries in its annual *Trafficking in Persons Report* and also through its listing of goods produced by forced labour.<sup>96</sup> In 2021, the US Customs and Border Protection Agency blocked seafood imports of a Chinese seafood company from entering the US market on the grounds that it used forced labour in its seafood harvesting.<sup>97</sup> Under the *Modern Slavery Act 2015*, the United Kingdom requires commercial organisations above a threshold size to prepare a slavery and human trafficking statement each year and to indicate the steps taken to ensure that human trafficking is not occurring in the supply chain or business.<sup>98</sup> The efforts of market states are commendable, but they only deal with fisheries that export their catch and do not address the underlying conditions which lead to migrant labour.<sup>99</sup>

The fourth and related development has been the increase in private sector initiatives which have risen to fill the regulatory gap resulting from the lack of progress in addressing labour conditions on board fishing vessels. The role of global value chains and transparency along these chains in helping to eliminate

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<sup>91</sup> Stringer, Whittaker and Simmons (n 3) 17.

<sup>92</sup> See, eg, Chantavanich, Laodumrongchai and Stringer (n 2).

<sup>93</sup> Shelby Stephens, ‘Show, Don’t Tell: How Thailand Can and Must Make Advancements in the Fight against Human Trafficking in the Thai Fishing Industry’ (2017) 31(3) *Emory International Law Review* 477, 483–4; Peter Vandergeest and Melissa Marschke, ‘Modern Slavery and Freedom: Exploring Contradictions through Labour Scandals in the Thai Fisheries’ (2020) 51(1) *Antipode* 291, 297–301; Melissa Marschke and Peter Vandergeest, ‘Slavery Scandals: Unpacking Labour Challenges and Policy Responses within the Off-Shore Fisheries Sector’ (2016) 68 *Marine Policy* 39, 43 (‘Slavery Scandals’); Vandergeest (n 4) 334–5.

<sup>94</sup> Chantavanich, Laodumrongchai and Stringer (n 2) 7.

<sup>95</sup> European Commission, ‘Commission Lifts “Yellow Card” from Thailand for Its Actions against Illegal Fishing’ (Press Release, 8 January 2019).

<sup>96</sup> For the latest reports, see Office to Monitor and Combat Trafficking in Persons, United States Department of State, *Trafficking in Persons Report* (Report, June 2020); Office of Child Labor, Forced Labor, and Human Trafficking, United States Department of Labor, *2020 List of Goods Produced by Child Labor or Forced Labor* (Report, 2020).

<sup>97</sup> Hannah Monicken, ‘Citing Force Labor, CBP Blocks Seafood Imports from Chinese Company’, *World Trade Online* (online, 28 May 2021) <<https://insidetrade.com/daily-news/citing-forced-labor-cbp-blocks-seafood-imports-chinese-company>>, archived at <<https://perma.cc/L7MM-JLWS>>.

<sup>98</sup> *Modern Slavery Act 2015* (UK) s 54.

<sup>99</sup> Marschke and Vandergeest, ‘Slavery Scandals’ (n 93) 44.

insidious practices on fishing vessels has been raised in the past.<sup>100</sup> Previously, major seafood certification schemes, such as the Marine Stewardship Council's ecolabel, have largely concentrated on ecological and environmental sustainability, rather than socio-economic or human rights considerations.<sup>101</sup> There have been calls for more socially responsible seafood certification schemes.<sup>102</sup> For example, the *Mahé Call to Action* has highlighted the value of developing guidelines on social responsibility in global seafood value chains.<sup>103</sup> These calls are being heeded.

Although there are some public bodies which support socially responsible sourcing of fish,<sup>104</sup> initiatives in the area of socially responsible sourcing of seafood have largely been undertaken by industry groups or by private certification bodies.<sup>105</sup> This has been a fairly recent phenomenon. In 2020, the International Seafood Sustainability Foundation implemented the *Public Policy on Social and Labour Standards*, under which participating companies are required to have policies to address matters including forced labour, remuneration, working conditions and grievance mechanisms.<sup>106</sup> The International Pole and Line Foundation, which is also engaged in tuna fisheries, is committed to social sustainability, including decent working conditions.<sup>107</sup> Some industry groups aim to ensure social responsibility in supply chains, including Seafood Business for Ocean Stewardship,<sup>108</sup> the Global Tuna Alliance<sup>109</sup> and the Seafood Task Force,<sup>110</sup> but with little detail on the standards required. In contrast, the Global Dialogue on Seafood Traceability, a seafood

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<sup>100</sup> Lydia CL Teh et al, 'The Role of Human Rights in Implementing Socially Responsible Seafood' (2019) 14(1) *PLOS ONE* e0210241:1–21; Stringer et al (n 3) 756; Chantavanich, Laodumrongchai and Stringer (n 2) 2.

<sup>101</sup> Teh et al (n 100) 3.

<sup>102</sup> *Ibid.*

<sup>103</sup> *Mahé Call to Action* (n 76).

<sup>104</sup> See, eg, Seafish, a public body supporting the seafood industry in the United Kingdom, which supports socially responsible sourcing of seafood: 'Responsible Sourcing', *Seafish* (Web Page) <<https://www.seafish.org/responsible-sourcing/>>, archived at <<https://perma.cc/4ZQT-W8H2>>.

<sup>105</sup> For a review of the range of organisations which work to some degree on the issue of social responsibility in seafood, see FishWise, *Social Responsibility in the Global Seafood Industry: Background and Resources* (Report, April 2018) app IV.

<sup>106</sup> International Seafood Sustainability Foundation, *9.1 Public Policy on Social and Labor Standards*, adopted 28 October 2020 (entered into force 1 January 2021).

<sup>107</sup> 'Social Responsibility', *The International Pole and Line Foundation* (Web Page) <<https://ipnlf.org/social-responsibility/>>, archived at <<https://perma.cc/9LUM-XVTS>>.

<sup>108</sup> SeaBOS is a collaboration between seafood companies and scientists which seeks to ensure that there is no forced labour within the members' supply chains: 'Our Commitments', *SeaBOS* (Web Page) <<https://seabos.org/our-commitments>>, archived at <<https://perma.cc/WS2F-DV6D>>.

<sup>109</sup> Tom Pickerell, *Tuna 2020 Traceability Declaration Social Responsibility Toolkit* (Toolkit, August 2020).

<sup>110</sup> The Seafood Task Force is an industry association comprising fishing companies, major buyers and tuna canners, which requires its members to develop socially responsible supply chains: Seafood Task Force, *10 Point Action Plan 2021: Driving Accountability, Increasing Transparency and Building Confidence in Seafood Supply Chains* (Briefer and Progress Update, 2021).



industry forum, has developed global standards for seafood traceability which includes human welfare standards as one of its components.<sup>111</sup>

There are also certification schemes adopted by private certification bodies that are increasingly looking to incorporate decent work conditions in their certification standards for fisheries. The Fair Trade USA Capture Fisheries Standard ('CFS'), revised in May 2021, is a certification scheme for groups of fishers or land-based operations enabling entities in the supply chain to carry the 'Fair Trade Certified' label. The CFS seeks to protect fundamental workers' rights, conditions of employment, and health and safety on vessels as well as ensuring proper fisheries management.<sup>112</sup> The Marine Stewardship Council requires the fisheries which carry its label and are certified by accredited independent certifiers to report publicly on the measures they are taking to address forced and child labour, and it is investigating approaches to address human and labour rights issues within the seafood industry.<sup>113</sup> In 2021, an independent and accredited third-party certification programme for labour practices on vessels in wild-capture fisheries around the globe — the FISH Standard for Crew — released a standard that seeks to ensure that fish sold all around the world is handled by crews who are ethically hired, treated with respect, paid properly and allowed fair access to address grievances.<sup>114</sup> However, this standard has been criticised, including on the grounds that it is unlikely to be effective in preventing human rights abuses at sea.<sup>115</sup>

These responses to the deficiencies in the legal and compliance framework for addressing labour standards on fishing vessels are based upon the power of markets and supply chains. They are, however, not without their problems. They rely upon fish entering the markets of the major import countries, which is not always the case. With the widespread use of transshipment in distant water fisheries, it is difficult to ensure adequate traceability. There is also concern that some certification schemes may operate so as to disadvantage exports from developing countries.<sup>116</sup> In essence, these are stopgap measures, but do not get to the heart of the problem. One must therefore look elsewhere for a potential solution. This is addressed in the following section.

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<sup>111</sup> Global Dialogue on Seafood Traceability, *GDST Standards and Guidelines for Interoperable Seafood Traceability Systems: Core Normative Standards (Version 1.0)*, February 2020.

<sup>112</sup> Fair Trade USA, *Capture Fisheries Standard*, 28 May 2021.

<sup>113</sup> Marine Stewardship Council, 'Fisheries Observers, Deaths at Sea, Human Rights, and Responsibilities of Fisheries Organisations' (Statement, 23 July 2020) <<https://www.msc.org/en-au/media-centre-anz/msc-briefings-statements/fisheries-observers-deaths-at-sea-human-rights-and-responsibilities-of-fisheries-organisations>>, archived at <<https://perma.cc/N9ZN-TL9N>>.

<sup>114</sup> FISH, *Fairness, Integrity, Safety and Health (FISH) Standard for Crew*, 12 August 2021.

<sup>115</sup> EJF Staff, 'Weak Fisheries Certification Leaves an Open Door for Human Rights Abuses', *Environmental Justice Foundation* (Web Page, 24 May 2021) <<https://ejfoundation.org/news-media/weak-fisheries-certification-leaves-an-open-door-for-human-rights-abuses>>, archived at <<https://perma.cc/8DPD-ZTNB>>.

<sup>116</sup> Richard A Nyiawung, Ajith Raj and Paul Foley, 'Marine Stewardship Council Sustainability Certification in Developing Countries: Certifiability and Beyond in Kerala, India and the Gambia, West Africa' (2021) 129 *Marine Policy* 104526:1–9, 7.

## V THE VALUE OF A MULTILATERAL APPROACH

It is clear from the previous sections that a range of states and intergovernmental, non-governmental, industry and private certification organisations are actively engaged in seeking to address labour conditions on fishing vessels. Figure 1 illustrates this complexity. The difficulties inherent in an institutional framework which is regulated by so many different international organisations has been highlighted previously.<sup>117</sup> However, it is not simply the plethora of actors involved, but the lack of serious engagement at a political level and the use of jurisdictional issues as an excuse for inaction.

Figure 1: Key Actors in ensuring decent work on fishing vessels



It does not need to be this way. New Zealand demonstrated a political commitment to taking action to address labour conditions on chartered fishing vessels and resulting jurisdictional issues by passing legislation requiring foreign-owned vessels to be flagged in New Zealand before being able to fish in

<sup>117</sup> Stringer et al (n 3) 755.

New Zealand waters.<sup>118</sup> The US is exploring the means that can be used to stop human trafficking on vessels fishing in international waters.<sup>119</sup> The challenge is to harness the international political will to bring about change.

Meeting this challenge will require coordination of the efforts of all those engaged at the various levels described in the previous sections, notably flag states; coastal states; port states; market states; home states; RFMOs, intergovernmental organisations; NGOs; and corporates. It will also require coordination at different levels within these various organisations, such as the agencies within states exercising variously fisheries, labour and human rights functions, and national as well as international NGOs seeking to advance decent working conditions in fisheries. Much of the scholarship on labour standards on fishing vessels has focused on one or other of these actors. For example, some commentators have advocated that RFMOs should take greater responsibility for addressing labour conditions on vessels fishing within their Convention Areas.<sup>120</sup> However, it is only through an effective and coordinated multilateral approach that the efforts of the various actors involved, including at different levels, can be brought together to promote a common objective.

A multilateral framework is therefore likely to be the most effective in responding to such a complex issue at an international, regional and national level in an integrated manner, taking into account all relevant links across sectors and between governments, industry and civil society.<sup>121</sup> The need for multilateral action has been recognised. The FAO Secretariat has suggested the development of an international strategy or international plan of action to provide guidance on the implementation of international instruments to improve safety at sea and decent working conditions.<sup>122</sup> It is envisaged that this would be voluntary and provide guidance in the implementation of the various international instruments, improve decent work conditions and be based on the FAO Technical Guidelines for Responsible Fisheries.<sup>123</sup> A Resolution from the 2019 Torremolinos

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<sup>118</sup> *Report of the Ministerial Inquiry* (n 31). This led to the *Fisheries (Foreign Charter Vessels and Other Matters) Amendment Act 2014* (NZ) Public Act No 60 of 2014.

<sup>119</sup> Office to Monitor and Combat Trafficking in Persons, United States Department of State, *Task Force on Human Trafficking in Fishing in International Waters* (Report, January 2021).

<sup>120</sup> Chris Wold, Western and Central Pacific Fisheries Commission, *Slavery at Sea: Forced Labour, Human Rights Abuses, and the Need for the Western and Central Pacific Fisheries Commission to Establish Labour Standards for Crew*, Doc No WCPFC-TCC17-2021-OP05, 17<sup>th</sup> reg sess, 17 September 2021.

<sup>121</sup> The UN Secretary-General, António Guterres, calls this ‘networked multilateralism’, in which the UN works more closely with the full range of multilateral and regional organisations and others such as businesses and civil society to effectively address current global challenges: United Nations, ‘Networked, Inclusive Multilateralism Can Help Overcome Challenges of Era, Says Secretary-General, Opening General Assembly Session’, (Press Release No SG/SM/19746-GA/12179, 17 September 2019) <<https://www.un.org/press/en/2019/sgsm19746.doc.htm>>, archived at <<https://perma.cc/V4YY-C4QP>>. See also Marianne Beisheim and Felicitas Fritzsche, ‘Networked Multilateralism: ECOSOC and HLPF Reviews as Window of Opportunity’, *SDG Knowledge Hub* (online, 20 January 2021) <<https://sdg.iisd.org/commentary/guest-articles/networked-multilateralism-ecosoc-and-hlpf-reviews-as-window-of-opportunity/>>, archived at <<https://perma.cc/UJM4-5ZWE>>.

<sup>122</sup> *Safety at Sea* (n 75) 7–8 [35].

<sup>123</sup> Food and Agriculture Organization of the United Nations, *Fisheries Operations: 3. Best Practices to Improve Safety at Sea in the Fisheries Sector* (Technical Guidelines, 2015) <<https://www.fao.org/3/i4740e/i4740e.pdf>>, archived at <<https://perma.cc/9VQC-U2B9>>.

Conference, held under IMO auspices, suggested that the IMO consider developing technical assistance tools,

in cooperation with relevant international organizations ... on matters concerning fishing working conditions, fishing vessel construction, training of fishing vessel personnel, monitoring, control and surveillance, operations and seaworthiness standards for fishing vessels, protection of the environment, combating IUU fishing, and measures against the fraudulent registration of vessels engaged in IUU fishing ...<sup>124</sup>

However, both suggestions do not truly represent a multilateral solution and may well lead to the same mandate issues as currently exist.

Coordination at the UN level, and in particular at the UN General Assembly, can help prevent silos and encourage the necessary political will to address all facets of the labour standards issue. UN Oceans was established in 2003 as an inter-agency mechanism to enhance the coordination, coherence and effectiveness of competent organisations of the UN system.<sup>125</sup> However, it is more of a coordinating mechanism among Secretariats and cannot by itself drive policy or legal changes. On the other hand, the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea ('ICP') is a vehicle for UN members to discuss oceans and law of the sea issues. In 2005, the UN General Assembly placed human and labour rights of those employed in the fishing and maritime sectors on the list of issues that merited attention by the General Assembly.<sup>126</sup> The ICP was briefed by the ILO on labour issues as a key element in an effective maritime safety and security regime during the 2008 ICP session on Maritime Security and Safety.<sup>127</sup> Although the issue has remained on the list of issues which merits discussion in the ICP, it has not progressed. This is despite the issue being regularly raised in the annual UN General Assembly Oceans and Law of the Sea Resolution together with calls to become party to the relevant conventions which address the issues.<sup>128</sup> However, consideration of the issue by the ICP could be a catalyst for increased coordination and action at the UN General Assembly level.<sup>129</sup>

There are other examples where the initiation of a process within the UN General Assembly to address issues of concern have led to the development of international law, including law of the sea. Three examples warrant particular

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<sup>124</sup> International Maritime Organization, *Ministerial Conference Resolution 1: Torremolinos Statement on the Cape Town Agreement of 2012, Relating to Fishing Vessel Safety, and Combating Illegal, Unreported and Unregulated (IUU) Fishing*, IMO Doc FVS-IUU/CONF.1/WP.2, annex 1, 5.

<sup>125</sup> See, eg, UN Oceans, *Summary Report*, 19<sup>th</sup> mtg (7–8 February 2019).

<sup>126</sup> *Report on the Work of the United Nations Open-Ended Informal Consultative Process on Oceans and the Law of the Sea at Its Sixth Meeting*, 60<sup>th</sup> sess, Agenda Item 76(a), UN Doc A/60/99 (7 July 2005) [106(c)].

<sup>127</sup> International Institute for Sustainable Development, 'Summary of the Ninth Meeting of the UN Open-Ended Informal Consultative Process on Oceans and the Law of the Sea: 23–27 June 2008' (2008) 25(55) *Earth Negotiations Bulletin* 1, 6.

<sup>128</sup> See, eg, *Oceans and the Law of the Sea*, GA Res 75/239, 75<sup>th</sup> sess, Agenda Item 76(a), UN Doc A/RES/75/239 (5 January 2021, adopted 31 December 2020) paras 117–24.

<sup>129</sup> Irini Papanicolopulu has noted that international organisations, in particular through the annual UN General Assembly resolution on oceans and the law of the sea, would be in the 'best position' to express a general principle obliging states to protect people at sea: Irini Papanicolopulu, *International Law and the Protection of People at Sea* (Oxford University Press, 2018) 169.

mention. First, UN General Assembly Resolution 46/215, *Large-scale Pelagic Drift-Net Fishing*, established a moratorium on the use of pelagic large-scale driftnets which has continued to the present day.<sup>130</sup> Similarly, *Resolution 59/25* called upon states to take action urgently to prohibit bottom trawling that has adverse impacts on vulnerable marine ecosystems until such time as appropriate conservation and management measures could be adopted.<sup>131</sup> This has been followed by successive resolutions on bottom fishing with periodic reviews.<sup>132</sup> The UN processes leading to the negotiations on biodiversity beyond national jurisdiction commenced with a UN Ad Hoc Working Group which laid the foundations for a General Assembly resolution establishing a preparatory process for negotiations.<sup>133</sup> The common element in these developments was a UN process to garner sufficient political will to take action on a particular issue and concentrated attention on solutions to a particular problem.

The initiation of a UN process to address labour standards on fishing vessels could commence with a session of the ICP dedicated to this topic. This could lead to increased understanding of the interplay between the various agencies involved in addressing labour conditions on fishing vessels and the complex mandate and jurisdictional issues involved. A UN Ad Hoc Working Group could be established to identify gaps in the current international legal framework, set out agreed standards to ensure decent work in fisheries, promote and improve monitoring, compliance and enforcement and develop standards of conduct by

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<sup>130</sup> *Large-Scale Pelagic Drift-Net Fishing and Its Impact on the Living Marine Resources of the World's Oceans and Seas*, GA Res 46/215, 46<sup>th</sup> sess, 79<sup>th</sup> plen mtg, UN Doc A/RES/46/215 (10 February 1992, adopted 20 December 1991).

<sup>131</sup> *Sustainable Fisheries, Including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments*, GA Res 59/25, 59<sup>th</sup> sess, Agenda Item 49(b), UN Doc A/RES/59/25 (17 January 2005, adopted 17 November 2004) para 66 ('Resolution 59/25'). See also *Sustainable Fisheries, Including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments*, GA Res 64/72, 64<sup>th</sup> sess, Agenda Item 76(b), UN Doc A/RES/64/72 (19 March 2010, adopted 4 December 2009) paras 113, 117, 119–24; *Sustainable Fisheries, Including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments*, GA Res 66/68, 66<sup>th</sup> sess, Agenda Item 76(b), UN Doc A/RES/66/68 (28 March 2012, adopted 6 December 2011) paras 121, 125–6, 129–30, 132–4; *Sustainable Fisheries, Including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments*, GA Res 71/123, 71<sup>st</sup> sess, Agenda Item 73(b), UN Doc A/RES/71/123 (13 February 2017, adopted 7 December 2016) paras 156, 171, 175, 177–88, 219.

<sup>132</sup> For the most recent resolution, see *Sustainable Fisheries, Including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and Related Instruments*, GA Res 74/18, 74<sup>th</sup> sess, Agenda Item 74(b), UN Doc A/RES/74/18 (19 December 2019, adopted 10 December 2019) para 210.

<sup>133</sup> See *Development of an International Legally Binding Instrument under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction*, GA Res 69/292, 69<sup>th</sup> sess, Agenda Item 74(a), UN Doc A/RES/69/292 (6 July 2015, adopted 19 June 2015).

which to assess whether the standards are being met. Calling for ratification of international instruments is not enough. There needs to be exploration of the reasons why the Conventions are not being ratified. It may be more constructive to encapsulate expected action in a single soft-law instrument to provide a coherent legal framework and which could be used to raise labour standards while acknowledging the link between poor labour standards and IUU fishing. This could lead to a UN General Assembly resolution which provides a set of concrete actions for flag states, coastal states, port states, migrants' home states and recruiting agency states to follow. A joined-up and coherent legal framework would make complementary action by RFMOs more feasible.

It is through such soft-law instruments that regulations, procedures or practices concerning labour standards on fishing vessels can become 'generally accepted' within the terms of art 94(5) of *UNCLOS*.<sup>134</sup> As Judge Paik has said, it is important to read flag state duties under *UNCLOS* in a way which recognises that 'flag State jurisdiction and control have evolved to cope with new issues, reflecting the changing needs of society and the new demands of the time'.<sup>135</sup> This may mean that a greater range of states can play a role in ensuring compliance with internationally accepted norms to improve labour conditions on fishing vessels.

Particular attention should be placed on the role of port states and coastal states. Port states can complement flag state responsibility and make an important contribution to ensuring compliance with international rules. It is generally accepted that port states do not exercise jurisdiction over affairs that are internal to the vessel and that do not affect the interests of the port state.<sup>136</sup> However, '[w]hat constitutes "internal affairs" of the ship and "interests" of the port State ... depends to a large extent on specific circumstances as well as on the evolving dominant views in the international community'.<sup>137</sup> In light of the interest of the international community in ensuring compliance with basic human rights norms, there is a role for port states in inspecting vessels and identifying instances of human rights abuses. This may be akin to an expansion of port state control to encompass labour conditions. This could provide an opportunity to integrate and 'mainstream' maritime labour concerns into the international regimes relating to ship safety and security and environmental protection. Similarly, coastal states have the right under art 62(4) of *UNCLOS* to require that nationals fishing within its exclusive economic zone comply with coastal state laws and regulations.<sup>138</sup> Nevertheless, there is a legal tension between this and art 94 of *UNCLOS*, which places responsibility on the flag state for the internal order of the vessel.<sup>139</sup> Any lack of legal clarity could be one of the elements

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<sup>134</sup> *UNCLOS* (n 13) art 94(5).

<sup>135</sup> *Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC) (Advisory Opinion)* (International Tribunal for the Law of the Sea, Case No 21, 2 April 2015) 106–7 [11] (Judge Paik).

<sup>136</sup> Erik Jaap Molenaar, 'Port State Jurisdiction: Toward Comprehensive, Mandatory and Global Coverage' (2007) 38(1) *Ocean Development and International Law* 225, 228.

<sup>137</sup> Erik J Molenaar, 'Port State Jurisdiction' in Rudiger Wolfrum (ed), *Max Planck Encyclopaedia of Public International Law* (Oxford University Press, online at January 2021) [14].

<sup>138</sup> *UNCLOS* (n 13) art 62(4).

<sup>139</sup> *Ibid* art 94.

addressed in any soft law instrument in order to provide appropriate legal frameworks for both coastal state and port state action.

At the national level, a new instrument could promote the intensification of state regulation of labour conditions on fishing vessels. It could reinforce the need to improve flag state implementation, compliance auditing and enforcement. It could also address the need for action to be taken in respect of recruiters and brokers in the fisher's home state or in third states.

Improved multilateralism would also provide a catalyst for business to embrace social responsibility in the fisheries supply chain. Thousands of companies already participate in the UN Global Compact, which is based on human rights, labour and environmental principles.<sup>140</sup> Labour standards on fishing vessels can and should be addressed through a human rights lens.<sup>141</sup> The UN *Guiding Principles on Business and Human Rights* ('*Guiding Principles*') already provide the 'Protect, Respect and Remedy' framework for states to implement their human rights obligations and prevent their corporates from committing human rights abuses abroad.<sup>142</sup> Under the *Guiding Principles*, respect for global human rights standards is expected of all business enterprises, wherever they operate.<sup>143</sup> The *Guiding Principles* could be a model for owners and operators of fishing vessels as well as all those businesses involved in the global supply chain. Such a model could also provide the basis for coordinated action by seafood corporations, third party certification groups and NGOs so that not only issues of sustainability are addressed through certification programmes but also labour conditions on vessels. A process which involves the UN General Assembly in setting internationally agreed labour standards might also help to prevent certification schemes being used as a mechanism to disadvantage exports from developing countries.

None of this is to suggest that a multilateral process under UN auspices would be easy to achieve or have the required level of legal specification to lift labour standards on fishing vessels, especially on industrial vessels fishing in international waters. However, this mechanism provides an opportunity to apply a more integrated systemic approach to international law and for states to adopt a dedicated, human-centred legal regime for the protection of persons at sea, as advocated by Irini Papanicolopulu.<sup>144</sup> It is through a more holistic approach which seeks to advance multilateral soft-law instruments that states can be persuaded to adopt and enforce stricter labour standards on fishing vessels, either as flag states, coastal states, port states, market states, home states or recruiting states, and to work together with other organisations and corporates to progress these aims. Such an approach also takes into account that the development of

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<sup>140</sup> See *United Nations Global Compact* (Web Page) <<https://www.unglobalcompact.org/>>, archived at <<https://perma.cc/A2BA-57C4>>.

<sup>141</sup> See Sara G Lewis et al, 'Human Rights and the Sustainability of Fisheries' in Phillip S Levin and Melissa R Poe (eds), *Conservation for the Anthropocene Ocean: Interdisciplinary Science in Support of Nature and People* (Academic Press, 2017) 379; Teh et al (n 100).

<sup>142</sup> John Ruggie, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises*, John Ruggie, 17<sup>th</sup> sess, Agenda Item 3, UN Doc A/HRC/17/31 (21 March 2011) annex ('*Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*').

<sup>143</sup> Ibid 13–14.

<sup>144</sup> Papanicolopulu (n 129). See also Becker-Weinberg (n 29) 109.

international law is primarily state driven, through the development of international rules or the state practice and *opinio juris* necessary for the establishment of customary international law.<sup>145</sup> It is a pragmatic approach which seeks to use the existing coordination mechanisms of the UN General Assembly to achieve an objective which is of fundamental importance to fishers.

## VI THE SEARCH FOR A HOME

Labour standards on fishing vessels is a multifaceted, multi-jurisdictional problem involving a wide range of states and non-state actors. A multilateral initiative is a potential avenue and catalyst for enhanced action. However, more is needed than just expression of good intention or appeals to states to ratify relevant international conventions. Concrete actions need to be taken by states and businesses, those actions need to be coordinated, and there needs to be a follow-up mechanism to ensure that expectations are fulfilled. Fundamentally, a multilateral initiative within a UN framework would help to make the issue a global political priority and would enhance cooperation among the many involved actors.

It is only through a UN process that such a multifaceted and crosscutting issue can be addressed in a concerted and coordinated manner. It can cut through fragmentation, circumvent the functionalism of international organisations and harness the necessary political will. A UN process can provide a blueprint for making a meaningful contribution to addressing the serious concerns over applicable labour standards on fishing vessels.

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<sup>145</sup> This does not detract from the importance of judicial tribunals and legal scholars in the development of legal regimes, as emphasised by Papanicolopulu (n 129) 218–19.