

ILLEGAL, UNREPORTED, AND UNREGULATED FISHING AND THE IMPACTS ON MARITIME SECURITY

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INTRODUCTION

Maritime security is a key component of national sovereignty. The ability to govern, regulate, and enforce laws within a country's exclusive economic zone (EEZ) is vital to the environmental, economic, and geopolitical security of maritime nations. Unfortunately, these concerns are increasing and being strained by some distant water fishing nations (DWFN)¹ and artisanal fishermen through the practice of illegal, unreported, and unregulated (IUU) fishing. With global consumption of seafood rising and fish stocks continuing to decline, the competition and economic incentive to harvest more seafood is creating a slow onset crisis for the environmental health of the oceans. Meanwhile, the willful violation of various national EEZs creates spikes in rapid onset crisis events for the governments involved in these issues. What can security practitioners in the Indo-Pacific region do about this problem? Informed by hindsight, this chapter will draw insights into the transnational threat associated with IUU fishing and suggest options for countering these issues.

Following the passage of the 1982 Law of the Sea Convention (often abbreviated as UNCLOS), maritime nations were able to formally claim exclusive economic zones out to 200 nautical miles from the baseline (approximate shoreline) for fisheries resources. The establishment of EEZs by sovereign maritime nations forced many fishermen to find new fishing grounds much farther afield in order to stay in business, as the new national maritime zones forced them to fish further from home ports. These

increased transit distances required greater seakeeping ability, fishing tactics, and improved technology to enhance productivity. As these vessels moved further out into the oceans, a greater percentage of the world's seas began to be targeted for industrial scale commercial fishing. In the 1950s, approximately 60% of the world's oceans were being fished; fast forward present, and over 90% of the seas are being targeted for various seafood products.² This increased pressure by both legal and illegal fishing activity has resulted in substantial pressure being placed on maritime ecosystems. According to the United Nations Food and Agriculture Organization (FAO), approximately 93% of all globally harvested fish products are either at their maximum sustainable levels or being overfished.³

UNDERSTANDING THE THREAT

As fishing stocks are depleted across the globe, distant water fishing fleets and artisanal fishermen are putting greater stress on fisheries resources. This increased pressure can create scarcity, driving increased prices, thereby incentivizing more unlawful fishing activity and predatory behavior. Collectively, these actions can drive a death spiral for the fisheries resources. The increased environmental pressure from overfishing and certain types of harvesting methods has led to ecological collapse of fishing grounds in the South China Sea and along the east and west coasts of Africa. With the destruction of natural resources, nations are faced with the twofold impact of the loss of the once renewable economic resource and the loss of food that was harvested from the sea. For many this is no small issue, according to the United Nations, several countries in the developing world obtain up to 50% of their protein input from seafood products.⁴ As fish stocks are depleted, individuals, families and communities are under increased pressure for basic survival. When faced with the cost-benefit analysis of starving to death or engaging in illegal activity to support one's family or village, most people will do what it takes to provide for their community. Thus, the loss of environmental habitat and natural resources can create economic and food security issues for human populations, which in turn can drive maritime crime and piracy.

The quintessential example of fishermen turned criminal is the piracy crisis that occurred off the coast of Somalia from 2006 to 2012. The nation of Somalia fell into chaos in 1991 after the government was overthrown. The loss of central authority created large ungoverned spaces across the land and seas surrounding the Horn of Africa. Recognizing a lack of na-

tional enforcement, distant water fishing fleets moved into Somalia's EEZ and quickly put the local fishermen out of work. With little opportunity to earn a living, and ready access to military grade weapons, it wasn't long before piracy became a booming industry in the waters surrounding the Horn of Africa. Today the Somali pirate issue has largely been suppressed through a significant multi-national naval task force and the widespread use of well-armed ship riders. Over the past five years there have only been 11 attacks, down from a high of 237 attacks in 2007 alone.⁵

Today the global piracy hotspots are in Southeast Asia and the Gulf of Guinea. According to the U.S. Office of Naval Intelligence, there have been 417 attacks in Southeast Asia and 544 in the Gulf of Guinea respectively since 2016.⁶ The pattern of smaller boats attacking larger, slower moving vessels to carry out armed robbery or kidnap for ransom still apparently work well.⁷ Whether these are unemployed fishermen conducting these most recent attacks remains to be seen. But the access to small boats, and the ability to operate them against targets of exploitation, frequently far offshore, indicates a level of competency one would gain as an artisanal fisherman or professional mariner.

Piracy and armed robbery at sea are crimes that are not to be taken lightly. However, the more pressing concern for the Indo-Pacific region is arguably the use of IUU fishing as an instrument of national power. The People's Republic of China (PRC) stands out today as the largest user of this tactic. In the 15th century China was a great maritime nation with very large merchant ships transiting throughout the Indo-Pacific region engaging in international trade and exploration. They abandoned their maritime quests until after the end of World War II, when the first official map of their territorial claims of the South China Sea appeared in 1947.⁸ Except for some temporary flashes—in 1974, when the PRC seized the western group of the Paracel Islands from the dying South Vietnam; in 1988, when Beijing grabbed six reefs in the Spratly Islands; and in 1995, when China stealthily took Mischief Reef—China's excessive territorial claims remained somewhat submerged in the international arena. In the late 2000s the PRC began to more forcefully assert its maritime claims to the region through a series of land reclamation and artificial reef building activities that continue today.⁹ After the PRC took de facto control of the Scarborough Shoal in 2012, a reef located within the Philippine EEZ, the Philippine government brought suit to the Permanent Court of Arbitration (PCA) against China. The Court found that China had engaged in a broad spectrum of illegal fishing activities, construction projects that de-

graded the marine habitat, and, in general, has “failed to exhibit due regard for the Philippines’ sovereign rights with respect to fisheries in its exclusive economic zone.”¹⁰ This finding perfectly summarizes many of the tactics China has employed throughout the region. Despite the clear violations of international maritime law, China has taken things a step further by the use of their coast guard ships to provide an armed escort for their fishing fleets into neighboring EEZs. It has also used structurally reinforced fishing vessels under the state control of the Maritime Militia, to ram, attack, and harass vessels throughout the region. In several instances this has resulted in the loss of life and the abandonment of mariners adrift at sea; again, a major breach of the most timeless principle of seamanship—never abandoning a mariner in distress. The good news in all of this is that some Southeast Asian nations have tired of these tactics and taken active steps to counter this illegal and immoral behavior.

Another significant concern with IUU fishing is the linkages between the vessels—their owners as well as their captains—and general criminal activities such as human slavery and trafficking, and the smuggling of drugs and weapons. In 2016, the Associated Press published a series of articles on slavery within the commercial fishing fleets of Asia.¹¹ In one instance they detailed the tragedy of a man who was repatriated to Myanmar after being kept at sea for 22 years without pay and under exceptionally poor working and living conditions.¹² In addition to forced labor, fishing vessels are being used to smuggle people across major bodies of water around the world.

In a 2020 UN report on migration, an estimated 653,000 migrants arrived in Europe by sea routes from 2016-2018.¹³ While the report did not specify the type of vessels used, fishing boats clearly had a role to play in this movement of peoples from the African continent to Europe. Another significant security concern is the linkage between drug trafficking organizations and commercial fishing vessels. Throughout the Eastern Pacific Ocean, many of the vessels interdicted by law enforcement agencies are fishing boats that are trafficking drugs or being used as logistics support vessels for “go fast” smuggling boats that require fuel resupply. A 2011 UN report noted that: “The use of fishing vessels is largely regarded as integral to the *modus operandi* of illicit traffic in cocaine at sea to Mexico and the United States.”¹⁴ This is further substantiated by a recent U.S. State Department report that references the movement of drugs across the maritime domain via the use of fishing vessels.¹⁵ In all of these different criminal ventures, it is clear that the use of these boats facilitates

good operational cover by masking illicit activities under the guise of legal maritime commerce.

THE WAY AHEAD

As the future unfolds, IUU fishing vessels, owners, operators, and nations are likely to have an outsized impact on the safety and security of the maritime domain throughout the Indo-Pacific region. The overexploitation of fisheries resources is likely to continue, resulting in the ecological collapse of highly migratory and international fish stocks. The resource collapse combined with increased global warming/sea level rise will see many Pacific Island and Indian Ocean nations forced to relocate or abandon existing land settlements. As humans move further from established areas, these governments will be hard-pressed to enforce and secure the surrounding EEZs while they deal with the humanitarian crisis associated with sea level rise. The current absence of maritime security throughout many EEZs will be greatly exacerbated, thus enabling distant water fishing fleets greater freedom of movement and opportunity to illegally harvest seafood. As resources collapse, and the opportunity to make money and gather food from the seas diminishes, maritime communities will turn to other legal or illegal means to ensure their personal and economic security. When viewed holistically, all of these factors will serve as great destabilizers of the maritime security environment and drive greater crime and piracy at sea. Maritime nations would be wise to plan for the increased irregular migration of people, human slavery, and the trafficking of drugs and weapons by commercial fishing vessels of all shapes and sizes.

Within this increasingly competitive environment, state sponsored fishing enterprises will continue to use their distant water fishing fleets as a “gray zone” tactic to further their national interests. The deliberate deployment of fishing vessels into neighboring and even distant EEZs will continue throughout the Indo-Pacific region and globally as well. These fleets will be supported by maritime militia or armed government forces such as the coast guard, or perhaps even naval vessels, to harass and intimidate lawful national interests in the maritime domain. This tactic will continue until it becomes clear that the cost is not worth the reward and the actor is dissuaded in this activity across the maritime commons. It is also probable that China will employ this against countries where it will be successful, and not against nations that are likely to react strongly. Thus, all maritime nations should prepare strategic, operational and tactical responses for this

eventual “probing” and attempted seizure of their EEZs by large, aggressive, distant water fishing nations.

IUU is by no means just a China problem; effective maritime security is a strong combination of law, policy, and a judicial system supported by military and police activity to regulate the maritime domain. In order to deal with the unconventional threats associated with IUU fishing, maritime nations must rise to the occasion and recognize the multi-pronged threat posed by this activity. First and foremost, they must implement and develop ways to control and enforce their EEZs. Many nations throughout the South Pacific do not have military forces, let alone any maritime patrol assets, yet they possess massive EEZs with little to no means of controlling this space. Therefore, there must be an international effort to bring governance to these presently ungoverned sea spaces. This enhanced effort must maximize boardings when vessels make port calls and while they are at sea. Fishing vessels must be boarded at every opportunity to validate the cargo, the health and welfare of the crew, vessel safety, and the overall legitimacy/legality of the voyage. This effort should be viewed as a combination of law enforcement and intelligence collection. Any information gleaned from these activities should be shared across regional security partners through multi-national command centers or intelligence fusion centers. Efforts along these lines would go a long way to mitigate some of the criminality of this industry.

The next challenge is to develop, implement, and enforce scientific controls and fisheries regulations over the national fish stocks. Less economically advantaged nations frequently do not have the resources to adequately monitor and regulate the health of their EEZs. This can result in uninformed decisions, such as selling fishing rights or other national interests without truly appreciating the value and volume of resources that are being extracted from their EEZ. In order to mitigate this, the international community has a role to support and defend the smaller states against unregulated resource extraction. A strong mix of scientifically-based fisheries management, in combination with the law enforcement program described above, would serve as force multiplier to counter the IUU activity and conserve renewable fisheries resources for future generations, especially in the developing world.

Lastly, the international community must step up to address and enforce standards on state-sponsored IUU activities. In several countries throughout the world, distant water fishing fleets are highly state-subsidized businesses. That is, the government is wholly or partly the owner

of the business, and/or provides substantial financial grants, loans, tax subsidies, etc. to enable an artificial profit margin. This mercantilist model, supported by military intervention, is having a substantial environmental impact as well as destabilizing the geopolitical environment across Asian seas. The European Union has successfully leveraged an IUU fisheries customs import regimen informally known as the card system. This has been very effective in changing the legal oversight of the fishing industry in many countries across Asia such as Taiwan, Thailand, and Sri Lanka. The United States has implemented a similar system called the Seafood Importation Monitoring Program. Between these two economic giants, the use of customs regulations and leveraged import controls has the potential to significantly influence the most belligerent national actors. Additionally, the use of coast guard forces, supported by naval vessels provides a clear use of force continuum for countries to ensure the national sovereignty of their EEZs.

On paper, basic IUU enforcement tactics sound easy, but in practice, they are not. The resource constraints and competing priorities of law enforcement agencies frequently make “fisheries enforcement” a secondary or tertiary mission. However, when taken in its totality, IUU fishing is much more than an environmental crime. IUU is a global, strategic challenge that must be met with a collaborative, international strategic response. When involved in illegal activities, the businesses, vessels, owners and operators, sometimes state-sponsored, are functionally acting as transnational criminal organizations. These fishing entities are having an outsized impact on the ecological health, economic security, food security, and overall maritime security of the world’s oceans. Whether they are in port or on the high seas, vessels and nations engaged in IUU fishing must have their actions dis-incentivized. Until the cost becomes greater than the reward for the countries, owners, and operators of IUU fishing vessels, these criminal behaviors will continue across the maritime commons.

Notes

- 1 Distant water fishing nations are those with significant fishing fleets that operate far away from their home ports, often in the international waters and the EEZs of other countries. Examples of DWFNs include China, Taiwan, Thailand, Vietnam, and Spain, with China being the largest by far.
- 2 David Tickler, Jessica J. Meeuwig, Maria-Lourdes Palomares, Daniel Pauly, Dirk Zeller, "Far from Home: Distance Patterns of Global Fishing Fleets," *Science Advances* 4, no. 8 (August 1, 2018), <https://advances.sciencemag.org/content/4/8/eaar3279>.
- 3 United Nations Food and Agriculture Organization, *The State of World Fisheries and Aquaculture, Meeting the Sustainable Development Goals* (Rome: United Nations, 2018), <http://www.fao.org/documents/card/en/c/I9540EN>.
- 4 *Ibid.*, 113-114.
- 5 Office of Naval Intelligence, *Gulf of Guinea/Horn of Africa/Southeast Asia: Weekly Piracy Update* for 5-11 March 2020 (Washington DC, March 12, 2020), <https://www.oni.navy.mil/Portals/12/Intel%20agencies/piracy/20200312%20Weekly%20Piracy%20Update.pdf>; Mariama Sow, "Africa in Focus, Figures of the Week: Piracy and Illegal Fishing in Somalia," Brookings Institute, April 12, 2017, <https://www.brookings.edu/blog/africa-in-focus/2017/04/12/figures-of-the-week-piracy-and-illegal-fishing-in-somalia/>.
- 6 Gulf of Guinea/Horn of Africa/Southeast Asia.
- 7 Office of Naval Intelligence, *Worldwide Threat to Shipping (WTS) Report* 7 February-11 March 2020 (Washington DC, March 13, 2020), https://www.oni.navy.mil/Portals/12/Intel%20agencies/piracy/20200312_WTS.pdf.
- 8 Hannah Beech, "Just Where Exactly Did China Get the South China Sea Nine-Dash Line From?" *Time*, July 19, 2016, <https://time.com/4412191/nine-dash-line-9-south-china-sea/>.
- 9 Alexander L. Vuving, "South China Sea: Who Occupies What in the Spratlys?" *The Diplomat*, May 6, 2016, <https://thediplomat.com/2016/05/south-china-sea-who-claims-what-in-the-spratlys/>.
- 10 PCA Case No. 2013-19, "Award in the Matter of the South China Sea Arbitration before an Arbitral Tribunal Constituted under Annex VII to the 1982 United Nations Convention on the Law of the Sea between the Republic of the Philippines and the People's Republic of China" (July 12, 2016), <https://pcacases.com/web/sendAttach/2086>.
- 11 "Seafood from Slaves: An AP Investigation Helps Free Slaves in the 21st Century," *Associated Press*, 2016, <https://www.ap.org/explore/seafood-from-slaves/>.
- 12 Margie Mason, "Myanmar Fisherman Goes Home after 22 Years as a Slave," *Associated Press*, July 1, 2015, <https://www.ap.org/explore/seafood-from-slaves/myanmar-fisherman-goes-home-after-22-years-as-a-slave.html>; Mason, "Fishing Slaves No More, but Freedom Brings New Struggles," *Associated Press*, July 12, 2017, <https://www.ap.org/explore/seafood-from-slaves/fishing-slaves-no-more-but-freedom-brings-new-struggles.html>.
- 13 United Nations International Organization for Migration (IOM), *World Migration Report 2020* (Geneva: International Organization for Migration, 2019), 67, https://publications.iom.int/system/files/pdf/wmr_2020.pdf.
- 14 *Ibid.*, 76.
- 15 United States Department of State, *Bureau for International Narcotics and Law Enforcement Affairs, International Narcotics Control Strategy Report, Volume 1: Drug and Chemical Control* (Washington DC, March 2020), <https://www.state.gov/wp-content/uploads/2020/03/Tab-I-INCSR-Vol-I-Final-for-Printing-2-25-20-508.pdf>.