



## SYMPOSIUM SUMMARY REPORT

### ILLEGAL FISHING IN SOUTHERN AFRICAN WATERS AND BEYOND: PREVENTION AND LAW ENFORCEMENT

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*Summary of the first expert one-day symposium convened by the Institute of Marine & Environmental Law (IMEL) and the Marine Research Institute (Ma-Re) in collaboration with INTERPOL's Project Scale on 9 July 2013 at the University of Cape Town.*

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#### Background

Researchers estimate that Southern and Eastern Africa lose as much as ZAR 9,8 billion worth of fish to illegal and unregulated fishing every year.<sup>1</sup> Fish stocks worldwide are subject to severe overfishing. According to the Food and Agriculture Organization of the United Nations (FAO) 29 per cent of fish stocks are currently overexploited, depleted or in recovery, and nearly all commercially exploited species are either over- or fully exploited.<sup>2</sup> Illegal fishing is one of the main contributors to overfishing, particularly in developing states, which makes efforts to tackle illegal fishing an increasingly important policy objective of African coastal states.<sup>3</sup>

Fish and fish products are valuable commodities. The last decade has seen an escalation of transnational and organised criminal networks engaged in illegal fishing, known as 'fisheries crime'. Fisheries crime undermines resource conservation; threatens food security and livelihoods; destabilises vulnerable coastal regions due to limited law enforcement capabilities and corruption; and is linked to other serious crimes including money laundering, fraud, human trafficking and drug trafficking.<sup>4</sup>

In early 2013 INTERPOL's Environmental Crime Programme launched Project Scale to improve cooperation among member states to combat transnational fisheries crime. Project Scale

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<sup>1</sup> Agnew *et al.* 'Estimating the Worldwide extent of illegal fishing'. (2009) *PLoS ONE* 4(2): e4570.

<sup>2</sup> Food and Agriculture Organization of the United Nations (FAO). *State of the World's Fisheries and Aquaculture 2012*. (2012), FAO. Pg. 56.

<sup>3</sup> See e.g., African Union's 2050 Integrated Maritime Strategy; NEPAD Partnership for African Fisheries; and the Somali Maritime Resource and Security Strategy.

<sup>4</sup> See INTERPOL at <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale>.

facilitates the use of INTERPOL's generic tools and services to assist law enforcement agencies detect, suppress and combat fisheries crime.

The UCT IMEL/Ma-Re first expert symposium on illegal fishing was convened in collaboration with INTERPOL Project Scale to assess current and future research and capacity building programmes to assist law enforcement agencies in Southern and Eastern Africa prevent illegal fishing and enforce fisheries laws. The symposium preceded the 2nd INTERPOL Project Scale Regional Consultation on Fisheries Crime in Cape Town, South Africa, on 10 and 11 July 2013.

## **Introduction**

Professor Jan Glazewski of IMEL welcomed attendees to the symposium explaining the objectives of the symposium and INTERPOL's aims in organising the symposium with IMEL and Ma-Re of UCT.

Professor Elrena Van de Spuy of the Centre of Criminology in the Faculty of Law officially opened the symposium on behalf of the Dean Of Law, Prof PJ Schwikkard. She welcomed the participants and encouraged them to engage the academics in pushing the boundary between orthodoxy and practicality on the issue of illegal, unregulated and unreported (IUU) fishing in Southern Africa.

## **Presentations**

### **1. AU 2050: Africa's Integrated Maritime Strategy:** *Prof. Patrick Vrancken, Nelson Mandela Metropolitan University.*

Prof Patrick Vrancken is the incumbent of the South African Research Chair in the Law of the Sea and Development in Africa, hosted by the Nelson Mandela Metropolitan University, funded by the Department of Science and Technology and managed by the National Research Foundation.

Prof Vrancken spoke about the African Union's 2050 Integrated Maritime Strategy (AIM). This is a document being drafted by the AU with the intention of providing a framework on protecting, preserving and sustainably managing the oceans and seas surrounding the African continent. The objective of this document is to foster increased wealth creation from Africa's inland waters, oceans and seas by developing a sustainable 'blue' economy in a stable, safe, secure and environmentally responsible manner. Maritime safety and security, and marine environment protection are, among others, the strategic objectives to be achieved.

Prof. Vrancken noted that the African Union started paying serious attention to the issue of fishery resources only during the last decade with various conferences, workshops and declarations prepared in order to encourage the protection, preservation and sustainable

management of fishery resources in Africa. The latest effort is part of the AIM Strategy. In addressing the issue of IUU fishing, paragraph 35 states that *'...the AIM Strategy shall incorporate and implement a Common Fisheries Policy for the conservation, management and exploitation of fish stocks in accordance with the ecosystems and precautionary approach for the whole CEMZA, when established'*. Paragraph 36 further states that *'in order to further deter IUU fishing activities, sanctions "of sufficient gravity as to deprive the offenders of the benefits accruing from their illegal activities" shall be put in place as per the 2005 Rome Declaration on IUU Fishing, which might include seizure of assets and prosecution, with the toughest stand for compensation. All Member States are encouraged to report any IUU fishing activity to the AU for supplementary stringent dissuasive actions through all available channels deemed appropriate'*.

This document is yet to be adopted formally by the AU Heads of State and Government.

## **2. Buccaneering business: Fisheries crime and the transnational organised crime perspective.**

*Ms Eve de Coning, Manager: Strategy and Analysis, Project Scale, INTERPOL Environmental Crime Programme.*

Ms de Coning introduced the objectives of INTERPOL Project Scale and traced the international development leading up to the establishment of a dedicated fisheries crime project at INTERPOL. Project Scale was established in February 2013 with the aim of cooperating with member countries in fighting fisheries crimes by sharing intelligence; facilitating operations across borders; and assisting with capacity building and raising awareness with regard to fisheries crimes. INTERPOL Project Scale also cooperates with a number of other international and regional organisations in tackling this form of crime.

Ms de Coning explained that the severe state of global fish stocks has placed the prevention and law enforcement of fisheries crime high on the global agenda. The United Nations General Assembly resolutions on sustainable fisheries have repeatedly reiterated that stronger and more coordinated efforts must be made globally to combat illegal fishing. She pointed out that two schools of thoughts have emerged as to how illegal fishing can be combatted. The one considers illegal fishing as an 'administrative' or 'management' concern, and focuses on regulating the industry and the activities of fishing vessels, typically aimed at vessels engaged in 'illegal, unreported or unregulated fishing'. Measures in this category include catch documentation schemes, port state measures, bans on transshipments at sea etc.

The second school of thought, which has emerged over the last six to seven years, focuses on the many links and similarities between illegal fishing and transnational organized crime. This school of thought has coined the phrase 'fisheries crime', i.e., administrative or criminal offences that may cause harm to the marine living environment. Ms De Coning referred to the need for improved intelligence gathering; the transnational nature of the activity; the links between illegal fishing and other transnational and local crimes, such as human trafficking, tax and customs evasion, corruption, drug trafficking, and document fraud; and the use of existing legal tools and institutions to facilitate cross border law enforcement and mutual legal assistance, as crucial elements in this new development.

Ms De Coning emphasized the need to view illegal fishing holistically in the context of other forms of crimes and to utilize the existing legal tools and institutions available to combat transnational organized crime. It is in this context that INTERPOL Project Scale is established. However, it is important to keep in mind that INTERPOL is only one of a number of international, regional and local organizations and agencies that need to cooperate and coordinate to create a seamless regime to combat fisheries crime. A core strategy of INTERPOL Project Scale is therefore to reach out and cooperate with strategic partners to improve cooperation and avoid duplication of efforts.

Ms de Coning closed by pointing out that while part of the objective of the symposium and the consultation is to raise awareness about fisheries crimes, its main aim is to bring together different agencies to discuss the problem of illegal fishing and transnational organised fisheries crime.

**3. IUU Fishing: Profits, plunder, port state jurisdiction and flags of convenience.** *Dr Emma Witbooi, Institute of Marine & Environmental Law, UCT*

Dr Emma Witbooi was invited to speak on IUU fishing, port state jurisdiction and flags of convenience. She noted that IUU fishing is a complex problem because it cuts across various jurisdictions raising the issue of jurisdictional reach and the related question of how to deal with organised crime. She stated that efforts of international fishing law towards preventing, deterring and eliminating IUU fishing are constantly hampered by the use of flags of convenience. She argued that key to tackling flags of convenience is the need for a genuine link that emphasises flag states' responsibility to control their vessel's fishing activities; for stricter, harmonised port state control; and for port states to join regional fisheries management organisations towards improved effectiveness of port state measures. She concluded with suggestions for tackling IUU fishing globally including: broader use of market-related tools; the creation of a global register on vessels fishing on the high seas; the establishment of a global IUU fishing vessel list and/or wide-spread sharing of information on lists created by regional fisheries management organisations; the need for unique vessel identification numbers for

fishing vessels; and that wide-spread sharing of accurate information on IUU fishing activities be encouraged.

**4. Small-scale fishers: Perspectives on enforcement and implementation.** *Assoc. Prof.*

*Moeniba Isaacs, Institute of Poverty, Land and Agrarian Studies, University of the Western Cape.*

Associate Professor Moeniba Isaacs gave a different perspective. Her paper provided an alternative view to the traditional ‘command and control’ approach by focusing on co-management of fisheries - particularly near-shore species such as abalone and lobster, which provide a living to small scale fishers. Small-scale fishers include subsistence, traditional and artisanal fishers. She noted that before 1994, the small-scale fishing industry was not regulated in South Africa and thus was marginalised and discriminated against. But the *Policy for the small-scale fisheries sector in South Africa, 2012* now provides a framework for promoting the rights of these fishers’ access to marine resources. The draft Marine Living Resources Amendment Bill 2013 was amended to accommodate small scale fishers. She pointed out that there needs to be a paradigm shift in thinking from Individual Transferable Quotas (ITQ) which favour big fisheries companies to collective rights allocations with preferential access to inshore species. Governance, monitoring and enforcement need to be people-centered and community oriented, promoting social equity, justice and the collective governance of marine living resources. Fishers should be empowered to participate in developing, implementing, and evaluating fishery policies and management plans, with the devolution of some management decisions to communities and the inclusion of provincial and local government-making powers.

Prof Isaacs described a ‘work in progress’ of a co-management structure involving community and government representatives. Her concluding remarks emphasised integrating the current rights holders into the framework of small-scale policy and the need to differentiate between the corporate and non-corporate value chains (nutrition and food security).

During the question period, the question of who or what constitute(s) “the community” was discussed among others.

**5. Inter-agency cooperation to detect, investigate and prosecute fisheries crime.** *Ms Henny Irene Beck, Detective Superintendent, Police University College, Norway.*

Ms Beck provided some practical law enforcement insights. She described the postgraduate study programme that has been designed in Norway to educate police officers to combat environmental crimes, including fisheries crimes. The Police University College was established in 1920 as a ‘State Police School’. It was accredited as a ‘Police College’ in 1992 offering three-year undergraduate courses for police officers. In 2004 it was accredited as a ‘University College’. Its accreditation as a Police University College sparked the postgraduate programme

in combatting environmental crimes. The fisheries crime module aims at dealing with uncovering fisheries crime, securing evidence and investigating during the fishing and landing of the catch. The purpose of the postgraduate study programme is to contribute to the knowledge of the police and coordinating authorities, increasing their level of competence through increased cooperation so that they will be better qualified to uncover, investigate and successfully bring to court fisheries crimes.

**6. USA v Bengis: Pillage in South African waters and beyond - lessons learnt for Southern Africa.** *Prof. Jan Glazewski, Institute of Marine & Environmental Law, UCT.*

Prof Jan Glazewski described the topical case of *USA v Bengis*. He pointed out that this was a current affairs issue - less than a month previously a US court had awarded South Africa restitution of over \$29 million (about R247 mill). This was the end result of a protracted legal battle whereby three South African defendants had illegally harvested rock lobster in South African waters and exported them to the USA. The defendants had been carrying on their illicit activities over a period of 14 years before being apprehended and convicted on criminal charges in both the South African and US courts. But over and above imposing criminal sanctions in the form of a fine and imprisonment, the US court awarded a substantial amount restitution to South Africa in what has been labeled as the biggest wildlife case in US history. Prof Glazewski pointed out that but for certain legal technicalities raised by the defendants the restitution award could have been doubled. Among the legal questions addressed was the legal nature of the South African government's interest in fish located in its waters; while it was acknowledged that it has a regulatory interest, the question whether it also had a property interest was addressed by the US court. It concluded that '...conspiracy to conceal their illegal trade in lobster deprived South Africa of money it was due; ...defendants' conduct deprived South Africa of proceeds from the sale of illegally harvested lobsters'. As such depriving South Africa of that revenue is an offence against property and South Africa has a property interest even though not literally owner of the fish. In addition the complex question of quantifying the amount of restitution due to South Africa was addressed.

**7. The SADC Regional Fisheries Monitoring, Control & Surveillance Centre.** *Mr Phil Snijman, Environmental Law Consultant.*

Mr Phil Snijman described how the SADC Fisheries Monitoring, Control and Surveillance Centre came about as a result of the 2001 SADC Protocol on Fisheries, the 2008 SADC Statement of Commitment and the 2010 SADC Action Plan on IUU Fishing. In implementing the Statement of Commitment, a Regional Task Force on IUU Fishing was established and the SADC Regional MCS Centre was formed in 2010. In 2011, the action plan for the Regional MCS Centre was

approved. In 2012, the regional taskforce undertook a feasibility assessment study on the implementation of the Statement of Action and undertook to elaborate a sustainability plan for the Region's MCS Centre in ensuring its successful functioning. The main purpose of the Regional MCS Centre is to enhance regional cooperation, information and intelligence-sharing in the region and to coordinate operations in the region. The Centre is situated in Maputo, Mozambique.

He posed a number of pertinent questions to INTERPOL including: exploring the possibility that it may be willing to get involved in information and intelligence exchange with the Centre; whether it would be possible for it to get involved in the Centre's capacity building and training programme for fisheries inspectors; and assisting by providing experts/specialists in investigating and prosecuting fisheries crime cases.

Eve de Coning (INTERPOL) replied that in order to utilise INTERPOL's intelligence communication services systems, INTERPOL requires information to be submitted via the National Central Bureau in Pretoria. The Bureau then analyses the information and stores it as intelligence. If the Regional MCS Centre wants to use INTERPOL's information and intelligence system, an MOU will have to be signed by the two parties. In terms of capacity building, INTERPOL participated in many training programmes of this sort and Project Scale would conceivably get involved with the Regional MCS Centre in organising programmes with them. In terms of INTERPOL providing expertise or specialists in assisting with the investigation and prosecution of fisheries crimes, they have Incidence Response Teams to facilitate this. Project Scale is thinking currently of setting up a similar group at short notice to help its member countries investigate fisheries crimes and for training fisheries inspectors. Project Scale would appreciate feedback on how this could be done as soon as practicable.

Further comments were made on the purpose of the Regional MCS Centre, particularly on sharing information and intelligence. It was suggested that the Centre could also look to NGOs, private organisations and fishing companies for information and intelligence. This could be done by setting up an independent body to coordinate information and the gathering and sharing of intelligence. In successfully implementing the SADC Statement of Commitment, minimum standards should be established by the Council of Ministers to enhance commitment.

#### **8. Opportunities and Constraints in Enforcing Fisheries Laws: National, Provincial and Local Government perspectives.** *Mr Shaheen Moolla, private consultant.*

Mr Moolla noted that South Africa is currently facing a compliance crisis in the monitoring, patrolling and management of our Exclusive Economic Zone (EEZ) and coastline. He expressed the view that SA has no functioning fisheries observer programme in terms of active vessels for

patrolling. SA has a shore-based monitoring programme with significant shortcomings such as weak compliance, allegations of corruption and reports of landings of rock lobster in the presence of fisheries control officers and inspectors, despite the rock lobster season being closed. In his view there was no significant follow-through process for prosecution of reported cases.

He was of the opinion that to enhance effective compliance and enforcement, there should be devolution of compliance and enforcement strategies to national, provincial and local spheres of government, which is provided for in the Marine Living Resources Act. As an example, he noted that the Green Court, created some time ago to deal with fishery crimes, successfully prosecuted many environmental crime cases, helping to ease the backlog of cases in the magistrate court jurisdiction. This court has since been dissolved but should be brought back because of its important role in enhancing compliance and enforcement.

In addition, Mr Moolla noted that a greater level of coordination is needed between the three spheres of government in compliance and enforcement. For instance, due to the monitoring of abalone and rock lobster in the Cape Town Metropole, the level of illegal poaching has been greatly reduced and the species' growth is healthy compared to other parts of the province where weak monitoring and enforcement has led to depletion of stocks. Intra-coordination within the City of Cape Town municipality has made this possible. He was of the view that while NGOs and fishing communities could also play an important role in monitoring and reporting illegal fishing to authorities, ultimately strong regulatory authorities also need to be in place.

Mr Moolla's presentation evoked a fairly strong reaction from the Department of Agriculture, Fisheries and Forestry (DAFF) officials present and the Chair responded by granting DAFF the right to respond after the tea-break.

## **Panel Discussion**

The final session of the day took the form of a Panel Discussion which evoked much discussion and many points were raised from the floor. The emphasis was on mapping a way forward after the symposium.

### *DAFF response to previous presentation*

First, however, a some of the facts alleged by Mr Moolla in his paper concerning South Africa's compliance, monitoring and enforcement strategies were disputed. It was pointed out by the DAFF representative that South Africa has made significant strides in enforcement via, among



other things, an initiative called the Integrated Fishery Security Strategy. The aim of the strategy is to form partnerships with the Navy, Defence Force, Police Service and all other security agencies to make compliance and enforcement easier to achieve. It was also pointed out that the South African Navy assists the Department with sea patrols while the Air Force assists with air patrols. The Department has a number of inshore fleets for patrols in inland waters and sea boats for patrol along the coast and within the EEZ. The Department also has a yard where it compounds fishing boats caught in illegal fishing.

In cooperation with the Department of Justice, a particular court has been designated as an environmental court. DAFF conducts training for all prosecutors. In addition, the Department has signed an MOU with the Department of Environmental Affairs (DEA) since their split in 2010 to assist the DEA in monitoring oil pollution. The DAFF also partners with the City of Cape Town when necessary and has conducted training sessions for their staff members.

In terms of creating environmental courts, currently there are specialised environmental prosecutors. At national level there is a State Advocate Response Squad for environmental crimes in general and within each Directorate of Public Prosecutions (DPP), there is a state advocate. At regional court level there are prosecutors responsible for environmental crimes.

#### *Panel discussion and ideas for the way forward*

Arising from discussions from the floor, it was suggested that more academic research should be carried out on fishery crimes in South Africa as it seemed that to date, little research has been conducted in this area. However that research had to be pertinent to the industry and government officials involved in fisheries management and the combating and prosecution of fisheries related crime. A suggestion was made, among others, that harsher penalties should be formulated for fisheries crimes with the purpose of deterrence. Additionally, it was suggested that all agencies working in the area of fisheries crimes should be integrated. A further recommendation was that attention should be paid to the nexus between fish species and the drug trade thus raising the criminology and social aspects of fishery crime. Also arising from discussion was the suggestion that SADC member countries should harmonise their fisheries laws and cooperate with each other to form monitoring and surveillance units so as to effectively combat IUU fishing.

It was generally evident that the discussion raised a number of varied and pertinent points. To accommodate these diverse views and to accommodate time constraints the delegates were invited to complete and submit a prepared form and to make suggestions for the way forward. These responses have been summarized and are encapsulated in the Addendum.

## *Conclusion*

The Chair concluded the symposium by thanking the organising administrative staff and voicing the overall sentiment of the attendees that the symposium had been an extremely constructive exercise. A number of suggestions for the way forward were also submitted on the pre-prepared form for this purpose (refer to Addendum of this document). The conference Power Point presentations would be made available on [www.imel.uct.ac.za](http://www.imel.uct.ac.za).

**Prof Jan Glazewski**  
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## **Addendum**

### *Suggestions for the way forward: Summary of written comments*

1. Build capacity in gathering evidence, securing evidence, taking a case to court, prosecuting, training of magistrates, enforcement
2. Work together at a regional and international level
3. Harmonise domestic regulations and regional laws
4. Share information and intelligence across the region
5. Maximise use of resources e.g. joint patrols
6. Address flag state responsibilities
7. Implement conservation and management measures
8. Work together at all spheres of government domestically
9. Research the criminality of IUU fishing
10. Examine the legal frameworks: flags of convenience; “fisheries crime trade” and “IUU trade”; irregularities at sea; arresting foreigners; procurement of fishing gear; forfeiture of fish
11. Examine the institutional frameworks: reporting lines of enforcement officers; incentives for enforcement officers.

### *Suggestions for the way forward: written comments*

- Build capacity in coastal states in the Region focusing on gathering evidence, prosecutors and magistrates
- Flags of convenience should be eliminated

- UNCLOS – forfeiture of fish should be included in national law
- This symposium showed the importance of working together to combat IUU fishing. We need to harmonise our domestic regulations on fisheries and to share information on all kinds of data intelligence.
- Focus on capacity building across the complete range of qualifications, preferably within wider efforts at capacity building and research across the whole maritime domain
- Addressing flag state responsibilities in a serious and frank manner is still an outstanding issue
- Need to consider more issues from other regional countries and partners
- Duplication of efforts at regional level is not helping the countries to put to best use their limited resources
- The lack of implementation of conservation and management measures adopted by RFMOs is still largely a concern
- More emphasis should be placed on the inter-relatedness and shared responsibility of all tiers of government, particularly local authority in that the latter can play a meaningful role in compliance and enforcement of IUU in terms of the resources which are available
- The devolution of knowledge and creating awareness of knowledge relevant to enforcement agencies at ground level
- Advocating integrated action and capacity building
- Continue research on the criminal side of IUU fishing
- Seek understanding on how UNTOC, FAO instruments, and Law of the Sea conventions can fulfill each other
- Identify the opportunities that already exist in the UNTOC when investigating transnational organised fisheries crime
- Encourage criminological research on fisheries crime and the effect of this crime
- Recognise and clearly demarcate the procedural differences between the “fisheries crime trade” and “IUU trade”
- Lots of important discussions took place. What I lacked to see was an integrated approach. It should be about “common and shared responsibility” between agencies, governments etc.
- Have we diagnosed the magnitude of the problem and its links if any, to organised crime? Value chain?
- Use of INTERPOL’s tools and services for cross-continental and inter-regional cooperation

- Development of information-sharing portal: = need to learn from best practice, sharing of case studies; have an annual symposium, and greater involvement of the commercial fishing industry; communicating similar events, conferences in future
- Training inspectors in the Laws of the Sea – IUU
- Irregularities at sea – mutinies and change of ownership – IUU; barriers of initial language with regard to foreign vessels
- Arresting foreigners – Merchant Shipping Act vs Criminal Law / Act
- Government House introduction – National Harbours
- Harmonisation of Laws under regional cooperation
- Standard control over procurement of fishing gear
- Joint regional patrol - concentration in sensitive areas
- Exchange of information on licences, black-listed vessels etc
- Enforcement officer should be accountable to the judiciary, not administration, to avoid interference
- Enhance capacity building
- Provide incentives to fisheries inspectors, like shares of fines, to prevent corruption
- Regional capacity building programme for environment crime prosecution from a legal perspective for our local prosecutors in the region, complemented with capacity building in evidence-gathering and securing, by enforcement personnel and police officers in relation to fisheries. UCT and INTERPOL can devise specialised training for these.
- We need to combine our efforts for the conservation of resources
- We need to increase our efforts on the matter of illegal fishing
- Develop common policies to combat these malpractices
- Strengthen the implementation of existing regulations and laws in the matter of MCS.