

(Submitted to the IV IBDMAR Congress, published as a book chapter in *Direito do Mar: reflexões, tendências e perspectivas*, v.4)

**WHO OBSERVES THE ONBOARD OBSERVERS WORKING IN THE WATERS
ADJACENT TO THE PACIFIC SMALL ISLANDS DEVELOPING STATES? THE
FLAG STATE RESPONSIBILITY FOR VIOLATION OF HUMAN RIGHTS AT SEA**

Luciana Fernandes Coelho

Julia Cirne Lima Weston

ABSTRACT: Onboard observers play an important role within the Law of the Sea regime by ensuring compliance to fisheries regulations and providing scientific data. However, the situation of onboard at-sea observers can be dire, with people being subject to disappearances, killings and inhumane work conditions. The legal framework on safety for onboard observers is in its infancy, while the application of international human rights standards to these workers is underdeveloped. Taking into account this situation, this article attempts to fill in a gap in the literature, by analysing the protection of life and wellbeing of at-sea observers working in the waters adjacent to Pacific Small Islands Development States through the lens of the existing Law of the Sea framework for State responsibility in order to ensure human rights to these workers.

KEY-WORDS: onboard observers, observer programmes, international human rights, flag State responsibility, pacific small islands developing states.

RESUMO: Os observadores de bordo tem um papel importante no regime do Direito do Mar ao monitorarem o cumprimento das normativas em relação à pesca e ao proverem dados científicos. No entanto, a situação dos observadores a bordo de navios pode ser periculosa, haja vista que eles estão sujeitos a desaparecimentos, assassinatos e condições degradantes. O arcabouço jurídico para a segurança desses trabalhadores está em fase inicial e a aplicação da legislação internacional de direitos humanos a eles ainda não está suficientemente desenvolvida. Considerando essa situação, o presente artigo pretende auxiliar na supressão de uma lacuna na doutrina, ao analisar o tema da

proteção à vida e à integridades dos observadores de bordo, atuando nas águas adjacentes aos pequenos Estados insulares em desenvolvimento do Pacífico, sob as lentes da legislação existente no Direito do Mar sobre responsabilidade do Estado de bandeira a fim de assegurar direitos humanos a esses trabalhadores.

PALAVRAS-CHAVE: observadores de bordo, programa de observadores de bordo, direitos humanos internacionais, responsabilidade do Estado de bandeira, pequenas ilhas em desenvolvimento do pacífico.

INTRODUCTION

The United Nations Convention on the Law of the Sea (LOSC) is known to be the Constitution of the oceans,¹ as it provides the framework for almost all the activities and aspects of the oceans, encapsulating customary norms and advancing new rights and obligations. It also inaugurated a complex regime involving several institutions and legal & policy instruments in the international, regional and national levels, negotiated by developing and developed countries. As a non self-governing regime, the law of the sea is heavily supported by the standards of public international law and it is open for connections with other fields of knowledge, such as environmental law, marine science, maritime law, labour law and human rights. Nonetheless, gaps still remain due to the fact that a framework instrument naturally calls for further developments by means of other rules or interpretation.

Fishing, one of the oldest uses of the sea, is regulated by the LOSC balancing the interests of long-distance fishing nations and coastal states, in particular those classified as developing nations. In addition, as a complex activity that involves, among others, subsistence, food security, traditional knowledge, economic aspects, sustainable and environmental concerns, technological advances, labour rules, safety of navigation and human rights it has produced an assemblage of specific and complementary norms. The 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 (FSA)² 1995 is considered the backbone in fisheries law, policy & management while the Food and Agriculture Organization (FAO) is the main United Nations (UN) body responsible for advancing fisheries law and policy initiatives, together with the International Labour Organization (ILO) and the International Maritime Organization (IMO).

¹ KOH, Tommy T. B. 'A Constitution for the Oceans'. Remarks by T. B. Koh, of Singapore. President of the Third United Nations Conference on the Law of the Sea, Division for Ocean Affairs and the Law of the Sea, 1982, Retrieved from: <http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf>.

² UNITED NATIONS. 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. Available at: <<https://daccess-ods.un.org/TMP/2732668.51902008.html>>, accessed 20 July 2020.

Many limitations in fisheries law still remain unresolved, despite the complex regulatory and institutional structure. For instance, overfishing³ and Illegal, Unreported and Unregulated (IUU) fishing⁴ are great and complex challenges in ocean governance, impacting ecosystems, biodiversity, food security, and human rights.⁵ Overfished stocks can be rebuilt on the basis of good management underpinned with scientific data and monitoring, control and surveillance (MCS) measures to combat illegal practices.⁶ Onboard observers (at-sea observers)⁷ are a twofold MCS mechanism able to provide good scientific information on mortality, ecosystems interactions and bycatch, and, at the same time, constitute a cost-effective tool to supervise fishing vessels activities and even compliance with labour laws.⁸

Around 2500 scientists are employed as at-sea observers around the world, in national or regional (high seas) programmes, constituting a very particular class of workers.⁹ They need to have expertise comprising marine biology, fisheries management, ecology, and safety of navigation as their reports are valuable sources of information to backup policies regarding fishing

³ In this essay we use a broad definition of overfishing covering activities of harvesting above the maximum sustainable yield of stocks, also including overexploitation of high trophic level fish and destruction of habitats by using harmful fishing gears (For a detailed discussion, see: SUMAILA, U. R., & TAI, T. C. **Ending overfishing can mitigate impacts of climate change**. Vancouver: Institute for the Oceans and Fisheries, 2019. Retrieved from: [https://consult-poseidon.com/fishery-reports/Poseidon_Management% 20Works% 20Nov_2016. pdf](https://consult-poseidon.com/fishery-reports/Poseidon_Management%20Works%20Nov_2016.pdf)). Although we acknowledge the importance of considering overfishing through an ecosystem perspective, this discussion deviates from the purpose of the present piece. For a detailed debate on that, see: MURAWSKI, S. A. **Definitions of overfishing from an ecosystem perspective**. ICES Journal of Marine Science, 2000, 57: 649–658.

⁴ We adopt the definition of IUU fishing stated in the FOOD AND AGRICULTURE ORGANIZATION. **International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing**. Available at: <<http://www.fao.org/3/y1224e/Y1224E.pdf>>, accessed 20 July 2020.

⁵ FOOD AND AGRICULTURE ORGANIZATION. **The State of World Fisheries and Aquaculture 2020**. Available at: <<https://doi.org/10.4060/ca9229en>>, accessed 19 July 2020.

⁶ BERGH, Erik; DAVIES, Sandy. Fishery Monitoring, Control and Surveillance, In: Cochrane, K. (ed.) **A Fishery Manager's Guidebook: Management Measures and Their Application**, FAO Fisheries Technical Paper. n. 424. Rome: FAO, 2020, 231p. Available at: <<http://www.fao.org/3/y3427e/y3427e0a.htm#bm10>>.

⁷ For the purpose of this essay, we adopt the definition of onboard observer stated in the International Observer Bill of Rights as follows: "An 'observer' is a person who is authorised by a regulatory authority to collect information in the field (either at sea or on shore) to support sustainable aquatic resource management. The observer must be financially independent of the industry being monitored (CCROP-SR, Section V). Observers generally do not have enforcement powers but their duties often involve the collection of enforcement related information. There are many titles associated with the observer profession, some of which do not have the word "observer" in the title (such as monitor, fisheries assistant, inspector, and sampler)" (cf. APO 2013).

⁸ WORLD WIDE FUND FOR NATURE. **Observer Programmes: best practice, funding options and north sea**. Available at: <http://assets.wwf.org.uk/downloads/observer_report.pdf>, accessed 19 July 2020.

⁹ EWELL, Christopher et. al. An evaluation of Regional Fisheries Management Organization at-sea compliance monitoring and observer programs. **Marine Policy**, United Kingdom, v 115, 2020, available at: <DOI: 10.1016/j.marpol.2020.103842>.

gears, fish stocks, conservation, and marine pollution.¹⁰ In spite of the unanimous acknowledgement that observers are "the only independent human element oversight mechanism for fisheries management activities at sea,"¹¹ there is little homogeneity within the administrative rules governing the existing programmes. The current scenario offers a variety of arrangements in the national and regional instances, differing in (i) the objectives (scientific or compliance scope); (ii) the sources of funding; (iii) the requirements of percentage of fleet to be covered; and (iv) the safety measures established, which may impact the effectiveness of the job and the protection of these workers.¹²

Recent reports by civil society and the Association for Professional Observers (APO) denouncing inhumane treatment, violations to wellbeing and/or disappearances of observers,¹³ especially in central and western parts of the Pacific Ocean,¹⁴ galvanized awareness of the vulnerability of these workers, who spend months at sea, alone, collecting scientific data and reporting transgressions of fisheries standards. The reported cases of bribery, privation of food, sexual harassment and/or disappearances that are rarely investigated or prosecuted.¹⁵ In the Pacific

¹⁰ Ibid. DAVIES, Sandy; REYNOLDS, J.Eric. (ed.), Guidelines for developing an at-sea fishery observer programme. **FAO Fisheries Technical Paper**, n. 414, Rome, FAO, 2002.

¹¹ HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & The role & Responsibilities of Fisheries Organisations**. Available at: <<https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/>>, accessed 18 July 2020.

¹² In 2002, the FAO published guidelines for developing onboard observer programmes, however, this document is only informative (Cf. DAVIES, Sandy; REYNOLDS, J.Eric. (ed.), Guidelines for developing an at-sea fishery observer programme. **FAO Fisheries Technical Paper**, n. 414, Rome, FAO, 2002).

¹³ MCVEIGH, Karen. **Disappearances, danger and death: what is happening to fishery observers?**, 2020. Available at: <<https://www.theguardian.com/environment/2020/may/22/disappearances-danger-and-death-what-is-happening-to-fishery-observers>>, accessed 18 July 2020. ASSOCIATION FOR PROFESSIONAL OBSERVERS.

An Open Letter to Ocean Activists and Marine Conservation Groups from The Association for Professional Observers, 2016, Available at: <https://eee0b4ee-ed80-4c1c-a622-965eeb7c6b45.filesusr.com/ugd/a5edc2_2ad655b345594782a5e59b89036981e4.pdf>, accessed 18 July 2020.

ASSOCIATION FOR PROFESSIONAL OBSERVERS. **Observer Casualties, Injuries, and Near Misses - OSIRS, A project of the Observer Health, Safety, and Welfare Focus Area**. Available at: <<https://www.apo-observers.org/misses>>, accessed 18 July 2020. RADIO NEW ZEALAND. **Latest death of Pacific fisheries observers highlights protection flaws**, 2020. Available at: <<https://www.rnz.co.nz/international/pacific-news/414236/latest-death-of-pacific-fisheries-observer-highlights-protection-flaws>>, accessed 18 July 2020.

¹⁴ HUMAN RIGHTS AT SEA, **Investigate report and case study: fisheries abuses and related deaths at sea in the Pacific region**, 2017. Available at: <<https://humanrightsatsea.org/wp-content/uploads/2017/12/HRAS-Fisheries-Abuse-Investigative-Report-Dec-2017-SECURED.pdf>>, accessed 18 July 2020. HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & The role & Responsibilities of Fisheries Organisations**. Available at: <<https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/>>, accessed 18 July 2020.

¹⁵ HUMAN RIGHTS AT SEA, **Investigate report and case study: fisheries abuses and related deaths at sea in the Pacific region**, 2017. Available at: <<https://humanrightsatsea.org/wp-content/uploads/2017/12/HRAS-Fisheries-Abuse-Investigative-Report-Dec-2017-SECURED.pdf>>, accessed 18 July 2020.

waters, vast areas of open sea between each national jurisdiction and the prevalence of Small Islands Developing States (SIDS) in the area, with reduced institutional capacity to implement national MCS measures, could partially explain the many cases of violations. Lack of transparency in fisheries activities, including the inexistence of binding detailed obligations in this regard, add another layer of complexity.¹⁶

A number of legal and policy initiatives have been taken to combat overfishing and IUU fishing and promote sustainable fisheries. At the same time, some initiatives have been promoted to raise the safety of onboard observers. Notwithstanding that, the situation mentioned above provides a compelling claim to look outside fisheries law and take into account the human dimension behind fishing in order to achieve sustainable fisheries. Therefore, in addition to the ongoing process to develop special rules to protect the life and wellbeing of onboard observers within the fisheries regime, one shall identify its interfaces with Public International Law, Law of the Sea and International Human Rights.

Against this backdrop, this essay aims to contribute to the scholarship on the connectivity between International Human Rights, Fisheries Law and Law of the Sea by exploring the applicability of flag State responsibility in cases of disappearance, deaths, and threats to onboard observers in waters adjacent to the Pacific SIDS (PSIDS). In the following, first the legal and policy framework requiring the implementation of at-sea observers in fisheries management are introduced. Second, the existing rules on safety in the Regional Fisheries Management Organisations (RFMOs) and the Regional Observer Programmes (ROPs) are analysed, highlighting the recent push to strengthen special regulations. Third, the rules on flag State responsibility on the law of the sea are discussed, by exploring their applicability to human rights violations at sea. Some concluding remarks point out the obstacles and ways forward. Before moving forward, we shall clarify that although it is acknowledged that while Corporate Social Responsibility, including certification bodies,¹⁷ can play an important role in the discussion of

¹⁶ CUTLIP, Kimbra. **Going Dark: When Vessels Turn Off AIS Broadcasts**. Available at: <<https://globalfishingwatch.org/data/going-dark-when-vessels-turn-off-ais-broadcasts/>>, accessed 20 July 2020. TACONET, M.; KROODSMA, D.; FERNANDES, J.A. **Global Atlas of AIS-based fishing activity - Challenges and opportunities**. Rome, FAO, 2019. Available at: <<http://www.fao.org/3/ca7012en/CA7012EN.pdf>> , accessed 20 July 2020.

¹⁷ HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & The role & Responsibilities of Fisheries Organisations**. Available at: <<https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/>>, accessed 18 July 2020.

promoting better working conditions for observers, it is not under the scope of the present study to investigate this aspect.

1. LEGAL AND POLICY FRAMEWORK REGULATING ONBOARD OBSERVERS PROGRAMMES

1.1 ONBOARD OBSERVER PROGRAMMES: AN ESSENTIAL TOOL IN FISHERIES MANAGEMENT AND FOR THE PROTECTION AND PRESERVATION OF THE MARINE ENVIRONMENT

The origin of onboard observer programmes dates to the creation of the Exclusive Economic Zone (EEZ) in the LOSC, in 1982, and the international concerns with overexploitation resources expressed in the Brundtland Report, in 1987.¹⁸ In the EEZ, the coastal State has sovereign rights to explore and exploit, conserve and manage living and non-living resources.¹⁹ These rights are interwoven with the duties to establish the total allowable catch, promote the optimum utilization of the resources, and to ensure, by using the best scientific evidence possible, that: stocks are not overexploited; the harvesting is able to produce the maximum sustainable yield (MSY); the interaction with other species and the ecosystem is considered; and scientific data and fishing information are the exchange through international organizations.²⁰ When fishing, vessels flagged in other States have the duty to comply with the legislation and management measures established by the coastal State, including placing observers of the coastal State in the vessel. Likewise, when undertaking marine scientific research (MSR) activities in waters under the jurisdiction of other States, the coastal State's right to be represented by onboard observers shall

¹⁸ FOOD AND AGRICULTURE ORGANIZATION. **State of World Fisheries**. Available at: <<http://www.fao.org/3/ca9229en/online/ca9229en.html>>, accessed 17 July 2020, p. 92.

¹⁹ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 20 July 2020, art. 56.

²⁰ *Id.*, arts. 61-62.

be respected.²¹ Thus, this legally binding instrument expressly stated onboard observers as an example of conservation measure, ensuring compliance, and as a mechanism to foster science that should be implemented by each coastal State.

The FSA detailed management measures to be adopted in waters outside the States' jurisdictions in regards to migratory and straddling stocks targeting their sustainable use. In this regard, States shall ensure that MCS measures, including onboard observers, are adopted by vessels flying their flag.²² The instrument expressly refers to the application of the precautionary approach to fisheries management,²³ which also emphasizes the importance of the data gathered by at-sea observers that sometimes might constitute the best scientific information available. The duty to cooperate in the international, regional and sub-regional spheres is a cornerstone of the document, which enumerates the promotion of technical assistance to implement onboard observer programmes within developing countries (and/or in regional bodies) as a form to fulfill this obligation.²⁴ Likewise, the FAO Code of Conduct for Responsible Fisheries adopted in 1995 also points out observer programmes as an MCS measure that States should implement to promote compliance.²⁵ Through the perspective of combating illegal practices that undermine science and fisheries management, the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) adopted in 2001, makes reference to observer programmes as a MCS measure that should be adopted from the commencement until the landing stage to attest compliance, and an element that should be considered in the process of authorizing a vessel to fish.²⁶ Although these documents are voluntary, attesting the law-making function of

²¹ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 20 July 2020, art. 62(4)(g), art. 248(f), art. 249(1)(a).

²² UNITED NATIONS. **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**. Available at: <<https://daccess-ods.un.org/TMP/2732668.51902008.html>>, accessed 20 July 2020, art. 6(3)(d), art. 18(3)(f), art. 18(3)(g)(ii).

²³ *Id.*, art. 6.

²⁴ *Id.*, art. 25(3)(c) and Annex I, art. 1(2) and art. (6)(b).

²⁵ FOOD AND AGRICULTURE ORGANIZATION. **Code of conduct for Responsible Fisheries**. Available at: <<http://www.fao.org/3/v9878e/v9878e00.htm#76>>, accessed 20 July 2020, art. 7.7.3 and art. 8.4.3.

²⁶ FOOD AND AGRICULTURE ORGANIZATION. **International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing**. Available at: <<http://www.fao.org/3/y1224e/Y1224E.pdf>>, accessed 20 July 2020, art. 24.4, art. 47.4 and art. 80.9.

soft law, they are of utmost importance for fisheries law by inspiring national fisheries policies and by setting the scene for adopting legally binding instruments combating IUU fishing.

The International Tribunal for the Law of the Sea (ITLOS) has stressed in its jurisprudence that the conservation of ecosystems and management of living resources are within the scope of part XII LOSC.²⁷ Moreover, the Tribunal has confirmed the applicability of the precautionary principle/approach within the Law of the Sea regime,²⁸ and this was expressly mentioned in regard to straddling and highly migratory species. In this regard, the role of observers are of utmost importance not only through an MSC and fisheries management perspective, but also for environmental purposes.

The international instruments analysed underscore the importance of onboard observers as a cost-effective tool to promote compliance and gather scientific data, especially in developing countries unable to develop strong fishing management policies due to poor data. Besides, their work is also part of the framework to conserve and protect the marine environment. However, none of these documents address the peculiar vulnerability of these workers and the need to set rules protecting their wellbeing. The next topic aims to provide an overview of the existing legal landscape addressing this issue.

1.2 REVIEW OF THE EXISTING FRAMEWORK TO PROTECT THE HEALTH & SAFETY OF ONBOARD OBSERVERS WORKING IN THE PACIFIC SMALL ISLANDS DEVELOPING STATES

²⁷ Cf. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **Southern Bluefin Tuna Cases**. Available at: <<https://www.itlos.org/cases/list-of-cases/case-no-3-4/>>, access 21 July 2020, order, para. 70. PERMANENT COURT OF ARBITRATION, **South China Sea Arbitration (Philippines v. China)**, Available at: <<https://pca-cpa.org/en/cases/7/>>, accessed 21 July 2020, Award 12 July 2016, para. 945. For a detailed analysis, see: PROELSS, Alexander. *The Contribution of the ITLOS to Strengthening the Regime for the Protection of the Marine Environment*. In: **Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals**. Springer, Cham, 2019.

²⁸ Cf. INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **Southern Bluefin Tuna Cases**. Available at: <<https://www.itlos.org/cases/list-of-cases/case-no-3-4/>>, access 21 July 2020, and INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **Responsibilities and Obligations of States with Respect to Activities in the Area, Advisory Opinion**. Available at: <<https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Responsibilities%20and%20Obligations%20of%20States%20with%20Respect%20to%20Activities%20in%20the%20Area.pdf>>, accessed 21 July 2020, paras. 125-135.

The framework to protect the health and safety of onboard observers is more limited than the existing one for fishers - what is detrimental if recalled that fishing is "the most dangerous occupation in the world".²⁹ In the following, we will discuss the existing international standards protective to fishers, flagging out the possibility of extending it to observers, and the regulations of the regional fisheries management organizations (RFMOs) of which the PSID are members.

Outside the FAO domain, the International Labour Convention (ILO) n.º 188 on Work in Fishing of 2007 is the main piece of legislation establishing decent conditions of work for fishers and fishing vessels engaged in commercial operations.³⁰ However, on top of its limited number of ratifications, the Convention is not applicable to onboard observers.³¹ In the International Maritime Organization (IMO) regime, the International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F) of 1995, establishes training requirements on safety for the crew on fishing vessels.³² The instrument does not have specific standards directed to fisheries observers, it is only applicable to vessels of 24 meters or more - while 97% of fishers work on vessels of less than 24m of length - and it has a low number of ratifications.³³ The Cape Town Convention (CTC) of 2012, establishes minimum safety standards on the construction and inspection of fishing vessels of 24 meters or more, enhancing transparency on fisheries sector, while combating IUU fishing and improving working conditions. This legally binding instrument is the first one to have specific rules regarding crew's protection applicable to

²⁹ DAVIES, Sandy; REYNOLDS, J.Eric. (ed.), Guidelines for developing an at-sea fishery observer programme. **FAO Fisheries Technical Paper**, n. 414, Rome, FAO, 2002. Also cf. INTERNATIONAL MARITIME ORGANIZATION. **Enhancing fishing vessel safety to save lives**. Available at: <<http://www.imo.org/en/MediaCentre/HotTopics/Pages/Fishing.aspx>>. FOOD AND AGRICULTURE ORGANIZATION. **Safety for fishermen: Fishing at sea is probably the most dangerous occupation in the world**. Available at: <<http://www.fao.org/fishery/safety-for-fishermen/en/>>, accessed 21 July 2020.

³⁰ Cf. INTERNATIONAL LABOR ORGANIZATION. **C188 - Work in Fishing Convention, 2007 (No. 188)**, Available at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188>.

³¹ *Id.*, art.1(e).

³² Cf. INTERNATIONAL MARITIME ORGANIZATION. **International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F)**. Available at: <https://www.ccaimo.mar.mil.br/sites/default/files/conv_stcw-f_ingles.pdf>, accessed 21 July 2020.

³³ DAVIES, Sandy; REYNOLDS, J.Eric. (ed.), Guidelines for developing an at-sea fishery observer programme. **FAO Fisheries Technical Paper**, n. 414, Rome, FAO, 2002.

observers.³⁴ However, it is not yet in force.³⁵ Since 2005, the FAO, ILO and IMO have been developing guidelines for fishing vessels safety, including small fishing vessels.³⁶ Nonetheless, these documents are soft law-based and voluntary, they do not have a detailed approach to the particular vulnerabilities of onboard observers, and their focus is only the safety aspect - e.g. vessel construction, crew training and safety equipment - leaving gaps in situations in which the observer disappears when the vessel is certified.

The United Nations General Assembly (UNGA) has emphasized the importance of observer programmes for improving fisheries statistics and for MCS purposes in its annual resolutions on sustainable fisheries.³⁷ Since 2016 the UNGA included in its resolutions a call for States to ensure the safety of observers either in their national legislations or through regional arrangements.³⁸ This move happened one year after the FAO and IMO *ad hoc* joint working group on IUU fishing³⁹ considered a proposal made by the United States of America⁴⁰ of undertaking,

³⁴ INTERNATIONAL MARITIME ORGANIZATION. **Consolidated text of the regulations annexed to the torremolinos protocol of 1993 relating to the torremolinos international convention for the safety of fishing vessels,1977, As modified by the capetown agreement of 2012 on the implementation of the provisions of the torremolinos protocol of 1993 relating to the torremolinos international convention for the safety of fishing vessels,1977(Agreement)**. Available at:

<<http://www.imo.org/en/About/Conventions/ListOfConventions/Documents/Consolidated%20text%20of%20the%20Agreement.pdf>>, accessed 21 July 2020, art. 2(4) and chapter VI.

³⁵ THE PEW CHARITABLE TRUST. **The Cape Town Agreement Explained How one international treaty could combat illegal fishing and save lives**. Available at: <https://www.pewtrusts.org/-/media/assets/2019/09/ctaexplained_brief.pdf>, accessed 22 July 2020.

³⁶ FOOD AND AGRICULTURE ORGANIZATION. **Vessel and equipment**. Available at: <<http://www.fao.org/fishery/safety-for-fishermen/50769/en/>>, accessed 22 July 2020.

³⁷ For instance: A/RES/67/79* (<https://undocs.org/A/RES/67/79>); A/RES/68/71 (<https://undocs.org/A/RES/68/71>); A/RES/69/109 (<https://undocs.org/A/RES/69/109>).

³⁸ For instance: A/RES/70/75 (<https://undocs.org/A/RES/70/75>); A/RES/71/123 (<https://undocs.org/A/RES/71/123>); A/RES/72/72 (<https://undocs.org/A/RES/72/72>); A/RES/74/18 (<https://undocs.org/A/RES/74/18>); and A/RES/73/125 (<https://undocs.org/A/RES/73/125>).

³⁹ About the FAO/IMO ad hoc joint working group, see: FOOD AND AGRICULTURE ORGANIZATION. **Joint Working Group on IUU fishing**. Available at: <<http://www.fao.org/iuu-fishing/tools-and-initiatives/joint-working-group-on-iuu-fishing/en/>> , accessed 22 July 2020.

⁴⁰ In its report, the United States proposed the following safety measures be taken into account: "1) vessels to be observed should meet appropriate safety standards before deployment and meeting these standards should be fully documented; 2) observers should not be deployed on vessels that do not meet established minimum safety requirements for carrying an observer; 3) RFMOs or flag States, as appropriate, should specify a list of minimum equipment necessary to enable deployed observers to carry out their duties aboard fishing vessels, including safety equipment; 4) observers, as well as vessel owners and operators, should receive training in the duties and roles of fishery observers, effective communication techniques, conflict management, appropriate conduct while aboard, vessel operations, and safety protocols; 5) a secure, cost effective means of communication, preferably independent of vessels communications, should be established to allow observers to notify the appropriate authorities if they are in danger so that appropriate action can be taken; 6) RFMOs or flag States, as appropriate, should establish processes and procedures to assist observers as quickly and effectively as possible if notified of a safety concern; 7) to ensure the safety of the observer to the greatest extent possible, notification of possible non-compliance with applicable

together with RFMOs, a baseline of safety standards and practices for existing and future at-sea observer programmes.⁴¹

By its turn, the US proposal derived from the 2013 APO's update of the International Observers Bill of Rights (IOBR),⁴² complemented by the Code of Conduct for Responsible Observer Programmes - Observer Health and Safety (CCROP-HS)⁴³ and Stakeholder Responsibilities (CCROP-SR).⁴⁴ Even though not legally binding, these documents attempt to standardize the right to a healthy working environment in which all observers (*i*) can perform the duties without discrimination and harassment, (*ii*) have access to "safety and emergency-action equipment prior to each deployment" standardised in national or international protocols, and (*iii*) have in place protocols of communication and emergency action plan. In addition, the observer shall have the right to (*iv*) access to safety and welfare reports of previous observers, (*v*) refuse an assignment, based on written justification, without negative repercussions (*vi*) to adequate accommodation, similar to the one provided for officers, and (*vii*) trainings on safety and healthy and to programme-specific safety protocols.⁴⁵

conservation and enforcement measures should be accomplished through the submission of a post-trip observer report; 8) the vessel master should provide the observer with food, sleeping accommodations, and medical facilities equivalent to that provided to the officers of the vessel." (FOOD AND AGRICULTURE ORGANIZATION/INTERNATIONAL MARITIME ORGANIZATION. **Report of the Third Session of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters, JWG 3/12 submitted by the United States, agenda item 12**, London, 16–18 November 2015. FAO Fisheries and Aquaculture Report No. 1152, 2016 Rome, Italy).

⁴¹ FOOD AND AGRICULTURE ORGANIZATION. **Report of the Third Session of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters, London, 16–18 November 2015**. Available at: <<http://www.fao.org/3/a-i5736e.pdf>>, accessed 22 July 2020, para. 57.

⁴² ASSOCIATION FOR PROFESSIONAL OBSERVERS. **The International Observer Bill of Rights and Codes of Conduct for Responsible Observer Programmes Version 1.0, September 2013**. Available at: <<http://www.apo-observers.org/billofrights>>, accessed 22 July 2020.

⁴³ ASSOCIATION FOR PROFESSIONAL OBSERVERS. **Code of Conduct for Responsible Observer Programmes – Observer Health and Safety (CCROP-HS). The International Observer Bill of Rights and Codes of Conduct for Responsible Observer Programmes. Version 1.0. September 2013**. Available at: <<http://www.apo-observers.org/billofrights>>, accessed 22 July 2020.

⁴⁴ Ibid.

⁴⁵ For example: WORLD WIDE FUND FOR NATURE. **Observer Programmes: best practice, funding options and north sea**. Available at: <http://assets.wwf.org.uk/downloads/observer_report.pdf>. World Wide Fund for Nature. **Onboard Tuna Fishery Observers: heroes of the seas**. Available at: <https://wwf.panda.org/wwf_news/?256330/onboard-tuna-fishery-observers-heroes-of-the-seas>. GREENPEACE. **Case for cameras on boats stronger than ever**. Available at: <<https://www.greenpeace.org/new-zealand/story/case-for-cameras-on-boats-stronger-than-ever/>>. OCEANA. **Oceana to Sue Feds Over Observer Cuts**. Available: <<https://oceana.org/press-center/press-releases/oceana-sue-feds-over-observer-cuts>>.

In 2019, the fourth meeting of the FAO and IMO *ad hoc* joint working group on IUU fishing, now including the ILO, adopted a recommendation for FAO to review the existing national and regional practices on safety and security of at-sea observers and propose measures for improvement.⁴⁶ This is an ongoing process and, up until the time of writing, there is no information on the conclusion of this review. In order to contribute to the FAO's work, and considering the importance of the regional work developed by RFMOs, in the following subsection the regulations within RFMOs of which PSIDS are members will be analysed.

1.2.1 THE EXISTING FRAMEWORK TO PROTECT THE HEALTH & SAFETY OF ONBOARD OBSERVERS IN THE RFMOs COVERING PACIFIC SMALL ISLANDS DEVELOPING STATES

The major RFMOs of which PSIDS are members are the Western and Central Pacific Fisheries Commission (WCPFC), the South Pacific Regional Fisheries Management Organisation (SPRFMO), and the Inter-American Tropical Tuna Commission (IATTC). This topic addresses their internal regulation to protect the safety of onboard observers, also taking into account the contribution to the topic of Regional Fisheries Bodies (RFB), in particular the Forum Fisheries Agency (FFA), the Secretariat of the Pacific Community (SPC), providing scientific and technical training of observers.⁴⁷

Notably, all the RFMOs require at-sea observers for at least part of the fleet/fisheries. The WCPFC has a leading role in this discussion, and the instrument that constituted the Commission already requires the establishment of an observer programme, with a scientific and MCS scope, and mentions the need to comply with minimum safety measures.⁴⁸ Influenced by the IOBR, the

⁴⁶ FOOD AND AGRICULTURE ORGANIZATION. **Report of the Fourth Session of the Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters.** Available at: <<http://www.fao.org/3/a-x9436e.pdf>> , accessed 21 July 2020.

⁴⁷ HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & The role & Responsibilities of Fisheries Organisations.** Available at: <<https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/>>, accessed 18 July 2020.

⁴⁸ WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean.** Available at:

CMM 2017-03, the CMM 2018-05, and the ROP-04 further detail safety measures.⁴⁹ The WCPFC Secretariat has been assisted by FFA and SPC, which provide scientific and technical assistance to the Pacific Island Fisheries Observers (PIRFO).⁵⁰ FFA also participated in the design of the WCPFC regulations and has its own regulation on safety and action plans.⁵¹

The Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean⁵² that established the SPRFMO determines the creation of an observer programme with compliance and scientific purposes, stressing the importance of considering safety measures. The Programme was established in the CMM 16-2019 and is in the implementation stage.⁵³ On the other hand, the convention that constituted IATTC did not establish at-sea observers programmes.⁵⁴ Onboard observers were later on required for operations of

<<https://www.wcpfc.int/doc/convention-conservation-and-management-highly-migratory-fish-stocks-western-and-central-pacific>>, accessed 23 July 2020.

⁴⁹ WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers (CMM 2017-03)**. Available at: <<https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme>>, accessed 23 July 2020. WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05)**. Available at: <<https://www.wcpfc.int/doc/cmm-2018-05/conservation-and-management-measure-regional-observer-programme>>. WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Guidelines for the Regional Observer Programme (ROP-04)**. Available at: <<https://www.wcpfc.int/doc/commission-12/guidelines-regional-observer-programme>>, accessed 23 July 2020.

⁵⁰ FORUM FISHERIES AGENCY. **Forum Fisheries Agency Observer Programme (Agenda Item 21), 4th Meeting of the Pacific Meteorological Council (PMC-4)**. Available at: <https://www.pacificmet.net/sites/default/files/inline-files/documents/Slides_Agenda_21.0.pdf>.

⁵¹ FORUM FISHERIES AGENCY. **The Harmonised Minimum Terms and Conditions For Access by Fishing Vessels, amended by FFC99 (4 July 2016)**. Available at: <<https://www.ffa.int/system/files/HMTC%20FFC99%20V4July2016.pdf>>, accessed 23 July 2020.

⁵² SOUTH PACIFIC REGIONAL FISHERIES MANAGEMENT ORGANISATION, **Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean**. Available at: <<https://docs.pca-cpa.org/2016/01/SPRFMO-Convention.pdf>>, accessed 23 July 2020.

⁵³ SOUTH PACIFIC REGIONAL FISHERIES MANAGEMENT ORGANISATION. **Conservation and Management Measure Establishing the SPRFMO Observer Programme, CMM 16-2019**. Retrieved from: <<https://www.sprfmo.int/assets/Fisheries/Conservation-and-Management-Measures/2019-CMMs/CMM-16-2019-5Mar2019.pdf>>, accessed 23 July 2020.

⁵⁴ INTER-AMERICAN TROPICAL TUNA COMMISSION. **Convention for the Establishment of an Inter-american Tropical Tuna Commission**. Available at: <https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/IATTC_IATTC%20Convention%201949.pdf>, accessed 23 July 2020.

transshipment,⁵⁵ focusing on compliance purposes, and for longline vessels,⁵⁶ with scientific objectives, in both cases the recommendations already stated general safety regulations and the ROP has been implemented by MRAG. In 2017, taking note of the minimum standards adopted by the WCPFC, the Commission adopted a detailed recommendation on observers safety.⁵⁷

The regulations analysed are similar, forbidding harassment, bribery, intimidation or discrimination that might impact the observers duties, safety and well-being. Likewise, all provide the right to accommodation, food and sanitary amenities at equivalent standards of an officer. Other commonalities are the right to adequate protocols on communication and emergency plan of action, access to standard safety equipment , and adequate health and safety training. The SPRFMO and WCPFC were the only ones to establish the right to refuse a task without negative repercussions for the observer. None of the documents provide specific measures based on gender nor stipulate the right to access previous reports of other observers that could impact the decision to refuse an assignment. However, the WCPFC does publish summaries of observers reports on safety violations.

There is a general trend towards adopting similar rules on the safety of onboard observers, in particular in the years following the last update of APO's IOBR and the WCPFC's adoption of safety rules, allowing us to infer that APO's initiative was highly influential and the existence of a cooperative (cross-reference) work between RFMOs. Moreover, the work of civil society of denouncing disappearances in the public arena, and spreading the IOBR in RFMO's meetings, played an important role. Nonetheless, there is still room for improvement, especially regarding safety measures that would prevent disturbances and disappearances (e.g. right to refuse an assignment and access to previous reports of observers). One important development that shall be

⁵⁵ INTER-AMERICAN TROPICAL TUNA COMMISSION. **Resolution on Establishing a Program for Transshipments by Large-scale Fishing Vessels, Resolution C-08-02.** Available at: <https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-08-02_Transshipments.pdf>, accessed 23 July 2020.

⁵⁶ INTER-AMERICAN TROPICAL TUNA COMMISSION. **Resolution on Scientific Observers for Longline Vessels, Resolution C-19-08.** Available at: <https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-19-08-Active_Observers%20on%20longliners.pdf>, accessed 23 July 2020.

⁵⁷ INTER-AMERICAN TROPICAL TUNA COMMISSION. **Resolution on Improving Observer Safety at Sea: Emergency Action Plan,, Resolution C-18-07.** Available at: <https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-18-07-Active_Observer%20safety%20at%20sea.pdf>, accessed 23 July 2020.

able to provide awareness for the need to properly address legally the special vulnerability of these workers and foster the investigation and prosecution of the human rights violations is by addressing these issues through the perspective of flag State responsibility, what will be analysed in the next topic.

2. RESPONSIBILITY OF FLAG STATES IN HUMAN RIGHTS

2.1. FLAG STATE DUTIES AND APPLICABLE INSTRUMENTS IN THE HUMAN RIGHTS OF OBSERVERS

It has been seen in the previous subsections that while there is an extensive framework assigning rights, such as against inhumane treatment and harassment, to the work of at-sea observers, the way to ensure flag State compliance with these is still very much underdeveloped. For the purpose of this analysis, due to the existence of a Law of the Sea framework for the jurisdiction of flag States within the Law of the Sea Convention (LOSC), this will be the focus of this article in order to address the existing gaps in this issue.

The LOSC establishes in its article 94 that “Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag”.⁵⁸ The text further specifies that States should take measures to ensure, among others, the labor conditions inside their vessels.⁵⁹ This would most likely include the labor conditions of observers, who are within a vessel when performing their duties. Once it decides to register a ship, a State must, according to article 94 of the LOSC, also exercise jurisdiction under its domestic Law over not only the vessel, but also officers, master and crew, regarding administrative, technical and social matters.⁶⁰ The well-regarded Virginia Commentary on article 94 says that “By necessary extension paragraph 2(b) also applies to all persons on board a ship, whether legally or not (e.g., stowaways)”. The Commentary, thus, clearly extends the exercise of jurisdiction to observers. Regarding what kind of activities are to be under jurisdiction, the Commentary says that those are

⁵⁸ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 20 July 2020, art. 94.

⁵⁹ *ibid.*

⁶⁰ *ibid.*

the activities by the persons onboard the vessel.⁶¹ If we follow this rationale, it would be logical to conclude that, amongst flag State duties as such, that of ensuring Human Rights of observers, in order for them to be able to pursue their duties, is to ensure their labour conditions and a guarantee of their impartial assessment, and would be under this array of activities.

Since we have established the possibility of the need for ensuring Human Rights to be within a flag State's set of duties within article 94, what kind of standards are supposed to be followed? Gavouneli argues that the standards to be upheld by flag States over their vessels should be based on international standards, which results in a rather restrictive approach towards flag State jurisdiction according only to internationally-agreed rules.⁶² In the case of human rights, this is a clear consequence of the overarching framework we currently have in International Law. According to the Report by the NGO 'Human Rights at Sea', Human Rights apply everywhere, including at sea, using as basis the Universal Declaration of Human Rights' (UDHR) article 3.⁶³ However, if we consider the UDHR to be not a binding, but a 'best endeavour'-based Declaration, we have a problem when enforcing those requirements. This character of the UDHR has been used to criticize its application in many fields of Human Rights, such as in the issue of asylum, which is more strictly regulated in practice than in the UDHR terms.⁶⁴

As an alternative to the UDHR, this article focuses on a wider application of the International Covenant of Civil and Political Rights (ICCPR) to the issue of Human Rights of observers, due to its wide adherence by States, with currently 113 parties.⁶⁵ If one argues that the UDHR lacks a binding character, the ICCPR, on the other hand, is established by the Human Rights Committee (HRC) as being legally binding on State parties, which shall apply the

⁶¹ NORDQUIST, Myron; NANDAN, Satya; ROSENNE, Shabtai (eds). **United Nations Convention on the Law of the Sea Commentary, v. III**. Leiden: Brill Nijhoff, 2013.

⁶² GAVOUNELI, Maria. **Functional Jurisdiction in the Law of the Sea**. Leiden: Brill, 2007.

⁶³ HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & the Role & Responsibilities of Fisheries Organisations**. Available at: <https://www.humanrightsatsea.org/wp-content/uploads/2020/07/HRAS_Abuse_of_Fisheries_Observers_REPORT_JULY-2020_SP_OPTIMISED.pdf> , accessed 28 July 2020.

⁶⁴ NOLL, Gregor. **Negotiating Asylum: the EU acquis, extraterritorial protection and the common market of deflection**. Leiden: Martinus Nijhoff, 2000.

⁶⁵ UNITED NATIONS TREATY COLLECTION. **International Covenant on Civil and Political Rights**. Available at: <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND> , accessed 30 July 2020.

Covenant to those under their jurisdiction and control.⁶⁶ Not only does the HRCComm’s General Comment 31 establish the binding nature of ICCPR over its parties, but it has also been judged as such by the International Court of Justice (ICJ) in relevant cases, such as in its Advisory Opinion over *The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, which will also be further approached in the following subsection. For now, it is important to establish that the ICCPR contains important provisions on the context of fisheries observers, such as the right of life and security, due to the dignity of the person, as well as the prevention of ill-treatment. According to the ICCPR, “Every human being has the inherent right to life”, and “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.⁶⁷ While it can be argued that ICCPR would apply specifically to violations perpetrated directly by the State, the HRCComm’s General Comment 36 extends it beyond that. General Comment 36 establishes that “States parties must also ensure the right to life and exercise due diligence to protect the lives of individuals against deprivations caused by persons or entities whose conduct is not attributable to the State”.⁶⁸ Thus, the right to life obligation over States does extend to those violations which are not directly caused by States, and measures shall be taken to avoid them, even in the case of attempts against the life of fisheries observers.

Regarding the prohibition of degrading and inhumane treatment, the same rationale occurs in General Comment 20. In general terms, it says that there should be protection of individuals against such treatment both by State officials and by private parties, through domestic legislation measures within State parties.⁶⁹ The Committee on Civil and Political Rights (CCPR) has decided in this sense in *Abubakar Amirov v Russian Federation*, saying that States have duties of prevention independently of the source of violation of a human right be an agent of the State or a

⁶⁶ UNITED NATIONS HUMAN RIGHTS COMMITTEE. **General Comment 31**. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en> , accessed 30 July 2020.

⁶⁷ UNITED NATIONS. **International Covenant on Civil and Political Rights**. Available at: <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> , accessed on 20 July 2020.

⁶⁸ UNITED NATIONS HUMAN RIGHTS COMMITTEE. **General Comment 36**. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGC%2f36&Lang=en> , accessed 30 July 2020.

⁶⁹ UNITED NATIONS HUMAN RIGHTS COMMITTEE. **General Comment 20**. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6621&Lang=en> , accessed 30 July 2020.

private individual.⁷⁰ It also said that the more serious a violation, the more due diligence is owed by the State to prevent it from occurring and to investigate it.⁷¹

Thus, both these issues should be applicable to human rights violations occurring at sea, and the State should not ‘turn a blind eye’ to these kinds of violations, being even required to investigate them should they occur under their jurisdiction. If that would be applicable inside a registered vessel, is to be approached in the following subsection. The other, more soft law related instruments which cover the situation of the rights of at-sea observers, were approached in the previous subsection. Although much is said regarding at-sea observers’ rights, little is said about compliance. The next subsections seek to tackle this issue specifically.

2.2. THE EXCLUSIVE COMPETENCE OF FLAG STATES FOR INVESTIGATING HUMAN RIGHTS VIOLATIONS

One of the major issues in casualties regarding observers is that they usually happen during the sailing of long-haul vessels.⁷² As a consequence, another feature of article 94 applies, derived from the premise of freedom of navigation, which is the exclusive competence of flag States to investigate incidents happening inside vessels while in the high seas.⁷³ This is also a logical conclusion from the flag State’s exercise of jurisdiction, which is not limited to the high seas and should be performed at all times.⁷⁴ In other maritime zones, this jurisdiction may be concurrent. In the case of vessels within the territorial sea coastal States’ criminal jurisdiction is limited, and dependent on the crime disturbing the peace of the coastal State or if the assistance of local authorities has been requested.⁷⁵ The only case in which another State could board a ship for

⁷⁰ COMMITTEE ON CIVIL AND POLITICAL RIGHTS. **Abubakar Amirov v Russian Federation**. Available at: <<https://juris.ohchr.org/Search/Details/1503>> , accessed 28 July 2020.

⁷¹ Ibid.

⁷² HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & the Role & Responsibilities of Fisheries Organisations**. Available at: <https://www.humanrightsatsea.org/wp-content/uploads/2020/07/HRAS_Abuse_of_Fisheries_Observers_REPORT_JULY-2020_SP_OPTIMISED.pdf> , accessed 28 July 2020.

⁷³ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 20 July 2020, art. 94..

⁷⁴ NORDQUIST, Myron; NANDAN, Satya; ROSENNE, Shabtai (eds). **United Nations Convention on the Law of the Sea Commentary, v. III**. Leiden: Brill Nijhoff, 2013.

⁷⁵ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 20 July 2020, art. 27.

enforcing its criminal jurisdiction would be if a crime happened while inside its internal waters.⁷⁶ Other than that, while in the EEZ of other States, coastal States have a very limited jurisdiction over vessels, that is subject to the freedom of navigation, which mostly hampers the exercise of criminal jurisdiction.⁷⁷ In the case of coastal States, we also have the application of the duty to render assistance, to promote rescue operations, which are relevant in the case of forced disappearances of observers.⁷⁸ Other flag States also have this duty to render assistance to any person found at sea should it happen in the high seas.⁷⁹

In the case of fisheries observers, who are usually on duty within vessels which fly the flag of other States, paragraph 7 of article 94 is particularly relevant. The paragraph binds flag States to the need to hold an inquiry whenever there is a casualty involving one of its flagged vessels resulting in the loss of life or serious injury to nationals of another State.⁸⁰

Another relevant provision is paragraph 6 of article 94, which leaves the possibility for other States who believe that proper jurisdiction and control have not exercised, to report facts to the flag State for it to investigate on the matter.⁸¹ This has been recognised as an obligation of flag States of not only to investigate upon receiving a report, but also to take necessary measures to remedy the situation, by ITLOS in its Advisory Opinion on IUU fishing.⁸² Once an investigation is established, cooperation can happen and the flag State will have to report to the other State regarding any updates in the inquiry.⁸³

As previously stated, the exclusive competence of investigation when an incident happens in the high seas, due to the freedom of navigation paradigm, falls to the flag State. The Human Rights at Sea report, when analysing the death of an observer, national of Kiribati on a Taiwan-

⁷⁶ Ibid.

⁷⁷ Id, art. 56.

⁷⁸ Id, art. 98.

⁷⁹ Ibid.

⁸⁰ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 20 July 2020, art. 94.

⁸¹ Ibid.

⁸² INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **Advisory Opinion on Illegal Unregulated and Unreported Fishing**. Available at: <https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf> , accessed 20 July 2020.

⁸³ Ibid.

flagged vessel tells about the procedure taken by Kiribati, of notifying Taiwanese authorities to investigate the incident.⁸⁴ This was accepted by Taiwan and investigations were initiated over the issue, which is an ideal conduct on this kind of case.⁸⁵ This makes an interesting point that the available framework, with all its applicable challenges, can also present some answers in practical situations.

2.3. THE APPLICATION OF HUMAN RIGHTS TREATIES TO OBSERVERS

As we have verified that Human Rights treaties, such as the ICCPR, should be applied to observers, it is now important to verify how they can be enforced and applied in practice. This subsection examines two hypotheses: their inclusion in the flag State duties *per se*, as well as the extraterritorial application of Human Rights treaties, most importantly the ICCPR.

The extraterritorial application of Human Rights is not an uncontroversial topic, and is still widely discussed within specific literature.⁸⁶ It has, however, been recognised in the case of the ICCPR and of the European Charter of Human Rights (ECHR) in international jurisprudence. In essence, this would refer to the applicability of international human rights treaties not only to those individuals who are located within the territories of States, but also to those who are located outside of them, as long as they are within said States' jurisdiction.⁸⁷ This concept has, however, mostly been applied in the jurisprudence either due to an occupation of another State's territory by a State, or through the exercise of migration controls. In the ICJ's Advisory Opinion on the Construction of a Wall in Occupied Palestinian Territory, the court recognised the violation by the occupying

⁸⁴ HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & the Role & Responsibilities of Fisheries Organisations**. Available at: <https://www.humanrightsatsea.org/wp-content/uploads/2020/07/HRAS_Abuse_of_Fisheries_Observers_REPORT_JULY-2020_SP_OPTIMISED.pdf> , accessed 28 July 2020.

⁸⁵ *ibid.*

⁸⁶ KING, Hugh. The Extraterritorial Human Rights Obligations of States. **Human Rights Law Review**, Oxford, vol. 9, n.4, p. 521-556, 2009.

⁸⁷ UNITED NATIONS HUMAN RIGHTS COMMITTEE. **General Comment 31**. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en> , accessed 30 July 2020.

power of the Human Rights of the occupied peoples.⁸⁸ The European Court of Human Rights has recognised the application of the ECHR on similar situations within the Iraq War, applying Human Rights of the ECHR to the United Kingdom and the Netherlands as occupying powers in Iraq.⁸⁹ In the case of vessels, the European Court of Human Rights has recognised the extraterritorial application of the ECHR in a push-back of a migrant boat by the Italian navy.⁹⁰ What is constant about these emblematic cases, however, is that the State has, in a way, a direct involvement, either through being an occupying power, or through the acts of their own security forces in a navy setting. In the case of a flag State's jurisdiction over matters inside a vessel, unless it is an official, military vessel, it is hard to argue that there is direct control of the State over a crew and its acts and omissions. There is still, however, a jurisdiction over issues of the vessel by the flag State, which should include human rights.

If we were simply to apply the logic within General Comment 31 and of the ICJ, and attain the issue of jurisdiction, a State would have the jurisdiction to apply its human rights norms over what happens in a vessel. This is because, in most cases due to the Law of the Sea framework, it is the one with the sole jurisdiction over it and the only one that can start an investigation of what has happened. It thus seems clear that whatever happens to observers inside a vessel within the high seas, or within another country's EEZ, for example, is under the flag State's jurisdiction to hold proceedings and to start needed investigations.

The ICCPR has also been applied in the rationale presented by both the Netherlands and Greenpeace in the Arctic Sunrise case, judged by the ITLOS. In the case, a Netherlands-flagged Greenpeace vessel's crew was arrested by the Russian Federation when protesting near one of its installations in the Russian EEZ.⁹¹ The rationale of Greenpeace and the Netherlands, however,

⁸⁸ INTERNATIONAL COURT OF JUSTICE. **Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory**. Available at: < <https://www.icj-cij.org/en/case/131> > , accessed on 20 July 2020.

⁸⁹ EUROPEAN COURT OF HUMAN RIGHTS. **Jaloud v the Netherlands**. Available at: < <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-114929%22%5D%7D> > , accessed on 20 July 2020.
EUROPEAN COURT OF HUMAN RIGHTS. **Al Skeini v the United Kingdom**. Available at: < <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-105606%22%5D%7D> > , accessed on 20 July 2020.

⁹⁰ EUROPEAN COURT OF HUMAN RIGHTS. **Hirsi Jamaa and others v Italy**. Available at: < <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-109231%22%5D%7D> > , accessed on 20 July 2020.

⁹¹ INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **The Arctic Sunrise Case (Kingdom of the Netherlands v. Russian Federation)**. Available at: <<https://www.itlos.org/cases/list-of-cases/case-no-22/>>, accessed 22 July 2020.

stuck to the concept of jurisdiction of a country over its EEZ in order to justify ICCPR applicability.⁹² If we were to follow a similar rationale, however, flag States do have jurisdiction over vessels which is similar to that of the EEZ, as both of them are not truly considered a State's territory.

It does seem, thus, that there is a need for the flag State to exercise jurisdiction, as well as investigate the issue, should an incident arise regarding the safety and violation of rights of fisheries observers. The International Law Association's Study Group on Due Diligence, in this sense, establishes that the obligation of States to investigate Human Rights violations diligently is an obligation of result, and, thus, not subject to due diligence.⁹³ The obligation of result entails that a State must have the due apparatus to investigate and to provide the remedy to the wrongdoing.⁹⁴ This means that the State will be automatically in violation of relevant Human Rights treaties when it does not perform an investigation of the violated rights once the issue happens. It is also within a State's due diligence obligations to prevent violations from happening originating from private actors, as has been noted by both the ILA Report and the HRCComm.⁹⁵ If we are to follow this rationale, a flag State does not have the option to turn a blind eye to the event of the death or disappearance of an observer, for example.

2.4. OBSTACLES TO ENFORCEMENT

The LOSC allows for a relative freedom for States when registering vessels according to their own domestic requirements, as long as there is a 'genuine link' between State and vessel.⁹⁶

⁹² ELFERINK, Alex Oude. The Arctic Sunrise Incident and the International Law of the Sea. **The Blog of the K. G. Jepsen Centre for the Law of the Sea**. Available at:

<https://uit.no/Content/362359/The%20Arctic%20Sunrise%20Incident%20and%20ITLOS_final.pdf>, accessed 22 July 2020.

⁹³ INTERNATIONAL LAW ASSOCIATION. **First Draft Report on Due Diligence in International Law**.

Available at: <https://olympereaseauinternational.files.wordpress.com/2015/07/due_diligence_-_first_report_2014.pdf>, accessed 29 July 2020.

⁹⁴ *ibid.*

⁹⁵ *ibid.*

⁹⁶ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 20 July 2020, art. 91.

There is still a lack of a clear concept of ‘genuine link’ on the Law of the Sea, which was not truly clarified by the ITLOS on both occasions it decided on the matter. The understanding of the ITLOS in the *M/V ‘Saiga’* case has been criticised as leaving the concept very open, and the same understanding was later echoed in the *M/V ‘Virginia G’* case.⁹⁷ As a consequence, in practice there is still a wide freedom for States when registering a vessel, and this leaves the possibility open for a wide registration of vessels by so-called ‘flags of convenience’.⁹⁸ Flags of convenience are countries with less strict requirements of human rights and labor laws within their own domestic systems, which allow for an easier registry of vessels.⁹⁹

This means that, although flag States should be called upon to clarify and solve issues of human rights, in a scenario of an open registry, the link is either weak or non-existent. This results in a problem which is well summed-up by Benham and Faust¹⁰⁰:

The problem arises from the fact that whereas a country with a normal registry can exercise authority over the owners, crew, and vessel, an open-registry country in practice can only exercise authority over the nominal owners listed on its register book.

In practice, we have flag States with a weak, or barely existent link with their registered vessels. This makes identifying ownership and even contacting the vessel in order to clarify the issues even harder. Not to mention that some known flags of convenience are countries with few options for redress and punishment of Human Rights violations.¹⁰¹ The Marshall Islands are an example of a State that is both within the category of SIDS and flags of convenience. There are reports of numerous Human Rights violations in the country, not to mention a law for the

⁹⁷ SCOVAZZI, Tulio. **ITLOS and Jurisdiction Over Ships**. In: RINGBOM, Henrik. *Post-UNCLOS Developments in the Law of the Sea*. Leiden: Brill Nijhoff, 2015, p. 382-404.

⁹⁸ *ibid.*

⁹⁹ BOCZEK, Boleslaw Adam. **Flags of Convenience: an international legal study**. Harvard: Harvard University Press, 1962.

¹⁰⁰ BEHNAM, Awni; FAUST, Peter. *Twilight of Flag State Control*. **Ocean Yearbook**, Leiden, vol. 17, p. 167-192, 2003.

¹⁰¹ UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT. **Review of Maritime Transport 2019**. Available at: <https://unctad.org/en/PublicationsLibrary/rmt2019_en.pdf>, accessed 30 July 2020.

DEPARTMENT OF STATE, **Marshall Islands 2018 Human Rights Report**. Available at: <<https://www.state.gov/wp-content/uploads/2019/03/MARSHALL-ISLANDS-2018.pdf>>, accessed 21 July 2020.

protection of workers that is subject to exemptions to foreign companies, as well as lacking provisions issues such as minimum age requirements.¹⁰²

Another obstacle is created by the LOSC itself, once it makes flag State competence exclusive for investigations.¹⁰³ Although there is technically an obligation for flag States to start investigations upon the request of other States, in practice the issue of the sovereign equality of States and differences in the international dynamics make it harder for some States to require certain actions from others. In the end, it depends on the will of flag States that investigations are conducted and that the human rights violations are redressed while we do not have an overarching human rights framework specifically within vessel registry requirements.

CONCLUSION

This article sought to contribute to the scholarship through associating current gaps of marine policy regarding safety of onboard observers, and the existing Law of the Sea and International Human Rights framework.

There is an emergent call for enhancing resilience in marine and coastal ecosystems; ending destructive fishing practices such as overfishing and IUU fishing; and increasing the economic benefits to SIDS from sustainable fisheries.¹⁰⁴ As demonstrated in the first part of this article the work of at-sea observers is stated in most of the international instruments as an important MSC tool to gather scientific data, improve fisheries management and to report illicit practices. It has been demonstrated that the achievement of the Sustainable Development Goals need to consider the human aspect within fisheries, like the protection of the life and wellbeing of at-sea observers. While much is said in declarations and soft instruments regarding a need for sound work

¹⁰² DEPARTMENT OF STATE, **Marshall Islands 2018 Human Rights Report**. Available at: <<https://www.state.gov/wp-content/uploads/2019/03/MARSHALL-ISLANDS-2018.pdf>>, accessed 21 July 2020.

¹⁰³ UNITED NATIONS. **United Nations Convention on the Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf>, accessed 29 July 2020, art. 94.

¹⁰⁴ UNITED NATIONS GENERAL ASSEMBLY. **A/RES/70/1. Transforming our world: the 2030 Agenda for Sustainable Development**, Available at: <<https://undocs.org/A/RES/70/1>>.

conditions, not many of these dispositions are truly applied in practice. This article sought to present the issue through its several regulations and its reflections in the practical reality of fisheries and at-sea observers. As presented, the cooperation amongst UN organs, the ILO, the FAO and the IMO illustrate the relevance of this topic for different areas of International Law.

While there is a trend within RFMOs covering pacific waters towards the standardization of rules on the safety of onboard observers in recent years, and a disposition of civil society to work on the improvement of the investigations of disappearances, there is still much to do. Possibilities for improvement lie on the implementation of safety measures to prevent disturbance and disappearances, such as the access to previous reports of observers, as well as assigning more measures to ensure flag State compliance with ensuring the human rights of observers.

In order for this improvement to happen, there is already an existing framework within the Law of the Sea, which is focused on the jurisdiction of flag States. This in a way, is a good sign, as flag States should already be considered responsible for ensuring human rights, including those of observers, within their jurisdiction, a scope which would include their flagged vessels. However, this focus on flag States also means that investigations will ultimately solely depend on their will and possibility to investigate, which can be hampered in case of States registering vessels in open registries such as flags of convenience

Thus, we do have an overarching framework of policies and of rights associated with at-sea observers that, although not especially designed only for these workers, if combined with the Law of the Sea regime, as well as International Human Rights Law provisions, should contribute to making a difference within this line of work. Problems still occur, however, regarding enforcement possibilities, which are still hampered by the exclusivity of flag State jurisdiction and by the existence of flags of convenience.

REFERENCES

- APO, **Code of Conduct for Responsible Observer Programmes – Stakeholder Responsibilities (CCROP-SR). The International Observer Bill of Rights and Codes of Conduct for Responsible Observer Programmes. Version 1.0. September 2013.** Available at: <<http://www.apo-observers.org/billofrights>>, accessed 22 July 2020. .
- APO OBSERVERS. **The International Observer Bill of Rights and Codes of Conduct for Responsible Observer Programmes Version 1.0, September 2013.** Available at: <<http://www.apo-observers.org/billofrights>>, accessed 22 July 2020.
- ASSOCIATION FOR PROFESSIONAL OBSERVERS. **An Open Letter to Ocean Activists and Marine Conservation Groups from The Association for Professional Observers,** 2016, Available at: <https://eee0b4ee-ed80-4c1c-a622-965eeb7c6b45.filesusr.com/ugd/a5edc2_2ad655b345594782a5e59b89036981e4.pdf>, accessed 18 July 2020.
- ASSOCIATION FOR PROFESSIONAL OBSERVERS. **Observer Casualties, Injuries, and Near Misses - OSIRS, A project of the Observer Health, Safety, and Welfare Focus Area.** Available at: <<https://www.apo-observers.org/misses>>, accessed 18 July 2020.
- BEHNAM, Awni; FAUST, Peter. **Twilight of Flag State Control.** *Ocean Yearbook*, vol. 17, p. 167-192, 2003.
- BERGH, Erik; DAVIES, Sandy. Fishery Monitoring, Control and Surveillance, In: Cochrane, K. (ed.) **A Fishery Manager's Guidebook: Management Measures and Their Application**, FAO Fisheries Technical Paper. n. 424. Rome: FAO, 2020, 231p. Available at: <<http://www.fao.org/3/y3427e/y3427e0a.htm#bm10>>.
- BOCZEK, Boleslaw Adam. **Flags of Convenience: an international legal study.** Harvard: Harvard University Press, 1962.
- COMMITTEE ON CIVIL AND POLITICAL RIGHTS. **Abubakar Amirov v Russian Federation.** Available at: <<https://juris.ohchr.org/Search/Details/1503>> , accessed 28 July 2020.
- CUTLIP, Kimbra. **Going Dark: When Vessels Turn Off AIS Broadcasts.** Available at: <<https://globalfishingwatch.org/data/going-dark-when-vessels-turn-off-ais-broadcasts/>>, accessed 20 July 2020.
- DAVIES, Sandy; REYNOLDS, J.Eric. (ed.), **Guidelines for developing an at-sea fishery observer programme.** *FAO Fisheries Technical Paper*, n. 414, Rome, FAO, 2002.
- DEPARTMENT OF STATE, **Marshall Islands 2018 Human Rights Report.** Available at: <<https://www.state.gov/wp-content/uploads/2019/03/MARSHALL-ISLANDS-2018.pdf>> , accessed 21 July 2020.

ELFERINK, Alex Oude. **The Arctic Sunrise Incident and the International Law of the Sea.** *The Blog of the K. G. Jebsen Centre for the Law of the Sea.* Available at: <https://uit.no/Content/362359/The%20Arctic%20Sunrise%20Incident%20and%20ITLOS_final.pdf>, accessed 22 July 2020.

EUROPEAN COURT OF HUMAN RIGHTS. **Al Skeini v the United Kingdom.** Available at: <[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-105606%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-105606%22]})>, accessed on 20 July 2020.

EUROPEAN COURT OF HUMAN RIGHTS. **Hirsi Jamaa and others v Italy.** Available at: <[https://hudoc.echr.coe.int/fre#{%22itemid%22:\[%22001-109231%22\]}](https://hudoc.echr.coe.int/fre#{%22itemid%22:[%22001-109231%22]})> , accessed on 20 July 2020.

EUROPEAN COURT OF HUMAN RIGHTS. **Jaloud v the Netherlands.** Available at: <[https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-114929%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-114929%22]})> , accessed on 20 July 2020.

EWELL, Christopher et. al. **An evaluation of Regional Fisheries Management Organization at-sea compliance monitoring and observer programs.** *Marine Policy*, vol. 115, 2020, available at: <DOI: 10.1016/j.marpol.2020.103842>.

FAO/IMO. **Report of the Third Session of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters, JWG 3/12 submitted by the United States, agenda item 12, London, 16–18 November 2015.** FAO Fisheries and Aquaculture Report No. 1152, Rome, Italy

FOOD AND AGRICULTURE ORGANIZATION. **Code of conduct for Responsible Fisheries.** Available at: <<http://www.fao.org/3/v9878e/v9878e00.htm#76>>, accessed on 20 July 2020, art. 7.7.3 and art. 8.4.3.

FOOD AND AGRICULTURE ORGANIZATION. **International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing.** Available at: <<http://www.fao.org/3/y1224e/Y1224E.pdf>>, accessed on 20 July 2020, art. 24.4, art. 47.4 and art. 80.9.

FOOD AND AGRICULTURE ORGANIZATION. **Joint Working Group on IUU fishing.** Available at: <<http://www.fao.org/iuu-fishing/tools-and-initiatives/joint-working-group-on-iuu-fishing/en/>> , accessed 22 July 2020.

FOOD AND AGRICULTURE ORGANIZATION. **Report of the Third Session of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters, London, 16–18 November 2015.** Available at: <<http://www.fao.org/3/a-i5736e.pdf>>, accessed on 22 July 2020.

- FOOD AND AGRICULTURE ORGANIZATION. **Report of the Fourth Session of the Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters**. Available at: <<http://www.fao.org/3/a-x9436e.pdf>> , accessed on 21 July 2020.
- FOOD AND AGRICULTURE ORGANIZATION. **Safety for fishermen: Fishing at sea is probably the most dangerous occupation in the world**. Available at: <<http://www.fao.org/fishery/safety-for-fishermen/en/>>, accessed on 21 July 2020.
- FOOD AND AGRICULTURE ORGANIZATION. **The State of World Fisheries and Aquaculture 2020**. Available at: <<https://doi.org/10.4060/ca9229en>>, accessed on 19 July 2020.
- FOOD AND AGRICULTURE ORGANIZATION. **Vessel and equipment**. Available at: <<http://www.fao.org/fishery/safety-for-fishermen/50769/en/>>, accessed on 22 July 2020.
- FOOD AND AGRICULTURE ORGANIZATION/INTERNATIONAL MARITIME ORGANIZATION. **Report of the Third Session of the Joint FAO/IMO Ad Hoc Working Group on Illegal, Unreported and Unregulated (IUU) Fishing and Related Matters, JWG 3/12 submitted by the United States, agenda item 12**, London, 16–18 November 2015. FAO Fisheries and Aquaculture Report No. 1152, 2016 Rome, Italy.
- FORUM FISHERIES AGENCY. **Forum Fisheries Agency Observer Programme(Agenda Item 21), 4th Meeting of the Pacific Meteorological Council (PMC-4)**. Available at: <https://www.pacificmet.net/sites/default/files/inline-files/documents/Slides_Agenda_21.0.pdf>.
- FORUM FISHERIES AGENCY. **The Harmonised Minimum Terms and Conditions For Access by Fishing Vessels, amended by FFC99 (4 July 2016)**. Available at: <<https://www.ffa.int/system/files/HMTC%20FFC99%20V4July2016.pdf>>, accessed on 23 July 2020.
- GAVOUNELI, Maria. **Functional Jurisdiction in the Law of the Sea**. Leiden: Brill, 2007.
- GREENPEACE. **Case for cameras on boats stronger than ever**. Available at: <<https://www.greenpeace.org/new-zealand/story/case-for-cameras-on-boats-stronger-than-ever/>>.
- HUMAN RIGHTS AT SEA. **Fisheries Observer Deaths at Sea, Human Rights & The role & Responsibilities of Fisheries Organisations**. Available at: <<https://www.humanrightsatsea.org/2020/07/03/report-fisheries-observer-deaths-at-sea-human-rights-and-the-role-and-responsibilities-of-fisheries-organisations/>>, accessed on 18 July 2020.
- HUMAN RIGHTS AT SEA, **Investigate report and case study: fisheries abuses and related deaths at sea in the pacific region, 2017**. Available

at:<<https://humanrightsatsea.org/wp-content/uploads/2017/12/HRAS-Fisheries-Abuse-Investigative-Report-Dec-2017-SECURED.pdf>>, accessed on 18 July 2020.

IATTC. Convention for the Establishment of an Inter-american Tropical Tuna Commission. Available at: <https://www.iattc.org/PDFFiles/IATTC-Instruments/_English/IATTC_IATTC%20Convention%201949.pdf>, accessed on 23 July 2020.

IATTC. Resolution on Establishing a Program for Transshipments by Large-scale Fishing Vessels, Resolution C-08-02. Available at: <https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-08-02_Transshipments.pdf>, accessed on 23 July 2020.

IATTC. Resolution on Improving Observer Safety at Sea: Emergency Action Plan,, Resolution C-18-07. Available at: <https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-18-07-Active_Observer%20safety%20at%20sea.pdf>, accessed on 23 July 2020.

IATTC. Resolution on Scientific Observers for Longline Vessels, Resolution C-19-08. Available at: <https://www.iattc.org/PDFFiles/Resolutions/IATTC/_English/C-19-08-Active_Observers%20on%20longliners.pdf>, accessed on 23 July 2020.

INTERNATIONAL COURT OF JUSTICE. Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. Available at: < <https://www.icj-cij.org/en/case/131>> , accessed on 20 July 2020.

INTERNATIONAL LABOR ORGANIZATION. C188 - Work in Fishing Convention, 2007 (No. 188), Available at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188>, art.1(e).

INTERNATIONAL LAW ASSOCIATION. First Draft Report on Due Diligence in International Law. Available at: <https://olympereseauinternational.files.wordpress.com/2015/07/due_diligence_-_first_report_2014.pdf>, accessed on 29 July 2020.

INTERNATIONAL MARITIME ORGANIZATION. Consolidated text of the regulations annexed to the torremolinos protocol of 1993 relating to the torremolinos international convention for the safety of fishing vessels,1977, As modified by the capetown agreement of 2012 on the implementation of the provisions of the torremolinos protocol of 1993 relating to the torremolinos international convention for the safety of fishing vessels,1977(Agreement). Available at: <<http://www.imo.org/en/About/Conventions/ListOfConventions/Documents/Consolidated%20text%20of%20the%20Agreement.pdf>>, accessed 21 July 2020, art. 2(4) and chapter VI.

INTERNATIONAL MARITIME ORGANIZATION. **Enhancing fishing vessel safety to save lives.** Availability :
<<http://www.imo.org/en/MediaCentre/HotTopics/Pages/Fishing.aspx>>.

INTERNATIONAL MARITIME ORGANIZATION. **International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F).** Available at: <https://www.ccaimo.mar.mil.br/sites/default/files/conv_stcw-f_ingles.pdf>, accessed 21 July 2020.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **Advisory Opinion on Illegal Unregulated and Unreported Fishing.** Available at: <https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf> , accessed 20 July 2020.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **Responsibilities and Obligations of States with Respect to Activities in the Area, Advisory Opinion.** Available at:
<<https://www.law.umich.edu/facultyhome/drwcasebook/Documents/Documents/Responsibilities%20and%20Obligations%20of%20States%20with%20Respect%20to%20Activities%20in%20the%20Area.pdf>>, accessed 21 July 2020.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **Southern Bluefin Tuna Cases.** Available at: <<https://www.itlos.org/cases/list-of-cases/case-no-3-4/>>, access 21 July 2020.

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA. **The Arctic Sunrise Case (Kingdom of the Netherlands v. Russian Federation).** Available at:
<<https://www.itlos.org/cases/list-of-cases/case-no-22/>>, accessed 22 July 2020.

KING, Hugh. The Extraterritorial Human Rights Obligations of States. **Human Rights Law Review**, Oxford, vol. 9, n.4, p. 521-556, 2009.

KOH, Tommy T. B. ‘**A Constitution for the Oceans**’. **Remarks by T. B. Koh, of Singapore. President of the Third United Nations Conference on the Law of the Sea, Division for Ocean Affairs and the Law of the Sea**, 1982. Available at:
<http://www.un.org/depts/los/convention_agreements/texts/koh_english.pdf>, accessed 18 July 2020.

MCVEIGH, Karen. **Disappearances, danger and death: what is happening to fishery observers?**, 2020. Available at:
<<https://www.theguardian.com/environment/2020/may/22/disappearances-danger-and-death-what-is-happening-to-fishery-observers>>, accessed 18 July 2020.

MURAWSKI, S. A. **Definitions of overfishing from an ecosystem perspective.** *ICES Journal of Marine Science*, vol. 57, 2000, pp. 649–658.

- NOLL, Gregor. **Negotiating Asylum: the EU acquis, extraterritorial protection and the common market of deflection**. Leiden: Martinus Nijhoff, 2000.
- NORDQUIST, Myron; NANDAN, Satya; ROSENNE, Shabtai (eds). **United Nations Convention on the Law of the Sea Commentary, v. III**. Leiden: Brill Nijhoff, 2013.
- OCEANA. **Oceana to Sue Feds Over Observer Cuts**. Available: <<https://oceana.org/press-center/press-releases/oceana-sue-feds-over-observer-cuts>>.
- PERMANENT COURT OF ARBITRATION, **South China Sea Arbitration (Philippines v. China)**, available at: <<https://pca-cpa.org/en/cases/7/>> , accessed 21 July 2020, Award 12 July 2016, para. 945.
- PROELSS, Alexander. **The Contribution of the ITLOS to Strengthening the Regime for the Protection of the Marine Environment**. In: Interpretations of the United Nations Convention on the Law of the Sea by International Courts and Tribunals. Springer, Cham, 2019.
- RADIO NEW ZEALAND. **Latest death of Pacific fisheries observer highlights protection flaws**, 2020. Available at: <<https://www.rnz.co.nz/international/pacific-news/414236/latest-death-of-pacific-fisheries-observer-highlights-protection-flaws>>, accessed 18 July 2020.
- SCOVAZZI, Tulio. **ITLOS and Jurisdiction Over Ships**. In: RINGBOM, Henrik. Post-UNCLOS Developments in the Law of the Sea. Leiden: Brill Nijhoff, 2015, p. 382-404.
- SPRFMO, **Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean**. Available at: <<https://docs.pca-cpa.org/2016/01/SPRFMO-Convention.pdf>>, accessed 23 July 2020.
- SPRFMO. **Conservation and Management Measure Establishing the SPRFMO Observer Programme, CMM 16-2019**. Retrieved from: <<https://www.sprfmo.int/assets/Fisheries/Conservation-and-Management-Measures/2019-CMMs/CMM-16-2019-5Mar2019.pdf>>, accessed 23 July 2020.
- SUMAILA, U. R., & TAI, T. C. **Ending overfishing can mitigate impacts of climate change**. Vancouver: Institute for the Oceans and Fisheries, 2019. Available at: <https://consult-poseidon.com/fishery-reports/Poseidon_Management%20Works%20Nov_2016.pdf>.
- TACONET, M.; KROODSMA, D.; FERNANDES, J.A. **Global Atlas of AIS-based fishing activity - Challenges and opportunities**. Rome, FAO, 2019. Available at: <<http://www.fao.org/3/ca7012en/CA7012EN.pdf>> , accessed 20 July 2020.
- THE PEW CHARITABLE TRUST. **The Cape Town Agreement Explained How one international treaty could combat illegal fishing and save lives**. Available at:

<https://www.pewtrusts.org/-/media/assets/2019/09/ctaexplained_brief.pdf>, accessed 22 July 2020.

UNITED NATIONS. **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**. Available at: <<https://daccess-ods.un.org/TMP/2732668.51902008.html>>, accessed 20 July 2020.

UNITED NATIONS. **Convention on the International Law of the Sea of 1982**. Available at: <https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf> .

UNITED NATIONS. **International Covenant on Civil and Political Rights**. Available at: <<https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>> , accessed on 20 July 2020.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT. **Review of Maritime Transport 2019**. Available at: <https://unctad.org/en/PublicationsLibrary/rmt2019_en.pdf>, accessed 30 July 2020.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/67/79**. Available at: <<https://undocs.org/A/RES/67/79>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/68/71**. Available at: <<https://undocs.org/A/RES/68/71>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/69/109**. Available at: <<https://undocs.org/A/RES/69/109>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/70/75**. Available at: <<https://undocs.org/A/RES/70/75>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/71/123**. Available at: <<https://undocs.org/A/RES/71/123>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/72/72**. Available at: <<https://undocs.org/A/RES/72/72>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/74/18**. Available at: <<https://undocs.org/A/RES/74/18>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/73/125**. Available at: <<https://undocs.org/A/RES/73/125>>.

UNITED NATIONS GENERAL ASSEMBLY. **A/RES/70/1**. Transforming our world: the 2030 Agenda for Sustainable Development, Available at: <<https://undocs.org/A/RES/70/1>>.

UNITED NATIONS HUMAN RIGHTS COMMITTEE. **General Comment 20**. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=INT%2fCCPR%2fGEC%2f6621&Lang=en> , accessed 30 July 2020.

UNITED NATIONS HUMAN RIGHTS COMMITTEE. **General Comment 31**. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CPR%2fC%2f21%2fRev.1%2fAdd.13&Lang=en> , accessed 30 July 2020.

UNITED NATIONS HUMAN RIGHTS COMMITTEE. **General Comment 36**. Available at: <https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CPR%2fC%2fGC%2f36&Lang=en>, accessed 30 July 2020.

UNITED NATIONS TREATY COLLECTION. **International Covenant on Civil and Political Rights**. Available at: <https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND> , accessed 30 July 2020.

WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Conservation and Management Measure for the protection of WCPFC Regional Observer Programme Observers (CMM 2017-03)**. Available at: <<https://www.wcpfc.int/doc/cmm-2017-03/conservation-and-management-measure-protection-wcpfc-regional-observer-programme>>, accessed 23 July 2020.

WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Conservation and Management Measure for the Regional Observer Programme (CMM 2018-05)**. Available at: <<https://www.wcpfc.int/doc/cmm-2018-05/conservation-and-management-measure-regional-observer-programme>>.

WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean**. Available at: <<https://www.wcpfc.int/doc/convention-conservation-and-management-highly-migratory-fish-stocks-western-and-central-pacific>>, accessed 23 July 2020.

WESTERN & CENTRAL PACIFIC FISHERIES COMMISSION. **Guidelines for the Regional Observer Programme (ROP-04)**. Available at: <<https://www.wcpfc.int/doc/commission-12/guidelines-regional-observer-programme>>, accessed 23 July 2020.

WORLD WIDE FUND FOR NATURE. **Observer Programmes: best practice, funding options and north sea**. Available at: <http://assets.wwf.org.uk/downloads/observer_report.pdf>, accessed 19 July 2020.

WORLD WIDE FUND FOR NATURE. **Onboard Tuna Fishery Observers: heroes of the seas**. Available at: <https://wwf.panda.org/wwf_news/?256330/onboard-tuna-fishery-observers-heroes-of-the-seas>.