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<<http://www.research.kobe-u.ac.jp/gsics-pcrc/ATS-resilience/PLS12-ATS-resilience.html>>

The Next Bastion in Combating IUU Fishing: The Role of Nationality Jurisdiction in CCAMLR & Beyond

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Abstract

Illegal, Unreported and Unregulated (IUU) fishing represents a threat to global fisheries sustainability and maritime security, incorporating large-scale and highly mobile environmental, economic, and social concerns. In terms of fisheries governance, the threat from illegal fishing is often not a lack of rules and standards on the international, regional, and domestic level but rather vessels avoiding compliance with relevant conservation and management measures through their choice of jurisdictions. This in turn results from implementation failures and a general lack of enforcement by flag, coastal, port and market states, and states of nationality. This presentation will focus on the role of the state of nationality, whose jurisdiction was long held by global instruments as a complimentary means of eliminating IUU fishing but has been highlighted only to a limited extent in state practice. In this respect, the presentation will focus on the practice of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and its member states as a leader in combating IUU fishing. The authors suggest the last decade has been demonstrative of at least three key developments in the contemporary use of the active nationality principle of jurisdiction to address IUU fishing.

This presentation will therefore touch upon a number of the cornerstones to the proposed book project, entitled, Resilience of the Antarctic Treaty System to future challenges. Firstly, the nature of IUU fishing means it remains, and will remain, a fundamental challenge to any cooperative framework – including for the next 60 years. This challenge, in this environment,

requires a regional approach (ATS Resilience, ch. 1). Secondly, by focusing on the increasing use of nationality-based jurisdiction, together with the obligations attached therein, this paper will demonstrate the changing nature of nationality-based jurisdiction in the context of international fisheries law (ATS Resilience, sect. 3). The obligations discussed will be similar to that required of flag states and coastal states, i.e. due diligence in prescribing and enforcing an adequate domestic legal framework (ATS Resilience, sect. 6). Finally, the paper is based on current CCAMLR and member state practice, as well as a comparison to nationality-based measures adopted in the context of other regional fisheries management organisations or agreements (RFMO/As). The former discussion will demonstrate the current situation of regulation, while the latter may demonstrate future prospects for regulation (ATS Resilience, sect. 5). Of course, the interests of the speaker go beyond one's own contribution and I particularly look forward to the discussions, for example, on commercial MSR and the uses of port state jurisdiction. Other ongoing projects are linked to these fields and so I can learn a great deal from the book meetings in the process. I hope I can contribute to these discussions as well.

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