

Sustainable utilization of marine fisheries in Sustainable Fisheries Partnership Agreements between the European Union, Madagascar and Senegal under international fisheries law.

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Abstract

The European Union (EU) has long tradition of concluding fisheries access agreement with developing countries on the basis of EU Common Fisheries Policy. EU is constantly reshaping its policies in response to increasing decline of fish stocks through inclusion of sustainability principles to make these fisheries access agreements effective. These agreements ensure access of EU vessels to Exclusive Economic Zone's (EEZ) surplus marine fisheries of developing countries. They play an important role in the economy of the developing countries through financial contribution. These agreements were commercial in nature in the beginning. To reduce the negative impact of them on the fisheries sector, the nature of these agreements has been changed from commercial agreement to sustainable fisheries partnership agreement (SFPA). Nevertheless, these agreements are subject to criticisms due to unsustainability of fish stocks in the maritime zone of developing countries. The questions which this paper explores are, to what extent do the SFPAs between EU, and Madagascar and the EU and Senegal incorporate and promote sustainable utilization of fish stocks? How can FPAs strengthen the duties of EU and aforesaid partner countries to ensure the sustainability of marine fishery resources? In order to explore the questions, this paper analyses the international instruments and EU regulations and policies on the basis of sustainable utilization of marine fisheries. After investigating all of these along with the concerned agreements, it is seen that there are many challenges to implement sustainable utilization of the marine fisheries provisions through the agreements. Strengthening the Joint Committee to implement the SFPAs, effectiveness of the sectoral support, failure to incorporate the principles relating to sustainability and implementation provisions of rights and obligation of flag and coastal states referred by Law of the Sea Convention, Fish Stock Agreement and FAO Code of conduct for responsible Fisheries in the operative part of the SFPAs, failure in shaping fisheries policy of Senegal and Madagascar ensuring exclusivity clause for all vessels through sectoral support, ensuring participation of the EU in stock assessment and surplus determination, ensuring environmental protection, consideration of effective *ex post* and *ante* evaluation report and introduction of Locally Managed Area can ensure the sustainable utilization of fish stock.

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List of Acronyms

UNCLOS	United Nations Convention on the Law of the Sea
FSA	Agreement for the implementation of the provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks
UN	United Nations
EU	European Union
CFP	Common Fisheries Policy
SFPA	Sustainable Fisheries Partnership Agreement
EEZ	Exclusive Economic Zone
EEC	European Economic Community
TAC	Total Allowable Catch
UNGA	United Nations General Assembly
ITLOS	International Tribunal for the Law of the Sea
SRFC	Sub-regional Fisheries Commission
MSY	Maximum Sustainable Yield
IUU	Illegal, Unreported and Unregulated
IOTC	Indian Ocean Tuna Commission

1 Introduction

1.1 Context and background of the study

Fisheries partnership agreements (FPA) are international agreements between the European Union (EU) and partner countries¹ regarding utilization of fisheries of EEZ of partner countries. Common Fisheries Policy, 2014 of the European Union, renaming this type of agreement as sustainable fisheries partnership agreement (SFPA) defines it as “an international agreement concluded with third state for the purpose of obtaining access to waters and resources in order to sustainably exploit a share of the surplus of marine biological resources, in exchange for financial compensation from the Union, which may include sectoral support.”² These agreements provide a framework for cooperation regarding exploration of fisheries between the parties for a specific period of time. General principles and governing access conditions are laid down in these agreements. Subsequent protocols adopted to the agreements contains detailed terms and conditions between the parties. Generally Protocol consists of detailed access conditions in surplus marine fisheries resources within the coastal water of the partner countries in return of financial compensation and sectoral support paid out by EU. SFPAs have an important role in EU market and in the economy of the partner countries. In addition to that they promote sustainable exploitation of marine fisheries in the partner countries through sectoral support and strengthen their administrative and scientific capacity based on proper management, monitoring, control and surveillance. In short, the objectives of SFPAs are ensuring access to fish stocks in partner countries for the EU fleets to supply EU market and promoting sustainable development in partner countries through sectoral support. So main basis of these agreements is sustainable utilization of fish stocks of the partner countries. For securing the objectives of the SFPAs, these fish stocks should be utilized sustainably. Since SFPAs and Protocols are main tools which

¹Some countries from ACP countries i.e Senegal Madagascar, Mauritania, Liberia, Cook Island, Cap Verde, Morocco etc. Only exception is Greenland.

² Regulation (EU) No 1380/2013 OF The European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy

incorporate the rights and obligations of the parties, they need to contain provisions ensuring the sustainable utilization of fish stocks³. For ensuring sustainable utilization, fisheries need to be harvested at a sustainable level that does not decline the fish population over the time. Marine fisheries were regarded as endless resources before. Later on it has been seen that fish stocks were being depleted by over exploitation.

Food and Agricultural Organisation (FAO) Committee on fisheries in 1991 recognized the need to conserve the natural resources and FAO developed a code of conduct for responsible fisheries in 1995. This helped to develop the concept of sustainable utilization. According to FAO report, 2007, most of the marine fisheries were depleted or hovering at the brink of the over-exploitation.

According to FAO report, as of 2016 the state of world's marine fish stock has not improved. Developing countries supply more than half of fish exports by value in world market. SFPAs play an important role in EU market. Unsustainable utilization of marine fisheries affects the fish market and SFPAs as well. There were more than 30 FPAs entered into by the EU with partner countries from the late 1970's to until today⁴. There is a downward trend in the number of the agreements in existence and especially from 2015 to 2017, the trend drastically dropped from seventeen to twelve⁵. Problems in fishing practices especially bycatch⁶, technical measures, effectiveness of sectoral support⁷, inadequate knowledge of resources and ecosystem and inadequate scientific data collection by developing countries⁸, failure of maximum sustainable yield (MSY) concept⁹, absence of long-term policies¹⁰, non-renewal of protocols¹¹, insufficient

³ Mwikya, Stephen Mbithi. Fisheries Access Agreements: Trade and Development Issues, International Centre for Trade and Sustainable Development, available at [ictsd.org/sites/default/files/research/2008/04/mbithi_2006.pdf](https://www.ictsd.org/sites/default/files/research/2008/04/mbithi_2006.pdf)

⁴ Bilateral agreements with countries outside the EU ec.europa.eu/fisheries/cfp/international/agreements_en

⁵ Ibid

⁶ Hauge, Kjellrun Hiis, Cleeland, Belinda and Wilson, Douglas Clyde. Fisheries Depletion and Collapse, International Risk Governance Council, available at [irgc.org/wp-content/uploads/2012/04/Fisheries_Depletion_full_case_study_web.pdf](https://www.irgc.org/wp-content/uploads/2012/04/Fisheries_Depletion_full_case_study_web.pdf)

⁷ The future of Fisheries Partnership Agreements in the context of the Common Fisheries Policy reform, Coalition for Fair Fisheries Arrangements (CFFA), 2010

⁸ Witbooi, Emma. Fisheries and sustainability: A Legal Analysis of EU and West African Agreements. Martinus Nijhoff Publishers, Boston 2012 page 27

⁹ Birnie, Patricia, Boyle, Alan and Redgwell. Catherine International Law and the Environment, Oxford University Press, 2009, 3rd Edition,, at 591

¹⁰ Are the Fisheries Partnership Agreements are Well Managed by the Commission, European Court of Auditors, Special Report, 2015 available at eca.europa.eu/Lists/ECA Documents/SR15_11/SR_FISHERIES_EN.pdf

¹¹ Ibid,

monitoring¹², control and surveillance, illegal, unreported and unregulated (IUU) fishing¹³ have severe impact in the way of attaining sustainable utilization of marine fisheries¹⁴. One of reasons to decrease the number of FPAs is unsustainable fishing. Since Fisheries access agreements are main documents which open the door for the distant water fishing nations, this paper aims to examine FPAs between the EU and Senegal and between the EU and Madagascar in the light of the sustainable utilization of the fish stocks.

The doctrine of the absolute freedom of the sea maintained a period of stability in the legal regime of the oceans from the seventeenth to nineteenth centuries.¹⁵ In the later part of the nineteenth century, with coastal states' exercise of rights to control coastal waters for the sake of their security, the concept of territorial sea began to emerge. First major threat for the doctrine of absolute freedom was declaration by the President Truman extending national jurisdiction of United States over all natural resources on its Continental shelf¹⁶ in 1945. Even though the concepts and regimes of the territorial sea and the continental shelf began to emerge, there was no uniformity in state practice. Hence, there was no obligation on states to conserve fish stocks. As a result, to keep pace with the demand for fish of people, the world's total annual fish catch had steadily risen in the middle of twentieth century. By the 1970's many coastal fish stocks had been fished in excess of their maximum sustainable yield especially by the developed countries with their effective technology and fishing capacity¹⁷. After over-exploitation of their own maritime zones, developed countries were interested in distant water fleets (DWFS¹⁸). DWFS have been increasing since last few decades due to the scarcity of marine fisheries within the maritime zones of their own state. During the same time, fisheries expansion began to take place in developing countries. Since distant water fishing fleets were free to fish almost everywhere, they used to come in contact with the national fishing fleets of developing countries and often led

¹² Supra n.5

¹³ Ibid

¹⁴ Supra n.10

¹⁵ Rothwell, Donald R and Stephens, Tim, *The International Law of the Sea*. Hart Publishing, Oxford, 2010, p-4

¹⁶ Ibid

¹⁷ Kaczynski, Vlad M and Fluharty, David L. 'European Policies in West Africa: who Benefits from fisheries Agreements?', *Marine Policy* 26 (2002) p.76

¹⁸ fleets which fish beyond their national jurisdiction

to conflicts over ownership of fishery resources which gave rise of over-exploitation of marine resources.¹⁹

By the adoption of the 1982 United Nations Convention on Law of the Sea (UNCLOS), the activities of distant water fishing fleets were circumscribed. UNCLOS restricted free access to ocean by creating the Exclusive Economic Zone (EEZ) regime. This regime empowers the coastal states with sovereign rights to explore and exploit marine resources within it under article 56 of UNCLOS. It restricts the other states to fish within the EEZ of coastal state without its consent. Besides this, as a package deal UNCLOS made a balance by imposing some responsibilities on coastal states formulated in articles 61 and 62 of UNCLOS. Article 61 states that the coastal state shall determine the allowable catch not to endanger them by over exploitation with a view to ensuring proper conservation and management of marine living resources. Apart from this, Article 62(2) of UNCLOS states that if a country cannot 'harvest the entire allowable catch' within its EEZ, it shall permit other countries regulated access to such 'surplus' marine resources. In reality, even though coastal states cannot be compelled to give foreign flag States access to their EEZ²⁰, it is an obligation on developing states because they cannot meet their allowable catch due to lack of fishing capacity (boats), expertise, infrastructure and technologies. By imposing an obligation on coastal states of allowing access right to EEZ, and through establishing discretionary right of coastal states to determine how their waters were to be exploited, the UNCLOS provided a legal basis for the negotiation of fisheries access agreements between coastal states and distant water fishing states.

Fisheries access agreement was then demand of time because 90% of marine fisheries came under the jurisdiction of coastal states due to EEZ regime created by UNCLOS²¹. Before European Economic Community's (the EEC) involvement, distant water fleets were mainly from Spain, France, the Netherlands and Portugal. As fish and other marine life are moving resources with no national boundaries and depend on shared ecosystem, individual fishing fleet activity can

¹⁹ Frederic et al, Who Gets What? Developing a more Equitable Framework for EU Fishing Agreements, Marine Policy, 2012

²⁰ Supra note 3, P.7

²¹ Hey, Ellen. 'The fisheries Provisions of the LOS Convention' in Ellen Hey, (ed.), Developments in International Fisheries Law (Hague: Kluwer Law International 1999) at 27

affect others interest. So the EEC tried to safeguard the traditional distant water fishing fleets of European countries by introducing a uniform state practices to make European fishing industry sustainable. Following the UNCLOS negotiation and accession of Spain and Portugal to the EEC in 1986, the EEC started to enter into fisheries access agreements and their implementing protocols with third countries. The number of agreements reached a peak in the early 1990's. At that time EEC had concluded a total of some thirty fisheries agreements (of which only six are now still in existence)²² The Common Fisheries Policy (CFP) of EU establishes a legal framework for EU fishing activities outside the European waters in 1970. So fisheries access agreements were entered into by the EEC and third countries within the ambit of the principles and rules of the CFP. The EEC's first fisheries agreement was with Senegal in 1979.

Fisheries access agreements were subject to criticism due to their commercial nature, excessive export of fishing capacity to the countries by EEC, over-exploitation of fish stocks, lack of transparency and enforcement, lack of compliance with national regulations of coastal states, ineffective negotiation and enforcement capacity of developing coastal states etc²³. Moreover CFP failed to pay attention to the conservation of marine fisheries. For the first time in 1983 fisheries conservation measures were introduced to the CFP by limiting catches, regulating fishing gear and establishing minimum standards for fish size and weight. The CFP's 1992 review revealed that conservation measures could not bring a success due to insufficient scientific data to determine total allowable catch(TAC), TAC for only certain species leaving most of the stocks unregulated, growing over capacity of the Community fleets resulting decline of EU fish stocks. 2002 CFP review also revealed the weakness of CFP to address sustainability concerns and recommended to reshape its contents.

In 2002, fisheries partnership agreements were introduced with new objective of sustainable exploitation of living aquatic resources, nevertheless the problems of declining fish stocks and growing of fishing fleets remained same revealed by 2012 CFP review. Finally there was a reform to CFP in 2014. This reform introduced a ban on discarding fish, a legally binding commitment to fishing at sustainable levels, decentralization of decision making etc. But still it has following limitations. According to article 61 of the UNCLOS, coastal states shall determine

²²Supra note 2, p.6

²³ Supra n 5

the total allowable catch after considering the best scientific evidence available to it. Where coastal state cannot harvest the total allowable catch, it shall give other states access to the surplus of the allowable catch under article 62 of the UNCLOS. Partner countries of the FPAs are poor with lack of expertise to determine allowable catch and surplus. FPAs are silent about this. Catch data of the Commission is also not well maintained. So it is affecting the sustainability of the fish stocks.

Apart from this, FPAs clearly mention for *ex ante* and *ex post* evaluation report but there are very few such reports published in the official website of European Commission, some are not written in English. Central monitoring of catches is not adequate which affect quota allocation and TAC as well. Co-ordination with other partners in the sector was also lacking. Developing countries also enter into contract with third countries. There is no proper monitoring in developing countries. As a result, such third countries use destructive method, unregulated fishing, IUU fishing etc which affect the SFPAs.

Besides this, fisheries partnership agreements are comprised of access right to EEZ of coastal states and sectoral support by the EU. Sectoral support promotes sustainable fisheries development in partner countries by strengthening their administrative and scientific capacity through a focus in sustainable management, monitoring, control and surveillance. Commissions' control of sectoral support actions was limited and the actions actually implemented by the partner countries were in some cases different from those agreed. Negotiation of FPA is long and complicated process. Sometimes protocols take time to be renewed which affects the sustainability of fisheries. Lack of reliable information on fish stocks, national fleets and foreign fleets, ineffectiveness of ex-post evaluation, unavailability of FPA evaluation etc have adverse impact on FPA.

1.2 Research questions

Present sustainable fisheries access agreements have various problems as mentioned aforesaid. Relation between the countries, political factors, negotiation skills etc. have contributing factors in ensuring sustainable utilization of fish stocks as well. Because of limitations on time and resources for empirical research, this paper only scrutinises the agreements between the EU, Senegal and Madagascar. In order to define the scope of the thesis, the following research questions are developed. These are:

1. To what extent do the FPAs between the EU, and Madagascar and the EU and Senegal incorporate and promote sustainable utilization of fish stocks?
2. How can FPAs strengthen the duties of EU and aforesaid partner countries to ensure the sustainability of marine fisheries?

The first question aims to identify importance of sustainable utilization of marine fisheries considering relevant international fisheries instruments and jurisprudence and how far it reflected in Common fisheries Policy and relevant agreements. Second question aims to identify duties of the parties of the SFPAs ensuring sustainable utilization of fish stocks and how far future improvements need to be made by the agreements.

1.3 Methodology

Depending on the amount of time required and scope of my research topic, analytical method is used in this paper. It focuses mainly on the text of the law from the primary sources. For the purpose of this research, existing SFPAs, relevant conventions, relevant policy adopted by EU etc. will be analysed. Besides this, decision of International Tribunal for Law of the Sea (ITLOS), relevant books and articles will also be considered. So it is a theoretical and literature review based research which will provide insights into the existing problems in SFPAs ensuring sustainability and help to develop ideas thereto.

From twenty-one FPAs between EU and West African countries, only two agreements will be analysed here, namely FAA between EU and Senegal, and Madagascar and EU. Generally documents relating to fishing agreements and negotiations between the parties are not publicly available except the official text. So a broad range of sources was considered here. The main source regarding these agreements is European law database, available at <http://eur-lex.europa.eu>. This website provides the agreements texts, protocols, some *ante* and *post* evaluation reports of the SFPAs, report and proposals by Audit, etc.

Other than the official agreement text, publicly available documents relating to fishing agreements and the underlying negotiations between contracting parties are generally scarce. Consequently, a broad range of sources was considered in the present analysis in order to understand how the negotiations and agreements between the EU and Madagascar took place. Most of the other sources of information used to understand Madagascar's position were based

on grey literature. Reports issued by government bodies, research thesis, conference papers, media articles, and many personal communications from government representatives were used to assess financial benefits. Senegal was the first African country which entered into a bilateral fisheries access agreement with EU. This agreement was renewed for eight times from 1979 till 2006. After 2006, the protocol was not renewed for eight years. Due to Senegal's strategic location, having an important role as ICCAT member in combating illegal fishing and long tradition of Community fishing in Senegalese water, EU again entered into an agreement in 2014.

Both of the agreements have attracted significant public attention and criticism for their alleged adverse impact on fisheries and depletion of fish stocks in the maritime zones of developing countries.. Apart from this, this paper will consist of a comparative study between UNCLOS and SFPAs, rights and obligations of flag and coastal states in EEZ and advisory opinion of ITLOS, evaluation of CFP, weakness of the FAAs and recommendations thereto. EEZ regime is the basis of fisheries access agreements, so other maritime regimes are not the subject of this thesis.

1.4 Structure of the thesis

Chapter 2 contains the international instruments e.g binding and jurisprudence ensuring sustainable utilization of fisheries relevant to the fisheries access agreements. In this part, extent of which the provisions of sustainability were incorporated in the provisions of international instruments will be examined. It also contains the concept of sustainable utilization of fish stocks. Chapter 3 will state how EU regulations and policies evolved over the time reflecting sustainability concern. Chapter 2 will illustrate the case study of Madagascar and Senegal. It will include background of the fisheries relation of EU, Madagascar and Senegal and the role of national laws, highlight challenges in ensuring sustainable utilization of fish stocks in coastal water of the each country, above all considering contents of the both agreements. Chapter 4 will provide some recommendations with conclusion.

2 Relevant International fisheries instruments and Jurisprudence

There are international fisheries instruments and jurisprudence promoting sustainability of marine fisheries. Some are binding and some are non-binding in nature. Binding instruments are: UNCLOS, FSA, FAO Compliance agreement. Non-binding instruments include UNGA resolutions. Next part will consist of analysis of both binding and non-binding international instruments promoting sustainability.

2.1 UNCLOS

UNCLOS does not define 'sustainable utilization of fish stocks but it gives states a right to exploit marine resources sustainably through the objective of maximum sustainable yield²⁴ in EEZ. MSY means catching maximum fish from a fish stock and such catching should be safe and not be dangerous for the capacity of the fish stocks to produce maximum sustainable returns in long run. Coastal states are under an obligation to determine total allowable catch (TAC) in its EEZ²⁵.

Though determining TAC depends on the discretion of the coastal state, this discretionary power of the coastal states are limited by using best scientific evidence, duty to conserve resources consideration of associated and dependent species and not to over-exploitation of resources²⁶. Over exploitation occurs when more fishes are caught from a stock than the fish population can replace through regeneration or immigration from other population. Besides preventing over exploitation, UNCLOS ensures that no fisheries are left unexploited. Article 62 of UNCLOS ensures the utilization of marine resources even when coastal state is unable to catch total allowable catch, by allowing other states to the surplus of the allowable catch. Article 62 states that coastal states shall promote the objective of optimum utilization of the living resources in EEZ. "Optimum utilization" implies that states are under an obligation not to leave any fisheries unexploited, but at the time of exploitation, there should have a limit as if fisheries are not subject to full or maximum utilization.

²⁴ Article 61 of the United Nations Convention on the Law of the Sea(UNCLOS)

²⁵ Ibid

²⁶ Supra, Art. 61

So it is a balanced utilization not hampering the future production of fisheries.²⁷ The responsibility of optimum utilization reflects the concept of sustainable utilization. In light of abovementioned provisions of UNCLOS, 'sustainable utilization' implies that no fisheries are to be left unexploited rather catching optimum fish but not maximum fishing from a stock which will not affect the reproduction capacity of the stock and will ensure the maximum sustainable yield in long term. As if fisheries are not overexploited, UNCLOS provides to determine total allowable catch and as if no fisheries are left unexploited, UNCLOS provides access right to third states when coastal state cannot harvest total allowable catch. 'Sustainable utilization' is not only concerned with any specific stock or stocks, but also it is concerned with all species of the same ecosystem. States fishing or flag states have also duty to cooperate in ensuring conservation and promoting optimum utilization of highly migratory species. Here both of the agreements between EU and Senegal and Madagascar are relating to exploitation of Tuna fish. Tuna is a highly migratory species²⁸. So EU has also duty for ensuring optimum utilization when fishing.

A treaty creates rights and obligations for the parties only.²⁹ Here, EU, Madagascar and Senegal are parties to UNCLOS. So they are bound by the UNCLOS obligation. Apart from this, they are bound to follow the provisions on EEZ, as these provisions are well established as customary international law due to consistent state practice and *opinio juris* i.e a belief by states that their practice is legally required by the norms³⁰.

States allowed to fish in the EEZ have to cooperate to conserve the marine fisheries and comply with laws of coastal states regarding conservation as well.³¹ Coastal state and states fishing shall cooperate directly or through organization to conserve and manage the highly migratory fish stocks to promote optimum utilization.

²⁷ Art 64 UNCLOS

²⁸ Ibid, Annex 1

²⁹ Article 34, Vienna Convention on Law of the Treaties

³⁰ Roach, J. Ashley. Today's Customary International Law of the Sea, Ocean Development & International Law, (2014) 45:3, 239-259,

³¹ Article 62(4), UNCLOS

The criteria of sustainable utilization are provided by UNCLOS in the following way:

1. Determination of TAC on the basis of best scientific evidence is necessary. In case of fisheries access agreement, determination of TAC plays a vital role in ensuring sustainable utilization.
2. Best scientific evidence needs to show that the catch allowable will ensure restoring of populations of harvested species at levels which can produce the MSY.
3. Determination of harvesting capacity by the coastal state though depends on its discretion, it should be determined by it for the sake of sustainable utilization. If it does not have capacity to harvest TAC, it has to give other States access to the surplus of the allowable catch.
4. Co-operation between coastal and flag state to fish in EEZ plays an important role in the sustainability of the FPAs. FPAs should bring the parties to a mutual understanding for a sustainable fishing in EEZ.

2.2 FSA

It is an implementing agreement of the UNCLOS relating to the conservation and management of straddling fish stocks and highly migratory fish stocks. FSA is an elaboration of the provisions of Articles 63(2) and 64, and Part VII, Section 2 of UNCLOS. As a result this agreement includes principles of conservation and management already established in the UNCLOS, as well as new norms and rules ensuring the implementation of relevant provisions of the UNCLOS. FSA applies not only to the conservation and management of straddling fish stocks and highly migratory fish stocks on the high seas, but also to ³² general principles, application of the precautionary approach. Compatibility of conservation and management measures mentioned for the high sea in the Agreement are equally applicable within areas under the national jurisdiction of the coastal State.³³ FPA between the EU, Senegal and Madagascar are relating to highly migratory species agreements. Annex 1 of UNCLOS contains seventeen kinds of species i.e, Albacore tuna, Bluefin tuna, Bigeye tuna, Southern Bluefin tuna etc. and article 1 of Protocol on the implementation on the sustainable partnership agreement between the EU and

³² Agreement for Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, article 5,6,7 and part vii

³³ Ibid, Article 3

Senegal grants fishing opportunities for species mentioned in annex 1 of the UNCLOS except species prohibited by ICCIT.

FSA provides for provisions to conserve and manage highly migratory species. Conservation means protecting and using resources in a wise way to get the most benefit for long term.³⁴ Concern of sustainable utilization is also protecting marine fisheries and using them in a way not hampering fish stock's regeneration to get benefit in the long run. Hence, conservation measures also reflect the concept of sustainable utilization. In a narrower sense, Article 62(2) of the UNCLOS gives coastal states unfettered sovereignty in their EEZ in practice. But international environmental principles and FSA imposed some restrictions over the unfettered power of the coastal states.³⁵

Obligation of considering best scientific evidence, precautionary approach, domestic policies shaping and regulating the bilateral fisheries interactions also impose some constraints on the power of the coastal states regarding EEZ fisheries.

According to article 5, coastal states and states fishing in the high sea and EEZ are under an obligation to cooperate to ensure long term sustainability of straddling and highly migratory fish stocks. States under obligation to promote the objective of fish stocks' optimal utilization, ensuring maximum sustainable yield, assessing the impact of relevant factors on ecosystem and to adopt measures thereto, minimize pollution, protecting bio-diversity, eliminating over-fishing and excess capacity etc. States are not allowed to postpone or failing to take conservation and management measures for fisheries even in the absence of scientific certainty. FSA is more specific with removal of various challenges of sustainable utilization of fisheries by integrating conservation measures, such as a precautionary approach, impact assessment, ecosystem management and biodiversity management in the framework of fisheries management.

Senegal and EU are parties to it but not Madagascar. Though a treaty cannot bind non-parties,³⁶ FSA can bind non-parties who are not parties to any RFMO or arrangement in respect of cooperation to conserve and management of the relevant fish stocks.³⁷

³⁴Black Law Dictionary

³⁵Kwiatkowska ,B. The 200 Mile Exclusive Economic Zone in the New Law of the Sea (Martinus Nijhoff Publishers, The Netherlands 1989) at 61...

³⁶ supra n 32 article 34

This Agreement introduced a number of innovative measures, particularly in the area of environmental and resource protection. FSA repeating the rules and norms already provided by UNCLOS impose another obligation to adopt a precautionary approach to fisheries exploitation. States have to take precaution to conserve and manage fisheries, even in the absence of adequate information.

2.3 FAO Code of Conduct for Responsible Fishing

The Code of Conduct consists of a collection of principles, goals and elements for action to conserve and manage of living aquatic resources and their environments and coastal areas. It establishes principles for responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects.

It also helps in shaping national policies for responsible conservation of fisheries resources and fisheries management and development. Besides, it provides guidance which may be used where appropriate in the formulation and implementation of international agreements and other legal instruments, both binding and voluntary. It facilitates and promotes technical, financial and other cooperation in conservation of fisheries resources and fisheries management and development.³⁸

This Code provides principles i.e regarding fisheries conservation, ecosystem approach to fisheries management, sustainable utilization, precautionary approach, participation of stakeholder in policy making, by catch reduction, minimizing environmental impact and cooperation among states.³⁹

It also specifies flag states responsibility.⁴⁰ Fishing vessels that fish beyond their waters have the responsibility to ensure that these vessels are issued with appropriate certificates, safe, insured; and vessels and gear should be properly marked, according to national and international regulations. Flag states should keep detailed records of the vessels fishing outside their maritime boundary.

³⁷Article 17 FSA

³⁸ Preamble, FAO Code of Conduct for Responsible Fishing

³⁹ Ibid, Article 6

⁴⁰ Ibid, Article 8.2

Port states should adopt procedures, such as inspecting foreign fishing vessels when they enter their ports, except in cases when a vessel is in port because of emergency, to assist in ensuring that the vessel has fished responsibly. Port state should cooperate with the flag states.⁴¹

Harbours and landing places should be safe havens for fishing vessels. These places should have facilities for servicing vessels, vendors, and fish buyers. Fresh water supplies, sanitation arrangements and waste disposal systems should also be provided.

The Code of Conduct provides long-term sustainable use of fisheries resources is the overriding objective of conservation and management.⁴² States should adopt appropriate measures, based on the best scientific evidence available to maintain or restore stocks at levels capable of producing maximum sustainable yield. Such measures should provide avoid excess fishing capacity, considering interest of stake holders, biodiversity, pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non- fish species, and impacts on associated or dependent species are minimized, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques.⁴³

⁴¹ Supra n 38 Article 8.3

⁴² Ibid n 38, Article 7.2.1

⁴³ Ibid Article 7.2.2

2.4 UNGA

Sustainable utilization of marine living resources is all about international concern and cooperation and within the mandate of UN Charter, involving general welfare and friendly relation of states.⁴⁴

UNGA resolution A/RES/72/72⁴⁵ calls upon for cooperation between developing and developed states through capacity building to implement the UNCLOS, get benefit from the sustainable development of the oceans and seas, and to ensure maritime safety and security. Capacity building needs for building the capacity of developing states in scientific research, technology through transfer, sustainable fisheries development, providing training, workshop, sustainable marine resources.⁴⁶ It also recognizes the crucial role of international cooperation in combating threats to maritime security, including piracy, armed robbery against ships at sea and terrorist acts against shipping, offshore installations and other maritime interests,⁴⁷ This resolution tries to balance calling upon flag and coastal states to contribute to ensure sustainable fisheries together. It calls upon coastal states to harmonize their national legislation with UNCLOS.⁴⁸

Apart from this, there are many international instruments containing obligations for sustainable use of marine fisheries for which UNGA can establish conditions to respect them through resolutions. For example, some UN GA resolutions support sustainable utilization of fisheries, introduced by UNCLOS, refer some measures adopted in FAO Code of Conduct, the Compliance Agreement and the UN FSA agreement, such as effective control over nationals, monitoring and control of trans-shipments on the high sea, vessel monitoring systems, record of fishing vessels and port state measures.

⁴⁴ Supra, Article 01

⁴⁵ Sustainable fisheries, including through the 1995 Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, and related instruments p 10,107

⁴⁶ Ibid, II Capacity building

⁴⁷ Ibid, p 119

⁴⁸ Ibid, p 5

One group of scholars asserts that resolutions act as authoritative source of international law as they derived it from UN Charter. Any resolution relating to subject addressed by the charter has the authority of charter itself and the charter is binding on the UN members.⁴⁹

Though UNGA resolutions do not have binding effect on the member states but consensus of states can generate new norms of customary international law and can also be transformed into new legal norms. Reference of them can be used in international affairs as well. Above all, some of these resolutions act as a guideline in ensuring sustainable use of marine living resources without imposing any formal legal obligation upon the member states. Resolutions are valued considerably by the states in a way they deliver legitimacy. Hence they have significant influence on the behavior of the states regarding sustainable utilization of fisheries. Some of the resolutions of UNGA set out principles and global standards for responsible fishing practices.

Some significant resolutions are on ensuring sustainable marine fisheries calling upon states and RFMOs to restore depleted stocks, to ensure maximum sustainable yield, identifying risk and reducing adverse impact of them on fisheries through application of precautionary and ecosystem approach, global moratorium, restriction in unauthorised fishing, by catch, discards etc. Some of them are of the world's oceans and seas, resolution 49/116 on unauthorized fishing in zones of national jurisdiction and its impact on marine living resources⁵⁰. This resolution strengthens cooperation among states to conserve and manage living resources according to international law through proper monitoring and control of fishing activities, and the enforcement of fishing regulations. Resolution 49/118⁵¹ on fisheries by catch and discards and their impact on sustainable use of living marine resources. They promote the development and use of selective fishing gears and practices that minimized waste to catch target fish species and minimized by-catch of non-target fish. Resolution 50/25⁵² consolidated all fisheries issue

⁴⁹VGJ Kerwin, The Role of United Nations General Assembly Resolutions in Determining Principles of International Law in United States Courts, Duke Law Journal, 1983 pp. 876-899

⁵⁰ Resolution adopted by the United Nations General Assembly, 22 February 1995, available at documents-dds-ny.un.org/doc/UNDOC/GEN/N95/768/55/PDF/N9576855.pdf?OpenElement

⁵¹ Ibid, available at documents-dds-ny.un.org/doc/UNDOC/GEN/N95/765/01/PDF/N9576501.pdf?OpenElement

⁵² Ibid, 4 January 1996, <https://documents-ddsny.un.org/doc/UNDOC/GEN/N96/761/29/PDF/N9676129.pdf?OpenElement>

concerning unauthorised fishing, bycatch, discard, large pelagic drift net, and their impact on sustainable fisheries .

2.4 ITLOS Advisory Opinion

UNCLOS provides alternative means for settlements of disputes. ITLOS is one of the four alternative means for settling disputes concerning the interpretation and application of UNCLOS. It is an independent judicial body to adjudicate disputes. Other agreements can also confer jurisdiction on ITLOS.⁵³ The Tribunal may also give advisory opinions when required to do so on the basis of international agreements related to the purposes of the Convention⁵⁴. For the first time ITLOS was requested by a co-operational organization among seven African states named Sub- regional Fisheries Commission (SRFC) to give an advisory opinion regarding obligation of flag and coastal state in sustainable fisheries management. The opinion was sought against the backdrop of the serious problem of illegal, unreported, and unregulated (IUU) fishing in the EEZs of SRFC members. To cover this, ITLOS is engaged with several issues of general international law, including the responsibility of states and international organizations for IUU fishing.

The most important players of the law of the sea are flag and coastal states. All international instruments relating to sea try to make a balance between rights and obligations of coastal and flag states. Since EEZ is a regime within the maritime zone of Coastal state, in the exercise of the sovereign rights of the coastal State to explore, exploit, conserve and manage the living resources of the EEZ, primary responsibility belongs to coastal state to adopt laws and regulations establishing the terms and condition for access by the foreign fishing vessels.⁵⁵ Laws adopted by the coastal states must be complied by the foreign fishing vessels engaged in fishing in EEZs of coastal staets⁵⁶. Hence ITLOS emphasised that EU must ensure that vessels flying

⁵³Article 21 Annex VI of UNCLOS

⁵⁴ Article 138(1), International Tribunal for the Law of the Sea, Rules of the Tribunal, ITLOS/8, Mar. 17, 2009, available at https://www.itlos.org/fileadmin/itlos/documents/basic_texts/Itlos_8_E_17_03_09.pdf

⁵⁵ Article 56(1), 62(4) of UNCLOS

⁵⁶ Article 58(3), UNCLOS

the flag of one of its member states comply with fisheries laws and regulations of the SRFC member state and do not engage in IUU fishing.⁵⁷

To ensure compliance by other states with its laws and regulations concerning the conservation and management measures for living resources, the coastal State may inspect, arrest and start judicial proceedings.⁵⁸

In addition to Article 58(3) mentioned above, UNCLOS also put some specific responsibilities on the flag states in EEZ Arts. 5 62(4) LOSC in respect to the fishing activities conducted by nationals of flag states. UNCLOS provided also some general obligation on the flag states for conservation and management of marine living resources pursuant to Arts. 91, 92, 94, 192 and 193 LOSC.⁵⁹ Flag states have to exercise their jurisdiction and control effectively over their vessels in administrative, technical and social matters, and to ensure safety at sea. Flag states are obliged to investigate, if there is any report of non-compliance of effective jurisdiction.⁶⁰ Article 192 of UNCLOS imposes an obligation on all states to protect and preserve the marine environment. ‘The conservation of the marine living resources of the sea is an element in the protection and preservation of the marine environment’⁶¹. Since IUU fishing is a threat to conservation and marine environment, so flag states are under an obligation to deter, prevent and eliminate IUU fishing.

In short, in light of the special rights and responsibilities given to the coastal State in the EEZ under the UNCLOS, the primary responsibility for taking the necessary measures to prevent, deter and eliminate IUU fishing rests with the coastal State.⁶² The Tribunal made it clear that the coastal state’s primary obligation, explained above, does *not* release the flag state from its own

⁵⁷ Advisory Opinion of 2nd April, 2015, International Tribunal for the Law of the Sea, at 172 available itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf

⁵⁸ Ibid, at 105 and Article 73 of UNCLOS

⁵⁹ Ibid at 111

⁶⁰ Article 94 of UNCLOS

⁶¹ Southern Bluefin Tuna (New Zealand v. Japan; Australia v. Japan, Provisional Measures, Order of 27 August 1999, ITLOS Reports 1999, p. 280, at p. 295, para. 70

⁶² Ibid at 106

responsibilities. Flag states have ‘responsibility to ensure’, ‘duty to cooperate’⁶³ and ‘due diligence obligation’ that vessels flying their flag comply with coastal states laws and do not conduct IUU fishing in the EEZs of SRFC states.⁶⁴

The Tribunal further notes that bilateral SFPAs concluded by the SRFC Member States contain provisions setting out obligations for the coastal states, flag State and vessels flying its flag. Any breach of obligation will be resolved according to the content of the SFPAs, in the absence of specific provisions, general rules of international law on states responsibilities will be applicable.⁶⁵

3 EU Regulations and policies on Fisheries access agreements

For the first time European Union’s Council Resolution of November 3, 1976³² introduced Community Fisheries Agreement (CFAs). This resolution defined conditions for exchange of access rights in shared stocks or the term of purchase of access rights to fishing areas under the sovereignty of the states that are not members of the EEC. Since then all bilateral agreements between the EEC member States and third countries have been replaced by the CFAs. CFAs were replaced by fisheries partnership agreements (FPAs) after passing European Council’s Conclusions, 2004⁶⁶ which provide for financial contribution from the EU. Later FPAs are replaced by sustainable fisheries partnership agreements (SFPAs) in 2014 to date. These agreements are shaped by the principles and rules of Common Fisheries Policy of the EU. CFP was first introduced in 1970 for creating a common organization for fishery products and a structural policy for fishing industry by Council regulation (EEC) No 2124/70. After 1970, it went through successive updates as it evolved over time to keep pace with developments in international law. Fisheries access agreement under CFP was mainly for securing access to fisheries resources but UNCLOS imposed conservation obligation upon the states. Subsequently Fisheries access agreement began to accommodate these new obligations and other duties to

⁶³ MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95, at p. 110, para. 82

⁶⁴ Ibid at 124, 140

⁶⁵ Ibid at 170

⁶⁶ Council Conclusions 11485/1/04 on the Commission Communication on an Integrated Framework for Fisheries Partnership Agreements with Third Countries (Brussels, 15 July 2004) available at register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011485%202004%20REV%201

conserve marine fisheries imposed by international instruments as well for ensuring access to marine fisheries by EU and improving fisheries governance in developing countries. The EU introduced many regulations for ensuring conservation and management of marine fisheries in 1983 by limiting catches, fishing gear regulation, fish and mesh size etc.⁶⁷ The 1992 Treaty on European Union emphasized on integration of environment and sustainability concern into CFP. The need of a more sustainable development oriented agreement was first expressed by the Committee on fisheries in 1997. The Council adopted integration strategy which served as a reference point in marine fisheries sector. Sustainable development strategy of EU imposed obligation to integrate environment concern to EU policies.⁶⁸

The 2002 review revealed that EU policies failed to accommodate environmental and sustainability concerns. So EU passed another regulation⁶⁹ to correct it by obligating to take available scientific advice, ecosystem based approach to fisheries management and precautionary approach in case of scientific uncertainty⁷⁰. Nevertheless over fishing, declining fish stocks, lack of knowledge of the aquatic resources, impact of fishing activities on ecosystem, difficulty in determining surplus, lack of monitoring and control and combat against illegal fishing remain problems in Community water. As a result, EU relied on FPAs. EU's fishing activity in outside Community water is also guided by similar sustainability and environment concern. The 2002 reform introduced new approach to fisheries agreement for strengthening cooperation and improving the developing states' capacity to achieve overall objectives of sustainability of fishing activities through fisheries partnership agreement instead of access agreement. Though it introduced ecosystem based approach, precautionary approach, long term perspectives on fisheries management, environmental concern integration, it failed to prevent depletion of fish stocks due to ineffective quota limitation, incomplete and unreliable stock assessment, pressure on coastal state for flexible financial contribution, weak vessel monitoring system, poor compliance of regulation set out in the agreement, fleet over capacity, deterioration of marine

⁶⁷Regulation 170/83

⁶⁸Communication from commission, 'A sustainable Europe for a better World: A European Union Strategy for Sustainable Development (Commissions Proposal to Gothenburg European Council)' COM (2001) 264 final

⁶⁹Regulation 2371/2002

⁷⁰Ibid at art 4(2)

environment etc.⁷¹ CFP 2014 reform introduced sustainable fisheries partnership agreement(SFPA) to provide a legal, environmental economic and social governance framework for fishing activities carried out by the EU fishing vessels in third country waters. These agreements promote sustainable fishing in the partner countries through sectoral support in the development policy of the third countries. SFPAs are based on the best available scientific advice and fully transparent and non discriminatory. CFP reform by introducing a ban on discard edible fish, a binding commitment to fishing at sustainable level, maximum sustainable yield, ecosystem approach, precautionary approach, using best scientific evidence in EU water and outside EU specifically states some principles and objectives of SFPAs. Such SFPAs create a legal, environmental, economic and social governing framework for fishing activities in non-EU countries. Such framework includes development and support for the necessary scientific and research institutions, monitoring, control and surveillance capabilities and other capacity building i.e development of a sustainable fisheries policy in third country.⁷²

It also contain provisions regarding ensuring mutual benefit of EU and third country, landing obligation, catch surplus fisheries on the basis of best scientific advice and consideration of scientific assessment for straddling and highly migratory fish stocks, non-discriminatory clause among fishing vessels, fishing authorization, exclusivity clause and Commission's obligation to ex ante and ex post evaluations of each protocol. In accordance with this principles and objectives and common principles enshrined in CFP, all the SFPAs are being entered into. SFPA of Senegal and Madagascar have clear reflection of all the principles and objectives, nevertheless there is shortcoming to ensure sustainable utilization of marine fisheries. This paper will analyze the SFPA between EU, Senegal and Madagascar to determine how far they can ensure sustainable utilization of EEZ fisheries.

⁷¹ Bossche, Koen Van & Burgt, Nienke Van Der Fisheries Partnership Agreements under the European Common Fisheries Policy: An external Dimension of Sustainable Development, *StudiaDiplomatica* Vol. LXII, 2009, N4, page 103- 125

⁷² Regulation No 1380/2013 of the European Parliament and of the Council on Common Fisheries Policy, Article 31

Background to EU- Malagasy fisheries relation

Madagascar is the fourth largest island in the world and it has one of the largest EEZ in the Indian Ocean with a surface area of 1.14 million km².⁷³ It has a vital potential fisheries resources where around 500000 people engaged directly or indirectly, nevertheless its contribution to the GDP is very poor⁷⁴. It supplies 20% of the protein consumption to the country with its small scale fishery sector. People engaged in this fishery sector are most marginalized from the very beginning of Madagascar's independence due to lack of infrastructure, proper management and enforcement to strengthen human capacity and domestic industry development. So SFPAs opened a door for Madagascar to act jointly to develop domestic fishery through these agreements. Madagascar first entered into fisheries agreement with EU in 1986. Now it has been renewed for eight times. Over the times nature of these agreements changed embracing sustainability concept of the fisheries resources. Apart from this, Madagascar became member of IOTC in 1996 and bound by the conservation and management measure adopted by IOTC.⁷⁵

Law concerning the delimitation of Maritime Zones of national jurisdiction (Malagasy Maritime Code, 2000⁷⁶ briefly states regarding management and conservation of living resources, and protection and preservation of marine environment. It imposed obligation on the Madagascar to ensure conservation of anadromous species and free migration of catadromous species⁷⁷. Conservation is mainly concerned with maintaining the integrity of aquatic ecosystem and preserving the diversity of aquatic biotas⁷⁸. It does not specifically mention anything regarding sustainable utilization of fisheries. Madagascar has the Fisheries and Aquaculture Code⁷⁹ as well as legal and operational schemes that allow to control, monitor and punish stateless vessels operating within Malagasy jurisdiction.

⁷³ Cisneros-Montemayor, Andrés M., et al. "Global Economic Value of Shark Ecotourism: Implications for Conservation." *Oryx*, vol. 47, no. 3, 2013, pp. 381–388.,

⁷⁴ World Bank. 2017. Madagascar - Country partnership framework for the period of FY17 - FY21 (English). Washington, D.C. : World Bank Group.

<http://documents.worldbank.org/curated/en/725881498788115661/Madagascar-Country-partnership-framework-for-the-period-of-FY17-FY21>

⁷⁵ Article IX, Agreement for the Establishment of the Indian Ocean Tuna Commission.

⁷⁶ Law n° 99—028 chapter 09 and 10

⁷⁷ Act no 99-028, Maritime Code of Madagascar, 2000

http://www.un.org/Depts/los/doalos_publications/LOSBulletins/bulletinpdf/bulletin56e.pdf

⁷⁸ Helfman, GS..Fish Conservation: A Guide to Understanding and Restoring Global Aquatic Biodiversity and Fishery Resources. Washington (DC), Island Press. 2007

⁷⁹ Act No. 2015-053 of 02/12/15

Contents of the Agreement between the EU and Madagascar

A) Scope of the agreement

One of the purposes of the agreement is promoting responsible fishing in Madagascar's fishing zones through economic, financial, technical and scientific cooperation⁸⁰. 'Responsible fishing' is not defined in the agreement. But it sets some criteria for ensuring responsible fishing based on co-operation among states, principle of non-discrimination between fishing fleets and respecting the state of the fish stocks⁸¹. For ensuring co-operation, 80% of the financial contribution of the agreement shall be allocated to the support and implementation of initiatives taken under the fisheries policy of Madagascar⁸². In this regard, this agreement emphasized on co-operation between both parties in implementing Malagasy fisheries policy in Malagasy water, carrying out *ante* and *ex post* evaluation, evaluation of fishing resources, adopting measure for a sustainable management after considering IOTC recommendations and best available scientific evidence⁸³. Apart from this, FAO Code of Conduct for Responsible Fisheries establishes principles⁸⁴ for responsible fishing. These principles are mainly concerned with fisheries conservation, ecosystem approach to fisheries management, sustainable utilization, precautionary approach, participation of stakeholder in policy making, by catch reduction, minimizing environmental impact and above all, cooperation among states. These principles establish that responsible fishing would ensure the long-term sustainability of the resources, minimize negative environmental impacts and protect biodiversity.⁸⁵

B) Applicable Laws

⁸⁰ Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar, Article 3

⁸¹ Ibid,

⁸² Article 7 of the Protocol setting out the fishing opportunities and the financial contribution provided for by the Fisheries, Official Journal of European Union, Partnership Agreement between the Republic of Madagascar and the European Community, L 365/8 of 19.12.2014,

⁸³ Article 4, *ibid*

⁸⁴ Article 6 of FAO Code of Conduct for Responsible Fisheries.

⁸⁵ M.R Boopendranath, "Responsible fishing - Pointers from FAO Code of Conduct for Responsible Fisheries". Proceedings of the National Seminar on Future of Indian Fisheries: Emerging Policy Paradigms, Department of Aquatic Biology & Fisheries, University of Kerala, 17-31.

In its preamble, the agreement between the EU and Madagascar provides that it will have due regard to UNCLOS. Since preamble is source and evidence of agreements' object and purpose, so UNCLOS plays an effective role as a guiding principle, especially in case of interpretation. It also means that the provisions of the agreement between the EU and Madagascar are not inconsistent with UNCLOS. Rights and obligations for the both parties incorporated in the agreement will be in compliance with UNCLOS provisions. There are some direct reflection of the provisions of UNCLOS in the operating part of the agreement between the EU and Madagascar e.g. access provisions to EEZ, best scientific evidence, promoting responsible fishing,⁸⁶ cooperation among states,⁸⁷ application of law of the coastal states.⁸⁸ In addition to UNLCOS, the agreement should be consistent with IOTC's recommendations and decisions and the FAO's Code of Conduct for responsible fishing.

C) Access condition to Malagasy water

Madagascar allows community vessel to its fishing zone with a licence⁸⁹ only. Protocol further specified in the exclusivity clause that IOTC's listed vessels of EU will be granted licence.⁹⁰ In addition to that, the agreement mentions that fishing activities shall be subject to laws and regulation of the Madagascar which will be monitored by the Madagascar⁹¹. All the requirements and process of issuing licence are provided in Annex.⁹²

D) Financial Contribution and common but differentiated responsibility

Financial contribution is paid each year by EU for access by Community vessel to Malagasy water and fisheries resources, and for financial support for promoting responsible fishing and sustainable exploitation in Malagasy water.⁹³ Specific payment by EU is laid down in Article 4 of the Protocol.⁹⁴ Financial contribution for the agreement is EUR 6107500 for 4 years

⁸⁶ Supra n 80, Article 5 of the agreement, article 61 of the UNCLOS

⁸⁷ Ibid, Article 4 of the agreement, Article 118, 144 of UNCLOS

⁸⁸ Ibid, Article 15 of the agreement, article 61 of UNCLOS

⁸⁹ Ibid Article 6 of the agreement

⁹⁰ Supra 82, Article 10

⁹¹ Supra 39 Article 5 of the agreement

⁹² supra n,23 Annex, Chapter II of the Protocol

⁹³ Article 7 of the Fisheries Partnership Agreement between the Republic of Madagascar and the European Community renewed for the period 01.01.2013-21.12.2018

⁹⁴ supra 24 Article 4

(01.01.15– 31.12.2018)⁹⁵ out of which 2 800 000 EUR⁹⁶ is dedicated to the support of the fisheries policy of Madagascar to promote sustainability in its waters. The current financial contribution by the EU for access in Malagasy water reflects common but differentiated responsibility, which is an important principle of international environmental law. One of the aims of the UNCLOS is creating a just and equitable international economic order which takes into account the interests of the developing states.⁹⁷ Here financial support by the EU to Madagascar ensures differentiated responsibility. Since Madagascar's economy, to some extent, depends on its marine living resources with lack of capacity to harvest and properly manage them, Madagascar needs help from the developed states to develop its infrastructure and management of fisheries which is incorporated in the agreement.

E) Joint Committee

A Joint committee will be formed by the representatives from the EU and Madagascar.⁹⁸ This committee will be responsible for monitoring the performance, interpretation and application of the agreement between both parties, provide liaison to ensure mutual fisheries interest.⁹⁹ This committee can revise fishing opportunities, and can examine and adapt provisions governing fishing opportunities and rules for implementing this protocol and the Annexes.¹⁰⁰ As a result, Joint committee can have an important role to ensure sustainable utilization through revising fishing opportunities from time to time.

F) Technical Conservation Measures

All vessels with the licence need must comply with all technical conservation measures, recommendations and resolution issued by the IOTC and the Malagasy legislation. Technical conservation is related to fishing zone, fishing gear and by-catches.¹⁰¹ Fishing zone is beyond 20 nautical miles from the baseline and a protected area.¹⁰² Authorized gears are Seine and Surface

⁹⁵ supra, no 23

⁹⁶ Supra n 80

⁹⁷ Preamble, UNCLOS

⁹⁸ Supra n 96 Article 2(g) of the agreement

⁹⁹ Ibid Article 9 of the agreement

¹⁰⁰ Article 8 of the protocol

¹⁰¹ Supra 90 Chapter III of the protocol

¹⁰² Ibid, Appendix 2 of the protocol

long liners, and authorised species are Tuna and similar species (tuna, bonito, seerfishes, marlin, swordfish), associated species and fishes under IOTC management mandate excluding species protected by international conventions and prohibited species.¹⁰³

G) Cooperation between States

UNCLOS provides for international cooperation for conservation and management of living resources.¹⁰⁴ In addition to that UNCLOS contains provisions on international cooperation for the development and transfer of marine technology,¹⁰⁵ scientific and technical assistance to the developing countries¹⁰⁶. Among from them, the agreement between the EU and Senegal clearly incorporated scientific cooperation to ensure responsible fishing.¹⁰⁷ Both parties shall exchange scientific information to monitor the condition of fisheries in Malagasy water. There will be a Joint Scientific Working Group (JSWG) to examine any scientific question relating to implementation of the agreement. Based on scientific advice and recommendation from the IOTC,, the Joint Committee will adopt measures to ensure the sustainable management of the fishery resources.¹⁰⁸ Observer appointed by Madagascar on board of authorized vessel will help to collect scientific information identified by the JSWG.¹⁰⁹

H) Monitoring System

All authorised fishing vessel of EU must be equipped with a satellite monitoring system for ensuring communication to fishing control centre of their flag state and Madagascar.¹¹⁰

I) Illegal, Unreported and Unregulated fishing

The agreement provides for participatory monitoring between Madagascar and EU in the fight against IUU fishing. If any vessel is found engaged in activities which may constitute IUU

¹⁰³ Supra no 34

¹⁰⁴ Article 118, 144 UNCLOS

¹⁰⁵ Ibid, Article 266

¹⁰⁶ Ibid,Article 202

¹⁰⁷ Supra n 102 Article 7 of the Protocol

¹⁰⁸ Supra, no 39

¹⁰⁹ Supra 107, Annex Chapter IV

¹¹⁰ Ibid, Annex Chapter IV section 4 of the protocol

fishing in Malagasy water, , the master of any vessel will notify Fishing Monitoring Centre of the Madagascar and to the flag state about it. Madagascar also will notify to the flag state.¹¹¹

J) Evaluation

It provides for ex ante and ex post evaluation unilaterally and jointly by the parties to the agreement.

Assessment of the agreement between the EU and Madagascar

The agreement is based on the principle of responsible fishing, non-discrimination, best available scientific evidence, cooperation between parties for sustainable utilization of marine fisheries, common but differentiated responsibility and above all, solidarity partnership thereto. But it has following limitations:

1. Absence of specific precautionary approach provision

This approach requires the parties to a fisheries agreement to take preventive action when there is risk of severe and irreversible damage to fisheries, even in the absence of scientific certainty. Although UNCLOS does not provide precautionary approach explicitly but obligation to apply this approach is compatible with UNCLOS, as UNCLOS provides obligations for States to conserve and manage straddling fish stocks and highly migratory fish stocks in EEZ.¹¹²

Apart from this, this approach is mentioned in Code of Conduct on Responsible Fishing as “States and sub-regional and regional fisheries management organizations should apply a precautionary approach widely to conservation, management and exploitation of living aquatic resources in order to protect them and preserve the aquatic environment, taking account of the best scientific evidence available. The absence of adequate scientific information should not be used as a reason for postponing or failing to take measures to conserve target species, associated or dependent species and non-target species and their environment”¹¹³

¹¹¹ Ibid, section 8

¹¹² Article 61, 117 and 119, UNCLOS.

¹¹³ Article 6(5) of FAO

The agreement between the EU and Madagascar does not explicitly incorporate precautionary approach. But it provides that Joint Committee can reassess the level of fishing opportunity and can adjust with the recommendation and resolution of the IOTC to ensure sustainable management of fisheries resources.¹¹⁴ After assessing fishing opportunities, if there is any degradation of the stocks concerned or discovery of a reduced level of exploitation of the fishing opportunities granted to community vessels, either party can terminate the agreement.¹¹⁵ Apart from the termination, the parties can suspend agreement for serious disagreement¹¹⁶ between parties regarding application of provisions of this agreement, fail to promote responsible fishing, fail to cooperate in implementation of a sectoral fisheries policy and carrying out *ex ante* and *ex post* evaluations, failure to implement in accordance with the principles of good economic and social governance, respecting the states of fish stocks, compliance of international International Labour Organisations Declaration and force majeure.¹¹⁷ For degradation of fish stock parties can not suspend the agreement, but they have to terminate the agreement for it. This provision is not helpful for both parties. The parties will not be interested for termination, especially sufferer developing states are not willing to terminate as the agreement constitutes significant budgetary resources for Madagascar and thus contribute to the economic and social development.¹¹⁸ So rather than termination, suspension of the agreement for a specific period or a rest period can help to restore degraded fish stock which should be incorporated in the future agreements.

The concept of precaution has received wide acceptance in international legal sphere through its incorporation in the Rio Declaration on Environment and Development adopted in 1992, and Principle 15 of Rio Declaration deals with implementation of the precautionary principle. Several international fisheries instruments including multilateral and regional fisheries treaties have incorporated this principle with a view to ensuring proper conservation of marine fisheries and marine biodiversity. The 1995 UN Fish Stocks Agreement and the 1995 FAO Code of Conduct for Responsible Fisheries have explicitly incorporated the precautionary principle.

¹¹⁴ Article 9(d) of the agreement and article 8 of the protocol

¹¹⁵ Ibid Article 12 of the protocol

¹¹⁶ Ibid Article 12 of the agreement

¹¹⁷ Article 11 and article 3 of the Agreement and Protocol

¹¹⁸ Failler, Pierre & Assara, Hayat & Beye, Diénaba & Gora Ndaye, Papa. (2016). The Partnership Agreements for Sustainable Fishing (SFPAs) and the good governance of the fisheries in ATLAFCO area. 10.13140/RG.2.1.1731.7369.

The Agreement contains the concept of surplus. The European Court of Auditors found that the surplus concept under the Agreement is very difficult to apply in practice as developing countries do not have capacity to determine surplus.¹¹⁹ Beside 50 EU fishing vessel in Malagasy water, there are more 130 to 140 non-EU vessel which are utilizing the fishing opportunities in the Malagasy water. The access condition for non-EU vessels and the catches by them are not publicly available.¹²⁰

The ex post and ex ante evaluation proposed that the agreement should be renewed so that there should have continuation of capacity building actions for monitoring, control and surveillance. In addition to that, training of seamen and support to make professional of the artisanal sector; formalisation of the new sectoral support payment mechanisms; and close coordination between sectoral support actions will be ensured through the renewal of agreement and the protocol

This evaluation recommended to strengthen the ocean governance to cooperate within the regional level under a multiannual legal instrument.

The ex post and ex ante evaluation of the agreement published in the website does not contain adequate information regarding discard and by catch. This evaluation provided that there is no sufficient catch data of non-EU vessel fishing in the Malagasy water. Catch limit of Shark is exceeded due to lack of monitoring.¹²¹

¹¹⁹ European Court of Auditors, Special Report No 11/2015, Are the Fisheries Partnership Agreements well managed by the Commission?

¹²⁰ Directorate General for Maritime Affairs and Fisheries- MARE / 2015/23 Specific contract 5, Final Report, 2018 Retrospective and prospective evaluation of the protocol to the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar

¹²¹ IOTC Compliance Report for Madagascar, Report of Implementation for the year,2016, IOTC 2017- CoC14 [E], Report produced on: 15.04.2017

This evaluation does not contain much regarding sustainability of the EEZ fisheries. It provides that IOTC conservation and management measures are complied by the Madagascar.

Section 1 of Article X¹²² states that Members are to take action under their national legislation to give effect to the Agreement and to implement the binding CMMs adopted by the Commission.

Report of 2017¹²³ showed that Madagascar has not reported regarding nominal catch for coastal fisheries, catch and effort, nominal catch for shark, observer report, VMS report and foreign vessel landings in its port. Compliance report, 2018¹²⁴ also provided the same. No report submitted by the Madagascar regarding nominal catch for coastal fisheries, catch and effort, nominal catch for shark, observer report, the Report on imports, landings and transshipment of tuna and tuna like species products, as required by IOTC Resolution 10/10, ban on large scale drift net and foreign vessel landings in its port in 2016.

It is provided by the Implementation Report¹²⁵ that Madagascar has an operational observer program for the monitoring of its fishing vessels to comply with IOTC Resolution 16/04; actions taken to implement reporting obligations for all IOTC fisheries (in terms of IOTC Resolutions 15/01 and 15/02), including shark species caught in association with IOTC fisheries, and to improve their data collection for direct and incidental catches;

It was submitted by Madagascar that it will draft the implementing legislation on tuna fisheries for the Fisheries and Aquaculture Code Act as well as the transposition of new IOTC resolutions by 2017. But this activity has not yet been taken.

¹²² Indian Ocean Tuna Commission Agreement, 1993

¹²³ Supra n 115

¹²⁴ IOTC Compliance Report for Madagascar, Report of Implementation for the year,2016, IOTC 2018- CoC15-CR13 [E], Report produced on: 12.04.2017

¹²⁵ Implementation Report ,2016 by Madadagascar, IOTC Agreement, Article X, , IOTC 2017- CoC14 , Submission date: 05.07.2017

From the both of the compliance report, it is clear that, Madagascar is unable to comply with the resolutions of the IOTC to some extent. So the *ex ante* and *ex post* evaluation should be more well organised.

1. Background to EU- Senegalese fisheries relations

Senegal was the first African country with which EU entered into fisheries access agreement in 1979. This agreement has been re-negotiated for eight times¹²⁶ and protocols renewed for 17 times.¹²⁷ So EU and Senegal have a long tradition of fisheries bilateral agreements for more than 31 years. These agreements were changed with the development of international law, especially after enactment of UNCLOS as stated above and domestic law i.e. Senegalese Marine Fisheries Code¹²⁸.

Fisheries access agreement were governed by Maritime fisheries Code which regulated the access to fisheries resources by Senegalese operators¹²⁹ in 1998. Marine Fisheries Code introduced differentiated license for trawlers, creation of consultation bodies, biological rest period, fishing zone and the possibility of terminating exploitation of endangered species. Though FAAs at that time were in line with the Code, they were purely commercial in nature. In 2015, the new Fishing Code imposed some fishing restriction regarding specified species, minimum mesh size, list of prohibited species, imposing fine for IUU fishing etc.

With the evolution of EU Policy, EU's approach has been changed over the time renaming the access agreements as Fisheries Partnership agreements and Sustainable Fisheries Partnership agreements. Natures of the agreements, financial contribution and access right to fish stocks have been changed as well. The agreements were commercial in nature since the fund for the agreement would directly go to the central state budget. Sectoral support to develop the fisheries sector was first introduced in 1994 the agreement between Senegal and EU.¹³⁰ EU Policy tried to

¹²⁶ Renewed in 1982, 1985, 1990, 1992, 1994, 1997, 2002 and 2014.

¹²⁷ 1982, 1985, 1990, 1992, 1994, 1997, 2002 and 2014 Sub-Regional Fisheries Commission, Member States, Senegal, at www.spcsrp.org/en/senegal

¹²⁸ 1988 and 2015 <http://www.spcsrp.org/en/senegal>

¹²⁹ Law No. 98-32 of 14 April 1998. Viewed at: <http://www.droit-afrique.com/images/textes/Senegal/Senegal%20-%20Code%20peche%20maritime.pdf>

¹³⁰ Andre Standing, Are the EU's Fisheries Agreements Helping to Develop African Fisheries? at <https://cape-cffa.squarespace.com/new-blog/2016/10/27/are-the-eus-fisheries-agreements-helping-to-develop-african-fisheries>

incorporate fisheries sustainability and responsible fishing¹³¹ through fisheries partnership agreements in 2002.

Nevertheless, the parties did not renew the agreement for 8 years from 2006- 2014 due to lack of consensus regarding objective of financial contribution, agreed fishing zone and biological rest period¹³² Following an eight years hiatus, both parties entered into a SFPA in 2014 which allowed 38 EU vessel to operate in Senegalese water targeting Tuna . EU claims that this Agreement is based on the principles of resource sustainability, good governance, and local development¹³³. In particular, sectoral support will be directed towards ensuring responsible and sustainable fishing in regard to small scale fishing and improving surveillance, combatting IUU¹³⁴, and promoting scientific cooperation. It also strengthens the artisanal fisheries, which provides 75% of the total catch of enegal¹³⁵, through conservation and rehabilitation of spawning areas and vulnerable ecosystems implementing proper Senegalese sectoral fisheries policy. 33% of the small pelagic fish caught under SFPAs is sold to African market and rest being shipped back to EU¹³⁶

¹³¹ Council Regulation (EC) 2323/2002 of 16 December 2002 on the Conclusion of the Protocol Setting Out the Fishing Opportunities and the Financial Compensation Provided for by the agreement between the EEC and Senegal on Fishing off the Coast of Senegal, 2002-2006

¹³² Supra n 8 Emma Witbooi p.182

¹³³ European Commission, EU and Senegal sign Sustainable Fisheries Partnership Agreement

At https://ec.europa.eu/fisheries/eu-and-senegal-sign-sustainable-fisheries-partnership-agreement_en

¹³⁴ Article 4, Protocol on the Implementation of the Sustainable Fisheries Partnership Agreement between the Europe and the Republic of Senegal.

¹³⁵ Henry, François, Lamine Mbaye and Dominique Rojat. 2010. Artisanal Fisheries in Senegal-Landing Sites As Engines for Local Development. In: Proceedings of the Fifteenth Biennial Conference of the International Institute of Fisheries Economics & Trade, July 13-16, 2010, Montpellier, France: Economics of Fish Resources and Aquatic Ecosystems: Balancing Uses, Balancing Costs. Compiled by Ann L. Shriver. International Institute of Fisheries Economics & Trade, Corvallis, Oregon, USA, 2010.

¹³⁶ Schroerer, A. et al. (2011). The European Union and Fishing Subsidies, OCEANA Report (p. 3 and 12).

Contents of the Agreement

A) Scope of the Agreement

The existing SFPA concluded between the EU and Senegal covers the period 20 November, 2014 to 19 November, 2019 and is tacitly renewed for 5-year periods. It is a Tuna fishery agreement. The Agreement establishes the principles, rules and procedures governing the access condition in Senegalese water, promoting sustainable fishing in Senegalese water through economic, financial, technical and scientific cooperation, cooperation between parties for effective conservation and management of Senegalese fishery resources and preventing IUU fishing.¹³⁷ Like the Madagascar and the EU agreement, this agreement also promotes the principle of responsible fishing, non-discrimination, human rights, good economic and social governance taking into account the state of fishing, ILO Declaration on labor laws and consultation.¹³⁸ These principles are not the foundation of the agreement unlike the agreement between the EU and Madagascar. In the agreement of Madagascar with the EU, non-compliance of principles make the agreement worthy of suspension.¹³⁹ But this is not the case with Senegal. But principles are included in the agreement between Senegal and the EU as directing principles¹⁴⁰ which outline a policy path to be followed by the parties. In case of non-compliance with the principles, parties can not suspend the agreement.

B) Applicable Laws:

Like the agreement between the EU and Madagascar, this agreement also provides in the preamble that it will have regard to UNCLOS and FAO Code of Conduct for responsible fisheries. This agreement also provided regard to FSA and determination to apply RFMOs'

¹³⁷Article 2, Agreement on a Sustainable Fisheries Partnership Between the European Union and the Republic of Senegal, Official Journal of the European Union, L 304/3, 23.10.2014,

¹³⁸ Ibid, Article 3

¹³⁹ Article 11 of the Protocol of Madagascar and the EU

¹⁴⁰Voigt, Christina. "The role of general principles in international law and their relationship to treaty law." *Nordic J Law Justice* 2 (2008): 12.

recommendation and decision.¹⁴¹ In the operative part of the agreement, it is provided that the fishing activities are subject to the Senegalese Law.¹⁴²

C) Access condition to Senegalese water:

EU vessels only can fish in Senegalese water with a fishing authorization from Senegal.¹⁴³ Authorization shall be given to the registered fishing vessel of the Union.¹⁴⁴

Such authorization is renewable yearly but not transferable.¹⁴⁵ All the requirements, fees for authorisation and process of issuing licence are given in the Annex.¹⁴⁶

D) Financial contribution:

The EU shall pay financial contribution annually to Senegal for the access to Senegalese water and build capacity of Senegal to formulate and implement a sustainable fisheries policy through sectoral support.¹⁴⁷ The total value of the protocol is EUR 13 930 000. From the total amount, EUR 750 000 will be allocated for sectoral fishery support for every year during the protocol period. In addition to that, EUR 5 240 000 will be payable by the vessel owners for the fishing authorization. Appropriate management of reference tonnage will be monitored by the Senegal for highly migratory species and of the total admissible catch for demersal species taking into account the state of stocks and any available surplus.

Sectoral support will be directed towards improving surveillance, combatting illegal fishing, and promoting scientific cooperation.¹⁴⁸ Local artisanal fishermen will also directly benefit from the conservation and rehabilitation of spawning areas and vulnerable ecosystems on which their livelihoods depend on.

¹⁴¹ Ibid, preamble

¹⁴² Ibid, Article 5

¹⁴³ Ibid, Article 4

¹⁴⁴ Capter II, Annex, Protocol

¹⁴⁵ Ibid

¹⁴⁶ Ibid

¹⁴⁷ Article 6 of the agreement

¹⁴⁸ Article 4 of the Protocol

E) Cooperation between the parties

Principle of cooperation plays a vital role in international law and in law of the sea as well. Hence it is also incorporated in the agreement between the EU and Senegal.

The parties undertake to convene the Joint Scientific Working Group which will examine all scientific issues relating to the implementation of the agreement.¹⁴⁹

The mandate, composition and functioning will be laid down by the Joint Committee. Parties also undertake to promote cooperation for responsible fishing through better monitoring¹⁵⁰ and to comply with the recommendations and resolutions ICCAT.¹⁵¹

In addition to that, the agreement also encourage cooperation on surveillance and combating IUU fishing, economic and technical cooperation, and information sharing on fishing techniques and gear, preservation methods and the industrial processing of fisheries products.¹⁵²

F) Monitoring

Senegal undertakes to take all the appropriate steps for the effective application of the fisheries monitoring measures mentioned in the agreement.¹⁵³ Union fishing vessel shall also cooperate with the Senegalese authorities responsible for carrying out such monitoring. In addition to that, the EU undertakes to take all appropriate steps to ensure that its vessels comply with this agreement and Senegalese Law.¹⁵⁴

To monitor the application of this agreement, a joint committee will be formed by the representative from the both parties. The joint committee can monitor the performance, interpretation and application of the agreement between the EU and Senegal. The committee can also re-assess the fishing opportunity and, consequently, the amount of the financial contribution, the sectoral support procedure and the conditions for the exercise of fishing activities by Union fishing vessel.¹⁵⁵

¹⁴⁹ Article 5 Protocol

¹⁵⁰ Article 9 of the agreement

¹⁵¹ Article 5 Protocol

¹⁵² Article 10 of the agreement

¹⁵³ Article 5 of the agreement

¹⁵⁴ Ibid

¹⁵⁵ Article 7 of the agreement

Procedure of monitoring all the catches is provided in the Annex.¹⁵⁶ Master of the Union vessel shall notify the all catches by submitting fishing logbooks to Senegal and the EU.¹⁵⁷ Both parties agree to ensure a transition to an electronic system for declaring catches. Transshipment and landings also be monitored by the Senegal.¹⁵⁸ To ensure continuous and automatic communication with the flag state, vessel monitoring system (VMS) is introduced.¹⁵⁹ Besides, observer shall be designate by the Senegal to observe fishing activity, verifying the position of the vessel, perform biological sampling for scientific program, note the fishing gear, verify the catch data and verify the percentage of by -catch and discarded catch.¹⁶⁰ Senegal can also inspect the EU vessel at sea and in port at the time of transshipment and landing.¹⁶¹ Both parties to the agreement shall cooperate to prevent IUU fishing.¹⁶²

Any infringement committed by a Union fishing vessel holding a fishing authorization will be subject to detention, penalties or legal proceedings.¹⁶³

Assessment of the Agreement

1. Evaluation

Unlike agreement between the EU and Madagascar, the agreement between the EU and Senegal does not provide provision for ex post and ex ante evaluation. Evaluation plays an important role to determine whether a protocol serves the purpose. It is also important to incorporate for concluding future protocol.

2. Like the agreement between the EU and Madagascar, this agreement also does not include precautionary or ecosystem approach. Senegal mostly rely on the artisanal fishing to meet the national demands of fish. Nothing is written in the agreement between the EU and Senegal. Since unsustainable fishing in EEZ has an adverse impact on the fish stocks affecting artisanal fishing too, the agreement should contain an integrated approach to serve the industrial fishing and artisanal fishing as well.

¹⁵⁶ Chapter IV of the Protocol

¹⁵⁷ Ibid

¹⁵⁸ Section 3 of the Protocol

¹⁵⁹ Ibid, section 4

¹⁶⁰ Ibid, Section 5

¹⁶¹ Ibid, section 6

¹⁶² Ibid, Section 8

¹⁶³ Ibid, Section 7

3. Exclusivity clause sometime act as a bar in the way of sustainability of the fisheries access agreement. Before renewing a protocol, negotiation take longer time. As a result, some agreement becomes dormant. Due to this exclusivity clause, EU vessel can not fish in case of dormant agreement which affect the EU and coastal state as well.

4. The agreement provides a biological rest period which is a key fisheries management tool.¹⁶⁴ It bans EU trawlers to fish for deep water demersal species for two months I May to 30 June. Joint Scientific Working Group (JSWG) can evaluate the fish stocks. This biological rest period is essential for the ensuring sustainability of the fish stock as it can get a time to regenerate before extraction. The period can be reviewed by the JSWG.

5 Challenges of implementation of the both SFPAs

There are some challenges of the implementation which are common for both the agreements. These are the following:

1. Decline of fish stock

Though it was presumed that fish stocks are not subject to decline in the past, now through the record of the depletion, it is well established that fish stocks are also depleting due to overexploitation. In last 30 years, overexploitation contributed to the decline of Africa's fish population by 50%¹⁶⁵. Such a depletion put thousands of fishers out of work, and cutting off locals' access to the resources that their livelihoods depend on. For such depletion especially within EEZ, no coastal states are accountable. In such a condition, SFPAs could ensure a check and balance to ensure sustainability of EEZ fisheries. Determination of surplus is very much important to ensure sustainability of fisheries resources. Mismanagement of fisheries cannot be sanctioned by the other states

¹⁶⁴ Appendix 2 of the Protocol

¹⁶⁵ Clark, B. and R. Clausen, 'The oceanic crisis: Capitalism and the degradation of marine ecosystems,' *Monthly Review*, 60(3) (2008) pp. 91-111.

2. Advantages of the SFPAs are subject to criticism. It has been seen that fisheries agreements are not contributing to the economic growth and sustainable fisheries in developing countries.¹⁶⁶

3. Lack of monitoring

In both the agreements, primary obligation for monitoring the fishing activities lies on the coastal state. Both the coastal states are developing countries. The concerned personnel of both Senegal and Madagascar lack training, capacity and technology to monitor the fishing activities.

4. Lack of involvement of the stakeholders

In case of fisheries policy making, fishermen are not getting opportunity to participate in the decision-making process, hence the marine fisheries policy of the developing countries can not reflect the real scenario of the fisheries sector. SFPAs are implemented subject to the law of Senegal and Madagascar. So SFPAs are also not ensuring their proper participation.

5. Two countries grant access to third countries' tuna vessels in their EEZ beside EU vessels. Such vessels operate under the agreement between the state and private fishing companies. Access conditions to such non EU vessels are not publicly available and catch data as well. These vessels are not closely monitored like EU vessels.¹⁶⁷

6. Lack of access to information

Though the agreements are found in the EU website, all other information regarding negotiation between parties, processes of implementation of the agreements are not

¹⁶⁶ Swedish Society for Nature Conservation (SSNC) (2009). To draw the line: EU Fisheries Agreements in West Africa.

¹⁶⁷ Supra note 47

publicly available. It is required that there should have ante and ex post evaluation. In EU website, there are few evaluations available and some are in French only.

7. Marine Ecosystem

Marine ecosystem can be defined as the interaction of plants, animals, and the marine environment. There are many different parts of an ecosystem, and each part plays a role in maintaining balance within the ecosystem.

The agreements target the fish species at the top of the food chain in marine ecosystem. Unsustainable fishing endangers all species and their habitats. Once all larger and mostly paid species are caught, the fisherman starts to fish smaller individuals. Overfishing can cause chain reactions that decrease marine biodiversity drastically. In addition to that, Corals, reefs, the ecological niche of many species, under water plants also being destroyed by the huge net used at the time of fishing, especially at the time of bottom trawling. Marine debris¹⁶⁸ and pollution from vessel also have adverse impact on marine ecosystem. But the both the agreements do not contain any provision in the operating part regarding protection of the marine ecosystem. These agreements refers to the UNCLOS, FAO Code of Conduct in the preamble. So all parties should have due regard to the provisions of the protection of marine environment mentioned in UNCLOS and FAO Code of Conduct. But mentioning in the operative part specifically could be more useful to comply with by the parties. These agreements did not refer to International Convention for the Prevention of Pollution from Ships (MARPOL).

8. By catch and discard

The portion of the total organic material of animal origin in the catch, which is not targeted, is called by catch and the portion which thrown away, or dumped at sea for whatever reason, is called discard. By catch and discards are threats to the sustainability

¹⁶⁸ Sheavly, S. B.; Register, K. M. "Marine Debris & Plastics: Environmental Concerns, Sources, Impacts and Solutions". *Journal of Polymers and the Environment*. (2007). **15** (4): 301–305. [doi:10.1007/s10924-007-0074-3](https://doi.org/10.1007/s10924-007-0074-3)

of the fisheries resources. Though both the agreements provide by catch limit, the limit often crossed. And there is no appropriate record of discards.

9. Sectoral Support

Before funds for sectoral support would simply go into the central state budget. Subsequently it is decided to spend for ‘targeted actions’. These actions were directly linked to strengthening fisheries management, and providing some support to artisanal fishing organisations. Targeted actions were subsequently introduced in most of the agreements between the EU and African countries. With the reform of the Common Fisheries Policy (CFP) of the EU in 2002, these agreements were transformed into fisheries partnership agreements, and target support was referred to as ‘sectoral support’. The new CFP provides further legal guidelines for sectoral support (see articles 31 and 32)¹⁶⁹. Sectoral support is therefore part of the financial contribution paid by the EU as part of an SFPA.

How sectoral support will be used, it should be determined by the partner State, based on its priorities, and is validated by the Joint Committee. Generally sectoral support is used at improving scientific research on fish stocks, supporting monitoring, control and surveillance of fishing vessels, improving health and sanitary conditions for exports of fish, or for small-scale fisheries. Sectoral support payments are dependent on results. If funds for sectoral support have not been spent, or there is a lack of evidence that funds have been used according to the matrix of results jointly agreed, subsequent annual payments by the EU for sectoral support can be withheld. Sectoral support was suspended for Madagascar in 2011.

Since sectoral support is used according to the will of the coastal state, determination of priority is a problem for developing state. Both the states are lack proper plan to utilize the sectoral support, public information, public consultation in how sectoral support will be utilized.

¹⁶⁹ Common Fisheries Policy, 2014

But now, sectoral support is used on combatting IUU fishing through strengthening monitoring and control of industrial fishing vessels. For example, nearly 60% of the sectoral support provided to Madagascar in 2013 went to paying for the monitoring and control of fishing vessels, and the remainder was invested in supporting fish exporting businesses, many of which are owned by European and Asian companies. Present protocol of the agreement between the EU and Madagascar provides that 46% of the financial contribution will be used for supporting and implementing Madagascar's sectoral fishery resources by contributing to capacity building for monitoring, control and surveillance, and for sanitary controls and fishing policy¹⁷⁰. 43% of the financial contribution under the Senegal protocol will be used for implementation of the Senegalese sectoral fisheries policy.

Sectoral support can be effective if both parties act jointly to identify the priorities of coastal states so that sectoral funds can be used well. This needs to be done through a more consultative process, including representatives of small-scale fisheries to improve sustainability and the contribution of fisheries to food security and poverty reduction. Proper coordination between sectoral support, development aid and other investment for fisheries is needed. Evaluation of the sectoral support is also needed. Reports by the Joint Committee regarding implementation of the sectoral support are not publicly available.. SFPAs should undertake more rigorous external evaluation of sectoral support, which could be given more prominence in existing evaluations of SFPAs.

10. Limitation of Exclusivity Clause

EU vessel must have a licence at the time of fishing in the EEZ of the Senegal and Madagascar. It was introduced to remove chance of private arrangement. But it is not case for fishing by other vessels of third country states. So EU vessels can be monitored but in case of other vessels, monitoring has become a difficult task. Without proper monitoring of all vessel operating in the EEZ of the developing states, it is difficult to record catch data, landings to assess the fish stock. SFPAs introduced principle of non-discrimination but this exclusivity clause acts as a discrimination between the EU and third country vessels.

¹⁷⁰ Ex post and ante evaluation report.

11. Stock assessment and maximum sustainable yield (MSY)

Due to lack of developed technologies, developing states can not record catch data, landings, assessing fish stocks and determination of MSY. So the EU can play a great role in this regard.

Conclusion

SFPAs are used as tools to ensure access of EU in the maritime zone (EEZ) of the developing countries to keep pace with the increasing demand of the EU market and helping the developing countries. EU started to conclude these agreements from 1979. The trend to conclude these agreements increased after the adoption of the UNCLOS. Due to rapid depletion of fish stock, these access agreements were subject to criticism. So the nature of agreements were changed. The 2002 reform of the CFP led to a transition from traditional commercial agreements to a new type of agreement built on the principle of partnership. These partnership agreements could not prevent over-exploitation and unsustainable fishing which showed downward trend of conclusion of fisheries partnership agreements. So SFPAs are introduced to help developing host countries from their otherwise unutilized fisheries resources. But in reality such agreements have been subject to criticism due to failure to ensure sustainability to marine fisheries resources in the long run. To ensure sustainable utilization of fisheries, these agreements must contain provisions regarding it. So this paper has examined how far these agreements ensure sustainable utilization of fish stocks in the EEZ of the Madagascar and Senegal.

Madagascar and Senegal both are parties to UNCLOS which established for using best scientific evidence to determine TAC, MSY and cooperation among states to ensure sustainability of marine fisheries of EEZ. Besides, FSA imposes obligation for using best scientific evidence, precautionary approach, regulate bilateral fisheries interactions, optimum utilization of highly migratory species, protecting bio-diversity etc. Apart from this, UNGA resolutions calls upon states for capacity building of developing countries in scientific research, technology through transfer, sustainable fisheries development, providing training, workshop, sustainable marine resources, combating threats to maritime security, including piracy, armed robbery against ships

at sea and terrorist acts against shipping, offshore installations etc. Moreover the ITLOS Advisory Opinion gave a clear guideline regarding responsibilities of flag and coastal state by introducing ‘responsibility to ensure’, ‘duty to cooperate’¹⁷¹ and ‘due diligence obligation.’ especially to combat IUU fishing. In addition to that, since EU regulation is the basis of these agreements, this paper also contains a brief discussion regarding EU regulations and policies regarding ensuring sustainability of marine fisheries through SFPAs.

SFPAs have many advantages. They ensure access by the EU fleet in the EEZ of the Madagascar and Senegal. It also helps developing countries to improve the conservation and management measures of their marine fisheries ensuring sustainability. SFPAs also provides for long term cooperation between the EU, Madagascar and Senegal.

The case studies reveal the real scenario of Madagascar and Senegal’s EEZ fisheries reflected in the agreements. Both the agreements recognized to respect the coastal state’s law. They both refer the international agreements as well e.g. UNCLOS, FAO and Cotonou agreement. Senegal’s agreement with the EU also refers FSA. So interpretation of any term of the SFPAs always requires an inquiry into the object and purpose of the treaty, which itself may require an examination of the preamble. Any interpretation cannot be accepted when they are clearly in conflict with the treaty’s object and purposes.¹⁷² So these international agreement just act as guiding stars, do not empower state parties to enforce rights and obligations directly provided by these agreements. Only coastal state’s laws have direct implication as provided by the operative part of the EU agreements with Madagascar and Senegal.

By considering contents of the agreements, it is evident that there are many challenges to implement the agreements e.g. lack of monitoring, lack of involvement of stakeholder, lack of

¹⁷¹ MOX Plant (Ireland v. United Kingdom), Provisional Measures, Order of 3 December 2001, ITLOS Reports 2001, p. 95, at p. 110, para. 82

¹⁷² Cont’l Cas. Co. v. Arg. Republic, ICSID Case No. ARB/03/9, Award, ¶ 258 (Sept. 5, 2008) (emphasis added), <http://www.italaw.com/sites/default/files/case-documents/ita0228.pdf> [<https://perma.cc/D354-BAXH>].

access to information, evaluation of the protocol, lack of concern of marine ecosystem, by catch and discard and effectiveness of sectoral support. EU regulation¹⁷³ requires vessels to submit catch data to their Member States on a weekly basis. There is a shortcoming in catch data management. There is no electronic database to keep record. The European Court of Auditor's Audit Report¹⁷⁴ there are differences among the catch data provided by the different sources i.e. from member states, from DG Maritime Affairs and fisheries and from the ex-post evaluation. There are no actual reliable catch data under SFPAs at the level of the EU Commission.

Sectoral support's effectiveness depends on the functioning of the Joint Committee. The protocols only refer to sectoral support that help shaping fisheries policy of the coastal states ensuring responsible and sustainable fisheries regard to small-scale fishing and the surveillance, monitoring and combating of illegal, unreported and unregulated fisheries. The protocols do not include formal eligibility conditions for actions to be funded by sectoral support. In the Joint committee reports, detail discussion regarding it also absent. Sometime coastal states take action different from the agreed actions in Joint Committee.¹⁷⁵ There is no comprehensive monitoring framework in the Joint Committee. So if the protocol contains the main actions of expenditure the sectoral support could help to improve the effectiveness of the sectoral support or proper monitoring by the EU can make the sectoral support effective.

In addition to catch data, reliable information of fish stocks also needed for surplus determination. So determining surplus is a difficult task for the developing countries. In this case, if EU along with regional RFMOS i.e. IOTC, SRFC help developing countries to determine surplus, sustainable utilization can be possible.

Involvement of the stakeholder can help to increase the sustainability of marine fisheries. In this case 'Locally Managed Area (LMA)' can be a solution. LMA enhances long-term sustainability of marine resources, increasing harvesting efficiency, restoring biodiversity and ecosystem,

¹⁷³ EU Regulation No: 1006/2008

¹⁷⁴ Ibid, Special Report 2015, Are the fisheries well managed by the Commission

¹⁷⁵ Ibid, special report observations 71

maintaining or restoring breeding biomass of fish or invertebrates, enhance the economy and livelihoods and empower communities.

In order to decide whether any protocol is beneficial or not, or to know under which conditions a protocol should be renewed, evaluation of protocol is necessary. But evaluation reports are not accessible all the time. Though the agreement between the EU and Madagascar is for 2014-2018, its evaluation is already accessible in the website of the EU. The evaluation covered the period from 1st January 2015 to the end of 2017. The ex-post evaluation is made on the basis of assessment criteria: efficiency, economy, coherence, relevance, EU added value and acceptability. For the ex-ante analysis, the questions focus on the lessons learned, benefits of the new Protocol, regarding renewal or non-renewal of the Protocol and the associated risks, and the added value for the EU.¹⁷⁶ Since this study only include the period between 2015-2017, it can not provide a complete scenario. This evaluations do not contain a critical analysis of the protocol and reduce the effectiveness of the evaluation. They do not contain by-catch, discard data. So effectiveness of the evaluation and accessibility should be improved.

The protocol does not contain anything regarding the marine ecosystem and prevention of pollution. Affecting marine ecosystem and environment; pollution can affect the sustainability of the fish stock. So provisions regarding these can be incorporated in the future agreement.

Still now there is lack of public access to information. All evaluations by coastal state, Joint Committee report, expost and ex ante evaluations are not published in the EU website. There is no report regarding by-catch and discard found in the website. the agreement of the coastal states with 3rd parties other than EU are also not publicly accessible. So without knowing overall catch data in the EEZ of the developing countries, it is really difficult determine surplus. So all these information should be made accessible. Since SFPAs are the main document which bring the parties to act jointly in the development of the sustainability concern regarding marine fisheries, they should contain provisions ensuring sustainability.

¹⁷⁶ Commission Staff Working Document Evaluation, Recommendation for the Council decision authorising the opening of negotiation with Madagascar for the conclusion of Sustainable Fisheries Partnership agreement and a protocol between the EU and Madagascar, {COM (2018) 240 final}-{SWD(2018) 144 final}

EU is developing its CFP so that it does not negatively impact global sustainable development. European legal frameworks provide sufficient legal building blocks for the development of an external common fisheries policy which meets the needs of sustainable development. Under the CFP SFPAs contribute to rational and sustainable exploitation of fisheries resources, through the inclusion of the exclusivity clause which restricts overall fishing effort; flexibility to revise fishing opportunities in the light of scientific evidence; the inclusion of technical measures; the focus on tuna agreements which has lowered the pressure on demersal stocks; and the clear commitment to combat IUU fishing. In this scenario, proper inclusion of provisions regarding proper fish stock assessment and surplus determination, effective monitoring, ensuring effectiveness of sectoral support, environment concern can make the SFPAs tool for sustainable utilization of marine fisheries.

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Annex II: List of International Instruments

1910	Brussels Salvage Convention	International Convention for the Unification of Certain Rules of Law related to Assistance and Salvage at Sea and Protocol of Signature, Brussels, 23 September 1910. In force 1 March 1913; United Kingdom Treaty Series 4 (1913), Cd. 6677
1911	Bering Fur Seal Convention	Treaty for the Preservation and Protection of Fur Seals, Washington, 1911, 104 BFSP 175.
1914	SOLAS 14	International Convention on Safety of Life at Sea, London, 20 January 2014. Never entered into force; His Majesty's Stationery Office by Harrison and Sons, 1914.
1920	Spitsbergen Treaty	Treaty concerning the Archipelago of Spitsbergen, Paris, 9 February 1920. In force 14 August 1925; 2 <i>League of Nations Treaty Series</i> 7 (1920).
1923	Halibut Convention	Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea, Washington D.C., 2 March 1923. In force 23 October 1924, http://www.iphc.washington.edu
	Maritime Ports Convention	Convention on the International Regime of Maritime Ports, Geneva, 9 December 1923. In force 26 July 1926; 58 <i>League of Nations Treaty Series</i> 285 (1926-1927)
	Montreux Convention	Convention regarding the Regime of the Straits, Montreux, 20 July 1936. In force 9 November 1936, 173 <i>League of Nations Treaty Series</i> 213.
	WHC	Convention on Nature Protection and Wildlife Preservation in the Western Hemisphere of 12 October 1940, EIF 30 April 1942, 161 UNTS 193.
1944	ICAO Convention	Convention on International Civil Aviation, Chicago, 7 December 1944. Entry into force 4 April 1947, 15 <i>United Nations Treaty Series</i> 295 (1948). For consolidated version see < www.icao.int >.
1945	UN Charter	Charter of the United Nations, San Francisco, 26 June 1945. In force 24 October 1945, 1 <i>United Nations Treaty Series</i> xvi; < www.un.org >.
	FAO Constitution	Constitution of the Food and Agriculture Organization of the United Nations, Quebec City. Opened for signature and entered into force on 16 October 1945; < www.fao.org/Legal >.
1946	IWC Convention	International Convention for the Regulation of Whaling, Washington D.C., 2 December 1946. In force 10 November 1948, 161 <i>United Nations Treaty Series</i> 72; iwc.int . 1956 Protocol, Washington D.C., 19 November 1956. In force ?

1947	GATT 1947	General Agreement on Tariffs and Trade, 1947 <www.wto.org>
1948	IMO Convention	Convention on the Intergovernmental Maritime Consultative Organization, Geneva, 6 March 1948. ¹⁷⁷ In force 17 March 1958, 289 <i>United Nations Treaty Series</i> 3.
1949	IATTC Convention	Convention for the Establishment of an Inter-American Tropical Tuna Commission, Washington D.C., 31 May 1949. In force 3 March 1950, 80 <i>United Nations Treaty Series</i> 4; <www.iattc.org>. Protocol to Amend the 1949 Convention on the Establishment of an Inter-American Tropical Tuna Commission, Guayaquil, 10 June 1999. Not in force, <www.iattc.org>; Convention for the Strengthening of the Inter-American Tropical Tuna Commission Established by the 1949 Convention Between the United States of America and the Republic of Costa Rica, Washington D.C., 14 November 2003. In force 27 August 2010, <www.iattc.org>.
	GFCM Agreement	Agreement for the Establishment of a General Fisheries Council for the Mediterranean, Rome, 24 September 1949. In force 20 February 1952, 126 <i>United Nations Treaty Series</i> 239; as amended in 1963, 1976, 1997 and 2014. At the time of writing, the 2014 amendments and some of the 1997 amendments were not in force for all Members. Consolidated version and information on status available at http://www.fao.org/legal/treaties/treaties-under-article-xiv/en/ (accessed 31 January 2017).
1950	ECHR	Convention for the Protection of Human Rights and Fundamental Freedoms, Rome, 4 November 1950. In force 3 September 1953, 213 <i>United Nations Treaty Series</i> 221; <www.coe.int>.
1952	Brussels Convention	International Convention for the Unification of Certain rules Relating to Penal Jurisdiction in Matters of Collision and other Incidents of Navigation, Brussels, 10 May 1952. In force 20 November 1955; 439 <i>United Nations Treaty Series</i> 233.
	Santiago Declaration	Declaration on the Maritime Zone, Santiago, 18 August 1952. In force same day; 1006 <i>United Nations Treaty Series</i> 323 (1976).

¹⁷⁷. Amendments:

- * London, 28 September 1964. In force 6 October 1967, 18 *UST* 1299
- * Paris, 28 September 1965. In force 3 November 1968, 19 *UST* 4855
- * London, 17 October 1974. In force 1 April 1978, 28 *UST* 4607
- * London, 14 November 1975. In force 22 May 1982, except for Art. 51 which entered into force 28 July 1982, 34 *UST* 497
- * London, 17 November 1977. In force 10 November 1984, *TIAS* 11094
- * London, 15 November 1979. In force 10 November 1984, *TIAS* 11094

1953	IPHC Convention	Convention for the Preservation of the Halibut Fishery of the North Pacific Ocean and the Bering Sea, Ottawa, 2 March 1953. In force 28 October 1953, 222 <i>United Nations Treaty Series</i> 78 (1955). Exchange of Notes Constituting an Agreement to Amend the [IPHC Convention], Washington, 29 March 1979. In force 29 March 1979, 1168 <i>United Nations Treaty Series</i> 380 (1980).
1954	OILPOL 54	International Convention for the Prevention of Pollution of the Sea by Oil, London, 12 May 1954. In force 26 July 1958, 327 <i>United Nations Treaty Series</i> 3 (1959); as amended.
1957	EC Treaty	Treaty establishing the European Economic Community, Rome, 25 March 1957. In force 1 January 1958, 298 UNTS 11. The EC Treaty has, inter alia, been amended by the 1986 Single European Act, the 1992 EU Treaty and the 1997 Amsterdam Treaty
	North Pacific Fur Seal Convention	Interim Convention on the Conservation of North Pacific Fur Seals (Washington, 9 February 1957. In force 14 October 1957. Expired 14 October 1984; 314 UNTS 105; < www.oceanlaw.net/texts/index.htm >)
1958	Benelux Treaty	Treaty instituting the Benelux Economic Union, The Hague, 3 February 1958. In force 1 November 1960, 381 <i>United Nations Treaty Series</i> 165
	Fisheries Convention	Convention on Fishing and Conservation of the Living Resources of the High Seas, Geneva, 29 April 1958. In force 20 March 1966, 559 <i>United Nations Treaty Series</i> 285; < www.un.org/law/ilc >.
	HSC	Convention on the High Seas, Geneva, 29 April 1958. In force 30 September 1962, 450 <i>United Nations Treaty Series</i> 11; < www.un.org/law/ilc >.
	CSC	Convention on the Continental Shelf, Geneva, 29 April 1958. In force 10 June 1964, 499 <i>United Nations Treaty Series</i> 311; < www.un.org/law/ilc >.
	TSC	Convention on the Territorial Sea and the Contiguous Zone, Geneva, 29 April 1958. In force 10 September 1964, 526 <i>United Nations Treaty Series</i> 205; < www.un.org/law/ilc >.
	Optional Protocol	Optional Protocol of Signature concerning the Compulsory Settlement of Disputes, 29 April 1958. In force 30 September 1962, 450 <i>United Nations Treaty Series</i> 169; < www.un.org/law/ilc >.
1959	NEAFC Convention	North-East Atlantic Fisheries Convention, London, 24 January 1959. In force 27 June 1963; 486 <i>United Nations Treaty Series</i> 157; < www.neafc.org >.
	Black Sea Fishing Convention	Convention Concerning Fishing in the Black Sea, Varna, 7 July 1959. In force 21 March 1960, 377 <i>United Nations Treaty Series</i> 203 (1960).
	Antarctic Treaty	Antarctic Treaty, Washington D.C., 1 December 1959. In force 23 June 1961,

		402 <i>United Nations Treaty Series</i> 71; <www.ats.aq>.
		Protocol on Environmental Protection to the Antarctic Treaty; Annexes I-IV, Madrid, 4 October 1991. In force 14 January 1998; Annex V (adopted as Recommendation XVI-10), Bonn, 17 October 1991. In force 24 May 2002; Annex VI (adopted as Measure 1(2005)), Stockholm, 14 June 2005. Not in force. All texts available at <www.ats.aq>.
1964	Fisheries Convention	Fisheries Convention, London, 10 April 1964. In force 15 March 1966, <i>Treaty Series</i> No. 35 (1966); http://treaties.fco.gov.uk/treaties/treatyrecord.htm?tid=2459
	ICES Convention	Convention for the International Council for the Exploration of the Sea, Copenhagen, 12 September 1964. In force 22 July 1968, 652 <i>United Nations Treaty Series</i> 237; <www.ices.dk>.
1966	ICCAT Convention	International Convention for the Conservation of Atlantic Tunas, Rio de Janeiro, 14 May 1966. In force 21 March 1969, 673 <i>United Nations Treaty Series</i> 63 (1969), as amended by Protocols adopted in 1984 and 1992, which both entered into force. Consolidated version at <www.iccat.int>.
1967	IHO Convention	Convention on the International Hydrographic Organization, Monaco, 3 May 1967. In force 22 September 1970. Nov. 2005 amendments not in force. Consolidated version at <www.iho.int>.
	CCFONA	Convention on Conduct of Fishing Operations in the North Atlantic, 1 June 1967; Trb. 1968, 54 implemented by the 1967 Fisheries Treaty Executive Act, of 7 September 1973 (Stb. 1973, 476).
1969	Vienna Convention	Vienna Convention on the Law of Treaties, Vienna, 23 May 1969. In force 27 January 1980, 1155 <i>United Nations Treaty Series</i> 331; <www.un.org/law/ilc>.
	Bonn Agreement	Agreement for Co-operation in Dealing with Pollution of the North Sea by Oil, Bonn, 9 June 1969. In force 9 August 1969, 704 <i>United Nations Treaty Series</i> 3; <www.bonnagreement.org>.
	ICSEAF Convention	Convention on the Conservation of the Living Resources of the South-East Atlantic, Rome, 23 October 1969. In force 24 October 1971; info based on <www.fao.org/Legal/treaties>. Protocol of Termination, Madrid, 19 July 1990. Not in force; text at <www.fao.org/Legal/treaties>.
	Intervention Convention	International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, Brussels, 29 November 1969. In force 6 May 1975, 970 <i>United Nations Treaty Series</i> 211 (1975).

		Protocol relating to Intervention on the High Seas in Cases of Marine Pollution by Substances Other than Oil, London, 2 November 1973. In force 30 March 1983, 1313 <i>United Nations Treaty Series</i> 3 (1983).
	CLC 69	International Convention on Civil Liability for Oil Pollution Damage, Brussels, 29 November 1969. In force 19 June 1975, 973 <i>United Nations Treaty Series</i> 3 (1975), as amended.
1971	Ramsar Convention	Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, 2 February 1971. In force 21 December 1975, as amended. 996 UNTS 245). Consolidated text available at <www.ramsar.org>.
	Fund 71	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, Brussels, 18 December 1971. In force 16 October 1978, 1110 <i>United Nations Treaty Series</i> 57 (1978), as amended.
	Nuclear 71	Convention Relating to Civil Liability in the Field of Maritime Carriage of Nuclear Material, Brussels, 17 December 1971. In force 15 July 1975, 974 <i>United Nations Treaty Series</i> 255 (1975).
1972	Oslo Convention	Convention for the Prevention of Marine Pollution by Dumping from Ships and Aircraft, Oslo, 15 February 1972. In force 7 April 1974, 932 <i>United Nations Treaty Series</i> 4, as amended.
	CCAS Convention	Convention for the Conservation of Antarctic Seals, London, 1 June 1972. In force 11 March 1978, 1080 <i>United Nations Treaty Series</i> 176 (1978); <www.ats.aq>.
	COLREG 72	Convention on the International Regulations for Preventing Collisions at Sea, London, 20 October 1972. In force 15 July 1977, as regularly amended.
	World Heritage Convention	Convention concerning the Protection of the World Cultural and Natural Heritage, Paris, 16 November 1972. In force 17 December 1975; 11 <i>International Legal Materials</i> 1972; <www.unesco.org>. 1037 <i>United Nations Treaty Series</i> 151
	London Convention	Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, London, Mexico City, Moscow, Washington D.C., 29 December 1972. In force 30 August 1975, 11 <i>International Legal Materials</i> 1294 (1972); as amended, consolidated version available at <www.imo.org>. 1996 Protocol, London, 7 November 1996. In force 24 March 2006, <i>Law of the Sea Bulletin</i> No. 34 (1997), p. 71; as amended in 2006, consolidated version at <www.imo.org>.

1973	CITES Convention	Convention on International Trade in Endangered Species of Wild Fauna and Flora, Washington, D.C., 3 March 1973. In force 1 July 1975, 993 <i>United Nations Treaty Series</i> 243; <www.cites.org>.
	CARICOM Treaty	Treaty establishing the Caribbean Community, Chaguaramas, 4 July 1973. In force 1 August 1973; <www.caricom.org>. 2002 Protocol on the Revision of the Treaty of Chaguaramas
	Gdansk Convention	Convention on Fishing and Conservation of the Living Resources in the Baltic Sea and the Belts, Gdansk, 13 September 1973. In force 28 July 1974, <www.ibsfc.org>
	MARPOL 73/78	International Convention for the Prevention of Pollution from Ships, London, 2 November 1973, as modified by the 1978 Protocol (London, 1 June 1978) and the 1997 Protocol (London, 26 September 1997) and as regularly amended. Entry into force varies for each Annex. At the time of writing Annexes I-VI were all in force.
	Polar Bear Agreement	Agreement on the Conservation of Polar Bears, Oslo, 15 November 1973. In force 26 May 1976; 13 <i>International Legal Materials</i> 13; <pbsg.npolar.no>.
1974	Paris Convention	Convention for the Prevention of Marine Pollution from Land-Based Sources, Paris, 4 June 1974. In force 6 May 1978, 1546 <i>United Nations Treaty Series</i> 119, as amended.
	SOLAS 74	International Convention for the Safety of Life at Sea, London, 1 November 1974. In force 25 May 1980; 1184 <i>United Nations Treaty Series</i> 277 (1980), with protocols and regularly amended.
1975	Framework Agreement	Agreement between the Government of the Kingdom of Norway and the Government of the Union of Soviet Socialist Republics on Co-operation in the Fishing Industry, Moscow, 11 April 1975. In force 11 April 1975; 983 <i>United Nations Treaty Series</i> 7 (1975).
	Canada-Norway Agreement	Agreement between the Government of Canada and the Government of Norway on their Mutual Fishery Relations, Ottawa, 2 December 1975. In force 11 May 1976, 1132 <i>United Nations Treaty Series</i> 123 (1979).
1976	Barcelona Convention	Convention for the Protection of the Mediterranean Sea against Pollution, Barcelona, 16 February 1976. In force 12 February 1978, 15 <i>International Legal Materials</i> 290; <www.unepmap.org>.
	Mutual Access Agreement	Agreement between the Government of the Union of Soviet Socialist Republics and the Government of the Kingdom of Norway Concerning Mutual Relations in the Field of Fisheries, Moscow, 15 October 1976. In

		force 21 April 1977; 1157 <i>United Nations Treaty Series</i> 146 (1980).
1977	Torremolinos Convention	International Convention for the Safety of Fishing Vessels, Torremolinos, 2 April 1977. Not in force 1993 Protocol, 2 April 1993. Not in force
1978	Grey Zone Agreement	Avtale mellom Norge og Sovjetunionen om en midlertidig praktisk ordning for fisket i et tilstøtende område i Barentshavet, Oslo, 11 January 1978. In force 11 January 1978; Overenskomster med fremmede stater (1978), 436 (Agreement between Norway and the Soviet Union on provisional practical arrangements on fishing in an adjacent area of the Barents Sea).
	FFA Convention	South Pacific Forum Fisheries Agency Convention, 10 July 1978. In force 9 August 1979
	NAFO Convention	Convention on Future Multilateral Cooperation in the Northwest Atlantic Fisheries, Ottawa, 24 October 1978. In force 1 January 1979, 1135 <i>United Nations Treaty Series</i> 369; <www.nafo.int>. 2007 Amendment, Lisbon, 28 September 2007. Not in force, NAFO/GC Doc. 07/4.
	STCW 78	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, London, 1 December 1978. In force 28 April 1984; 1361 <i>United Nations Treaty Series</i> 190 (1984); as amended.
1979	Faroe Islands-Norway	Agreement between Norway and the Faroese Islands on reciprocal fishing rights, Tórshavn, 7 February 1979. In force 9 September 1980; <i>Treaties of Norway (NT)</i> , Vol. V, pp. 475-476.
	SAR Convention	International Convention on Maritime Search and Rescue, Hamburg, 27 April 1979. In force 22 June 1985; 1405 <i>United Nations Treaty Series</i> 118, as amended.
	CMS Convention	Convention on the Conservation of Migratory Species of Wild Animals, Bonn, 23 June 1979. In force 1 November 1983, 1651 <i>United Nations Treaty Series</i> 355; <www.cms.int>.
	Bern Convention	Convention on the Conservation of European Wildlife and Natural Habitats, Bern, 19 September 1979. In force 1 June 1982, 1284 <i>United Nations Treaty Series</i> 209 (1982); <www.coe.int>.
	CLRTAP	Convention on Long-Range Transboundary Air Pollution, Geneva, 13 November 1979. In force 16 March 1983; <www.unece.org>.
1980	CCAMLR Convention	Convention on the Conservation of Antarctic Marine Living Resources, Canberra, 20 May 1980. In force 7 April 1982, 1329 <i>United Nations Treaty Series</i> 47 (1983); <www.ccamlr.org>.

		(Trb. 1985, 78; 1990, 73 (de laatste is inwerkingtreding))
	NEAFC Convention	Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, London, 18 November 1980. In force 17 March 1982, 1285 <i>United Nations Treaty Series</i> 129; <www.neafc.org>. 2004 Amendment (Art. 18bis), London; 12 November 2004. Not in force due to objection by the Russian Federation (cf. Status of the NEAFC Convention as of 13 October 2016, on file with author). 2006 Amendments, London (Preamble, Arts 1, 2 and 4), 11 August 2006. In force 29 October 2013 (cf. Status of the NEAFC Convention as of 13 October 2016, on file with author). Consolidated version of 'London Convention' available at <www.neafc.org>.
	EEC-Norway	Agreement on fisheries between the European Economic Community and the Kingdom of Norway, Brussels, 27 February 1980. In force 16 June 1981; <i>OJ L</i> 226, 29/08/1980, pp. 48-50; http://emeritus.lovddata.no/traktater/index.html
1982	Nauru Agreement	Agreement concerning Cooperation in the Management of Fisheries of Common Interest, Nauru, 11 February 1982. In force ? <ul style="list-style-type: none"> • An Arrangement Implementing the Nauru Agreement setting forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties, ? In force ? • A Second Arrangement Implementing the Nauru Agreement setting forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties, 19 September 1990. In force ? • A Third Arrangement Implementing the Nauru Agreement setting forth Additional Terms and Conditions of Access to the Fisheries Zones of the Parties, 16 May 2008. In force ?
	Paris MOU	Memorandum of Understanding on Port State Control, Paris, 26 January 1982. In effect 1 July 1982, as regularly amended. Updated version at <www.parismou.org>.
	Jakarta Treaty	Treaty between Malaysia and the Republic of Indonesia relating to the Legal Regime of Archipelagic State and the Rights of Malaysia in the Territorial Sea and Archipelagic Waters as well as in the Airspace Above the Territorial Sea, Archipelagic Waters and the Territory of the Republic of Indonesia lying between East and West Malaysia, Jakarta, 25 February 1982. In force 25 May 1984, UN OALOS Archip. 1992, p. 144
	NASCO Convention	Convention for the Conservation of Salmon in the North Atlantic Ocean, Reykjavik, 2 March 1982. In force 1 October 1983, 1338 <i>United Nations Treaty Series</i> 33 (1983); <www.nasco.int>.

	Bonn Agreement	Agreement for Cooperation in Dealing with Pollution of the North Sea by Oil and Other Harmful Substances, Bonn, 13 September 1983. In force 1 September 1989, <i>OJ</i> 1984, L 188/9; < www.bonnagreement.org >.
	LOS Convention	United Nations Convention on the Law of the Sea, Montego Bay, 10 December 1982. In force 16 November 1994, 1833 <i>United Nations Treaty Series</i> 396; < www.un.org/Depts/los >.
	San José Agreement	Eastern Pacific Ocean Tuna Fishing Agreement, San José, Costa Rica, 15 March 1983. < www.oceanlaw.net >. and its Protocol
1983	Canada – Denmark Agreement	Agreement Between the Government of Canada and the Government of the Kingdom of Denmark for Cooperation relating to the Marine Environment, Copenhagen, 26 August 1983. In force 26 August 1983, 1348 <i>United Nations Treaty Series</i> 121 (1984).
	Cartagena Convention	Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Cartagena de Indias, 24 maart 1983. In werking 11 oktober 1986, 22 <i>International Legal Materials</i> 221 (1983); < www.unep.org/regionalseas >. 1990 Protocol concerning Specially Protected Areas and Wildlife in the Wider Caribbean, Kingston, 18 januari 1990. In force 18 June 2000; < www.unep.org/regionalseas >.
1985	Pacific Salmon Treaty	Treaty between the Government of Canada and the Government of the United States of America Concerning Pacific Salmon, Ottawa, 28 January 1985. In force 18 March 1985; 1469 <i>United Nations Treaty Series</i> 358 (1987), as amended. Consolidated version available at < www.psc.org >. The Yukon River Panel was established by means of the Yukon River Salmon Agreement of 4 December 2002, which added Chapter 8 to the Pacific Salmon Treaty.
	Vienna Convention	Convention for the Protection of the Ozone Layer, Vienna, 22 March 1985. In force 22 September 1988, 1513 <i>United Nations Treaty Series</i> 324 (1988); < www.unep.org/ozone >. Protocol on Substances that Deplete the Ozone Layer, Montreal, 16 September 1987. In force 1 January 1989, as amended. Consolidated version available at < www.unep.org/ozone >.
1986	Registration Convention	United Nations Convention on Conditions for Registration of Ships, Geneva, 7 February 1986. Not in force, < www.unctad.org/ttl >.
	Single European Act	Single European Act, 17/28 February 1986, 25 <i>ILM</i> 506 (1986)

	Act	
1987	Port Moresby Treaty	Treaty on Fisheries Between Governments of Certain Pacific Island States and the Government of the United States of America, Port Moresby, 2 April 1987.
1988		Agreement between the Government of Canada and the Government of the United States of America on Arctic Cooperation, 11 January 1988. In force 11 January 1988, Canada Treaty Series 1988, No. 29.
	Agreement on Mutual Fisheries Relations	Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics on Mutual Fisheries Relations, Moscow, 31 May 1988. In force 28 October 1988, Treaties and other International Acts Series 11,422.
	CRAMRA Convention	Convention on the Regulation of Antarctic Mineral Resource Activities, Wellington, 2 June 1988. Not in force, 27 <i>International Legal Materials</i> 868 (1988).
	Vienna Convention	United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna, 20 December 1988. In force 11 November 1990, 1582 United Nations Treaty Series 164
1989	Basel Convention	Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, Basel, 22 March 1989. In force 5 May 1992; 1673 <i>United Nations Treaty Series</i> 126 (1992); as amended. Consolidated version available at <www.basel.int>.
	Salvage Convention	International Convention on Salvage, London, 28 April 1989. In force 14 July 1996; 1953 <i>United Nations Treaty Series</i> 194 (1996).
	Drift-Nets Convention	Convention for the Prohibition of Fishing with Long Drift-nets in the South Pacific, Wellington, 23 November 1989. In force 17 May 1991, 29 <i>International Legal Materials</i> 1449 (1990); <www.oceanlaw.net>.
1990		Agreement between the United States of America and the Union of Soviet Socialist Republics on the maritime boundary, Washington D.C., 1 June 1990. Not in force, 90 <i>International Legal Materials</i> 942 (1990); <www.un.org/Depts/los>.
	Wadden Sea Seals Agreement	Agreement on the Conservation of Seals in the Wadden Sea, Bonn, 16 October 1990. In force 1 October 1991, text at <cwss.www.de>
	Lisbon Agreement	Cooperation Agreement for the Protection of the Coasts and Waters of the North-East Atlantic Against Pollution, Lisbon, 17 October 1990. In force 1 February 2014; text available at <www.dgpm.mam.gov.pt/Pages/CILPAN_UK.aspx>.

	OPRC 90	International Convention on Oil Pollution Preparedness, Response and Cooperation, London, 30 November 1990. In force 13 May 1995, 1891 <i>United Nations Treaty Series</i> 77 (1995). Protocol on Preparedness, Response and Co-operation to Pollution Incidents by Hazardous and Noxious Substances, London, 15 March 2000. In force 14 June 2007, IMO Doc. HNS-OPRC/CONF/11/Rev.1, of 15 March 2000.
	PICES Convention	Convention for a North Pacific Marine Science Organization, Ottawa, 12 December 1990. In force 24 March 1992, Canada Treaty Series 1992/8
1991	Espoo Convention	Convention on Environmental Impact Assessment in a Transboundary Context, Espoo, 25 February 1991. In force 10 September 1997; 1989 <i>United Nations Treaty Series</i> 310 (1997). As amended; consolidated version at <www.unece.org>. Protocol on Strategic Environmental Assessment, Kiev, 21 May 2003. In force 11 July 2010; <www.unece.org>.
	AEPS	Arctic Environmental Protection Strategy, Rovaniemi, 14 June 1991; 30 <i>International Legal Materials</i> 1624 (1991); <arctic-council.org>.
	Dakar Convention	Regional Convention on Fisheries Cooperation Among African States Bordering the Atlantic Ocean, Dakar, 5 July 1991. In force 11 August 1995, <www.fao.org/fi/body/rfb/AAFC>
1992	TEU	Treaty on European Union, Maastricht, 7 February 1992. In force 1 November 1993, 31 <i>ILM</i> 247 (1992)
	NPAFC Convention	Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, Moscow, 11 February 1992. In force 16 February 1993, 22 <i>Law of the Sea Bulletin</i> 21 (1993); <www.npafc.org>.
	Denmark/Greenland – Russian Federation	Agreement between the Government of the Kingdom of Denmark and the Local Government of Greenland, on the one hand, and the Government of the Russian Federation, on the other hand, concerning Mutual Fishery Relations between Greenland and the Russian Federation, Copenhagen, 7 March 1992. In force provisionally on 7 March 1992 and definitely on 16 October 1992, 1719 <i>United Nations Treaty Series</i> 89 (1993).
	ASCOBANS	Agreement on the Conservation of Small Cetaceans of the Baltic and North Seas, New York, 17 March 1992. In force 29 March 1994; <www.ascobans.org>. Convention on the Transboundary Effects of Industrial Accidents, Helsinki, 17 March 1992. In force?, 31 <i>International Legal Materials</i> 1330 (1992). As amended; consolidated text at <www.unece.org>.

Helsinki Watercourses Convention	Convention on the Protection and Use of Transboundary Watercourses and Lakes, Helsinki, 17 March 1992. In force 6 October 1996; text at <www.unece.org>.
Helsinki Convention	Convention on the Protection of the Marine Environment of the Baltic Sea Area, Helsinki, 9 April 1992. In force 17 January 2000; 2099 <i>United Nations Treaty Series</i> 197, as amended; consolidated version at <www.helcom.fi>.
NAMMCO Agreement	Agreement on Cooperation in Research, Conservation and Management of Marine Mammals in the North Atlantic, Nuuk, 9 April 1992. In force 8 July 1992, 1945 <i>United Nations Treaty Series</i> 3 (1996); <www.nammco.no>.
UNFCCC	United Nations Framework Convention on Climate Change, New York, 9 May 1992. In force 21 March 1994, 1771 <i>United Nations Treaty Series</i> 107; <unfccc.int>. Kyoto Protocol, Kyoto, 11 December 1997. In force 16 February 2005, 2303 <i>United Nations Treaty Series</i> 214 (2005); <unfccc.int>.
Rio Declaration	Rio Declaration on Environment and Development, Rio de Janeiro, 13 June 1992. 31 <i>International Legal Materials</i> 876 (1992); <www.unep.org>.
Niue Treaty	Niue Treaty on Cooperation in Fisheries Surveillance and Law Enforcement in the South Pacific Region, Honiara, 9 July 1992. In force 20 May 1993; text at <www.ffa.int>
CBD	Convention on Biological Diversity, Nairobi, 22 May 1992. In force 29 December 1993, 1760 <i>United Nations Treaty Series</i> 143 (1993); <www.biodiv.org>. <ul style="list-style-type: none"> • Cartagena Protocol on Biosafety to the Convention on Biological Diversity, Montreal, 29 January 2000. In force 11 September 2003; 2226 <i>United Nations Treaty Series</i> 208 (257) (2005); <www.biodiv.int>. • Protocol on Access to Genetic Resources and the Fair and Equitable Sharing of Benefits Arising from their Utilization, Nagoya, 29 October 2010. Not in force; Doc. UNEP/CBD/COP/DEC/X/1, of 29 October 2010; <www.biodiv.int>.
Agenda 21	Agenda 21, Annex II to the Report of the United Nations Conference on Environment and Development, Rio de Janeiro, 3 to 14 June 1992. UN Doc. A/CONF.151/26; <www.unep.org>
Denmark/Greenland - Norway	Agreement between Greenland/Denmark and Norway concerning Mutual Fishery Relations, Copenhagen, 9 June 1992. In force provisionally with retroactive effect from 24 September 1991 and definitely on 4 March 1994, 1829 <i>United Nations Treaty Series</i> 223 (1994).

Canada – Russian Federation	Agreement between the Government of Canada and the Government of the Russian Federation on Cooperation in the Arctic and the North (with Annex), Ottawa, 19 June 1992. In force 19 June 1992, 1884 <i>United Nations Treaty Series</i> 179 (1995)
SADC Treaty	Treaty establishing the Southern African Development Community, Windhoek, 17 August 1992. In force 30 September 1993; <www.sadc.int> Protocol on Fisheries, Blantyre, 14 August 2001. In force 8 August 2003, <www.sadc.int>
OSPAR Convention	Convention for the Protection of the Marine Environment of the North-East Atlantic, Paris, 22 September 1992. In force 25 March 1998; 2345 <i>United Nations Treaty Series</i> 67 (2006), as amended. Annex V ‘On the Protection and Conservation of the Ecosystems and Biological Diversity of the Maritime Area’, Sintra, 23 September 1998. In force 30 August 2000, as amended. Consolidated text available at <www.ospar.org>.
Norway – Russian Federation	Agreement Between the Governments of the Kingdom of Norway and the Russian Federation on Cooperation in Environmental Matters, Oslo, 3 September 1992. In force same day; Overenskomster med fremmede makter (Oslo, Norwegian Ministry of Foreign Affairs: 1992), pp. 1,532-1,535.
Palau Arrangement	Arrangement for the Management of the Western Pacific Purse Seine Fishery, Palau, 1992. In force 8 December 1995.
1993 EEA Agreement	Agreement on the European Economic Area, Brussels, 17 March 1993. In force 1 January 1994; <www.efta.int>.
Copenhagen Agreement	Agreement Between Denmark, Finland, Iceland, Norway and Sweden Concerning Cooperation in Measures to Deal with Pollution of the Sea by Oil or Other Harmful Substances, Copenhagen, 29 March 1993. In force 16 January 1998, 2084 <i>United Nations Treaty Series</i> 324.
CCSBT Convention	Convention for the Conservation of Southern Bluefin Tuna, Canberra, 10 May 1993. In force 20 May 1994, 1819 <i>United Nations Treaty Series</i> 360; <www.ccsbt.org>.
Conakry Convention	Convention on Subregional Cooperation in the Exercise of Maritime Hot Pursuit (Conakry, 1 September 1993. No information on entry into force. Adopted in the framework of the 1985 Convention for the Establishment of a Sub-Regional Commission on Fisheries (info at <www.oceanlaw.net>).
FAO Compliance Agreement	Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, Rome, 24 November 1993. In force 24 April 2003, 33 <i>International Legal Materials</i>

		969 (1994); < www.fao.org/legal >.
	IOTC Agreement	Agreement for the Establishment of the Indian Ocean Tuna Commission, Rome, 25 November 1993 (105 th Session FAO Council). In force 27 March 1996, < www.iotc.org >.
	Tokyo MOU	Asia-Pacific Memorandum of Understanding on Port State Control in the Asia-Pacific Region, Tokyo, 1 December 1993. In effect 1 April 1994, as regularly amended. Most recent text at < www.tokyo-mou.org >.
1994	GATT 1994	General Agreement on Tariffs and Trade, 15 April 1994. In force 1 January 1995, < www.wto.org >.
	WTO Agreement	Agreement Establishing the World Trade Organization, Marrakesh, 15 April 1994. In force 1 January 1995, < www.wto.org >.
		Agreement between Norway and the Russian Federation Concerning Cooperation on the Combating of Oil Pollution in the Barents Sea, Moscow, 28 April 1994. In force 30 January 1996; Overenskomst med fremmede makter (Oslo, Norwegian Ministry of Foreign Affairs: 1996), pp. 94-98.
	CBS Convention	Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea, Washington, 16 June 1994. In force 8 December 1995, 34 <i>International Legal Materials</i> 67 (1995); < www.afsc.noaa.gov/REFM/CBS >.
	Part XI Deep-Sea Mining Agreement	Agreement relating to the Implementation of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982, New York, 28 July 1994. In force 28 July 1996, 1836 <i>United Nations Treaty Series</i> 42 (1994); < www.un.org/Depts/los >.
	FSM Arrangement	The Federated States of Micronesia Arrangement for Regional Fisheries Access, Honiara, 30 November 1994. In force 23 September 1995, < www.ffa.int >.
1995	Barcelona Convention	Convention for the Protection of the Marine Environment and the Coastal Region of the Mediterranean, Barcelona, 10 June 1995. In force 9 July 2004, < www.unepmap.org >.
		Protocol concerning Specially Protected Areas and Biological Diversity in the Mediterranean, Barcelona, 10 June 1995. In force 12 December 1999, < www.unepmap.org >.
	AEWA	Agreement on the Conservation of African-Eurasian Migratory Waterbirds, 16 June 1995. In force? (1995) 6 <i>Yearbook of International Environmental Law</i> 907.
	Norway-Canada	Agreement between the Government of the Kingdom of Norway and the

	Agreement	Government of Canada on Fisheries Conservation and Enforcement, 30 June 1995. Not in force (Proposition No. 3 (1995–96) to the Odelsting)
	Fish Stocks Agreement	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, New York, 4 August 1995. In force 11 December 2001, 2167 <i>United Nations Treaty Series</i> 3; < www.un.org/Depts/los >.
	Canada-EC Agreement	Agreement on the Conservation and Management of Fish Stocks, 34 <i>International Legal Materials</i> 1260 (1995)
	FAO Code of Conduct	Code of Conduct for Responsible Fisheries. Adopted by the Twenty-eight Session of the FAO Conference, Rome, 31 October 1995, < www.fao.org/fishery/en >.
	Kyoto Declaration & Plan of Action	Declaration and Plan of Action, Kyoto, 4 to 9 December 1995
1996	Stockholm Agreement	Agreement concerning Specific Stability Requirements for Ro-Ro Passenger Ships Undertaking Regular Scheduled International Voyages Between or to or from Designated Ports in North West Europe and the Baltic Sea, Stockholm 28 February 1996. In force 1 April 1997, 2010 <i>United Nations Treaty Series</i> 176 (1998).
	HNS 96	International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, London, 3 May 1996. Not in force; as superseded by the Protocol adopted on 30 April 2010; also not in force; consolidated text available at < www.hnsconvention.org >.
	ACCOBAMS	Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area, Monaco, 24 November 1996. In force 1 June 2001, < www.accobams.mc >
	IACS Convention	Inter-American Convention for the Protection and Conservation of Sea Turtles; Caracas, 1 December 1996. In force 2 May 2001; < www.iacseaturtle.org >, <i>Tractatenblad</i> 2000, 49
	Atlanto-Scandic Agreement	Agreement on the Atlanto-Scandic Herring Fisheries, 16 December 1996. Seems to be an annual agreement for the next year's quota.
1997	Watercourses Convention	Convention on the Non-Navigational Uses of International Watercourses, New York, 21 May 1997. In force 17 August 2014; doc. UNGA Res. 51/229 (1997).

	Amsterdam Treaty	Treaty of Amsterdam amending the Treaty on European Union, the Treaties Establishing the European Communities and Certain Related Acts, Amsterdam, 2 October 1997. In force 1 May 1999, http://ue.eu.int
1998	STR Arrangement	Arrangement between the Government of Australia and the Government of New Zealand for the Conservation and Management of Orange Roughy on the South Tasman Rise, signed on 12 January 1998 and 18 February 1998 respectively. In effect 1 March 1998, expired 28 February 1999
	IDCP Agreement	Agreement on the International Dolphin Conservation Program (Washington D.C., 21 May 1998. In force 15 February 1999, as amended; text at < www.iattc.org >).
	Aarhus Convention	Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus, 25 June 1998. In force 30 October 2001; 2161 United Nations Treaty Series 450 < www.unece.org >.
1999	IPOA-SHARKS	International Plan of Action for the Conservation and Management of Sharks. Adopted by FAO's Committee on Fisheries in February 1999 and endorsed by the FAO Council in June 1999; text available at < www.fao.org/fi >.
	IPOA-SEABIRDS	International Plan of Action for Reducing Incidental Catch of Seabirds in Longline Fisheries. Adopted by FAO's Committee on Fisheries in February 1999 and endorsed by the FAO Council in June 1999; text available at < www.fao.org/fi >.
	IPOA-CAPACITY	International Plan of Action for the Management of Fishing Capacity. Adopted by FAO's Committee on Fisheries in February 1999 and endorsed by the FAO Council in June 1999; text available at < www.fao.org/fi >.
	Loop-hole Agreement & Protocols	Agreement between the Government of Iceland, the Government of Norway and the Government of the Russian Federation Concerning Certain Aspects of Co-operation in the Area of Fisheries, St. Petersburg, 15 May 1999. In force 15 July 1999; 41 <i>Law of the Sea Bulletin</i> 53 (1999); Protocol between the Government of Iceland and the Government of the Russian Federation under the Agreement between the Government of Iceland, the Government of Norway and the Government of the Russian Federation concerning Certain Aspects of Co-operation in the Area of Fisheries St. Petersburg, 15 May 1999. In force 15 July 1999; 14 <i>International Journal of Marine and Coastal Law</i> 488-490 (1999); < faolex.fao.org >; and Protocol between the Government of Norway and the Government of Iceland under the Agreement between the Government of Iceland, the Government of Norway and the

		Government of the Russian Federation concerning Certain Aspects of Co-operation in the Area of Fisheries St. Petersburg, 15 May 1999. In force 15 July 1999; 41 <i>Law of the Sea Bulletin</i> 56 (1999) <faolex.fao.org>.
	Rome Agreement	Agreement Concerning the Creation of a Marine Mammal Sanctuary in the Mediterranean, Rome, 25 November 1999. In force 14 February 2002, <www.oceanlaw.net>.
2000	STR Arrangement	Arrangement between the Government of Australia and the Government of New Zealand for the Conservation and Management of Orange Roughy on the South Tasman Rise. Signed for New Zealand on 17 February 2000 and for Australia on 25 February 2000. In effect on 1 March 2000; text at 16 <i>International Journal of Marine and Coastal Law</i> 119-124 (2001); <www.intfish.net/treaties/bilaterals/texts/aus-nz/2000.pdf>.
	Black Sea MOU	Memorandum of Understanding on Port State Control in the Black Sea Region, Istanbul, 7 April 2000. In effect 19 December 2000, as regularly amended. Most recent text at <www.bsmou.org>.
	Cotonou Agreement	Partnership Agreement between the Members of the African, Caribbean and Pacific Group of States of the One Part, and the European Community and its Member States, of the Other Part, Cotonou, 23 June 2000. In force 1 April 2003, text at <europa.eu.int/comm/development>;
	Galapagos Agreement	Framework Agreement for the Conservation of the Living Marine Resources on the High Seas of the Southeast Pacific, Santiago, 14 August 2000. Not in force, <i>Law of the Sea Bulletin</i> , 70-78, No. 45 (2001).
	WCPFC Convention	Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean, Honolulu, 5 September 2000. In force 19 June 2004, 2275 <i>United Nations Treaty Series</i> 43 (2007); <www.wcpfc.int>.
	Bilateral Polar Bear Agreement	Agreement between the Government of the United States of America and the Government of the Russian Federation on the Conservation and Management of the Alaska-Chukotka Polar Bear Population, Washington, D.C., 16 October 2000. In force January 2007?.
2001	IPOA on IUU Fishing	International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing. Adopted by consensus by FAO's Committee on Fisheries on 2 March 2001 and endorsed by the FAO Council on 23 June 2001; <www.fao.org/fi>.
	BUNKER 01	International Convention on Civil Liability for Bunker Oil Pollution Damage, London, 23 March 2001. In force 21 November 2008; IMO Doc.

		LEG/CONF.12/19, of 27 March 2001.
	SEAFO Convention	Convention on the Conservation and Management of the Fishery Resources in the South East Atlantic Ocean, Windhoek, 20 April 2001. In force 13 April 2003, 2221 <i>United Nations Treaty Series</i> 189 (2005); <www.fao.org/Legal/treaties>.
	POPs Convention	Convention on Persistent Organic Pollutants, Stockholm, 22 May 2001. In force 17 May 2004; text at <chm.pops.int>.
	ACAP	Agreement on the Conservation of Albatrosses and Petrels, Canberra, 19 June 2001. In force 1 February 2004, 2588 <i>United Nations Treaty Series</i> 257 (2005); as amended, consolidated version at <www.acap.aq>.
	IMO Anti- Fouling Convention	International Convention on the Control of Harmful Anti-fouling Systems on Ships, London, 5 October 2001. In force 17 September 2008, IMO Doc. AFS/CONF/26, of 18 October 2001.
	Underwater Cultural Heritage Convention	Convention on the Protection of the Underwater Cultural Heritage, Paris, 1 November 2001. In force 2 January 2009; 2562 <i>United Nations Treaty Series</i> 3 (2009); <www.unesco.org>.
	FAO Treaty on Plant Genetic Resources	International Treaty on Plant Genetic Resources for Food and Agriculture, approved by the FAO Conference, at its Thirty-first Session (November 2001), through Resolution 3/2001. In force 29 June 2004, text at <www.fao.org/legal>.
2002	2002 Johannesburg POI	Plan of Implementation of the World Summit on Sustainable Development, Johannesburg, 4 September 2002; <www.unep.org>.
	CRFM Agreement	Agreement Establishing the Caribbean Regional Fisheries Mechanism, 2002. In force 4 February 2002; <www.caricom.org>.
2003	San José Agreement	Agreement Concerning Co-operation in Suppressing Illicit Maritime and Air Trafficking in Narcotic Drugs and Psychotropic Substances in the Caribbean Area, San José, 10 April 2003. Not in force; text on file with author
	Trilateral capelin agreement	Agreement between Iceland, Greenland / Denmark and Norway on the capelin stock in the waters between Greenland, Iceland and Jan Mayen, Reykjavik, 8 July 2003. In force provisionally on 8 July 2003 (on file with author)
	Canberra Treaty	Treaty Between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands, Canberra, 24 November 2003. Not in force;

		< www.austlii.edu.au/au/other/dfat/treaties/notinforce/2003 >, [2003] ATNIF 20
	Caspian Sea Framework Convention	Framework Convention for the Protection of the Marine Environment of the Caspian Sea, Tehran, 4 November 2003. In force 12 August 2006; < www.caspianenvironment.org >.
	Titanic Agreement	Agreement Concerning the Shipwrecked Vessel RMS Titanic, London, 6 November 2003. Not in force; text available at < www.state.gov/g/oes/rls/or/2004/33709.htm > and < www.fco.gov.uk/Files/kfile/TitanicAgreementEnglish,0.pdf >
	Pacific Whiting Treaty	Agreement between the Government of the United States of America and the Government of Canada on Pacific Hake/Whiting, Seattle, 21 November 2003. In force 2008; http://www.westcoast.fisheries.noaa.gov/fisheries/management/whiting/pacific_whiting_treaty.html
2004	BWM Convention	International Convention for the Control and Management of Ships' Ballast Water and Sediments, London, 13 February 2004. Scheduled to enter into force on 8 September 2017, IMO Doc. BWM/CONF/36, of 16 February 2004.
	SWIOFC Statutes	Statutes of the South West Indian Ocean Fisheries Commission, Rome, adopted by Resolution 1/127 of the FAO Council on 25 November 2004; < www.fao.org/fishery/rfb/swiofc >.
2005	FAO Model Scheme on PSM	Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing, implicitly endorsed by FAO's Committee on Fisheries in March 2005. Annex E to the "Report of the Technical Consultation to Review Port State Measures to Combat Illegal, Unreported and Unregulated Fishing. Rome, 31 August – 2 September 2004" (FAO Fisheries Report No. 759; 2004).
2006	Maritime Labour Convention	Maritime Labour Convention, Geneva, 23 February 2006. In force 20 August 2013; <i>United Nations Treaty Registration</i> No. I-51299; < www.ilo.org >.
	SIOF Agreement	Southern Indian Ocean Fisheries Agreement, Rome, 7 July 2006. In force 21 June 2012; < www.fao.org/legal >.
	MOU on Whales in South Pacific	Memorandum of Understanding for the Conservation of Cetaceans and their Habitats in the Pacific Islands Region, Noumea, 15 September 2006. In force 15 September 2006; text at < www.cms.int >.
		Agreement between the Government of the Kingdom of Norway on the one hand, and the Government of the Kingdom of Denmark together with the

		Home Rule Government of Greenland on the other hand, concerning the delimitation of the continental shelf and the fisheries zones in the area between Greenland and Svalbard, Copenhagen, 20 February 2006. In force 2 June 2006; English translation registered at the United Nations on 7 July 2006, Registration No. I-42887, published as an Appendix to A.G. Oude Elferink, “Maritime Delimitation Between Denmark/Greenland and Norway”, 38 <i>Ocean Development and International Law</i> 375-378 (2007).
2007	Nairobi Convention	Nairobi International Convention on the Removal of Wrecks, Nairobi, 18 May 2007. In force 14 April 2015; IMO Doc. LEG/CONF.16/19, of 23 May 2007.
	MOU on Dugongs	Memorandum of Understanding on the Conservation and Management of Dugongs (<i>Dugong dugon</i>) and their Habitats throughout their Range, Abu Dhabi, 31 October 2007. In force same day; <www.cms.int>.
2008	Ilulissat Declaration	Ilulissat Declaration, Arctic Ocean Conference of 28 May 2008 (48 <i>International Legal Materials</i> 362 (2009); Error! Hyperlink reference not valid. <www.arctic-council.org>.
	International Deep-sea Fisheries Guidelines	International Guidelines for the Management of Deep-sea Fisheries in the High Seas, Rome, 29 August 2008 (contained in Appendix F to the Report of the Technical Consultation on International Guidelines for the Management of Deep-sea Fisheries in the High Seas, Rome, 4-8 February and 25-29 August 2008 (<i>FAO Fisheries and Aquaculture Report</i> No. 881)).
	Swordfish Understanding	Understanding Concerning the Conservation of Swordfish Stocks in the South Eastern Pacific Ocean, Brussels, 16 October 2008. Not in force, on file with author.
2009	Ship Recycling Convention	Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, Hong Kong, 15 May 2009. Not in force, IMO Doc. SR/CONF/14, of 19 May 2009.
	PSM Agreement	Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Rome, 22 November 2009. In force 5 June 2016; <www.fao.org/Legal>.
	SPRFMO Convention	Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, Auckland, 14 November 2009. In force 24 August 2012; <www.sprfmo.int>.
2010	Murmansk Treaty	Treaty between the Kingdom of Norway and the Russian Federation concerning Maritime Delimitation and Cooperation in the Barents Sea and the Arctic Ocean, Murmansk, 15 September 2010. In force 7 July 2011;

United Nations Treaty Series Reg. No. 49095. English text available at <www.un.org/Depts/los>.

AHRC Statutes	Statutes of the Arctic Regional Hydrographic Commission, Ottawa, 6 October 2010. In force same day; < www.iho.int >.
International Bycatch & Discards Guidelines	International Guidelines on Bycatch Management and Reduction of Discards, Rome, 10 December 2010 (contained in Appendix E to the Report of the Technical Consultation to Develop International Guidelines on Bycatch Management and Reduction of Discards, Rome, 6-10 December 2010 (<i>FAO Fisheries and Aquaculture Report</i> No. 957)).
2011 Arctic SAR Agreement	Agreement on Cooperation in Aeronautical and Maritime Search and Rescue in the Arctic, Nuuk, 12 May 2011. In force 19 January 2013; 50 <i>International Legal Materials</i> 1119; also available at < www.arctic-council.org >.
2012 NPFC Convention	Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean, Tokyo, 24 February 2012. In force 19 July 2015; < nwpbfo.nomaki.jp >.
2013 Benguela Current Convention	The Benguela Current Convention, Benguela, 18 March 2013. Not in force
Arctic MOPPR Agreement	Agreement on Cooperation on Marine Oil Pollution Preparedness and Response in the Arctic, Kiruna, 15 May 2013. In force 25 March 2016; available at < www.arctic-council.org >. Depositary: http://lovdata.no/traktater/index.html
2017 Arctic Scientific Cooperation Agreement	Agreement on Enhancing International Arctic Scientific Cooperation, Fairbanks, 11 May 2017. Not in force

Other FAO Instruments

Technical Guidelines	Technical Guidelines in Support of the Implementation of the Code of Conduct on Responsible Fisheries; No. 1: Fishing Operations (including Supplement No. 1 on Vessel Monitoring Systems); No. 2: Precautionary Approach to Capture Fisheries and Species Introductions; No. 3: Integration of Fisheries into Coastal Area Management; No. 4: Fisheries Management; No. 5: Aquaculture Development; and No. 6: Inland Fisheries (all available on the FAO Fisheries Department's website)
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