

On 23 July, the UN General Assembly adopted a resolution on tackling illicit trafficking in wildlife. The resolution highlights the importance of the CITES framework and urges states to take decisive steps to prevent, combat, and eradicate wildlife crimes.

On 1 November, MIKE published the annual analysis of continental and sub-regional trends in the levels of elephant poaching for 2020, noting that the current trends show the lowest level in elephant poaching in Africa since 2003.

The month-long worldwide enforcement operation against illegal trade in wildlife and timber was coordinated by the World Customs Organization and INTERPOL (1–31 October). The operation, with the codename of Thunder 2021, resulted in numerous seizures around the world. The seizures included 478 kilograms of ivory, 487 kilograms of ivory-derived products, seventy-five big cat parts, twenty-nine live big cats, 856 pangolin scales, 531 turtles and tortoises, 171 birds, 336 reptiles, 4843 kilograms of marine products, 73,320 kilograms of timber, including 313 cubic metres of rosewood, and 1.4 million plant-derived items.

Mazyar Ahmad

Research Fellow, Norwegian Centre for Law of the Sea, University of Tromsø, Tromsø, Norway
mazyar.ahmad@uit.no

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4. Fisheries and Marine Mammals

While international law often suffers from the problem of limited enforcement, the past year saw a significant effort to combat illegal, unreported, and unregulated (IUU) fishing. Operation Ikatere, named after the fish god from Polynesian and Māori mythology, brought together countries from all over the planet, including land-locked nations, to combat IUU fishing in several oceans. Led by the International Police Organization (INTERPOL), 1,710 inspections and hundreds of arrests were made across several countries around the world. A total of thirty-four countries were involved in the joint effort, and, according to INTERPOL, forty arrests were made. In Kenya, for example, Operation Ikatere led to further arrests in relation to IUU fishing not only at sea but also in inland waters. In addition, large quantities of illicit products were confiscated. In Montenegro, for example, explosives that were used for illegal fishing practices were confiscated. In this context, awareness was raised between IUU fishing and organized crime. It is estimated by the United Nations (UN) Food and Agricultural Organization (FAO) that one-fifth of all fish is caught through IUU fishing, although the rate is likely higher in countries with limited law enforcement capabilities. This connection between the fisheries industry and organized crime is not limited to the sale of illegally caught fish and the associated document fraud but also includes smuggling, the use of explosives, and human trafficking. In Kenya, 121 victims of human trafficking were reportedly freed from fishing vessels on Lake Victoria. While the human rights dimension of activities at sea has received more attention in recent years, the connection to organized crime remains a major challenge—in particular, for those fishing crews that comply with the legal rules that apply to their work. Although Operation Ikatere only covered a tiny fraction of all fishing

vessels operating worldwide, the global nature of the cooperation in the fight against IUU fishing highlights the global nature of the problem that causes threats to biodiversity and annual economic damages of billions of euros.

The use of explosives is not the only outlawed mechanism for fishing. On 15 April, the Court of Justice of the European Union (CJEU) confirmed the European Union (EU) rules that prohibit electric trawling starting 1 July 2021, in a case brought by the Netherlands. The court based its decision on the negative environmental impacts of electric trawling. Fishing devices are also a problem when they are no longer in use. Ghost nets pose a threat not only to fish and marine mammals but also to seabirds. Ghost nets that break apart eventually contribute to the increasing pollution of the seas with microplastics that enter the food chain. While the issue of ghost nets has gained more public attention in recent years, international regulatory efforts have, so far, been insufficient to address the problem of ghost nets in the manner that is necessary to protect wildlife and the natural environment. In an article this year in *Ocean Development and International Law*, Robin Churchill also drew attention to the problem of abandoned or lost fish aggregating divides, concluding that discarding them amounts to a violation of Annex V to the International Convention for the Prevention of Pollution from Ships (see 'Just a Harmless Fishing Fad—or Does the Use of FADs Contravene International Marine Pollution Law?' (2021) 52 *Ocean Development and International Law* 169 <<https://www.tandfonline.com/doi/full/10.1080/00908320.2021.1901342>>).

The Marine Environment Protection Committee (MEPC) of the International Maritime Organization (IMO) adopted a resolution regarding marine plastic litter. The MEPC aims to reduce the amount of plastic litter that enters the seas from ships, with the aim of a complete reduction by 2025. This effort also targets fishing vessels. By tackling plastic pollution from ships, the IMO contributes to the efforts to reduce the threat posed by ghost nets that kill marine life needlessly. What is needed in the long term is a culture of compliance. While there might be circumstances in which abandoning a net is absolutely necessary to ensure the safety of a fishing vessel, the deliberate discarding of nets and other forms of plastic waste into the sea needs to come to an end in order to protect marine life. This requires sufficient commitment from flag states as well as ship owners and operators. This year, the MEPC's Sub-Committee on Pollution Prevention and Response was tasked with looking further into the issue of marking fishing gear, reducing the risk of nets and other fishing gear being lost at sea.

Fishing also remains a challenge for international cooperation and sustainable development. The UN Sustainable Development Goal 14, 'life under water,' includes sustainable fishing as target 14.4. This includes the fight against IUU fishing. IUU fishing causes harm to the natural environment as well as economic damages. According to FAO numbers from 2020, fishing creates millions of jobs around the world and, together with aquaculture, is a key source of income for approximately one-tenth of the global population, and nearly one-half of Earth's population gets approximately one-fifth of their animal protein intake from fish and other marine animals. While this dependency is particularly pronounced in developing countries, small-scale fishing communities have to compete with long-distance fishing fleets operating close to the coasts of their respective countries. The FAO's declaration of the year 2022 as the International Year of Artisanal Fisheries and Aquaculture can contribute to raising awareness of the inter-connectedness between protecting marine life and supporting sustainable development because, in the long run, the protection of biodiversity at sea also contributes to sustainable development.

This need for sustainability in fisheries also has implications for international cooperation efforts. For example, the CJEU decided in September that the EU and Morocco had to get back to the drawing board in regard to their fisheries agreement because the existing

agreement lacked the consent of the people of Western Sahara, a region that is largely under the de facto control of Morocco without being part of the state of Morocco. The EU and Morocco are prevented from concluding an agreement that disadvantages a third group that is not part of the agreement and the EU. Among the rights of peoples protected under international human rights law is the right to economic self-determination. This includes not only access to marine resources such as fish but also the responsibility to protect them. This year, the EU was also criticized for its stance against a proposed landing ban for makos. Despite EU opposition, new protective measures agreed to for North Atlantic shortfin mako sharks were adopted at the November meeting of the International Commission for the Conservation of Atlantic Tunas. This decision marks the end of a process of four years and is in force as of 2022. Since 2019, mako sharks have been protected under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). This has the effect that trade in makos is permitted only if there is no threat to regional mako stocks. Due to the endangerment of makos in the North Atlantic, it is practically impossible to trade mako from this region in a manner that is compatible with CITES. It is particularly noteworthy that Spain, a key fishing nation for shortfin mako, initiated a ban on North Atlantic shortfin mako landings this year, leading to a de facto ban on trade in the endangered fish. The Spanish initiative highlights the particular responsibility of those states that are particularly interested in (and often, economically dependent on) fisheries for the protection of marine living resources, also within the framework of shared fisheries policies, like in the case of the EU. The EU's Common Fisheries Policy is scheduled to be reviewed in 2022. It remains unclear whether the EU will actually use this opportunity to show a stronger commitment to sustainable fisheries.

This dual nature of rights and obligations is reflected in the current international law of the sea and is at the heart of many bilateral relations. Because of the significant implications for food security and the economy, but also because of the cultural relevance of fishing for coastal communities and countries with a traditional maritime outlook, fisheries are often the object of international disputes. Among the most notable fisheries disputes in recent years was the dispute between the United Kingdom and France that arose as a consequence of the United Kingdom's departure from the EU. The so-called 'Brexit' on 31 January 2020 was followed by a transitional period until the end of 2020. However a new trade and cooperation agreement between the EU and the United Kingdom did not enter into force until 1 May. Among the key points of contention was a dispute between France and the United Kingdom over the allocation of fishing rights in British waters that had traditionally been used by fishing crews from France. This dispute seems to have been resolved only in December, when the relevant authorities of the United Channel Islands (that is, the Crown Dependencies of Guernsey and Jersey, which are not part of the United Kingdom) agreed to issue more fishing licenses. Fishing rights are also at stake in the ongoing discussions concerning the waters surrounding Norway's Svalbard archipelago, which is the object of a specific international legal regime. Instead of an Exclusive Economic Zone, Norway has only established a Fisheries Protection Zone, but not all legal issues surrounding fishing in the waters between twelve and two hundred nautical miles from shore have yet been clarified. These examples of fisheries disputes even between nations that have long histories of partnership and cooperation, such as France and the United Kingdom, highlight the political nature of the allocation of fishing rights and the risk that concerns such as the protection of biodiversity and marine life take a back seat when compared to economic and political considerations. The current model of fisheries management through regional fisheries management organizations has not been able to prevent overfishing and threats to fish stocks. These organizations, though, can only be as effective as member states let them be. On 1 February, twenty-five years after the FAO's Code of Conduct on Responsible

Fisheries (CCRF) was adopted, the thirty–fourth session of FAO’s Committee on Fisheries (COFI) endorsed the ‘Declaration for Sustainable Fisheries and Aquaculture’ (<<https://www.fao.org/3/cb3767en/cb3767en.pdf>>). The COFI declaration takes note of substantial changes since the adoption of the CCRF as demand for fish has grown and aquaculture has taken on a more important role than in the past. Among the issues dealt with in the COFI declaration is the recognition that the increasing demand also increases the need for sustainability in fisheries management. In this context, COFI emphasized the importance of regional fisheries management organizations and of good fisheries governance, including the prevention of loss of caught fish—for example, through discarding—through a rules-based order for the ocean. The COFI declaration builds on existing international legal frameworks such as the 1982 UN Convention on the Law of the Sea (UNCLOS), the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement), and existing measures against IUU fishing.

Although the long-standing view of the oceans as an infinite source of fish has been known to be wrong for many decades, nevertheless, it still inspires the existing international law. While there has been significant progress towards protecting biodiversity at sea, overfishing and pollution remain serious threats. By the end of the year, negotiations for an internationally legally binding instrument on biodiversity beyond national jurisdictions, which formally began in late 2017, remain ongoing. Like the Fish Stocks Agreement and the Implementation Agreement, this future internationally legally binding instrument will be part of the framework created under UNCLOS. Among the topics discussed in these negotiations in the past year were the proposed clearing house mechanism and the issue of dispute settlement.

Finally, it has to be noted that awareness of the impact of climate change on the oceans continues to grow. Not only does climate change impact the distribution of fish stocks as different species migrate to other parts of the ocean due to changing water temperatures (the poleward movement of mackerel in the North Atlantic is one of the better-known examples) but climate change is also now known to impact marine mammals. From 29 November to 3 December, the International Whaling Commission (IWC) organized its fifth technical workshop addressing climate change. This online workshop focused on the impact of climate change on cetaceans (<<https://iwc.int/resources/media-resources/news/fifth-iwc-workshop-on-climate-change-and-cetaceans>>). In June, the IWC Scientific Committee held its annual meeting with over six hundred (online) participants this year. It examined a wide range of other issues affecting cetaceans including marine debris and other forms of marine pollution (<<https://iwc.int/resources/media-resources/news/available-now-iwc-scientific-committee-meeting>>). While progress on the creation of new marine protected areas in the Southern Ocean has been frustratingly slow as members of the Commission for the Conservation of Antarctic Marine Living Resources have repeatedly failed to reach consensus on such areas—for example, in the Weddell Sea—the IWC has created whale sanctuaries in the Indian and Southern Oceans. However, the proposal for a whale sanctuary in the South Atlantic, which has been discussed at the IWC since the late 1990s, has so far failed to garner the necessary support of three-quarters of the member states of the IWC. At the end of the day, measures to protect marine wildlife, in particular in areas that are beyond the jurisdictions of nation-states, require agreement between states. From many national capitals, the ocean seems far away. Protecting biodiversity at sea is not an end in itself but it plays an important role in ensuring food security for many people around the world. A stronger focus on long-term sustainability rather than on short-term profits will be beneficial both for the natural environment and for national economies. The same approach would also aid in the protection of marine mammals. Reducing the speed of ships in areas such as the Strait of Gibraltar, where large numbers of ships share a small space with cetaceans, could limit not only the risk of maritime disasters but also the risk of cetaceans being

injured to killed by ship strikes. In addition, reducing ship speeds can contribute to a reduction of underwater noise, which, in turn, would help prevent whale beachings. Effective protection of the marine environment and marine wildlife will increasingly have to rely on the ecosystem approach. The existing international legal framework provides a solid basis for the measures that have to be taken. Like in earlier years, it is still the political will of states that is absent but urgently needed to take the action that is needed to protect marine wildlife and to safeguard sustainable development in the fisheries sector.

Stefan Kirchner

Arctic Centre, University of Lapland, Rovaniemi, Finland
stefan.kirchner@ulapland.fi

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5. Forests

The year witnessed major developments in connection with forestry issues that include the following topics.

(1) UNITED NATIONS FORUM ON FORESTS (UNFF)

(A) Sixteenth Session (UNFF-16)

UNFF-16 took place on 26–30 April in a virtual format. Participants elected Kitty Sweeb (Suriname) as chair and Jesse Mahoney (Australia) and Javad Momeni (Islamic Republic of Iran) as vice-chairs. The discussion centred on the implementation of the United Nations (UN) Strategic Plan for Forests 2017–30. UNFF-16 recommended a draft resolution for adoption of the UN Economic and Social Council regarding the program of work for the UNFF for the period 2022–4 (UNFF-17, UNFF-18, UNFF-19). It also recommended a draft agenda for UNFF-17 to be adopted by the UN Social and Economic Council.

As noted above, as a result of the COVID-19 pandemic, the work of UNFF-16 was virtual and was carried out in seven virtual informal meetings to consider the items on its agenda. The proceedings of the virtual informal meetings were set out in Annex I to the report of the session. Draft proposals and reports as well as voting on nominations were considered and decided in the seven meetings using a silent procedure (UNFF, *Report of the Sixteenth Session*, Doc. E/2021/42-E/CN.18/2021/8 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/N21/120/62/PDF/N2112062.pdf?OpenElement>>). The various themes and issues considered by the UNFF are complex in organization as they span a number of sessions. As explained in the *Summary by the Chair of the Technical Discussions* at UNFF-16:

2. As the sixteenth session of the Forum was a technical session, the deliberations were conducted in accordance with the guidance provided in annex I to Council resolution 2020/14. Accordingly, the quadrennial programme of work of the Forum for the period 2021–2024 included two thematically linked bienniums: 2021–2022 (sixteenth and seventeenth sessions) and 2023–2024 (eighteenth and nineteenth sessions). The thematic