Distant Water Fishing Fleet: Challenges to Indonesia’s Maritime Security

Andreas Aditya Salim

July 6th, 2021
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Distant Water Fishing Fleet (DWFF)
DWFF: Context

DWF = fishing in a part of the ocean situated beyond national jurisdiction of a coastal state

- High Seas
  - High Seas Fishing (HSF)
- Other state’s EEZ
  - Distant Water Fishing (DWF)

Daniel J. Skerritt & Rashid Sumaila (2021)
DWFF: Brief History

1. The age of exploration (15th – 17th century): Spain and Portugal → Ferdinand Magellan, Vasco Da Gama, Christopher Colombus, Alfonso de Albuquerque, Amerigo Vespucci, James Cook, Bartholomeu Diaz → Mare Liberum, Mare Clausum (Hugo Grotius, 1609).
3. Introduction of steam machinery after WW II.
4. Competition over resources:
   General Douglas MacArthur (the Supreme Commander of the Allied Power (SCAP): The Government ruling Japan after its tragic loss in WW II (1945)): “from coastal to offshore, offshore to distant water”.
DWFF: Brief History

5. Post 1958 (post high seas convention, territorial sea and contiguous zone convention, continental shelf convention and convention on fishing and conservation of the living resources of the high seas (no EEZ yet)) → maritime powers domination.

6. Second Conference on the Law of the Sea (1960): Developing States raised their concern over this issue:

   Annex II of the Final Act of the Second United Nations Conference on the Law of the Sea: “… Recognizing further that economic development and the standard of living in many coastal States require increased international assistance to improve and expand their fisheries and fishing industries, which in many cases are handicapped by a lack of modern equipment, technical knowledge and capital; Expresses the view that technical and other assistance should be available to help States in making adjustments to their coastal and distant water fishing in the light of new developments in international law and practices…” (Summary Records of Plenary Meetings and of Meetings of the Committee of the Whole, Annexes and Final Act (A/CONF.19/L.15, 26 April 1960).
7. Asian-African Legal Consultative Committee (1972): Kenya introduced the concept of exclusive economic zone due to:

“...(the interest of) developing countries with hardly ... if any ocean going commercial vessels and fledging fishing fleets, ... would be spared from cut-throat competition, particularly from sophisticated fishing fleet of distant-water fisheries, mainly from the developed countries. ... the present regime of the high seas benefits only the developed countries who had laid down the law and it is harmful to their (the developing countries) interests particularly in fishery”

8. Kenya’s idea was largely supported at the Third Conference on the Law of the Sea. Finally, the sui generis regime of Exclusive Economic Zone adopted in UNCLOS 1982.
1. China, Taiwan, Japan, South Korea, and Spain responsible for 64% global high seas fishing (Enric Sala, 2018).

2. Vessels flying the flag of Taiwan, South Korea, Spain and China are found highly engage in fishing in other states’ EEZ (Daniel Skerritt & Sumaila, 2021).

3. Hiding behind the FoC? Ghost fleet?

4. Why?
   1. Fish stock ↓, nutrition needs ↑;
   2. Security and politics;
   3. Nutrition;
   4. Employment.

5. Enabler?
   1. Subsidy;
   2. Technology development.
DWFF: Why DWFF is a Problem?

Intro…

Today’s presentation will focus on the issue of DWF and its relation to the fisheries resources and good governance. The issue of human trafficking and human rights abuses in fishing industry is an important topic that IOJI has been advocating. IOJI is committed to continuously raised the importance of this issue.
DWFF: Why DWFF is a Problem?

ACCESS & BENEFIT
What types of agreements determine access to coastal countries’ waters for a DWF fleet?

There are four main categories of agreements governing access to another country’s waters: **bilateral access agreements, private company agreements, charter agreements, and joint-venture agreements**. With a bilateral access agreement, the

In addition to the four primary ways in which foreign vessels can gain legal access to coastal countries’ waters, the use of shell companies is also prevalent in the industry. In coastal countries where foreign fishing may be banned entirely, such as Ghana, there is evidence that foreign companies will work with locals to set up a front company, which hides the true beneficial owner behind the fishing operations. With hidden beneficial owners, it is difficult to sanction the true owners of DWF vessels, and instead captains and local companies are held responsible, which does not effectively target the entire network that supports these illicit activities.

**Fishing Access Agreements**

Fishing agreements define the terms under which fishing countries are allowed to fish in the EEZs of host countries.

- The large majority of fishing agreements are signed between industrialized distant water fishing nations (DWFN) and developing host countries that (officially) lack the capacity to fully fish the surplus production of their EEZs.
- Depending on host countries’ monitoring capacity, agreements grant access to number of boats, vessel days, or catch volume.
- Financial compensations are often partially earmarked for development of host countries’ fishing industry and/or management capacity.

These agreements are premised on the “Surplus Principle” outlined in Article 62 UNCLOS.

- All fishing access agreements are based on the idea that nations that don’t have the capacity to fish their resources should sell access.
- Recent interpretations argue that UNCLOS in fact states no such thing, and host nations are under no obligation to allow access.

Source: Gagem and Van den Burgh, 2013
DWFF: Why DWFF is a Problem?

Fishing Access Agreements

A generous interpretation of FAAs would suggest their benefits to host nations are mixed. In most cases, these agreements are highly exploitative and result in negative impacts for the host nations.

- **Benefits accrue to governments, not to fishers**: Access fees are only rarely invested into the fishing industry; in any case, fees are a fraction of the value that is captured by DWFNs.

- **Countries are getting underpaid**: Officially, the EU pays approximately 25% of the value of the catch, China up to 40%. Accounting for unreported catches, this figure drops to 4% and 8% respectively.

- **Joint ventures are not beneficial to host countries**: Companies from most DWFNs set up joint ventures to reflag vessels and benefit from less stringent local regulations. This has not often translated into sector development in host countries, but increased overexploitation.

- **Where negotiation power exists, benefits accrue**: The parties to the Nauru agreement (PNA countries) significantly increased prices of vessel day scheme by negotiating as a group of tuna-rich countries rather than individual small island states.

- **Some bright spots of domestic sector development exist**: The EU has set a good example by increasingly holding the external fleet to the same standards as the domestic fleet. Some earmarked investments have led to meaningful investments such as the construction of commercial ports (Seychelles); the purchase of fisheries inspection equipment (Ivory Coast); or the construction of sanitary control laboratory (Guinea-Bissau).

Distant water fleets are justified by international law under the idea of comparative advantage. In reality, these fleets seem to do little more than contribute to overexploitation, illegality, and human rights abuses. But those connections are hard to prove.

- In its official documentation of its access agreements, the EU pays approximately 25% of the value of the catch, China up to 40%. Accounting for unreported catches, this figure drops to 4% and 8% respectively.
DWFF: Why DWFF is a Problem?

Table 32-2: Access Fees: Some Comparisons

<table>
<thead>
<tr>
<th>Country/Territory</th>
<th>2014 Access Fees (US$)</th>
<th>2014 Access Fees as a % of the Value of Foreign-based Offshore Fishing</th>
<th>2014 Access Fees per Resident (US$)</th>
<th>2014 Access Fees per km² of 200 mile Zone (US$)</th>
<th>Other Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Islands</td>
<td>8,437,500</td>
<td>14.8%</td>
<td>554</td>
<td>4.61</td>
<td></td>
</tr>
<tr>
<td>FSM</td>
<td>47,518,000</td>
<td>20.8%</td>
<td>462</td>
<td>5.96</td>
<td></td>
</tr>
<tr>
<td>Fiji</td>
<td>555,815</td>
<td>Large</td>
<td>1</td>
<td>0.43</td>
<td>No foreign fishing in zone, but payments under the US tuna treaty.</td>
</tr>
<tr>
<td>Kiribati</td>
<td>116,040,984</td>
<td>10.4%</td>
<td>1,044</td>
<td>32.69</td>
<td></td>
</tr>
<tr>
<td>Marshall Islands</td>
<td>16,900,002</td>
<td>41.7%</td>
<td>310</td>
<td>7.94</td>
<td></td>
</tr>
<tr>
<td>Nauru</td>
<td>13,852,439</td>
<td>6.9%</td>
<td>1,487</td>
<td>49.54</td>
<td></td>
</tr>
<tr>
<td>Niue</td>
<td>635,815</td>
<td>41.8%</td>
<td>424</td>
<td>1.63</td>
<td>Access fees as a % of foreign-based offshore fishing distorted by fee-paying locally-based foreign fleet</td>
</tr>
<tr>
<td>Palau</td>
<td>3,600,586</td>
<td>19.5%</td>
<td>208</td>
<td>5.76</td>
<td></td>
</tr>
<tr>
<td>PNG</td>
<td>83,019,455</td>
<td>27.3%</td>
<td>11</td>
<td>27.25</td>
<td></td>
</tr>
<tr>
<td>Samoa</td>
<td>555,814</td>
<td>Large</td>
<td>3</td>
<td>4.63</td>
<td>No foreign fishing in zone</td>
</tr>
<tr>
<td>Solomon Islands</td>
<td>27,963,558</td>
<td>38.3%</td>
<td>45</td>
<td>20.67</td>
<td></td>
</tr>
<tr>
<td>Tuvalu</td>
<td>9,090,000</td>
<td>27.3%</td>
<td>7,062</td>
<td>33.21</td>
<td></td>
</tr>
<tr>
<td>Tonga</td>
<td>627,858</td>
<td>12.4%</td>
<td>6</td>
<td>0.90</td>
<td></td>
</tr>
<tr>
<td>Tuvalu</td>
<td>1,477,814</td>
<td>11.2%</td>
<td>1,321</td>
<td>16.42</td>
<td></td>
</tr>
<tr>
<td>Vanuatu</td>
<td>1,759,112</td>
<td>6.7%</td>
<td>6</td>
<td>2.59</td>
<td></td>
</tr>
<tr>
<td>Total</td>
<td>349,335,570</td>
<td>15.4%</td>
<td>32</td>
<td>11.43</td>
<td></td>
</tr>
</tbody>
</table>

Table 32-1: Access Fees for Foreign Fishing in 2014

<table>
<thead>
<tr>
<th>Country/Territory</th>
<th>Access Fees (local currency)</th>
<th>Access Fees (US$)</th>
<th>Access fees as % of Government Revenue</th>
<th>Other Information</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cook Is.</td>
<td>10,800,000</td>
<td>8,437,500</td>
<td>11.40%</td>
<td>Access fees for FY 2014/2015</td>
</tr>
<tr>
<td>FSM</td>
<td>47,518,000</td>
<td>47,518,000</td>
<td>20.90%</td>
<td>The fees are those actually collected (from government audit)</td>
</tr>
<tr>
<td>Fiji</td>
<td>1,100,513</td>
<td>555,815</td>
<td>0.04%</td>
<td>The only access fees since 2006 are from the US Tuna Treaty</td>
</tr>
<tr>
<td>Kiribati</td>
<td>141,570,000</td>
<td>116,040,984</td>
<td>75.00%</td>
<td>Information from the Ministry of Finance and Economic Development Annual Report 2014</td>
</tr>
<tr>
<td>Marshall Is.</td>
<td>16,920,802</td>
<td>16,920,802</td>
<td>16.40%</td>
<td></td>
</tr>
<tr>
<td>Nauru</td>
<td>19,340,000</td>
<td>15,852,459</td>
<td>13.70%</td>
<td>By FY for fees and total revenue</td>
</tr>
<tr>
<td>Niue</td>
<td>813,843</td>
<td>635,815</td>
<td>3.30%</td>
<td>For FY 2013/2014</td>
</tr>
<tr>
<td>Palau</td>
<td>3,620,586</td>
<td>3,620,586</td>
<td>3.30%</td>
<td>Access fees from government audit</td>
</tr>
<tr>
<td>PNG</td>
<td>218,500,000</td>
<td>85,019,455</td>
<td>1.70%</td>
<td>Access fees estimated</td>
</tr>
<tr>
<td>Samoa</td>
<td>1,328,395</td>
<td>555,814</td>
<td>0.30%</td>
<td>The only access fees are from the US Tuna Treaty</td>
</tr>
<tr>
<td>Solomon Is.</td>
<td>213,361,944</td>
<td>27,963,558</td>
<td>7.20%</td>
<td></td>
</tr>
<tr>
<td>Tonga</td>
<td>1,167,816</td>
<td>627,858</td>
<td>0.40%</td>
<td>Access fees for 2014; government revenue for FY 2013/2014</td>
</tr>
<tr>
<td>Tuvalu</td>
<td>18,028,933</td>
<td>14,777,814</td>
<td>58.30%</td>
<td></td>
</tr>
<tr>
<td>Vanuatu</td>
<td>180,326,546</td>
<td>1,759,112</td>
<td>1.00%</td>
<td></td>
</tr>
</tbody>
</table>

Many experts argue that the revenue from access agreements with foreign vessels is low and often not well distributed to fisheries ministries and local communities, remaining in the capital and leaving the local "fishers both without fish and without the dollars." In East Africa, some countries along the agreements, joint ventures, and charters to foreign companies, they pointed to the "white elephant" in the window known as the Mapurul-Katembe bridge, which was built by the Chinese. The individual remarked: "There's no free lunches. They're taking our natural resources." The individual also went on to express that it is widely believed in and outside of government - that the recently arrived Chinese vessels were given access in return for the infrastructure projects across the country. Moreover, the recently arrived vessels are seen as not complying with fisheries regulations, and that the vessels will be here for a few years, capture everything that they need and collapse the stocks in the process. This opinion was in stark contrast to the perceptions of other non-Chinese foreign entities utilizing the joint venture system: European and Japanese joint ventures have operated in Mozambique for decades and are invested in the long-term viability of the fishery, whereas the Chinese are invested in the short term with little concern for long-term effects on the health of the fishery and the impact it may have on Mozambican communities. The overwhelming sentiment...
DWFF: Why DWFF is a Problem?

1. Destroying fish stock + marine ecosystem;
2. Undermining rule of law;
3. Worsening poverty;
4. Etc.


China’s Monster Fishing Fleet

Though not alone in its destructive practices, Beijing’s rapacious fleet causes humanitarian disasters and has a unique military mission.

By Christopher Pala
November 30, 2020, 6:24 AM

DWFF: Why DWFF is a Problem?

CORRUPTION
DWFF: Why DWFF is a Problem?

Corruption quickly emerged as a common theme in interviews with private sector, non-governmental, and even governmental interviewees. In one meeting with a private sector representative, the individual discussed the allocation of access to fishery resources by exploiting corrupt practices, institutions, and officials. Moreover, there are real concerns that foreign access agreements can be influenced by quid pro quo, tacit agreements, and coercion where infrastructure or targeted development assistance may translate into access of natural resources or even further in some cases outright corruption. Instances of such influence exist across the DWF industry – such as Chinese vessels acquiring exemptions for transhipment in Ghana in the early 2000s, or even tying access to fisheries with other assistance packages like infrastructure development in Mozambique.

Ghana’s fishing failure

By: By Joan Nimarkoh in Accra and Billie Adwoa McTernan in Prampram
Posted on Monday, 10 August 2015 14:01

“There is political interference with enforcement. Some politicians have vessels themselves. Some fishermen are funding political parties,” he adds.

2.1.3 A captured state?

The corrosive impact of access agreements on governance may occur in other ways. Dependence on revenues from access agreements may undermine the independence of African regulators and policy makers. This tendency may be exacerbated where access agreements are linked to further loans and aid projects.

A manifestation of this problem may occur when fishing boats operating under access agreements break rules and regulations. The host state may fail to respond with appropriate sanctions, due to a wish to protect diplomatic relations. This may explain why, in many African countries, forms of illegal fishing by DWF seem to be treated leniently. For example, some commentators in Mozambique sense...
DWFF: Why DWFF is a Problem?

NATIONAL SECURITY
DWFF: Why DWFF is a Problem?
DWFF: Why DWFF is a Problem?

SUBSIDY
DWFF: Why DWFF is a Problem?

- Total value of subsidies provided by the top 10: 22.8 billion USD (64% of global subsidies).
- 67% of the 22.8 billion USD is harmful subsidies (around 15.3 billion USD).
- China provides 5.9 billion USD of harmful subsidies (38.5% of the total harmful subsidies).

Figure 1: Estimated subsidies provided in 2018 by the ten largest providers of harmful subsidies (Sumaila et al. 2019), ranked in order of the provision of harmful subsidies (left to right). Harmful, ambiguous and beneficial subsidies are shown in black, white and grey, respectively.
DWFF: Why DWFF is a Problem?

Table 1: Estimated provision of harmful fisheries subsidies to the SSF and LSF fleets in 2018 by the ten largest providers of harmful subsidies (Schuhbauer et al. 2020).

<table>
<thead>
<tr>
<th>Country</th>
<th>Harmful subsidies to SSF (USD millions)</th>
<th>Harmful subsidies to LSF (USD millions)</th>
<th>Proportion harmful subsidies to LSF (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>China</td>
<td>270.2</td>
<td>5,615.5</td>
<td>95.4</td>
</tr>
<tr>
<td>Japan</td>
<td>868.5</td>
<td>1,242.0</td>
<td>58.9</td>
</tr>
<tr>
<td>Korea Rep</td>
<td>294.5</td>
<td>1,205.1</td>
<td>80.4</td>
</tr>
<tr>
<td>Russian Fed</td>
<td>19.5</td>
<td>1,142.5</td>
<td>98.3</td>
</tr>
<tr>
<td>USA</td>
<td>218.7</td>
<td>917.5</td>
<td>80.8</td>
</tr>
<tr>
<td>Thailand</td>
<td>110.9</td>
<td>958.0</td>
<td>89.6</td>
</tr>
<tr>
<td>Taiwan</td>
<td>46.9</td>
<td>661.6</td>
<td>93.4</td>
</tr>
<tr>
<td>Spain</td>
<td>15.7</td>
<td>667.1</td>
<td>97.7</td>
</tr>
<tr>
<td>Indonesia</td>
<td>202.9</td>
<td>363.1</td>
<td>64.2</td>
</tr>
<tr>
<td>Norway</td>
<td>116.8</td>
<td>410.4</td>
<td>77.8</td>
</tr>
<tr>
<td>Total (Average %)</td>
<td>2,164.6</td>
<td>13,182.8</td>
<td>83.6</td>
</tr>
</tbody>
</table>

- Only Japan, Indonesia and Norway whose subsidy proportion to LSF is under 80%.
- Russia, Spain and China sit as the top-3 in terms of proportion of harmful subsidies to LSF.
Figure 2: The volume of catch in millions of tonnes that the top-ten providers of harmful subsidies took from domestic, distant-water and high-seas locations in 2016 (Pauly and Zeller 2016). Domestic, distant-water and high-seas shown in black, white and grey, respectively.
DWFF: Why DWFF is a Problem?

• Country with lowest DW catches: Indonesia
• Country with highest DW catches: China
• Country with lowest high seas catches: Thailand
• Country with highest high seas catches: Indonesia
• Country with the highest domestic catch: China
• Country with the lowest domestic catch: Spain
• Countries whose domestic catches is smaller than its DW catches: China, Thailand and Spain.
DWFF: Why DWFF is a Problem?

The most fished EEZ
DWFF: Why DWFF is a Problem?

INCONSISTENCY
DWFF: Why DWFF is a Problem?

China's policies and practice on combatting IUU in distant water fisheries

Huihui Shen x, Shuolin Huang x.x

x School of Foreign Languages, Shanghai Ocean University, Shanghai, 201306, China
x College of Marine Culture and Law, Shanghai Ocean University, Shanghai, 201306, China

In December 2017, the Ministry of Agriculture issued the 13th Five-Year National Plan for China DWF Development, calling for slowdown of DWF development (zero-growth of enterprise number), strict control of fishing vessel scale (vessel number not exceeding 3000 in 2020), transformation and upgrading of DWF industry (Ministry of Agriculture and Rural Affairs, 2018e). Meanwhile, the plan requires the government to provide support for the transformation of DWFs, and the development of high-tech, high-efficiency fishing vessels.

In 2013, the decline of fish stocks in Chinese waters, together with China's growing demand for protein, led Xi Jinping to urge his nation's fishermen: "Build bigger ships and venture even farther into the oceans and catch bigger fish."


Construction begins on world’s first 100,000-tonne intelligent fish farming vessel in Qingdao

The Conson Group plans to invest in the construction of an aquaculture armada consisting of 50 such ships with a gross tonnage of 100,000 tonnes each, which are expected to annually produce about 200,000 tonnes of seawater fish with an annual output value exceeding 11 billion yuan ($1.68 billion).

With a length of 249.9 meters, a width of 45 meters and a designed speed of 10 knots, the vessel is able to avoid typhoons, red tides and other severe weather and disasters, conducting aquaculture operations in seas around the world.
DWFF: Why DWFF is a Problem?

UNDERMINING RULE OF LAW
DWFF: Why DWFF is a Problem?

The boat crew initially sought to escape and the Russian boarder guards had to fire warning shots, the statement said.

According to the press release, after the Argentine coast guard ship Derbes discovered the Lu Yan Yuan Yu 010 fishing off the coast Puerto Madryn, Chubut Province on Wednesday, 14 March, it contacted the vessel by radio and eventually attempted to board it. However, the Lu Yan Yuan Yu 010 ignored all attempts at communication, turned off its lights and fled to international waters.

On the night of March 1, PNA personnel aboard the coast guard GC-24 Mantilla detected the Chinese ship Hua Xiang 801 within Argentina’s Exclusive Economic Zone (EEZ), 199 nautical miles off the coast of San Jorge Gulf. The Chinese vessel didn’t emit satellite positioning information.
DWFF: Why DWFF is a Problem?

On October 6 at 03:28 am, the boat RUNDA 608 began to slow down to 0.1 knots and maintains this low speed for about 6 hours apparently with a behavior similar to a boat in fishing activity. As he continued his route to Chimbote and crossed the line of the 200 miles of the Peruvian sea.

After detecting the Jing Yuan last month, the coast guard said it called on the boat to stop moving, at which point it turned off its lights and tried to escape into international waters.

An Argentine coast guard vessel pursued the boat and fired warning shots, but it said four other boats tried to collide with its vessel to prevent the Jing Yuan from being captured. The Foreign Ministry called off the operation after eight hours.
DWFF: Why DWFF is a Problem?

Radio frequency calls were made and sound and visual signals were made to make contact with it, however, the ship turned off its fishing lights and began the flight in navigation towards international waters without responding to the permanent calls by different frequencies of the maritime mobile service, "the

Why running to the international waters (high seas)?
## DWFF: Why DWFF is a Problem?

<table>
<thead>
<tr>
<th></th>
<th>High Seas</th>
<th>EEZ</th>
<th>Territorial Sea</th>
<th>Archipelagic waters outside sea lane passage</th>
<th>Strait Used for International Navigation</th>
<th>Archipelagic sea lane passage</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Enforcement against passage</strong></td>
<td>Yes.</td>
<td>Yes.</td>
<td>Passage is &quot;not innocent&quot; + Art. 220 UNCLOS</td>
<td>Passage is &quot;not innocent&quot; + Art. 220 UNCLOS</td>
<td>Pollution (art. 233 UNCLOS)</td>
<td>Pollution (art. 233 UNCLOS)</td>
</tr>
</tbody>
</table>
DWFF: Why DWFF is a Problem?

Why running to the international waters (high seas)?

“One-on-one arena”

Hot pursuit

Stronger vessel wins

Flag State Responsibility

Monetary penalty paid to the Flag State

Remedy (art. 94 para. 6 UNCLOS)  
\[ \text{time+cost > compensation} \]

Unfortunate position for the Pursuing State
Indonesia’s Maritime Security
Archipelagic waters: 3,110,000 km²
Territorial Sea: 290,000 km²
EEZ: 3,000,000 km²
Continental Shelf: 2,800,000 km²
Islands: 17,504
Coastline: 104,000 km
## IMSS: Maritime Zones

<table>
<thead>
<tr>
<th>MZ</th>
<th>IW</th>
<th>AW</th>
<th>TS</th>
<th>CZ</th>
<th>EEZ</th>
<th>CS+ECS</th>
<th>HS</th>
<th>TA</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligation to give due publicity and deposit</td>
<td>-</td>
<td>V</td>
<td>V</td>
<td>-</td>
<td>V</td>
<td>V</td>
<td>-</td>
<td>O</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Art 47 para 9 UNCLOS</td>
<td>Art 16 para 2 UNCLOS</td>
<td></td>
<td>Art 75 para 2 UNCLOS</td>
<td>Art 79 para 9 &amp; Art 84 para 2 UNCLOS</td>
<td></td>
<td>Art 134 para 3 jo. art 1 para 1 UNCLOS</td>
</tr>
</tbody>
</table>

Another UNCLOS features in Indonesia: SUIN & 3 ASLP
IMSS: Agencies & Main Challenges

1. Multi Agency Multi Task;
2. Fisheries:
   1. At sea: MMAF, Navy, Marine Police and Coast Guard (arrest and detention only); “I” fishing
   2. Land based: MMAF “U” fishing
3. Marine Police, ICG and Navy deal with maritime security challenges other than fisheries;
4. Navy: MEF 60,42%. Navy vessels: 8 (fregat), 139 (patrol), 24 (Corvet), 12 (minesweeper), 3 (submarines)
5. ICG: 10 vessels (12,9% from the target of 77 vessels); 1.004 personnel (36,5% from the target of 2.746 personnel)
7. Low ability to conduct hot pursuit (outnumbered, lack of funding & vessels inability).
8. Numerous not-so-interconnected maritime surveillance system across ministries/agencies.
9. A huge room of improvement for inter-agency cooperation and MCS in Fishing Management Zones other than North Natuna Sea (FMZ-711) in relation to China’s DWF, FMZ-717 (North Papua).
IMSS: Surrounding Challenges

1. COVID-19 gives a huge pressure to state budget. Natural resources exploitation, consequently, taken as a solution.
2. Corruption Perception Index Indonesia (2020): 37 (score: 0 – 100);
Recommendation
Recommendation

1. Ship rider agreement: law enforcement officer of one agency to embark on another agency’s patrol vessels. Fisheries jurisdiction can be exercised using patrol vessels of non-fisheries agency, for instance: customs.

2. Increase the frequency of bilateral joint patrol covering the outer limit of EEZ, particularly FMZ-717 (North Papua), FMZ-718 (South Papua) in relation to DWF.

3. Streamlining the perception:
   1. Article 62 UNCLOS stipulates that a coastal state can open access with requirements:
      1. Surplus of fish stock;
      2. All relevant factors;
      3. Access to be given upon landlocked states and/or geographically disadvantaged states;
      4. Prevent economic dislocation in the region;
   2. Sovereign rights = rights that is sovereign. Exclusive in nature, not preferential → coastal state’s inability to harvest does not give birth an entitlement for another state who can.
   3. Bring the fish to the shore not the vessel farther.
   4. Stop harmful subsidies!
Recommendation

5. Build common understanding: countermeasures against escaping IUU fishing.
   1. Nowadays, International cooperation against transnational IUU fishing is **necessary**.
   2. A small number of States who possess a formidable patrol ships to exercise right of hot pursuit;
   3. Escaping IUU fishing vessel is not entitled to the right of navigation (against good faith and abuse of right principle governed under article 300 of UNCLOS).
   4. Duty to protect marine environment, including to not involve in IUU fishing (AO ITLOS, 2015) is obligation erga omnes: obligation owed to the international community as a whole (Nilufer, 2020). A flag state not exercising its due diligence over its vessels engaged in IUUF = international wrongful act.

Another State can assist the injured state by stopping the passage of an escaping fishing vessel, not to prosecute it, but to give an opportunity to injured state in pursuing remedy to the flag state. The detained vessel must be released when the flag state has fulfilled its duty.
Thank you