
Discussion Document on Human Trafficking in Fisheries from the Perspective of the UNCLOS Provision that Bans Slavery – The Case Study of Indonesia¹

1. Background

This discussion document is based on the 14th webinar in a series of Blue Justice Forum webinars facilitated by the Blue Justice Initiative Secretariat in conjunction with the UNDP Blue Resilience project.

The theme for the webinar was the **‘Human Trafficking in Fisheries from the Perspective of the UNCLOS Provision that Bans Slavery – The Case Study of Indonesia’**.

The webinar was presented by H.E Prof. Dr. Todung Mulya Lubis – Indonesian Ambassador to Norway and Human Rights Lawyer and Dr. Ioannis Chapsos - Assistant Professor and Research Lead in Maritime Security Centre For Trust, Peace & Social Relations, Coventry University. A total of 30 participants joined the webinar from 14 countries (Australia, Austria, Brazil, Denmark, Indonesia, Ireland, Israel, Malaysia, Norway, Pakistan, Sri Lanka, Switzerland, United Kingdom, and the United States). The webinar was moderated by Emma Witbooi from the Blue Resilience project.

2. Topics in Focus

Human Trafficking in Fisheries from the Perspective of the UNCLOS Provision that Bans Slavery – The Case Study of Indonesia’ – Prof. Dr. Todung Mulya Lubis – Indonesian Ambassador to Norway and Human Rights Lawyer.

1. The rapid growth of the world's population has led to an increase in demand for fishery products as a food source. Oceans are crucial to food security around the world, and Indonesia is no exception. On a global level, the country ranks third in capture fisheries production, amounting to 6,71 million tons in 2018.
2. According to Ministry of Foreign Affairs, there were over 250.000 Indonesian fishermen working on foreign fishing vessels in 2013-2015. These high numbers can be explained by a number of push-factors, including lack of jobs, low wages and the economic insecurity of artisanal fishing. On the pull-factor side, there is an increase in demand for cheap labour,

¹ The webinar was held on 19 November, 11:00 CET.

foreign fishing vessels is considered a more stable source of livelihood, and the relatively high salaries promised by manning agencies.

3. The problem starts with the manning agencies that handle the recruitment process. Many of these companies operate without licences or without 'proper' licences despite the legal obligation for a permit from the Ministry of Transportation, the Ministry of Justice and Human Rights, the Ministry of Manpower & Transmigration, and the Minister of Trade.
4. The recruitment process typically includes an administrative process, an employment agreement (the recruits rarely understand their legal rights and obligations therein), preparation of documents (licenses, passports), training and training certificates. Training is often not conducted in the required thorough, professional manner.
5. Recruits are required to pay for recruitment and training. Manning agencies typically lend them money to this end and, as guarantee, hold recruits' passports and withdraw/ cut their salaries. Once the seafarers have embarked on fishing vessels, they are subject to being unpaid, underpaid, overworked, undocumented, human trafficking and modern slavery. An underlying challenge is that Indonesian migrant workers have little knowledge of their own worker rights.
6. Chapter 99 of the United Nations Convention on the Law of the Sea (UNCLOS) prohibits the transport of slaves. It states that every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. Any slave taking refuge on board any ship, whatever its flag, shall ipso facto be free. The challenge is to what extent can this be enforced on the high seas?
7. Indonesia ratified the 1982 United Nations Convention on the Law of the Sea (UNCLOS) by Law No. 17 of 1985 on 31 December 1985, which entered into force in 1986. Due to the large ocean space to be patrolled in Indonesia, again the challenge is of enforcement.
8. From 2018 until 9 July 2020, the Indonesian Migrant Workers Protection Agency received 469 complaints from Indonesian fishing crew working on foreign fishing vessels. Ministry of Foreign Affairs data notes that during the first semester of 2020, the distribution of cases of Indonesian fishing crew on Chinese fishing vessel occurred on 45 ships, with 237 victims, and in 13 countries.
9. During the 2012-2015 period, the Ministry of Foreign Affairs facilitated assistance for 2,368 Indonesian crew members involved in cases overseas, with 12.1% (287) of the cases concerning human trafficking.
10. Recent examples of human trafficking cases show that vessels involved in such practices are often involved in additional criminal offences, including child labour, smuggling of people, modern slavery, illegal transshipment, used of prohibited fishing gear (trawlers), document forgery, and illegal transaction of fuel at sea.
11. In the Long Xing 629, Long Xing 605, Long Xing 802, and Tian Yu 8 Case, 18 Indonesian migrant fishers became suspected victims of forced labour and human trafficking, which resulted in four deaths. Three bodies of the Indonesian migrant fishers were buried at sea and one other died at Busan Medical Centre. The 14 other crew members experienced various forms of human rights violations. The Indonesian government are currently prosecuting the actors involved, including the manning agency that carried out the placement.
12. A key underlying issue to dealing with human trafficking in the fisheries sector is poor ocean governance: Legal loopholes, absence of law, transshipment, inadequate monitoring and sanctions, and falsification of documents and vessel IDs are all components that facilitate such offences.

13. There are recent legal attempts to protect Indonesian fishing crew on foreign fishing vessels. Law No. 21 of 2007 on the Eradication of the Crime of Human Trafficking Regulates all types of human trafficking including human trafficking of Indonesian migrant workers. Law No. 18 of 2017 on the Protection of Indonesian Migrant Workers Sets out standard of protection for Indonesian migrant workers during pre-employment, during employment, and after employment. Enforcement efforts, however, remain unsatisfactory.

Human Trafficking in Fisheries from the Perspective of the UNCLOS Provision that Bans Slavery – The Case Study of Indonesia’ – Dr. Ioannis Chapsos - Assistant Professor and Research Lead in Maritime Security Centre For Trust, Peace & Social Relations, Coventry University.

14. Illegal, unreported and unregulated (IUU) fishing is estimated to be a US\$23 billion annual industry, with as much as 26 million tons of fish being caught illegally. It has severe implications on artisanal fishing communities and threatens human security by destabilizing food, economic, environmental and social security.
15. Fisheries crime includes a long list of (traditional) crimes, such as human trafficking, document fraud, drug trafficking, corruption, tax- and customs evasion, etc. which occur within the fishing industry. Organized criminal networks are involved and need to be dismantled.
16. There is no universal legal definition of modern slavery; rather, there is a working definition from a policy perspective and in academia referring to it as “a wide range of human rights abuses resulting in the severe exploitation of other people for personal or commercial gain”. It is associated with exploitative practices such as forced labour, bonded or indebted labour, human trafficking, and deceptive recruitment for labour, amongst others, which are crimes in their own right but also associated with the concept of modern slavery.
17. In 2015, more than 2,000 foreign fishermen from Myanmar, Cambodia, Laos and Thailand were found stranded on Ambon and Benjina, Aru island in Indonesia. Victims of trafficking in the fisheries sector, they were rescued by IOM Indonesia. Joint research by the IOM Indonesia, Indonesian Ministry of Marine Affairs & Fisheries (KKP) and Coventry University on the case unveiled new trends about the inner workings of transnational organized crime networks operating in the fishing industry.
18. Recruitment teams had visited villages across four countries, promising work in the Thai fishing industry. Fishing companies in Thailand at the time accepted undocumented and/or unregistered foreign unskilled workers and there were no registration costs for workers or ‘employers’.
19. Victims were male, 90% of them between 20-40 years old, some with their date of birth unknown since documents had been confiscated by the recruiters. They all came from a poor background, with low levels of education or none at all. 70% of them were single/unattached, hence more willing to work overseas.
20. 70% of the victims had to pay a ‘recruitment fee’ to the agent (\$2–4,000) and almost half of them were required to sign a debt contract prior to their departure. These contracts were later used as a means of pressure for forced labour and excessive working hours.
21. It took between one to 6 months to complete each fishing trip – with more than 12 working hours per day – and victims are denied any kind of salary, which was used to pay their initial debts. Remote vessel locations made escape impossible, and 75% of the victims reported that they were not allowed to move freely neither on board the vessel nor ashore.

22. Living quarters were unsanitary and victims were denied adequate food, water and medical treatment. Testimonies reported physical abuses, psychological abuses, and even killings as a means of control, to scare the trafficked workforce.
23. Conclusively, the Ambon and Benjina Case ticked all the boxes of the definition of modern slavery: exploitation of other people for personal or commercial gain, deceptive recruitment of labour, human trafficking, use of violence, forces labour and debt bondage. There was no question that art 99 UNCLOS was indeed violated.
24. Art 99 UNCLOS requires updating to reflect contemporary challenges, amongst others modern slavery, in order to be an effective legal instrument in these cases. The Benjina and Ambon Case showed that reflagging – compounded by flags of convenience and open registries - and transshipments were key enabling factors for slavery and slave trade (as defined in the UNCLOS) and human trafficking in the fisheries sector. UNCLOS obliges flag state responsibility to prevent and punish in this regard but legal loopholes and inability or unwillingness of flag states to exercise their responsibilities is problematic.
25. Art 110 UNCLOS is potentially facilitate with regards to right of visit on the high seas where there is a reasonable ground for suspicion that the ship is engaged in the slave trade. When drafted, probably a different type of slave trade was envisaged, but one can use this article to ground a right of visit in the context of modern slavery on fishing vessels. The threshold for ‘reasonable ground of suspicion’ becomes relevant. Further, the article only covers right of visit on the high seas; within different maritime zones (such as e.g. territorial waters and the exclusive economic zone) jurisdictional questions arise. Lessons learned from the combat against piracy on how to overcome such obstacles, especially in cases where sovereign states can’t enforce effective policing and control need to be considered.
26. Another lesson learned is that criminal activities occurring at sea should most effectively be addressed on land given that, in the context of modern slavery, this is where the recruitment takes place. There is great potential in increasing institutional cooperation to this end.
27. The examined case studies and the presented findings demonstrate how widespread modern slavery in fisheries is and that the ungoverned nature of the maritime space provides opportunities for such illegal activities to flourish in the form of exploitation of human beings for personal and commercial gain.
28. Both perpetrators and victims are non-state actors, there is thus a need for a comprehensive approach, rather than the traditional state centric approach, to the problem.
29. UNCLOS is a key document on ocean governance but needs to be updated to reflect more contemporary challenges and become a modern tool to facilitate international cooperation rather than act as an impediment.
30. Maritime insecurity is complex and highly interconnected. The fishing industry is used as a legitimate cover for illicit activities, and IUU fishing is related to fisheries crime in the form of modern slavery, forced labour; human trafficking and smuggling.
31. One way to combat IUU fishing is to prioritize addressing forced labour and modern slavery – the human exploitation which fuels and helps to make it profitable.

In sum:

32. According to Indonesian Ministry of Foreign Affairs data, there were over 250.000 Indonesian fishermen working on foreign fishing vessels in 2013-2015. These high numbers can be

explained by a number of push-factors, including lack of jobs, low wages and the economic insecurity of artisanal fishing. On the pull-factor side, there is an increase in demand for cheap labour, foreign fishing vessels is considered a more stable source of livelihood, and the relatively high salaries promised by manning agencies.

33. Manning companies demand new recruits to pay for their own training, a process in which the poor work force often indebted themselves. This indebtedness is later used as a means of pressure and facilitates modern slavery in the form of exploitation of human beings for personal and commercial gain.
34. Recent human trafficking/modern slavery cases in the Indonesian fishing industry show that victims live on board in unsanitary living conditions, are denied adequate food, water and medical treatment. Testimonies reported physical abuses, psychological abuses, and even killings as a means of control, to scare the trafficked workforce.
35. Art 99 UNCLOS prohibits the transport of slaves. It states that every State shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag and to prevent the unlawful use of its flag for that purpose. The provision is an important ocean governance provision but must be updated to reflect contemporary challenges, amongst others modern slavery, in order to be an effective legal instrument in these cases. Flag state responsibility and accountability remains a challenge in effective use of existing provisions to combat modern slavery in fisheries.
36. The international community should explore ways to make the most of UNCLOS Art 110 'Right to visit' on how to establish 'reasonable ground' to board and search vessels suspected to be involved in modern slavery. To this end, international collaboration and information sharing is of paramount importance.

General discussion

Discussion themes included:

1. Prosecution practices of human trafficking cases involving Indonesian fishermen.
2. Legal definition of modern slavery.
3. The lack of political will as an impediment to effective ocean governance.
4. The importance of bilateral and multilateral cooperation to address the challenge of human trafficking in the fisheries sector.