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## FAIR FISHING HUMAN RIGHTS AND SUSTAINABILITY IN BILATERAL FISHING AGREEMENTS BETWEEN THE EU AND DEVELOPING COUNTRIES

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FAIR FISHING  
HUMAN RIGHTS AND SUSTAINABILITY IN  
BILATERAL FISHING AGREEMENTS BETWEEN THE  
EU AND DEVELOPING COUNTRIES

BY

ANNA S. ANTONOVA

A THESIS SUBMITTED IN PARTIAL FULFILLMENT OF THE  
REQUIREMENTS FOR THE DEGREE OF  
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MASTER OF ARTS THESIS

OF

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## **Abstract**

This project investigates bilateral fishing agreements between the European Union and developing states in order to assess the extent to which these agreements are as successful at implementing international law principles as European Union officials have claimed they are. Over the past two decades, European Union rhetoric has communicated an intent to take on a normative power role in advancing human rights and sustainable development approaches in the context of global fisheries policy. Officials have propagated an image of a “new Europe,” conscientious of its colonizing heritage, committed to promoting good maritime governance, and ensuring responsible fishing worldwide as part of its global responsibility to sustainable development. These normative principles have at times been framed as an integral part of the European Union’s legal and political identity. In practice, however, the bilateral agreements have often come short of European Union aspirations, facing criticism for hindering rather than aiding local development. This project explores the bilateral agreements from an international law perspective, engaging in grounded theory, discourse analysis, and a detailed case study on European Union-Senegal fishing relations. For the European Union, the study raises questions about conflicts between national and supranational fishing goals and about the challenges these conflicts present to its goal of normative leadership. More generally, the project suggests implications for enacting international law principles on the ground, as well as for the inherent power dynamics of post-colonial relations fifty years on.

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## List of Abbreviations

ACP	African-Caribbean-Pacific group
CFP	Common Fisheries Policy
Code of Conduct	FAO's Code of Conduct for Responsible Fisheries, 1995
CVCE	Centre Virtuel de la Connaissance sur l'Europe
DG MARE	Directorate-General for Maritime Affairs and Fisheries
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EU	European Union
FAO	Food and Agricultural Organization of the United Nations
FPA	Fishing Partnership Agreement
GEF	Global Environmental Facility
ILO	International Labour Organization
IUU	Illegal, Unregulated, and Underreported fishing
OECD	Organization for Economic Cooperation and Development
SEA	Single European Act, 1986
SFA	Sustainable Fishing Partnership Agreement
SSF Guidelines	FAO's Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication, 2014
The Stockholm Conference	United Nations Conference on Human Environment, 1972
UK	United Kingdom
UN	United Nations
UNCED	United Nations Conference on Environment and Development
UNCLOS III	United Nations Convention on the Law of the Sea, 1982
UNDP	United Nations Development Programme
UNEP	United Nations Environment Programme
US	United States
USAID	United States Agency for International Development
WSSD	World Summit on Sustainable Development, 2002
WTO	World Trade Organization

# Chapter 1: Introduction

## 1. Problem Statement

This project investigates bilateral fishing agreements between the European Union (EU) and developing countries in order to assess the extent to which these agreements are as successful at implementing international law principles as EU officials have claimed they are.<sup>1</sup> Over the past two decades, rhetoric from the European Commission and the Directorate-General for Maritime Affairs and Fisheries (DG MARE) has communicated an intent for the EU to take on a leadership role in enacting human rights and sustainable development approaches into global fisheries policy. Officials have propagated an image of a “new Europe,” conscientious of its colonizing heritage, committed to promoting good maritime governance and fishing practices worldwide as part of its global responsibility for sustainable development. Indeed, these normative principles have at times been framed as an integral part of the EU’s legal and political identity. In practice, however, the bilateral agreements have often come short of EU aspirations, facing criticism for hindering rather than aiding local development. This project investigates the challenges to the EU’s stated purpose of normative leadership by examining the international law framework in which the bilateral agreements exist and testing the alignment of the EU’s fishing goals and

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<sup>1</sup> A note on the European Union: For reasons of space, I have chosen to analyze the EU as a uniform actor in the realm of international law and international relations. In reality, of course, the EU is a much more complex entity. Increasingly centralized by many of its constitutional treaties (the most recent of which, the 2007 Treaty of Lisbon, changed the EU’s structure and empowered the European Parliament significantly), the EU is nevertheless governed by an intricate interplay between member states, represented by the Parliament and Council of Ministers, and the common interests defended by the European Commission. Research careers and numerous PhDs have been made on the examination of the EU’s inner political dynamic, both in general and in fisheries policy. This, however, has not been my purpose. Thus, although I do discuss in some depth the underlying dynamics of the EU as they pertain to fisheries governance (in Chapter 3), for the most part I have simplified the interactions between the EU’s three bodies, choosing to focus on the Eurocratic perspective generally advanced by the European Commission

policy actions with this framework. To do so, the work engages in grounded theory, discourse analysis, and a case study on EU-Senegalese fishing relations over the last three decades. For the EU, the study raises questions about conflicts between national and supranational fishing goals and about the challenges these conflicts present to its prospects of normative influence. More generally, the project suggests implications for enacting international law principles in fisheries governance, as well as for the inherent power dynamics of post-colonial relations.

## **2. Research Questions**

The guiding question for this study pertains to the EU's agency and purported leadership in global fisheries governance. There is a perceived incongruity between, on one hand, the EU's rhetorical claim of providing leadership in enacting human rights and sustainable development principles in its bilateral agreements with developing countries, and, on the other hand, the EU's actual external fishing policy. This work tests this observation with the following questions:

1. What is the overlap between the EU's rhetoric of exerting normative influence in international fisheries policy and its real potential for doing so? In particular:
  - a. What is the framework of international law in which the EU purports to act?
  - b. Are the EU's fishing goals and policy actions aligned with this framework?

## **3. Background**

The contemporary model for bilateral fishing agreements was introduced under the terms of the third United Nations Convention on the Law of the Sea in 1982 (UNCLOS

III), which codified the 200-mile exclusive economic zone (EEZ) into international law and effectively placed 90 per cent of the world's fisheries under coastal jurisdiction.<sup>2</sup> The EEZ provisions in UNCLOS III addressed above all increasing concerns with pressures on marine resources and improved understanding that these resources were not, in fact, inexhaustible.<sup>3</sup> Yet the EEZ regime also presented a balance between the interests of coastal (often developing) states and distant water fishing fleets (often from developed countries).<sup>4</sup> This arrangement reflected a significant input from developing countries, whose perspective played an important role in dethroning the previously dominant regime of “freedom of the seas.”<sup>5</sup> The significant sway of emerging states on the UNCLOS III negotiations meant also that the rights and duties pertaining to the EEZ regime emphasized fish in particular as an expression of developing countries’ interests in international ocean law.<sup>6</sup> Over the following decades, this notion of natural resources as inseparable from human and developmental rights became extremely influential in discourse on global fisheries governance, in parallel to similar discussions on sustainable development in international environmental law.

During the 2000s, these concepts found their way into the rhetoric of EU leaders who sought to establish the EU as a normative power in international law. In 2000, Romano Prodi ascended to his European Commission presidency for 2000-2005

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<sup>2</sup> L. Juda, “Basic trends in the evolving Law of the Sea and their implications for ocean use management,” *Oceanography* 14 (2001): 17-21.

<sup>3</sup> As famously claimed by Thomas Huxley in his Inaugural Address at the 1883 Fisheries Exhibition in London.

<sup>4</sup> L. Juda, “International environmental concern: Perspectives of and implications for developing states,” in *The Global Predicament: Ecological Perspectives on World Order*, David Orr and Marvin Soroos, eds. (Chapel Hill: University of North Carolina Press, 1979).

<sup>5</sup> Id.; H. Grotius, 1609, *Mare Liberum*; 1958 Geneva Convention on the High Seas, Article 2.

<sup>6</sup> 1982 United Nations Convention on the Law of the Sea, Part V, Articles 61.

proclaiming that the EU – “the new Europe,” as he called it – “must aim to become a global civil power at the service of sustainable global development.”<sup>7</sup> His Environment Commissioner, Margot Wallström, reaffirmed these statements two years later in the run up for the 2002 Johannesburg World Summit on Sustainable Development (WSSD): “EU has to play the leading role in ensuring that Johannesburg delivers concrete progress toward sustainability goals.”<sup>8</sup> Similar rhetoric emerged from discussions on the external dimension of the Common Fisheries Policy (CFP). As DG MARE prepared for the upcoming reform of the policy in 2012, its Green Paper seemed to echo Prodi and Wallström, outlining a vision for the near future in which “the EU continues its work to promote good maritime governance and responsible fishing worldwide [...] as part of the EU’s overall responsibility and effort to achieve better global governance of the seas.”<sup>9</sup>

The EU’s “worldwide effort” in promoting sustainable development and responsible fisheries had faced severe criticism for decades. For the most part, reviewers perceived the EU’s bilateral fishing agreements with developing countries as a form of political and economic imperialism that exports overfishing and promotes power imbalance instead of encouraging good governance.<sup>10</sup> The agreements were lambasted as unsustainable, exploitative, and, at best, “detached from the broader scope of European-

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<sup>7</sup> R. Prodi, “2000-2005: Shaping the New Europe” (speech, Strasbourg, 15 February 2000), available online: <[http://europa.eu/rapid/press-release\\_SPEECH-00-41\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-00-41_en.htm)>.

<sup>8</sup> M. Wallström, “A wake-up call for global sustainability” (speech, Brussels, 26 February 2002), available online: <[http://europa.eu/rapid/press-release\\_SPEECH-02-84\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-02-84_en.htm)>.

<sup>9</sup> European Commission, 2009. Green Paper on Reform of the Common Fisheries Policy. COM (2009) 163.

<sup>10</sup> E.g., see N. Johnstone, “The economics of fisheries access agreements: Perspectives on the EU-Senegal case.” Environmental Economics Programme Discussion Paper (1996); V. M. Kaczynski and D. L. Fluharty, “European policies in West Africa: who benefits from fisheries agreements?” *Marine Policy* 26 (2002): 75-93.

African development cooperation.”<sup>11</sup>

Calls for the EU’s “responsibility” in fishing came in part because of the EU’s significant presence in global fishing governance. Considering the numbers alone, the influence of the EU on global fisheries is tremendous. Collectively, the 28 member states are the world’s fifth biggest fish producer, responsible for a significant proportion of the total global catch (see Table 1 below).<sup>12</sup> The EU is also the world’s largest single market for fisheries products, with the highest total expenditure on purchasing fish products.<sup>13</sup> For many developing countries, the EU is the principle market for fishing exports, and therefore its policies in the area matter greatly.<sup>14</sup>

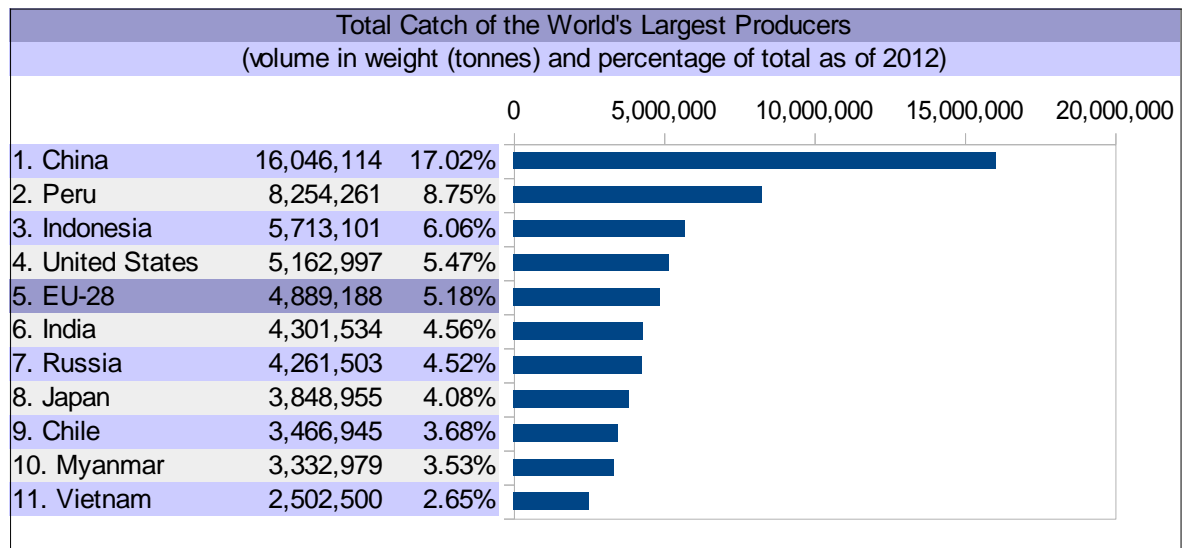


Table 1: Leaders in world catch, 2012. Adapted from European Commission,

<sup>11</sup> E. Witbooi, “The infusion of sustainability into bilateral fisheries agreements with developing countries: The European Union example,” *Marine Policy* 32 (2008): 669-679.

<sup>12</sup> European Commission. 2014. The European Union explained: Maritime affairs and fisheries. Available online: <[http://europa.eu/pol/pdf/flipbook/en/fisheries\\_en.pdf](http://europa.eu/pol/pdf/flipbook/en/fisheries_en.pdf)>.

<sup>13</sup> Directorate-General for Maritime Affairs and Fisheries, “Fishing outside the EU,” available online: <[http://ec.europa.eu/fisheries/cfp/international/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/index_en.htm)>; EUMOFA. 2014. “The EU fish market,” available online: <<http://ec.europa.eu/fisheries/market-observatory/>>.

<sup>14</sup> S. Ponte, J. Raakjær, L. Campling, “Swimming upstream: Market access for African fish exports in the context of WTO and EU negotiations and regulation,” *Developmental Policy Review* 25 (2007): 113-138.

2014.<sup>15</sup>

In an attempt to remedy its image and role, the EU introduced the term “fishing partnership agreements” (FPAs) during the 2002 CFP reform, offering coastal states a dedicated sum for sectoral support in addition to the EEZ access fee mandated by UNCLOS III.<sup>16</sup> The language of “partnership” originated from the 2000 Cotonou Agreement between the EU and the group of African-Caribbean-Pacific (ACP) countries, which focused on partnership and mutual effort in alleviating poverty and supporting development in ACP countries. The inclusion of this language was clearly intended as step toward the “new Europe” image pursued by EU officials. Even so, the new reincarnation of the bilateral fisheries agreements drew just as much criticism as its predecessor for its prescriptive approach and for ultimately failing to support the needs of developing countries effectively.<sup>17</sup>

These concerns continued to punctuate the debate as the EU began its 2012-2014 CFP reform cycle and renamed the agreements to “sustainable fishing partnership agreements” (SFAs), once again evoking notions of responsibility, sustainability, and a new beginning for its fishing relations with developing countries.<sup>18</sup> Throughout past manifestations of the agreements, critics predominantly highlighted the failures of EU policy to address issues of sustainable development, human rights, and cooperation. These

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<sup>15</sup> Directorate-General for Maritime Affairs and Fisheries, “Fishing outside the EU,” available online: <[http://ec.europa.eu/fisheries/cfp/international/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/index_en.htm)>.

<sup>16</sup> Directorate-General for Maritime Affairs and Fisheries, 2014, “Bilateral agreements with countries outside the EU,” available online: <[http://ec.europa.eu/fisheries/cfp/international/agreements/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/agreements/index_en.htm)>.

<sup>17</sup> F. Le Manach, M. Andriamahefazafy, S. Harper, A. Harris, G. Hosch, G.M. Lange, D. Zeller, and U.R. Sumalia, “Who gets what? Developing a more equitable framework for EU fishing agreements,” *Marine Policy* 38 (2012): 257-266; A. Gagern and J. van den Bergh, “A critical review of fishing agreements with tropical developing countries,” *Marine Policy* 38 (2012): 375-386.

<sup>18</sup> See Green Paper on Reform, n. 9 above.

shortcomings proved particularly jarring in contrast to the high aspirations that official EU rhetoric and policy language repeatedly communicated. This dissonance remains pertinent today in light of the CFP reform's recent conclusion, and serves as the main motivation for the present project.

#### **4. Study Outline**

Chapter two explores the international law framework within which the EU places its rhetorical claims of leadership. When official EU rhetoric and policy texts evoke the agreements and treaties of international law, they draw on the rich history of ideas contained in these documents. The EU's aspirations must be understood within the context of this framework. Hence, the chapter delves into the emergence of human rights and sustainable development as guiding principles of global fisheries management. Using grounded theory, the text constructs a notion of what normative influence actually means in the context of this framework. The chapter demonstrates that the concept of EU "leadership" is potentially problematic, as it appropriates ideas originally established through the key influence of developing countries. However, the international law framework does suggest a possible positive role for the EU: advancing the soft law mechanisms through which these ideas have been promulgated in the past.

If the international law framework calls for good faith in implementing international law principles, then the EU's potential for exerting positive influence depends on the alignment of its goals with concepts contained in this framework. Thus, chapter three examines the EU's external fishing objectives to determine if they are aligned with this model. The chapter discusses the internal dynamics and structural limitations that may affect the EU's international involvement in fisheries. It highlights



contradictions between national and supranational priorities as detriments to the EU's stated objective.

Chapter four conducts a detailed case study on bilateral fishing relations between the EU and Senegal. Senegal's longevity of fishing relations with the EU makes it well-placed to illustrate some of the issues involved in implementing international law principles within the bilateral agreements. The chapter examines what environmental and human rights or developmental notions exist in each iteration of the agreements and assesses what policy actions might be necessary to carry out the EU's rhetorical claims in a way consistent with international law.

The final chapter provides conclusions and recommendations about the extent to which the EU has implemented international law principles into its bilateral agreements. Hence, this chapter will place the EU-developing countries relations into a broader perspective by assessing the extent to which normative notions are employed, rhetorically or in practice, in these agreements. Painting a wider picture in this way will help establish a more realistic view of the EU's tangible influence. The work will draw conclusions about future perspectives on the FPAs/SFAs and the kinds of insights they offer for international relations, international environmental and ocean law, and the global regime for living resource governance.

## **5. Methods**

Because of its specificity and focus, this study employs qualitative methods of analysis. It utilizes a combination thereof. Predominantly, it applies critical discourse analysis methods to international policy and legal documents, speeches, and other sources

of recorded rhetoric.<sup>19</sup> In other words, the work makes inquiry into the structure and usage of language as a resource for understanding the underlying purpose and context of policy documents. International legal and political documents – treaties, agreements, policy communications, and law – employ language in a particularly purposeful way. This fact allows the critical discourse analyst to study their use of phrases and terminology and determine their political meaning, their conceptual origin, and their influence on subsequent documents. Hence, this work analyzes purposeful linguistic connections between documents in order to understand their real political impact.

Additionally, the study combines this critical discourse approach with elements of grounded theory.<sup>20</sup> The grounded theory approach allows for deep immersion in the (textual) data without pre-conceived hypotheses and with the aim of constructing themes, connections, and theories as part of the analysis.<sup>21</sup> Here, this approach is utilized especially in the second and third chapters. In the second chapter, critical discourse analysis of the text of international legal documents suggests themes and ideas that, through the use of grounded theory, are organized into a conceptual framework of human rights in fisheries from international law. Later chapters then study specific policy documents or actions in the context of this framework. Chapter three utilizes this framework, as well as the dual approach from chapter two, to construct alternate hypotheses of the EU's external fishing goals as they relate to international law.

Finally, the study employs a case-oriented analysis (case study) of the EU-Senegal

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<sup>19</sup> J. P. Gee, *An Introduction to Discourse Analysis: Theory and Method*, 3 ed. (New York: Routledge, 2011).

<sup>20</sup> B. G. Glaser and A. L. Strauss, *Grounded Theory: Strategies for Qualitative Research*. (New York: Aldine de Gruyter, 1967).

<sup>21</sup> Id.

bilateral fishing agreement. The case study examines concrete policy and evidence from journal literature in the context of the framework devised in chapter two. Simultaneously, the case study tests the two alternate hypotheses devised in chapter three.

These methods are well-suited to this project as the unit of analysis consists of documents constructed through intentional, structured use and choice of language. Hence critical discourse analysis presents itself as the best tool to interrogate the communicative choices made for these documents. The methods also afford the opportunity to study processes that occur over a long period of time, something particularly important to this project given its aim of examining long-term trends in fishing relations between the EU and developing countries.<sup>22</sup> Further, qualitative content analysis provides an opportunity for multiple reassessments, resulting in high reliability.<sup>23</sup> In general, methods used in this study are applied widely in political science research, suggesting that scholars who work with them generally find them reliable. Finally, methods are also unobtrusive and do not raise the possibility of violating subjects' privacy.

Potential weaknesses of these methods include the difficulty in assessing the causal relationship between identified trends and the danger of overlooking in-built biases without triangulation with other data.<sup>24</sup> Since policy documents, speeches, and other sources of official rhetoric are usually written for a specific purpose, they could present potential biases or distortions. Hence, to adjust for potential issues with internal validity, this project triangulates between different sources of rhetoric and maintains an awareness

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<sup>22</sup> Id.

<sup>23</sup> C. Robson. Content analysis of documents. *Real World Research*, 3 ed. (Cornwall: TJ International Ltd., 2011), pp. 348-361.

<sup>24</sup> Id.

of the underlying purpose of all documents under consideration. The analysis also compares findings to existing peer-reviewed literature in order to ensure the project's internal validity.

Finally, external validity is ensured through the study's contribution to the broader discussions of environmental justice and international ocean law. The development of global fisheries governance has distinct overall trends and concerns. Expanding upon these trends through a detailed examination of rhetoric in fisheries agreements would therefore be broadly applicable across the field. But the study also raises questions about EU involvement in international law in general – an ongoing discussion of what a supranational organization's role might be. The work touches upon the nature of implementing principles and ambitious aspirations from the international level all the way down to individual policy decisions. These are valuable themes – and ones that have wide implications for international relations and public policy research.

## **Chapter 2: Fishing It Right**

Modern fishing agreements between the EU and developing countries draw on a complex history of ideas that both sides have engaged with for decades. Thus, the EU's aspirations to leadership must be understood and evaluated within the conceptual international law framework in which they exist. This chapter explores the theme of natural resource use as an essential human and developmental right, demonstrating its origin and inherent controversies. Although many of the notions pertaining to this theme seem intuitive today, they emerged at the end of the 20<sup>th</sup> century largely through the influence of developing countries, making the very notion of EU leadership problematic. Instead, this chapter demonstrates that the EU can exert meaningful influence as a perpetrator of the soft law mechanisms that continue to advance human rights and sustainable development in the context of the fisheries governance today.

### **1. An Idea**

When the EEZ regime emerged from the UNCLOS III negotiations, it defined fisheries predominantly as a matter of national coastal state policy. This decision was partly for purposes of conservation and partly an expression of the compromise between coastal and distant water fishing states. Yet it also derived from a new notion that held natural resources as vital to encouraging development and thereby upholding human rights. At the time, this idea was almost revolutionary. It originated from the 1972 United Nations Conference on the Human Environment in Stockholm (the Stockholm Conference) – that is, shortly before the beginning of the UNCLOS III negotiations in 1973.

The Stockholm Conference first set in motion the principles referenced by EU officials decades later. The conference's conceptual influence on ecological discourse was unprecedented. It came to dictate subsequent international environmental policy for two reasons: because it defined the term "human environment" for the first time, and because it chose to do so in terms of socioeconomic and cultural, as opposed to just physical and biological, factors.<sup>1</sup> And this expanded definition was due largely to a new understanding of the environmental needs of developing countries, whose perspective proved both very influential and very different from the concerns of industrialized states, which had originally called for the conference.<sup>2</sup>

The opposing views of developed and developing countries punctuated preparations for the Stockholm Conference as well as its proceedings. Whereas advanced nations saw the ecological crisis in terms of environmental degradation and pollution resulting from past mismanagement during industrial growth, for developing countries, on the contrary, industrialization and resource exploitation presented a solution to poverty and related environmental problems such as water quality, wildlife depletion, and agricultural land degradation.<sup>3</sup> On one side, a Northern environmentalist framed ecological deterioration as "the consequence of indiscriminate deference to the 'sovereign' rights of nations – as interpreted by national governments."<sup>4</sup> On the other, a Brazilian representative reacted vehemently to developed nations' suggestion that "overpopulation"

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<sup>1</sup> L. Juda, "International environmental concern: Perspectives of and implications for developing states," in *The Global Predicament: Ecological Perspectives on World Order*, David Orr and Marvin Soroos, eds. (Chapel Hill: University of North Carolina Press, 1979).

<sup>2</sup> M. Strong, "One year after Stockholm," *Foreign Affairs* 51 (1973): 690-707.

<sup>3</sup> C. Joyner and N. Joyner, "Global eco-management and international organizations: the Stockholm Conference and problems of cooperation," *Natural Resources Journal* 14 (1974): 535-555; L. Juda, 1979, see n. 1 above.

<sup>4</sup> L. Caldwell, *In Defense of Earth: International Protection of the Biosphere*, (1972): 145.

in emerging states could present an environmental problem: “Plans for the Stockholm Conference are marked by what might be called the ‘Calvinistic’ attitude that the developed countries have demonstrated, by their development, a special right to salvation and perpetuation, thus passing on to the more numerous underdeveloped people the responsibility for creating the necessary space on earth.”<sup>5</sup> Hence, the Stockholm Conference revealed a contradiction between the need for multilateral cooperation, born out of ecologically defined space, and the rights of development, hindered by prescriptive policy.

In appeasing this conflict, the Stockholm negotiations circled in on a new idea: that developmental and environmental interests met halfway where human rights took central role. But this powerful perspective owed its existence largely to the overwhelming majority of developing countries, who exerted a strong influence on redefining the notion of human environment in terms of socioecological concerns.<sup>6</sup> Because it occurred shortly after a wave of decolonization, the Stockholm Conference marked one of the first instances in which developing countries played a prominent and even determining role in international governance. Their influence resulted not only in an expanded definition of what constitutes human environment, but also in a completely new understanding of the global scope of environmental issues.<sup>7</sup> Never before had it been imaginable to center international environmental management around the idea, voiced by Indian Prime Minister Indira Gandhi, that “poverty is the worst form of pollution.”<sup>8</sup>

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<sup>5</sup> M. Ozorio de Almeida, “The confrontation between problems of development and environment,” *International Conciliation* 39 (1970): 54.

<sup>6</sup> C. Joyner and N. Joyner, 1974, see n. 3 above.

<sup>7</sup> M. Strong, 1973, see n. 2 above.

<sup>8</sup> Cited in: UN Department of Economic and Social Affairs, “Rio+20: from environment to sustainable development,” (2012), available online:

This idea gave rise to some of the most prominent concepts in modern environmental law. Although the term “sustainable development” was most famously defined fifteen years later in the 1987 Brundtland Report, the language of its definition (“development that meets the needs of the present without compromising the ability of future generations to meet their own needs”) was a distinct heir of the very first principle in the 1972 Stockholm Declaration on the Human Environment: “[man] bears a solemn responsibility to protect and improve the environment for present and future generations.”<sup>9</sup> As seen earlier, this idea found its way into the UNCLOS III negotiations and the resulting EEZ regime. It gained further prominence during the 1992 United Nations Conference on Environment and Development (UNCED) in Rio, revolutionizing perceptions of what international environmental law must entail, and shaping the future direction of global fisheries governance.<sup>10</sup>

This is the idea, then, that found its way into EU rhetoric in the 2000s. By then, it had spread throughout numerous subsets of international law and produced a plethora of new meanings and approaches across various disciplines, including, as we will see, fisheries policy. However, at heart it was still the same core idea of human rights as central to environmental concern. When the 2009 Green Paper on Reform stated that the main objective in the new CFP’s external dimension must be “to extend the principles of sustainable and responsible fisheries internationally,” it referenced precisely derivatives

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[<http://www.un.org/en/development/desa/newsletter/desanews/feature/2012/06/>](http://www.un.org/en/development/desa/newsletter/desanews/feature/2012/06/).

<sup>9</sup> World Commission on Environment and Development (Brundtland Commission), *Our Common Future*, (1987), Chapter 2, para. 1; United Nations Environmental Programme, Declaration of the United Nations Conference on the Human Environment, (Stockholm Declaration, 1972), available online: <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503>.

<sup>10</sup> P. Sand, “International environmental law after Rio,” *European Journal of International Law* 4 (1993): 377-389.



of the original Stockholm Conference idea.<sup>11</sup>

It is vital to remember, however, that this idea had emerged mainly from the perspective of developing countries. Moreover, it gained the prominence it holds today through their early advocacy and sway. While subsequent iterations of the idea came to be advertised by international institutions as well as a variety of developed and developing countries, the latter continued to play a crucial role in the process. So impressive was their influence, in fact, that a critic described the “semicircle syndrome” – the need to divide round discussion tables at the 1992 Rio conference exactly by half to accommodate for concerns with equity – as “symptomatic of contemporary multilateral negotiations.”<sup>12</sup> And in subsequent fora of the international environmental framework (e.g., the Johannesburg World Summit on Sustainable Development in 2002), emerging states' collective retained a remarkable resilience of unity in defending the principles and supporting their further development.<sup>13</sup>

Because the necessity of considering human rights in environmental policy might not have emerged but for the advocacy of developing countries, modern EU language of leadership in this area appears problematic. In the context of the bilateral fishing agreements, to “extend” principles of sustainability would be to appropriate them from the same group of states that first suggested them. A more successful model for normative influence, by contrast, would engage more meaningfully with the concepts, emphasizing rhetoric of cooperation and a goal of strengthening specific policy mechanisms in the

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<sup>11</sup> European Commission, Green Paper on Reform of the Common Fisheries Policy, 22. COM (2009) 163.

<sup>12</sup> P. Sand, 1993, see n. 10 above.

<sup>13</sup> A. Najam, “Developing countries and global environmental governance: from contestation to participation to engagement,” *International Environmental Agreements* 5 (2005): 303-321.

realm of fisheries management. The following sections discuss what expression these principles and tools take on.

## 2. The UNCED Model of Governance

While the Stockholm Conference introduced themes of resource exploitation as a state's sovereign developmental right and of environmental protection as indivisible from human rights and development, it did so broadly. Later developments at the UNCED mega-conferences in 1992, 2002, and 2012 expanded these notions with more detailed definitions and specific policy recommendations. The Rio Declaration of 1992, in particular, developed the understanding of the "human environment" to include aspirations of alleviating poverty, providing equal rights to women, empowering indigenous people, protecting people under oppression, and engaging youth.<sup>14</sup> Subsequent UNCED conferences, at Johannesburg in 2002 and Rio in 2012, built further upon these concepts. At these later conferences, and especially in Johannesburg, the international community also emphasized poverty eradication, health, and the sustainability of consumption and production patterns.<sup>15</sup>

A brief aside is in order here. Following the direction set by Stockholm, UNCED mega-conferences reflected global commitment to tackling a very challenging task: to define the trajectory of lasting human relationship with the environment and devise corresponding action plans.<sup>16</sup> In doing so, the conferences continuously struggled, as they

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<sup>14</sup> UNCED, Rio Declaration on Environment and Development (1992), available online: <http://www.unep.org/Documents.Multilingual/Default.asp?documentd=78&articleid=1163>.

<sup>15</sup> UNCED, Johannesburg Plan for Implementation (2002), available online: [http://www.un.org/jsummit/html/documents/summit\\_docs/131302\\_wssd\\_report\\_reissued.pdf](http://www.un.org/jsummit/html/documents/summit_docs/131302_wssd_report_reissued.pdf).

<sup>16</sup> G. Seyfang and A. Jordan, "The Johannesburg Summit and Sustainable Development: How Effective are Environmental Mega-Conferences?" in *Yearbook of International Co-operation on Environment and Development*, S. Stokke and O. Thommesen, eds. (London: Earthscan, 2002), 19-26.

had at Stockholm, with resolving the conflicting perspectives of developed and developing countries.<sup>17</sup> As a result, the UNCED conferences ultimately promote a constructivist model of global governance, one that derives its legitimacy from cooperation and inclusivity.<sup>18</sup> Noting this here helps illustrate just how problematic it is to ascribe leadership to any one entity in this governance context –and particularly where doing so concerns the EU, a group of developed states with a distinct history of non-inclusivity. Instead, the very nature of the UNCED conferences and the issues discussed at them – including fisheries – highlights the necessity to stress cooperation.

### **3. Human and Developmental Rights in Fisheries**

It was through the UNCED conferences, as well, that ideas of human rights, sustainable development and cooperation, found their expression in fisheries governance. Chapter 17 of Agenda 21 – a multi-chapter action plan developed at the 1992 Rio Conference – focused on ocean law, introducing the principles of sustainable development into the context of the legal ocean regime established by UNCLOS III.<sup>19</sup> The chapter underlined several major themes for all marine fisheries, stressing as objectives sustainable utilization and conservation, food security, and social, economic, and developmental goals.<sup>20</sup> In particular, Part D of Chapter 17 stressed the need to utilize marine living resources for food and income, protect the interests of small-scale artisanal fisheries, local and indigenous communities, and strive for international cooperation for

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<sup>17</sup> G. Seyfang, “Environmental mega-conferences—from Stockholm to Johannesburg and beyond,” *Global Environmental Change* 13 (2003): 223-228.

<sup>18</sup> P. M. Haas, “UN conferences and constructivist governance of the environment,” *Global Governance* 8 (2002): 73-91.

<sup>19</sup> UNCED, Agenda 21 (1992), available online:  
<<http://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>>.

<sup>20</sup> Agenda 21, Part D, 17.46, 17.73, 17.74.

human resource development and capacity-building.<sup>21</sup>

Many of the concepts found in the Rio Declaration and Agenda 21 became deeply imbedded into fisheries discourse, justifying scholars today in describing the introduction of sustainable development to ocean governance as a “paradigm shift.”<sup>22</sup> The resulting commitments to introducing principles of sustainability to fisheries were operationalized and structured through subsequent agreements, predominantly sponsored by the Food and Agricultural Organization of the UN (FAO). The first of these, the 1995 Code of Conduct for Responsible Fisheries, echoed both Stockholm and Rio with language that called for “the maintenance of the quality, diversity and availability of fishery resources in quantities sufficient for present and future generations in the context of food security, poverty alleviation, and sustainable development.”<sup>23</sup> Crucially, it also provided a detailed definition of what “responsible fishing” – a term poignantly employed by the EU decades later – actually entails.

The Code of Conduct expressed responsibility and sustainable development in fisheries as a function of ecological, social and economic factors. In the text of the Code, these factors are presented in a way that makes them indivisible: the utilization of fisheries considers stock levels but also “food security”; conservation decisions are to be based “on the best scientific evidence available, also taking into account traditional knowledge of the resources.”<sup>24</sup> Thus, while it is possible to distinguish the ecological from the social-economic concerns, the Code’s stature clearly aspires to make these factors meaningless

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<sup>21</sup> Agenda 21, Part D, 17.79, 17.81, 17.93-17.95.

<sup>22</sup> B. Cicin-Sain, M. Balgos, J. Appiott, G. Hamon, and K. Wowk, “Assessing progress made on the ocean and coastal commitments of the 1992 Earth Summit and the 2002 World Summit on Sustainable Development for the Rio+20 conference,” *Ocean Yearbook* 28 (2014): 1-57.

<sup>23</sup> FAO Code of Conduct (1995), 6.2, available online: <<http://www.fao.org/fishery/code/en>>.

<sup>24</sup> *Id.*, 6.2, 6.4.

without each other. Ecologically, sustainable fishing entails not only the maintenance of stocks at renewable levels but also using the precautionary principle and considering local biodiversity and ecosystems.<sup>25</sup> Socially and economically, “responsibility” includes supporting food security and poverty eradication.<sup>26</sup> These are expressed through specific goals that would become equally important to fisheries governance over the following decades: maintaining the interests of small-scale fishing, aiding local capacity-building, and ensuring fair trade that avoids negative consequences for “social, including nutritional, impacts.”<sup>27</sup>

According to the Code of Conduct, therefore, “responsibility” and “sustainability” in fishing involve consideration for the whole specter of relations between an environment and the humans exploiting it. In other words, these terms and the approach inherent to them must apply not only to the act of fishing itself but also to all negotiations, trade, processing, and other activities surrounding it. Food security, for example, must be advanced not only through sustainable stock levels but also through equitable market decisions; poverty alleviation depends on building up local capacity for governance at the same time as preserving the interests of small-scale fishermen.<sup>28</sup> This wholeness of human rights considerations in fisheries became the guiding aspiration behind subsequent global policy efforts. Over the following decades, various initiatives of prominent international organizations such as the FAO, the Global Environment Facility (GEF), the United Nations Development Programme (UNDP), and the United States Agency for

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<sup>25</sup> Id., 6.1, 6.4-6.8.

<sup>26</sup> Id., 6.2.

<sup>27</sup> Id., 6.2, 6.3, 6.12-6.16, 6.18.

<sup>28</sup> Id.

International Development (USAID) repeatedly cited these ideas as did the EU.<sup>29</sup> But given the ambition of the aspirations set in the Code of Conduct, the framework of policy tools for implementation continued to grow.

The most recent of these tools is the FAO's Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines), adopted in 2014. The SSF Guidelines bear a brief discussion for several reasons: first, they were conceived to support the Code of Conduct's provisions and guiding principles, and hence show the latest expression of these ideas in international fisheries governance.<sup>30</sup> Second, the 2010-2013 development process for the Guidelines coincided with the preparations and first stages of the EU's CFP reform. Given the EU's rhetorical claims of leading the way in international fisheries governance, we would expect to see the Guidelines' principles reflected in the reformed CFP's external dimension.

The SSF Guidelines explicitly highlight the key role small-scale fisheries must play in pursuing the Code of Conduct's aspirations regarding food security, poverty eradication, equitable and sustainable development through resource utilization.<sup>31</sup> The Guidelines speak of the vitality of artisanal fishing activities – pre-harvest through processing – to local communities, serving as “an engine, generating multiplier effects in

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<sup>29</sup> See, for example, K. Sherman and S. Adams, “Stress, sustainability, and development of large marine ecosystems during climate change: policy and implementation,” *Large Marine Ecosystems* 18 (2013); USAID, “Sustainable fisheries and responsible aquaculture: a guide for USAID staff and partners,” (2013), available online: <<http://www.usaid.gov/documents/1865/fisheries-and-aquaculture-guide>>.

<sup>30</sup> FAO. Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (2014), available online: <<http://www.fao.org/fishery/ssf/guidelines/en>>.

<sup>31</sup> Id., Preface.

other sectors.”<sup>32</sup> To this role, the SSF Guidelines juxtapose the considerable challenges faced by small-scaled fisheries, stressing in particular the constraints placed on them by industrial overfishing and, notably, by “unequal power relations” – that is, conflicts with larger-scale fishing and other sectors.<sup>33</sup>

These points are particularly important for a study on the EU’s bilateral fishing agreements. Challenges such as unfair competition and resource overexploitation have been shown to punctuate the agreements themselves in the past.<sup>34</sup> Further chapters, chapter four in particular, will explore these accounts in more depth. But it is of note here that the SSF Guidelines’ language emphasizes small-scale fishing communities as central to concerns of human rights and equitable development in fisheries.<sup>35</sup> Given especially the simultaneous development of the SSF Guidelines and the latest reform of the CFP, we would expect the EU’s policy to reflect these ideas if indeed its intentions of normative influence are genuine.

#### **4. Aspirations and Laws**

Further, it is important to recognize that, even as influential and as ambitious as these aspirations have become, in the context of international law and the EEZ regime they have always been advanced through soft law mechanisms. Under the auspices of formal international law, most implementation principles for sustainable development and human rights in fisheries could be considered either as merely declaratory, or as entirely

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<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> See V. M. Kaczynski and D. L. Fluharty, “European policies in West Africa: Who benefits from fisheries agreements?” *Marine Policy* 26 (2002): 75-93; P. Nagel and T. Gray, “Is the EU’s Fisheries Partnership Agreement (FPA) with Mauritania a genuine partnership or exploitation by the EU?” *Ocean & Coastal Management* 56 (2012): 26-34.

<sup>35</sup> SSF Guidelines, 2014, see n. 30 above.

non-binding. The complexity of defining humanity's relationship with the environment had meant that neither the Stockholm Conference in 1972 nor the UNCED mega-conferences in 1992, 2002, and 2012, resulted in conclusive codifications for a global regime as UNCLOS III had.<sup>36</sup> The non-binding nature of the UNCED conferences was a function of their broad aim to build institutional capacity across borders and disciplines through a continuous multilateral approach.<sup>37</sup> The issues of applying human and developmental rights in the context of environmental management were too nuanced, perhaps, to be constrained by a hard law framework.

Or perhaps, in the context of sustainability in EEZ fisheries, the soft law approach was an oversight. The part of Chapter 17 in Agenda 21 that dealt with fisheries on the high seas or stocks ignoring EEZ boundaries did, by contrast, inspire the development of binding legal instruments – such as the FAO's 1993 Compliance Agreement and the 1995 UN Fish Stocks Agreement.<sup>38</sup> For fisheries on the high seas, straddling and highly migratory stocks, the chapter called for further international legal action under the auspices of the UN and UNCLOS III.<sup>39</sup> For stocks under national jurisdiction, on the other hand, issues were framed entirely within the existing EEZ regime. Pertinent language in the chapter demonstrates that the EEZ was perceived as a well-established legal tool, a status that allowed it, in the international community's view, to lend itself to national developmental interests: “Coastal States, particularly developing countries and States whose economies are overwhelmingly dependent on the exploitation of the marine living

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<sup>36</sup> P. Sand, 1993, see n. 10 above.

<sup>37</sup> L. Andonova and M. Hoffman, “From Rio to Rio and beyond: Innovation in global environmental governance,” *Journal of Environment and Development* 21 (2012): 57-61.

<sup>38</sup> L. Juda, “Rio plus ten: The evolution of international marine fisheries governance,” *Ocean Development & International Law* 33 (2002): 109-144.

<sup>39</sup> Agenda 21, 17.49 (e).



resources of their exclusive economic zones, shall obtain the full social and economic benefits from sustainable utilization of marine living resources within their exclusive economic zones [...].”<sup>40</sup>

As a result, most of the subsequent hard law – binding treaties and agreements after Rio that expanded the formal international legal framework for fisheries – focused on the weaker provisions for the high seas, straddling, and highly migratory stocks.<sup>41</sup> In this way, some of the advanced ideas of sustainability, most notably concerning integrated and ecosystem-based management, became formally codified into fisheries governance where it concerned fisheries outside the EEZ. Conversely, the introduction of human rights and sustainable development principles inside the EEZ remained confined to the realm of soft law developments.<sup>42</sup> Both the FAO’s 1995 Code of Conduct and the much more recent (2014) Guidelines for Small-Scale Fisheries are voluntary.

## **5. Conclusion**

In short, an analysis of the international law framework for sustainable development in fisheries suggests a challenging model for normative influence. Because the concept of the environment as inseparable from human well-being originated from the viewpoint and advocacy of developing countries, language of EU “leadership” raises problematic questions about power relations and cooperation. Moreover, this rhetoric is concerning given that the principles of sustainable development and human rights have always been propagated at forums committed to multilateralism on equal terms. Hence,

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<sup>40</sup> Agenda 21, 17.73.

<sup>41</sup> See the Food and Agricultural Organization's (FAO) Compliance Agreement (1993), as well as the United Nations Fish Stocks Agreement (1995).

<sup>42</sup> L. Juda, 2002, see n. 32 above.

the EU could take on a normative influence role through support for the soft law instruments advancing human rights in fisheries. The tools it must employ concern small-scale fisheries (avoiding unfair competition), food security (through sustainable stock levels and appropriate trade decisions), capacity-building (aiding local ability to govern through cooperation, not prescription), and poverty alleviation (through small-scale fisheries and capacity-building). If the EU's aspirations are genuine, and not merely rhetoric, we would expect these concerns to be reflected in its overall goals, as well as in its policy.

### **Chapter 3: “The New Europe”**

In chapter two, analysis of the international law framework suggests a very specific approach through which an entity wishing to exert normative influence should implement principles of human rights in fisheries: an approach based in cooperation for ensuring that the health of both the environment and humans inhabiting it is equally upheld. The ACP group’s vital role in negotiating the current environmental and fisheries management regimes renders the idea of EU leadership problematic. As the UNCED conference series have emphasized, sustainable development demands policy-making grounded in inclusivity and cooperation. Simultaneously, the soft law nature of existing legal and policy instruments makes good faith crucial in implementing the principles of responsible fishing.

To meet its rhetorical commitments, then, the EU must inscribe its actions within the boundaries of this framework. Its ability to do so depends on how aligned its actual fishing goals and policy actions are with its stated aspirations. The EU’s stated goals, consistent with a narrative of Europe as a normative power committed to the principles of international law, often contradict its actual fishing goals, which are dictated by internal conflicts of interests between member states. In short, the EU faces significant structural limitations that impact its ability to align real goals with rhetorical commitments. This theme presents the focus of this chapter. The discussion evaluates the structural limitations of EU influence by outlining the evolution of the EU’s legal identity with regard to international fisheries governance. At the same time, the chapter delineates the EU’s external fishing goals over time, examining their alignment to the international law framework.

## 1. The EU's Evolving Fishing Identity

Today it seems almost intuitive that the fisheries, fleets, markets and other fishing activities across the EU are managed collectively, albeit implemented by individual member states.<sup>1</sup> Centralized governance began as a legacy of the 1957 Treaty of Rome, the founding document of the European Economic Community (EEC), the EU's predecessor. The Treaty's original signatories (Germany, France, Italy, Belgium, Luxembourg, and the Netherlands) agreed to invest certain legal powers to the EEC, including control over a common agricultural policy, which, in the specific language of the Treaty, included fisheries.<sup>2</sup> While it has been suggested that this addition of fisheries was at first accidental, considering the relatively limited fishing activity of the original member states, over time it proved by no means insignificant.<sup>3</sup>

The EEC came to consider its fishing goals much more attentively with the accession of larger fishing states to the Community during the 1970s and 1980s (Denmark, the UK, and Ireland in 1972, Greece in 1981, and Spain and Portugal in 1986). Indeed, the establishment of the first CFP in 1983 was prompted by pressure from these newer member states and their fishing interests.<sup>4</sup> Soon thereafter, the EEC's centralized fishing competences were codified through several treaties, including the Maastricht Treaty on the European Union in 1992.

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<sup>1</sup> European Commission. 2014. The European Union explained: Maritime affairs and fisheries. Available online: <[http://europa.eu/pol/pdf/flipbook/en/fisheries\\_en.pdf](http://europa.eu/pol/pdf/flipbook/en/fisheries_en.pdf)>.

<sup>2</sup> Treaty of Rome. 1957. Articles 38-47. Available online: <[http://ec.europa.eu/archives/emu\\_history/documents/treaties/rometreaty2.pdf](http://ec.europa.eu/archives/emu_history/documents/treaties/rometreaty2.pdf)>.

<sup>3</sup> M. Holden, "The policies for structures, markets and external fisheries, or How the policy started," in *The Common Fisheries Policy* (Oxford: Fishing News Books, 1994), 16-38.

<sup>4</sup> Council of the European Communities. 1983. Council Regulation (EEC) No. 170/83 establishing a Community system for the conservation and management of fishery resources; J. Raakjær, "An introduction to Danish and EU fisheries systems," Chapter 3 in *A Fisheries Management System in Crisis – The EU Common Fisheries Policy* (Aalborg: Aalborg University Press, 2009), 33-56.

The formalization of the EEC/EU's collective fishing governance coincided with the legal evolution of the EEC – previously seen simply as a common market organization – into the distinctly political entity that the EU is today. This point is vital for understanding the rhetoric of global leadership and responsibility that persists in CFP debates today. The EU's claims of normative power in fisheries derive from a vision of the EU as champion of international values, a view that originated from the EU's gradually transforming legal identity during the late 1980s and early 1990s.

Just as it had spurred discussions on fishing goals, the accession of newer member states to the EEC also promoted the organization to reevaluate its political identity entirely. In particular, the accessions of Greece (1981), Spain and Portugal (1986) served an international affairs agenda viewed by many as the origin of the EEC/EU as a political, and not merely a market-based, union.<sup>5</sup> The EEC's goal in admitting these three states was not economic; instead it responded to the original aspirations of ensuring peace and stability on the European continent that had resulted in the EEC's own founding. In fact, both enlargements were heralded by overwhelming concerns with the devastating impacts (as some critics presented them)<sup>6</sup> admitting these states would have on the EEC's thriving economy.<sup>7</sup>

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<sup>5</sup> See Centre Virtuel de la Connaissance sur l'Europe, "1980-1986 Enlargement to the south and the Single European Act," available online: <<http://www.cvce.eu/>>.

<sup>6</sup> And no doubt reaffirmed during February 2015 events in Greece.

<sup>7</sup> H. Stadlmann, "Will Europe be the victim of its own expansion?" *Frankfurter Allgemeine Zeitung* (14 April 1977); J. Gouzy, "Greater Europe," *L'Europe en formation* (February 1979); "The perils of enlargement," *L'Humanité* (28 May 1979); H. Hartzinger, "Griechenland bewirbt sich um den Beitritt zur EG," *Politische Karikaturen von Horst Hartzinger 1970/1980*, (München: Bruckmann 1979); all available online through CVCE <<http://www.cvce.eu/>>.



Figure 1: H. Hartzinger, "May 1979: Greece applies for admission in the EEC."<sup>8</sup>

Various documents attest to the political significance in admitting these states as a means of encouraging their democratic development, thereby ensuring stability on the continent.<sup>9</sup> In admitting the southern states, moreover, the EEC initiated a series of institutional and legal reforms, which swiftly resulted in the Single European Act (SEA) of 1986 (a first amendment to the Treaty of Rome), the 1992 Maastricht Treaty on the European Union and ultimately all other reforms (the 1997 Amsterdam Treaty, the 2001 Nice Treaty, and the 2007 Lisbon Treaty) that led to the EU we have today.

Although fishing was only a sub-theme in these events, it was affected by them in a large way. As noted above, the new states' accession resulted in the firm establishment of

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<sup>8</sup> H. Hartzinger, "Griechenland bewirbt sich um den Beitritt zur EG," 1979, see n. 6 above.

<sup>9</sup> For example, Margaret Thatcher wrote that "Greece had been accepted into the Community precisely to entrench its restored democracy [...]. I had earlier stressed [...] just how vital it was to get Spain and Portugal in [to the EEC] quickly and not let short-term considerations stand in the way of what must be done to strengthen democracy in Europe." *The Downing Street Years* (London: Harper Collins Publishers, 1993), p. 545-546.

the EEC/EU's legal competence in fisheries. The Maastricht Treaty reinforced the EU's control over the resource, whereas the EU's ratification of UNCLOS III explicitly claimed an exclusive right "to adopt the relevant rules and regulations (which are enforced by the Member States) and, within its competence, to enter into external undertakings with third States or competent international organizations."<sup>10</sup> Yet in exercising these competences, the EU faced distinct limitations. Its approach to overcoming them gave rise to the rhetoric on fisheries we encounter today.

## 2. Normative Power Europe

With the Maastricht Treaty, the EU had acquired a unique legal structure, transforming into a type of supranational organization previously unknown in the post-Westphalian era. It now faced, therefore, unique obstacles to establishing its international legitimacy. Even as member states transferred certain sovereign competences to the EU, as a supranational organization its degree of participation in any international institution or treaty regime, including UNCLOS III, remained subject to the relevant provisions of the institution or regime in question.<sup>11</sup> Modes of engagement employed by traditional nation states, by contrast, were often unavailable to the EU.<sup>12</sup> Thus, the EU faced unique challenges in international engagement although it carried a legal responsibility to

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<sup>10</sup> Maastricht Treaty on European Union. 1992. Title II, Article G (B)(3)(e); UNCLOS, Declaration of the European Community upon signature (7 December 1998). Declaration made pursuant to article 5(1) of Annex IX to the Convention and to article 4(4) of the Agreement.

<sup>11</sup> R. Wessel, "The legal framework for the participation of the European Union in international institutions," *Journal of European Integration* 33 (2011): 621-735.

<sup>12</sup> Discussions of the EU's establishment reflected a robust debate about forms of state, as well as about what constitutes power and whether military capability is essential to it. See e.g., H. Bull, "Civilian power Europe: A contradiction in terms?" *Journal of Common Market Studies* 21 (1982): 149-164; J. Caporaso, "The European Union and forms of state: Westphalian, regulatory, or post-Westphalian?" *Journal of Common Market Studies* 34 (1996): 29-52; J. Vogler, "The European Union as an actor in international environmental politics," *Environmental Politics* 8 (1999): 24-48.

represent its member states in many areas – as was the case with fisheries.

As a consequence, the EU strove to establish itself definitively as a legitimate international actor in its areas of competence. The international norms that it came to promote – human rights, democratic freedoms, the rule of law and multilateralism – were all adopted in this way, with many of them coinciding with the founding legal principles of the EU in the Maastricht Treaty: “the principles of liberty, democracy and respect for human rights and fundamental freedoms and of the rule of law [...]”<sup>13</sup> Thus, it has been argued, the normative approach adopted by the EU as a pinnacle of its international engagement was directly necessitated by the EU’s legal origins.<sup>14</sup> Because the EU had been established on the merit of certain principles and aspirations, its promotion of these principles internationally was not only genuine, but also the chief source of its internal and global legitimacy.<sup>15</sup>

Nor was this a view singularly promoted by the EU. On the contrary, a multitude of external critics framed the EU’s international legitimacy as a function of its advocacy of select principles.<sup>16</sup> The UNCED conferences, in particular, saw non-governmental organizations calling upon the EU to take on a leadership role in international environmental governance.<sup>17</sup> In the context of fisheries, analysts began measuring the success of the bilateral agreements against criteria of multilateralism and development

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<sup>13</sup> Preamble to the Maastricht Treaty on the European Union. 1992. See n. 10 above.

<sup>14</sup> I. Manners, “Normative power Europe: A contradiction in terms?” *Journal of Common Market Studies* 40 (2002): 235-238.

<sup>15</sup> *Id.*

<sup>16</sup> E.g., for a broad overview of the vast debate on the EU’s democratic legitimacy, see L. Siedentop, *Democracy in Europe* (New York: Columbia University Press, 2001); A. Moravcsik, “In defence of the ‘democratic deficit’: Reassessing legitimacy in the European Union,” *Journal of Common Market Studies* 40, 603-624.

<sup>17</sup> S. Lightfoot and J. Burchell, “Green hope or greenwash? The actions of the European Union at the World Summit on sustainable development,” *Global Environmental Change* 14 (2004): 337-344.



almost as soon as the first agreements were signed.<sup>18</sup>

For its own part, the EU has certainly promoted itself on the merit of norms. It is precisely this approach to legitimacy that has dictated rhetoric surrounding the latest 2013 CFP reform. The external objectives for the new CFP, primarily driven by the European Parliament, reflect the EU's perception of itself as a normative power entity in general, and a leader in environmental policy in particular: "The CFP reform aims to ensure sustainable exploitation of marine living resources while working towards robust economic performance, inclusive growth and enhanced cohesion in coastal regions. The new orientations for the external dimension of the reformed CFP intend to project these principles at the international level and contribute to more responsible international fisheries governance [...]"<sup>19</sup>

Relevant rhetoric has also promoted a distinct vision of the EU as an evolving normative entity, thereby ascribing past misdemeanor to legal limitations. In this view, early external objectives of the CFP were justified as the means to legitimacy adopted by a mere market alliance of nation-states. Now, past external objectives, "such as maintaining the presence of an EU fleet internationally and ensuring that this fleet supply the EU market, [were] less relevant."<sup>20</sup> Indeed, these outdated goals were to be replaced through a softer, more normative approach: "[t]he idea that the presence of EU vessels worldwide supports EU legitimacy [...] does not seem so obvious today: even in the

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<sup>18</sup> See, for example, N. Johnstone, "The economics of fisheries access agreements: Perspectives on the EU-Senegal case." Environmental Economics Programme Discussion Paper (1996). Available online at Transparent Sea: <<http://transparentsea.co>>; or V. M. Kaczynski and D. L. Fluharty, "European policies in West Africa: Who benefits from fisheries agreements?" *Marine Policy* 26 (2002): 75-93.

<sup>19</sup> European Commission. 2011. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on External Dimension of the Common Fisheries Policy. COM (2011) 424.

<sup>20</sup> Id.

absence of fishing interests, many international partners have demonstrated the ability to influence global fisheries governance as well as an active presence in international fora.”<sup>21</sup>

The rhetoric also supplied the alternative: its vision of the EU, now empowered through its enhanced legal competences, perceiving its role differently and pursuing legitimacy through fair market principles and the promotion of multilateralism, the rule of law and sustainable development. The New Europe’s goals were to be “good governance” and coherence with international environmental and developmental policy.<sup>22</sup> Talks on the CFP during the latest reform frequently underlined external commitments by recurring reference to international law and principles. In this way, documents and officials continuously reaffirmed the notion that the CFP reflects broad EU objectives of leadership in sustainability and multilateralism. The 2010-2014 Fisheries Commissioner Maria Damanaki, in particular, often employed language that evoked these goals. Opening a ministerial meeting with fishing partners from developing countries, for instance, she claimed: “I value the external dimension of the EU’s common fisheries policy [...] We want to make sure that the fish stocks in *all* our seas are healthy and productive.”<sup>23</sup> Damanaki’s emphasis on the first person plural “we” and “all our seas” communicated a strong sense of shared global responsibility. Further, it evoked notions of the “common heritage of mankind,” a phrasing first introduced by developing states during the negotiations for UNCLOS III but one reminiscent of the UNCED conferences and their message of wedding sustainability to the promotion of human rights and equitable

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<sup>21</sup> Id.

<sup>22</sup> European Commission. 2009. Green Paper on Reform of the Common Fisheries Policy. COM (2009) 163: 22.

<sup>23</sup> M. Damanaki, “A new generation of fisheries agreements,” (Brussels, 13 May 2011): 2. Available online: <[http://ec.europa.eu/commission\\_2010-2014/damanaki/headlines/speeches/2011/05](http://ec.europa.eu/commission_2010-2014/damanaki/headlines/speeches/2011/05)>.

development.<sup>24</sup> Evoking these ideas also related the EU as an entity ever more firmly established on the merit of normative principles, and therefore one committed to their promotion worldwide.

### **3. Exporting Overfishing**

The normative vision contained in this rhetoric describes the EU's structural challenges as a thing of the past. The more founding treaties empowered the European Commission, this narrative claims, the more firmly ideals of international law (democratic freedoms, the rule of law, environmentalism, responsible fisheries) became ingrained in the EU. However, this account overlooks the internal political intricacies of EU fishing. Far from a uniform policy, the CFP vacillates between ongoing conflicts of interests within the EU, resulting in external fishing goals that may not always align with the EU's rhetorical aspirations.

Contradictions in the EU's external fishing goals were incorporated into the CFP from its conception. At heart, the CFP represented a compromise between new and old member states. Fishing played an important role throughout all of the early stages of EEC enlargement.<sup>25</sup> It proved an extremely sensitive issue during accession negotiations with Norway in the 1970s because of the fishing industry's enormous economic significance to the Scandinavian state.<sup>26</sup> Disagreements over market and access arrangements figured prominently among the reasons for Norway's ultimate refusal to join the EEC.<sup>27</sup>

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<sup>24</sup> UNCLOS III, 1982, Part XI, Article 136.

<sup>25</sup> European Parliament. "The Common Fisheries Policy: Origins and development." Available online: <[http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU\\_5.3.1.html](http://www.europarl.europa.eu/aboutparliament/en/displayFtu.html?ftuId=FTU_5.3.1.html)>.

<sup>26</sup> See Protocol No. 21 in Documents concerning the accession to the European Communities of the Kingdom of Denmark, Ireland, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland, *Official Journal of the European Communities* (27 March 1972).

<sup>27</sup> Centre Virtuel de la Connaissance sur l'Europe, "Norway's refusal," available online:

Similarly, fishing was one of the outstanding issues in the negotiations for Spain's and Portugal's entry in the EEC.<sup>28</sup> As with Norway, fishing constituted a vital part of the Iberian states' economies; yet, large fishing member states of the EEC expressed strong reservations against granting Spain and Portugal fleets access to their (already overexploited) waters.<sup>29</sup> Indeed, the accession negotiations with Spain and Portugal were a main driver behind the original member states' agreement to establish the CFP in 1983.<sup>30</sup> The compromise that eventually lead to Spain and Portugal's successful accession three years later, in 1986, involved financial aid packages for fleet capacity reduction, (exasperated) calls for "political goodwill" from North Sea fishing member states, suggestions for revisiting the CFP itself, and the underpinned importance of negotiating fishing agreements with third state countries so as to "offer Spanish fishermen good prospects for the future" – good prospects, that is, safely away from the North Sea.<sup>31</sup>

From the first, then, nationalist struggles, protectionism and local environmental and economic interests figured heavily in the reasoning behind fishing abroad. Internal conflicts between member states continued to influence future iterations of the CFP. Spain and Portugal's accession had set forth the EEC/EU's quest of ensuring fleet access outside European waters. Following UNCLOS III, the EEC had to negotiate such access with third countries formally.<sup>32</sup> Hence, the EEC/EU's bilateral fishing agreements began as the

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<http://www.cvce.eu/>.

<sup>28</sup> See 1 (a) Resolution on problems involved in the accession of Spain and Portugal with regard to fisheries; and (c) Resolution on the accession negotiations with Spain in the fisheries sector, *Official Journal of the European Communities* (14 March 1985).

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*; J. Raakjær Nielsen, "Participation in fishery management policy making: National and EC regulation of Danish fishermen," *Marine Policy* 18 (1994): 29-40.

<sup>31</sup> *Id.*

<sup>32</sup> UNCLOS 1982. Part V, Articles 55-58 and 61-62.

unavoidable consequences of distinctly internal interests, coming into sharp contrast with the high aspirations expressed by EU officials later on.

In 1994, Holden summarized the objectives of the first bilateral agreements under the 1983 CFP:

1. To ensure that the majority of EEC fish supply is caught by EEC vessels, not imported;
2. To secure foreign access for EEC vessels and thereby prevent them from fishing Europe's already overexploited stocks;
3. To ensure a steady supply of species that do not occur in EEC waters; and,
4. To minimize unemployment in distant-water fisheries.<sup>33</sup>

Stated in this way, the objectives expose two distinct themes. The first, expressed in points one and three above, focuses on value added for European fish supply and market influence. The second theme, directly related to the political origins of the CFP, concerns internal conflicts between EEC/EU member states and local economic and environmental protectionism – in other words, goals of exporting the problem of fleet capacity and local overfishing. These are goals that distinctly contradict international law aspirations such as equitable cooperation or advancing development, building local governance capacity, alleviating poverty, or maintaining food security.

### *3.1. The CFP's External Dimension as a Value Generator for EU Fleets and Markets*

Moreover, these are goals that remain pertinent. The bilateral agreements still hold a considerable importance for the EU's fishing imports, market, and fleet—something

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<sup>33</sup> M. Holden, "The policies for structures, markets and external fisheries, or How the policy started," in *The Common Fisheries Policy* (Oxford: Fishing News Books, 1994), 16-38.

openly communicated by various EU documents not related to the CFP reform. At the time preparations for the latest CFP reform began in 2009, roughly 40 per cent of total EU catch was taken in third party states' waters.<sup>34</sup> As of 2011, although the long distance fleet constituted less than 1 per cent of the EU fleet by number of vessels, it accounted for 86 per cent of EU landings in weight per day at sea, 19 per cent of total gross tonnage, and 15 per cent of total income for the year.<sup>35</sup> Given this immense value added, the continued presence of EU fleets in foreign EEZs could not but remain an important consideration in the CFP. Indeed, an interim report on the 2007-2013 period prepared for the European Commission stated explicitly that “[t]he FPAs have made a significant contribution to securing the continued existence and competitiveness of the EU's fisheries sector.”<sup>36</sup>

EU fishing competitiveness, in particular, has been enhanced significantly by the bilateral agreements. This is consistent with critics' speculations that the EU's aspirations in international environmental law are dictated at least in part by regulatory competition politics.<sup>37</sup> Without preferential trade agreements in place, the EU's relatively stringent environmental standards could curb its ability to compete with less conscientious producers worldwide. In this context, the dual payment scheme introduced with the 2002 CFP reform could be perceived as a tool of preferential trade rather than, as advertised,

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<sup>34</sup> European Commission. 2009. "Fishing in wider waters," Chapter 10 in *Brochure on the Common Fisheries Policy*, available online:  
<[http://ec.europa.eu/fisheries/documentation/publications/cfp\\_brochure/partnerships\\_en.pdf](http://ec.europa.eu/fisheries/documentation/publications/cfp_brochure/partnerships_en.pdf)>.

<sup>35</sup> Scientific, Technical and Economic Committee for Fisheries (STECF). 2013. *The 2013 Annual Economic Report on the EU Fishing Fleet (STECF 13-15)*. Luxembourg, Publications Office of the European Union (EUR 26158 EN).

<sup>36</sup> TEP, Poseidon, MRAG, "Interim evaluation on EU financial measures for the implementation of the Common Fisheries Policy and in the area of the Law of the Sea 2007-2013" (2010), p. 11, available online:  
<[ec.europa.eu/fisheries/documentation/studies/cfp\\_evaluation/financial\\_measures\\_implementation\\_cfp\\_en.pdf](http://ec.europa.eu/fisheries/documentation/studies/cfp_evaluation/financial_measures_implementation_cfp_en.pdf)>.

<sup>37</sup> R. Kelemen and D. Vogel, "Trading places: The role of the United States and the European Union in international environmental politics," *Comparative Political Studies* 43 (2010): 427-457.

one of sustainable development.<sup>38</sup>

Similar concerns could also be gleaned from the tariff regime incorporated in the FPAs and now the SFAs. The EU-ACP system of tariff exemptions has been controversial since its conception under the first Lomé Convention (1975) – framed as a tool for equitable post-colonial cooperation by the EEC/EU but often censured by others for promoting market dependency.<sup>39</sup> The current export tariffs regime in the bilateral fishing agreements draws on the successor of the Lomé Convention, the 2000 Cotonou Agreement, which has faced similar criticism. It sets out tariffs-free exports from ACP countries to the EU market as long as fish are caught by either the local fleet or EU vessels.<sup>40</sup> Given the limited size of large-scale ACP country fleets, this policy promotes the host countries' dependency on both the EU export market and on the EU long distance fleets as the main (or only) means of accessing it.<sup>41</sup> In this way, the FPA's tariff regime supports both the competitiveness of the EU's distant water fishing fleet against other global fleets and the EU's position as the world's largest market and purchasing power for seafood products.<sup>42</sup>

Finally, the competitiveness of the EU's long range fleet has been supported

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<sup>38</sup> See for example J. Smith, "Fishing for self-determination: European fisheries and Western Sahara – the case of ocean resources in Africa's last colony," *Ocean Yearbook* 27 (2013): 267-290.

<sup>39</sup> UNEP. 2002. Integrated Assessment of Trade Liberalization and Trade-Related Policies: A Country Study on the Fisheries Sector in Senegal.

<sup>40</sup> E. Naumann, "Rules of Origin in the Cotonou Agreement: Selected issues and proposals in the context of Economic Partnership Agreements (EPAs)." Report prepared for the Commonwealth Secretariat. (Stellenbosch, South Africa: Trade Law Centre for Southern Africa, 2004).

<sup>41</sup> S. Ponte, J. Raakjær and L. Campling, "Swimming upstream: Market access for African fish exports in the context of WTO and EU negotiations and regulation," *Development Policy Review* 25 (2007): 113-138.

<sup>42</sup> For a quantification of the EU's fish market, see Directorate-General for Maritime Affairs and Fisheries, "Fishing outside the EU," available online: <[http://ec.europa.eu/fisheries/cfp/international/index\\_en.htm](http://ec.europa.eu/fisheries/cfp/international/index_en.htm)>; or EUMOFA. 2014. "The EU fish market," available online: <<http://ec.europa.eu/fisheries/market-observatory/>>.

through subsidies. These have included tax benefits, subsidized loans and grants for vessel owners transferring their vessels to ACP countries' waters, but the EU's financial contribution to ACP partners (as delineated by the FPAs) itself represents a form of subsidy, mitigating vessel owners' access costs.<sup>43</sup> Depending on different definitions of what constitutes a subsidy, the exact amounts granted to the EU fishing industry vary, but they are always substantial. In 1997, for example, the EU disbursed 23 per cent of all fishing subsidies among countries in the Organization for Economic Cooperation and Development (OECD);<sup>44</sup> whereas a later report estimated the total amount of fishing subsidies for the year of 2009 at EUR 3.3 billion.<sup>45</sup> The subsidies raise concerns with unfair competition as they make it economically viable for EU distant water vessels to continue fishing when stock levels have decreased too much to justify the activity for others.<sup>46</sup>

In short, the competitiveness of the EU's seafood market and of its distant water fleets remains an important goal for the CFP. Further, it is a goal that directly contradicts the normative framework of international law to which EU rhetoric purportedly aspires. The subsidized operational flexibility of EU vessels places pressure on small-scale fishermen who do not have similar support. The resulting "unequal power relations" feature as a main concern in the FAO's SSF Guidelines.<sup>47</sup> Meanwhile, the tariffs regime

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<sup>43</sup> B. Gorez, "Policy study: EU-ACP fisheries agreements." Report prepared for the UK Department of International Development (2005).

<sup>44</sup> O. Flaaten and P. Wallis, "Government financial transfers to fishing industries in OECD countries," (2000). Paris: OECD.

<sup>45</sup> A. Shrøer, C. Sakai, V. Vulperhosrst, A. Bialas, "The European Union and fishing subsidies." Report prepared for Oceana (2011). Available online: <[oceana.org/en/eu/media-reports/publications/the-european-union-and-fishing-subsidies](http://oceana.org/en/eu/media-reports/publications/the-european-union-and-fishing-subsidies)>.

<sup>46</sup> B. Gorez, 2005, see n. 42 above.

<sup>47</sup> FAO. 2014. Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication. Preamble. Available online: <[www.fao.org/cofi/en](http://www.fao.org/cofi/en)>.



increases ACP governments' dependency on the EU export market and the bilateral agreements as a way to access it, undermining developmental goals and coming into sharp contrast with the FAO Code of Conduct's provisions on equitable trade of fish and seafood products that does not "result in obstacles to trade, environmental degradation or negative social, including nutritional, impacts."<sup>48</sup> And finally, the value added by EU operations in ACP waters belies claims from the European Commission that the agreements are no longer as pivotal as before.<sup>49</sup>

### *3.2. The CFP's External Dimension as a Solution to Internal Politics*

Equally, the role of the CFP as a means of assuaging problems and internal conflicts within the EU remains active. As noted above, the bilateral agreements originated as a means of allocating capacity (especially Spanish vessels) outside of European waters (especially the North Sea). This concern with relocating excess capacity has not receded. The 2009 Green Paper on Reform attributed the CFP's overall (internal) poor performance, the continuously declining fish stocks (in European waters) and the low profitability of European fisheries to "chronic overcapacity."<sup>50</sup> In addressing the issue, the EU has employed a range of subsidies that encouraged vessel owners to relocate to ACP countries' waters.<sup>51</sup> It has done so predominantly through offering grants for joint ventures with ACP partners and increased access through the bilateral agreements. In 2000, for instance, 16 out of 31 Spanish vessels relocated to the Senegalese register

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<sup>48</sup> FAO. Code of Conduct for Responsible Fisheries (1995), 6.14. Available online: <<http://www.fao.org/fishery/code/en>>.

<sup>49</sup> European Commission. 2009. Green Paper on Reform of the Common Fisheries Policy. COM (2009) 163: 22.

<sup>50</sup> Id, p. 7.

<sup>51</sup> Shröer et al., 2011, see n. 44 above.

received structural fund subsidies from the EU.<sup>52</sup>

The internal EU politics of distant water fishing remain a substantial factor in this dynamic. Early on, the sway of Spain, Italy and France (three large fishing member states) resulted in the exclusion of fisheries from the World Trade Organization's (WTO) 1995 Agreement on Agriculture because the treaty sought to limit sectoral subsidies, whereas all three countries benefited from EU subsidies in fisheries.<sup>53</sup> Spain, in particular, has been a consistent recipient of subsidiary benefits, accounting for 26 per cent of EFF funding in the 2007-2013 period (followed by Portugal at 17 per cent and Italy at just under 10).<sup>54</sup> The politics involved in keeping Spanish (and Portuguese) fleets away from European waters while maintaining their economic gains continue to impact the CFP. Spain's influence on the EU's external fisheries policy is substantiated by the country's overwhelming share in total capacity (22 per cent of gross tonnage as of 2014) and in total employment (a quarter of all EU jobs in the fisheries sector as of 2014).<sup>55</sup>

Hence the bilateral agreements are still an important utility in furthering EU fishing interests and mitigating internal conflicts. Goals such as redistributing excess fleet capacity through ensuring continuing access to third states' waters and retaining market status quo are still discernible in the FPAs/SFAs today. These goals plainly contrast the Green Paper on Reform's statement that "the logic of the EU external fleet supplying the EU market is being undermined by our large and increasing dependence on imports."<sup>56</sup>

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<sup>52</sup> B. Gorez, 2005, see n. 42 above.

<sup>53</sup> Ponte et al., 2007, n. 40 above.

<sup>54</sup> European Commission. 2014. Facts and Figures of the Common Fisheries Policy. Available online: [http://ec.europa.eu/fisheries/documentation/publications/pcp\\_en.pdf](http://ec.europa.eu/fisheries/documentation/publications/pcp_en.pdf).

<sup>55</sup> Together, Spain, Portugal, Italy and Greece accounted for 70 per cent of all fishing jobs in the EU as of February 2014. See European Commission. 2014. Facts and Figures of the Common Fisheries Policy.

<sup>56</sup> European Commission. 2009. Green Paper on Reform of the Common Fisheries Policy. COM (2009) 163: 22

On the contrary, the EU's fishing goals seem dictated above all by the continuing importance of external fishing as a solution to internal interests.

#### **4. Conclusion**

The analysis of the EU's actual fishing goals presents an obvious contradiction with the EU's stated aspirations. Whereas official rhetoric on the CFP's external dimension presents a vision of normative responsibility enabled by legal centralization, the analysis reveals that structural limitations still persist, spurred by internal interests and conflicts. The following chapter examines a case study on the EU's fishing relations with Senegal so as to offer some more concrete evidence of the mismatch and, in the final chapter, present pertinent policy recommendations.

## **Chapter 4: Senegal Fisheries and the EU Agreements**

While in chapter two the international law framework suggested a very specific model for normative influence in fisheries governance, the conflicting goals of external EU fishing illustrated in chapter three place doubt on the EU's ability and even its desire to take on that role successfully. This chapter examines a case study of fishing relations between the EU and Senegal in the 1979-2014 period. The chapter explores different iterations of the two parties' bilateral agreements over time. In doing so, the chapter assesses whether the actual policy has reflected rhetorical aspirations from the EU's normative power perspective. More specifically, the chapter compares the agreements' textual and political history to the international law framework for sustainable and responsible fisheries: considerations for maintaining food security, efforts toward poverty eradication, promoting equitable development, and protecting small-scale fisheries.

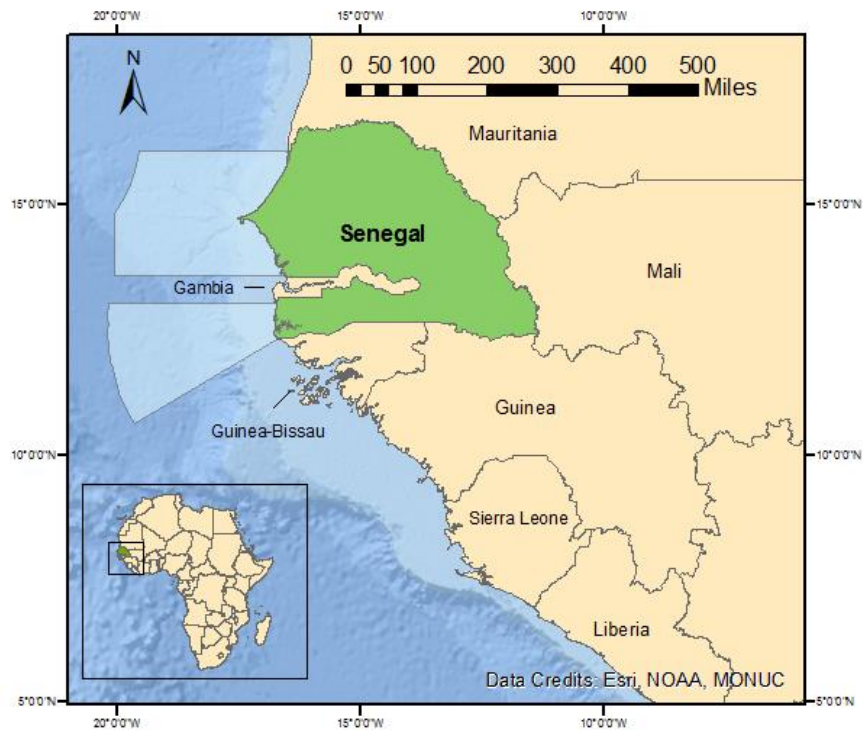
### **1. Fishing in Senegal**

For a number of reasons, Senegal presents itself as a useful case study of the extent to which the EU's bilateral fishing agreements can successfully introduce concepts of sustainability and human rights in practice. Senegal exemplifies many trends that are generally applicable to the issues of long-distance fishing and EU-ACP fishing relations. To begin, the country is a former French colony, hence its relationship with the EU today reflects all the post-colonial moral complexities of trade and resource exploitation that could generally be attributed to the FPA/SFAs.<sup>1</sup>

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<sup>1</sup> Developmental historians often speak of Europe's post-colonial guilt; see E. R. Gilli, *The European Community and Developing Countries* (Cambridge: Cambridge University Press, 1994); and M. Holland, *The European Union and the Third World* (New York: Palgrave, 2002).

Due to significant upwelling along its coast as part of the Canary Current and Gulf of Guinea Large Marine Ecosystems, Senegal’s EEZ contains particularly rich fishery resources that have been heavily targeted by distant water fleets from Europe and elsewhere over the last three decades.<sup>2</sup>



*Figure 2: Senegal's EEZ.*

Like other rich-resource coastal states targeted by foreign fleets, Senegal has faced problems with over-capacity and over-exploitation.<sup>3</sup> In the three decades between 1970 and 2000, landings from the country’s EEZ increased nearly six-fold, from 60,000 to 350,000 tonnes.<sup>4</sup> This has led to a rapid decline of fishing stocks, particularly ones at the

<sup>2</sup> D. Belhabib, V. Koutob, A. Sall, V. W. Y. Lam, and D. Pauly, “Fisheries catch misreporting and its implications: the case of Senegal.” *Fisheries Research* 151 (2014): 1-11.

<sup>3</sup> FAO. 2008. General Overview of the National Fisheries Sector, Republic of Senegal (in French). Available online: <<http://www.fao.org/fishery/countryprofiles/search/en>>.

<sup>4</sup> M. Laurant, D. Gascuel, E. Chassot, and D. Thiam, “Changes in the trophic structure of fish demersal

high trophic level, including tuna, deep sea demersal fish, and cephalopods (the species predominantly targeted by foreign fleets in Senegal, including the EU).<sup>5</sup> These issues, representative of many developing states in the region, are also exacerbated by the poor quality and quantity of statistical information supporting the industry today. Small scale and industrial fisheries' catches in West African countries are often monitored separately, by systems that are managed by different organizations and use distinct methods from one another.<sup>6</sup> Different levels of funding and resources also mean that the resulting data are rarely equally comprehensive.<sup>7</sup> In Senegal, issues with competing information sources and methodologies have at times been observed even within the same fishery.<sup>8</sup> Hence, although the first datasets of Senegalese fisheries dates as far back as the 1950s, comparative analyses of stock levels and fishing effort remain difficult because of the continuity and complementarity issues of later data.<sup>9</sup>

Senegal also presents a perfect case study for this project because of its involvement with the EU and the CFP. Following its decolonization, Senegal became the first country in Africa to enter into a bilateral fishing agreement with the EEC/EU in 1979.<sup>10</sup> Since then, Senegal and the EU have maintained an evolving fishing relationship. In exchange for financial compensation, in Senegalese waters the EU has targeted

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communities in West Africa in the last three decades.” *Aquatic Living Resources* 17 (2004): 163-173.

<sup>5</sup> Id.

<sup>6</sup> P. Chavance, P. Morand, L. Thibaut, and M. Bâ, “Challenges and difficulties of cooperation between fisheries information systems – Experiences in six West African developing countries.” *Ocean & Coastal Management* 50 (2007): 713-731.

<sup>7</sup> Id.

<sup>8</sup> Id.

<sup>9</sup> These datasets could count among the few positive bequests of the colonial regime in Senegal; for example, see F. Doumenge, “Problèmes et perspectives de l’organisation des économies de pêche maritimes dans les états de l’Afrique occidentale en 1962. Comité des Travaux historiques et scientifiques (1963).

<sup>10</sup> Belhabib et al., see n. 3 above.

predominantly tuna, but also shrimp and demersal species such as hake and cephalopods. The two parties have explored multiple iterations of the bilateral agreements: from the original agreement to a number of subsequent amendments, a 2002-2006 protocol incorporating certain notions from the 2002 CFP reform, a 2006-2014 hiatus, and finally the most recent agreement signed in October of 2014, marking the EU's first SFA after the latest reform of the CFP.<sup>11</sup> In other words, Senegal's fishing agreements with the EU not only represent the longest duration of post-colonial fishing relations, but also afford the opportunity to compare each stage of these relations and trace the way in which relevant policy has affected the industry and the country over time.

And crucially, Senegal constitutes an important case study for the evolution of EU-ACP fishing relations because the human rights and sustainable development aspects of the FPA/SFAs for the country are quite significant. Fishing is as an important pillar of the Senegalese economy, prompting UN reports to deem it vital for the country's sustainable growth.<sup>12</sup> The fishing industry employs 15 per cent of Senegal's workers, while 75 per cent of Senegal's population relies on fish products as a main source of protein – the second highest fish consumption per capita in Africa.<sup>13</sup> At the same time, fishing has served as Senegal's largest export for nearly three decades.<sup>14</sup> Finally, the interests of artisanal or subsistence fishing are particularly important to the country. In 2002, 90 per cent of its 100,000 fishermen were considered to be small-scale fishermen.<sup>15</sup> This trend is

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<sup>11</sup> Agreement on a Sustainable Fisheries Partnership between the European Union and the Republic of Senegal. 2014. *Official Journal of the European Union* L 304/3.

<sup>12</sup> UNEP. 2002. *Integrated Assessment of Trade Liberalization and Trade-Related Policies: A Country Study on the Fisheries Sector in Senegal*.

<sup>13</sup> *Id.*; Belhabib et al., see n. 3 above.

<sup>14</sup> UNEP, 2002, see n. 11 above.

<sup>15</sup> *Id.*

representative of the region as a whole, where over 90 per cent of fishing vessels are less than 12 meters long.<sup>16</sup> It also makes the FAO's SSF Guidelines, and the EU's stated role in enforcing them through its new agreements, particularly important for Senegal.

In short, Senegal affords ample opportunity to study the merit of the EU's claims in practice, both during the previous and current iterations of the CFP and the FPA/SFAs. Because the country is representative of many issues shared across the region, studying Senegal's fishing relations with the EU could lead to generalizable conclusions for the bilateral agreements as a whole. This chapter will compare the different agreements to each other, evaluating the extent to which they demonstrate progress in reflecting the international human rights and environmental law principles discussed in the previous chapters. This evaluation will be based both on rhetorical and, as much as possible, on practical evidence from Senegal.

## **2. Criteria for Analysis**

The analysis of the international law framework in chapter two demonstrated that the ideas and principles associated with sustainable development lie on the merit of cooperation, multilateralism, and enabling developing states' self-governing capacities. In fisheries, these goals are expressed in the promotion of a set of soft law principles delineated by the FAO's 1995 Code of Conduct and 2014 SSF Guidelines.

Rhetoric from the EU has claimed that the EU's progressive legal structure has placed it in a position where it not only *can* but also *must* promote these soft law principles. As we have seen in chapter three, however, internal interests persist among the CFP's

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<sup>16</sup> FAO. 2014. The State of World Fisheries and Aquaculture 2014.



external goals, placing structural limitations to the EU's ability to support its claims in practice.

The criteria for analysis of this case study flow from these findings. If the EU's normative perspective holds, then evidence from the sequence of bilateral agreements would show a progressive implementation of responsible fishing principles, concurrent with the evolution of the EU's legal centralization. Hence, EU-Senegal protocols and agreements following 1995 would increasingly implement policies aimed at poverty eradication, capacity building, food security, and the well-being of small-scale fishing communities. Under this normative influence hypothesis, the latest EU-Senegal agreement (signed in October 2014) would implement advanced ideas for policies targeted at artisanal fisheries from the negotiations of the FAO's SSF Guidelines.

Alternatively, if the sequential agreements reveal an ongoing impact of the EU's internal interests, including capacity relocation, concern with vessel or market competitiveness, and EU (rather than local fishers') job security. Finding such evidence would suggest that structural limitations to the EU's normative involvement in fisheries are still substantial.

### **3. An Agreement Evolution**

#### *3.1. The 1979 Agreement*

The earliest agreement between the EEC and Senegal, signed in 1979, addresses predominantly concerns of trade: access to resources in return for corresponding payments.<sup>17</sup> Aspirations such as conservation or sustainability are barely represented in

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<sup>17</sup> Agreement between the Government of the Republic of Senegal and the European Economic

this earliest version. However, this closely reflects the agreement's international law context, particularly in its limited inclusion of aspects such as developmental rights, equitable resource usage and intergenerational sustainability.

Although it refers to the then-ongoing UNCLOS III proceedings in its preamble, the 1979 EEC-Senegal agreement precedes both the Convention's conclusion in 1982 and important subsequent developments in fisheries governance, such as the 1995 Fish Stocks Agreement. Given its context, and especially the political priorities of the European Commission at the time the CFP was first negotiated in 1983, it is hardly surprising that the agreement shows little textual evidence of concern with stock levels. A single article commits both parties to "concert action... to ensure the management and conservation of the living resources."<sup>18</sup> There are, however, no provisions for desired stock availability; further, the agreement or its protocol do not assign catch quotas to individual EEC license holders.<sup>19</sup> Similarly, some of the agreement's articles contradict notions that are now vital for modern fisheries management. For instance, the agreement's postulation that any conservation measures reducing the EEC's assigned opportunities "shall be offset by other fishing opportunities of equal value..." would prove difficult today given improved understanding of fishing ecosystems and impacts on different trophic levels.<sup>20</sup> Yet this provision corresponds directly to the EEC's external fishing priorities at the time – that is, maintaining independent fish supply and employment for fishermen.<sup>21</sup>

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Community on Fishing off the Coast of Senegal. 1979. *Official Journal of the European Communities* L 226/7.

<sup>18</sup> *Id.*, Article 8.

<sup>19</sup> Senegal-EEC Agreement, 1979, see n. 18 above.

<sup>20</sup> *Id.*, Article 12; Laurans et al., 2004, see n. 4 above.

<sup>21</sup> As discussed in Chapter 3. See M. Holden, "The policies for structures, markets and external fisheries, or How the policy started," in *The Common Fisheries Policy* (Oxford: Fishing News Books, 1994), 16-38.

Similarly, the agreement reflects only very early notions of developing countries' needs, regarding fishing simply as a tradable commodity and thereby a revenue source. Signed only shortly after the 1972 Stockholm Conference and far in advance of the 1992 Earth Summit in Rio, where fisheries first became firmly associated with sustainability or development,<sup>22</sup> the agreement comes short of meaningful considerations for the local industry, food security, or Senegal's development. While it does contain statements about "mutual trust and respect for each other's interests in the sphere of sea fishing," the agreement is at core simply an exchange of license payments for catch opportunity.<sup>23</sup>

The preamble also makes reference to the "spirit of cooperation resulting from the Lomé Convention."<sup>24</sup> The first Lomé Convention, signed in 1975, set forth principles of cooperation between the EEC and ACP countries aiming to direct the two sides' political and trade relations following decolonization.<sup>25</sup> As part of its provisions, the Lomé Convention introduced non-reciprocal duty exemptions on a wide array of products originating from ACP countries, encouraging ACP exports to the EEC and introducing protections for these exports against shortfall due to price or supply fluctuations.<sup>26</sup> In this way, the Lomé Convention helped expand Senegalese fish exports significantly – quickly transforming fish into the country's main export – yet it came into criticism later for creating a worrying market dependency on the EEC/EU in the process.<sup>27</sup> In addition, the resulting expansion of export-oriented fishing over the following decades shifted the

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<sup>22</sup> As discussed in Chapter 2.

<sup>23</sup> Senegal-EEC Agreement, 1979, see n. 18 above.

<sup>24</sup> *Id.*

<sup>25</sup> ACP. "The Lomé Convention." Available online: <<http://www.acp.int/content/lome-convention>>. Accessed Jan. 3, 2015.

<sup>26</sup> *Id.*

<sup>27</sup> UNEP, 2002, see n. 13 above.

Senegalese industry's efforts away from domestic supply, causing concern with protein deficit and creating conflicts with the artisanal fleet over resource access later on.<sup>28</sup> It was not until the third Lomé Convention, signed in 1984, that the focus of ACP-EEC relations shifted away from industrial development and trade preferences, and instead focused on self-reliant development, based in food security and self-sufficiency.<sup>29</sup>

Set in this historical context, the 1979 bilateral fishing agreement reflects relevant issues with the power imbalance of post-colonial relations. The agreement postulates fish as a trading commodity, without due regard to problems with its renewability or its local value. Additionally, its impacts reflect issues that would become apparent in the global fisheries governance regime as it was settled in UNCLOS III. One of the emergent problems, for instance, was rooted in the complementarity principle. UNCLOS III postulated that foreign fleets should only conclude access agreements with the coastal state in the event of a stock "surplus" not exploited by local fleets: that is, only if efforts by local and foreign fleets were complementary to each other within a common target effort frame.<sup>30</sup> In the Senegalese case, government revenue from bilateral agreements proved important enough to justify renewing access agreements despite the fact that Senegal's growing small-scale national fleet soon became capable of exploiting Senegal's stocks fully.<sup>31</sup> As the size of the artisanal fleet increased and became increasingly motorized, the complementarity principle caused competition between industrial and small-scale fishermen, predominantly to the detriment of the latter.<sup>32</sup> Further, the issue of

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<sup>28</sup> Id.; Belhabib et al., 2014, see n. 3 above.

<sup>29</sup> ACP, see n. 22 above.

<sup>30</sup> United Nations Convention on the Law of the Sea. 1982. Part V, Article 62 (2).

<sup>31</sup> UNEP, 2002, see n. 13 above.

<sup>32</sup> For the local small-scale fishermen perspective, see testaments cited in O. Brown, "Policy Incoherence: EU fisheries policy in Senegal." UNDP Human Development Report Office (2005); also J. Vidal,

determining complementary efforts correctly was exacerbated by problems with scientific assessments of stocks, which were often based on incomplete landing reports and just as often disregarded during the process of concluding the agreements.<sup>33</sup> And finally, the principle has raised issues of power and prescription, especially in the context of EU/EEC-ACP relations, as political negotiations between the two sides often involve an *a priori* assumption that stock surplus is invariably available in ACP countries.<sup>34</sup>

In short, the 1979 EEC-Senegal agreement reflected the shortcomings of the international law context it cited. Unsurprisingly, it soon came under criticism for its failure to set up conservation measures such as clear catch quotas for licensed vessels, as well as for the lack of compliance of its foreign fleets and for inadvertently promoting ineffectual resource governance.<sup>35</sup> It might equally be stated, however, that the agreement came into review because it had lost its coherence with the broader framework of international law and the gradual infusion of developmental and sustainability concerns into fisheries governance.

### *3.2. Letters and Protocols, 1979-2002*

The original 1979 agreement was amended twice and its duration extended numerous times by a series of subsequent protocols and letter exchanges; but the original conditions of the agreement itself were never actually renegotiated in their entirety during

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“Senegal’s fishing community will act on foreign fleets if government doesn’t.” *The Guardian* (2012), available online: <<http://www.theguardian.com/global-development/2012/apr/02/senegal-fishing-community-act-foreign-fleets>>.

<sup>33</sup> UNEP, 2002, see n. 13 above.

<sup>34</sup> B. Gorez, “Policy study: EU-ACP fisheries agreements.” Report, UK Department for International Development (2005).

<sup>35</sup> J. Stilwell, A. Samba, P. Failler, and F. Laloë, “Sustainable development consequences of European Union participation in Senegal’s Marine Fishery.” *Marine Policy* 34 (2010): 616-623.

the 1979-2006 period. Accordingly, the agreement and its impacts on the local industry faced intensifying criticism as sustainable development, small-scale fishing rights, and ecosystem-based management became more integral to the international model for fisheries management during the 1990s and early 2000s.<sup>36</sup>

Different reports emphasized various aspects of the agreement's power imbalance, lack of sustainability, and disregard for Senegal's interests. As early as 1996, a Transparent Sea report discussed the weakness of Senegal's bargaining position in EEC-Senegal fishing negotiations because the target species' mobility across Western African EEZs enabled the EEC/EU to access the resource elsewhere by concluding agreements with neighboring countries.<sup>37</sup> Multiple reports stressed the negative impacts of the EEC/EU's fleets on local resources and Senegal as a whole. Analysis of the EEC-ACP fishing agreements over the duration of the 1990s showed that revenue from the EEC's financial contribution was only marginally beneficial to the coastal state, with most of the added value from the exchange collected by EEC/EU vessel operators (mostly from Spain).<sup>38</sup> During the same decade, Senegal's increasing market dependency on the EEC/EU and its Lomé-driven shift toward export-oriented fishing at the expense of national markets' needs was exacerbated.<sup>39</sup> As a result, critics expressed concern with local food security, employment, and especially with the interests of the artisanal fleet.<sup>40</sup> EEC subsidies made

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<sup>36</sup> For a more detailed discussion of this process, see Ch. 2.

<sup>37</sup> N. Johnstone, "The economics of fisheries access agreements: Perspectives on the EU-Senegal case." Environmental Economics Programme Discussion Paper (1996). Available online: <[http://transparentsea.co/images/d/d6/Johnstone\\_1996\\_EU\\_Agreements.pdf](http://transparentsea.co/images/d/d6/Johnstone_1996_EU_Agreements.pdf)>.

<sup>38</sup> B. Gorez, "Policy study: EU-ACP fisheries agreements." Report, UK Department for International Development (2005).

<sup>39</sup> UNEP, 2002, see n. 9 above; O. Brown, 2005, see n. 29 above; V. M. Kaczynski and D. L. Fluharty, "European policies in West Africa: Who benefits from fisheries agreements?" *Marine Policy* 26 (2002): 75-93.

<sup>40</sup> *Id.*

the distant water fishing fleet even more competitive with the local small-scale fishermen as it could afford to continue operations even when the stock levels were too low to make the expense justifiable without subsidies.<sup>41</sup>

On par with developmental concerns, reports continuously pointed toward issues with sustainability, most notably overarching problems with stocks over-exploitation and depletion of stocks.<sup>42</sup> Although other fleets (notably Chinese, Korean and Japanese) were also fishing in Senegalese waters, the EEC/EU both held by far the largest share of the export market and maintained the most significant local presence, thereby contributing most to the problem.<sup>43</sup> The agreements' structure – payment in exchange for access – meant that the EU could demand additional fishing opportunities in exchange for increased financial contributions, taking advantage of any devaluation of the resource and refusing to account for ecosystem value. Evidence for this approach could be gleaned from EU communications on the suspension of the 2002 negotiations with Senegal to renew the expired fisheries protocol. The official press release noted, “The European Commission delegation felt that additional fishing possibilities would have been necessary to justify the substantial increase in the compensation requested by the Senegalese representatives.”<sup>44</sup> Perhaps inadvertently, the EU showed a direct association between payments and fishing opportunity, a position starkly inconsistent with concurrent rhetoric from EU leaders. An entity that advanced such a claim years after the first UNCED

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<sup>41</sup> Gorez, 2005, see n. 39 above. Additionally, the EEC's subsidy policy was at least in part motivated by accession politics and the desire to export Spanish and Portuguese fishing away from the North Sea. For a more detailed discussion on this issue, see Chapter 3.

<sup>42</sup> Kaczynski and Fluharty, 2002, see n. 40 above.

<sup>43</sup> UNEP, 2002, see n. 13 above.

<sup>44</sup> European Commission. 2002. “EU/Senegal fisheries agreement: negotiations suspended.” Available online: <[http://europa.eu/rapid/press-release\\_IP-02-462\\_en.htm](http://europa.eu/rapid/press-release_IP-02-462_en.htm)>.

conference and the FAO's Code of Conduct could hardly hold true to its own Environmental Commissioner's claim that it would "play a leading role in ensuring that Johannesburg delivers concrete progress toward sustainability goals."<sup>45</sup>

### *3.3. The 2002-2006 Protocol*

In early 2002, negotiations between the EU and Senegal to renew the existing protocol came to a head. The early suspension of negotiations was influenced by pressure from environmentalists and the Senegalese government's position. As a result, the hiatus marked a partial shift in the EU's approach. The renegotiated protocol for the 2002-2006 period introduced certain principles and approaches that would later become integrated into the 2002 CFP reform as well as into the structure of the new Fisheries Partnership Agreements.<sup>46</sup> Notably, the protocol's actual provisions are prefaced by an explanatory memorandum that places them into a context more reminiscent of concurrent sustainability rhetoric.<sup>47</sup> These opening paragraphs make a claim to policy continuity through the decades (noting the "longstanding relation" in fisheries between the two parties), although in reality the protocol represents a sharp tack from the EU's negotiating position only months earlier.<sup>48</sup> In contrast to its previously guiding "payment for access" structure, here the EU offers significant increase in its financial contribution (from 12 to 16 million EUR per year) in exchange for "considerable reduction" of fishing

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<sup>45</sup> M. Wallström, "A wake-up call for global sustainability" (speech, Brussels, 26 February 2002), available online: <[http://europa.eu/rapid/press-release\\_SPEECH-02-84\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-02-84_en.htm)>.

<sup>46</sup> Proposal for a Council Regulation on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided by the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006. COM (2002) 496. *Official Journal of the European Communities* C 20 E/336.

<sup>47</sup> M. Wallström, 2002, see n. 46 above.

<sup>48</sup> EEC-Senegal Protocol, 2002-2006, see n. 47 above.



opportunity.<sup>49</sup> The added expense could best be ascribed to concerns with sustainability—and fair play.

The new protocol's provisions reduce demersal quotas by 30 per cent and eliminate coastal pelagic quotas entirely.<sup>50</sup> They introduce continuous stock monitoring, obligatory biological resting periods, larger mesh sizes, smaller fishing zones, reduced bycatch and increased obligatory landing.<sup>51</sup> In direct contradiction with the 1979 agreement, the protocol even affords for reductions in fishing opportunity for the benefit of conservation.<sup>52</sup> Additionally, the protocol assigns an estimated 3 million EUR per year for a “partnership” aiming to support scientific monitoring, institution building and artisanal fishermen's safety.<sup>53</sup>

These provisions are worth discussing for several reasons. First, despite language of concern with “sustainable and responsible fisheries” (a phrase that occurs repeatedly throughout the proposal), the 2002 protocol marks the first instance in which some of these otherwise basic measures in fisheries conservation are introduced in a meaningful way into the EU-Senegal fishing relations. What is more, the political context in which they were introduced places doubt on the intentions behind these policies. As we have seen, 2002 marked a sharp turn in the EU's position. The EU had defended its right to receive more fishing opportunities against larger sums early in the year; in the space of a few months, it implemented these radically different measures, but only after the suspension of its negotiations with Senegal. It is worth noting here that the conclusion of

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<sup>49</sup> Id.

<sup>50</sup> Id.

<sup>51</sup> Id.; Senegal-EEC Agreement, 1979, see n. 18 above.

<sup>52</sup> EEC-Senegal Protocol, 2002-2006, see n. 47 above.

<sup>53</sup> Id.

the 2002-2006 protocol, too, was followed by a hiatus in relations, this time a more lengthy one. In short, although the measures introduced in it were more consistent with sustainability principles than they had been previously, this was the result of some external pressure, and clearly proved insufficient in the long term. Reviewed in this context, the inclusion of these measures into the 2002-2006 protocol remains inconsistent with an image of Europe as a leader in enforcing environmental principles. Instead, the presence of these provisions in the protocol seems more aligned with a notion of Europe rather as a shamed participant in an established system of fisheries and environmental governance.

Second, the protocol proves notable not only for its somewhat belated emphasis on sustainability, but also for its inclusion of the ecological, but not necessarily developmental, aspects of these principles. This was true despite official EU claims to leadership in sustainable *development*, rather than just sustainable fisheries.<sup>54</sup> The “partnership” provisions present a sharp clash between rhetoric and reality. Originating from the Lomé Convention as well as from the 2000 Cotonou Agreement on ACP-EU relations, the use of the word “partnership” cannot be coincidental here as it carries notions with it such as cooperation, developed states’ support for self-reliant development, and awareness of developmental needs and historical issues of power in post-colonial relations.<sup>55</sup> The actual provisions in the protocol, however, reflect very little of these ideas. In fact, the relevant articles ordain the establishment of a joint committee to supervise scientific research, monitor fishing activities and stocks, oversee training of local

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<sup>54</sup> In 2000, new EC President Romano Prodi stated that the EU “must aim to become a global civil power at the service of sustainable global development” in his speech “2000-2005: Shaping the New Europe” (Strasbourg, 15 February 2000). Available online: <[http://europa.eu/rapid/press-release\\_SPEECH-00-41\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-00-41_en.htm)>.

<sup>55</sup> N. S. Bradley and A. Bradley, “Is the EU’s governance ‘good’? An assessment of EU governance in its partnership with ACP states.” *Third World Quarterly* 31 (2010): 31-49.

fishermen for an undefined mode of “responsible fishing” (the “institutional support” clause) and, crucially, ensure small-scale vessel safety—rather than small-scale job security.<sup>56</sup> Despite repeated references to “responsible” fishing, therefore, the protocol demonstrates very limited, if any, responsibility for the social, economic, or political impacts of EEC fishing in Senegalese waters.

Critics corroborated these conclusions.<sup>57</sup> They also continued to highlight a discrepancy between the EU’s rhetoric and its policy. Reports noted that, despite expressing a commitment to eradicating poverty and advancing sustainable development in other aspects of its international engagements, the EU fell short of implementing these notions into its external fisheries policy.<sup>58</sup> Analysts questioned both the EU’s motivation and its overall ability to aid development without retaining problematic power relations with its fishing “partners”: given uneven negotiation positions, the founding agreements setting out trade principles as well as the bilateral fishing agreements retained power inequality.<sup>59</sup> And the protocol itself confirmed these concerns: although it served as a launching point for the EU’s approach in the new generation of fishing agreements (the FPAs), it was never renewed following its expiration in 2006. Subsequently, its cancellation was framed as a triumph for local fishermen and Senegal more generally.<sup>60</sup>

### *3.4. The 2014 Sustainable Fishing Agreement*

Given the long (2006-2014) hiatus in fishing relations between the EU and Senegal

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<sup>56</sup> EEC-Senegal Protocol, 2002-2006, see n. 47 above.

<sup>57</sup> C. Bretherton and J. Vogler, “The European Union as a sustainable development actor: The case of external fisheries policy.” *Journal of European Integration* 30 (2008), 401-417; Gorez, 2005, see n. 39 above.

<sup>58</sup> *Id.*

<sup>59</sup> Bradley and Bradley, 2010, see n. 61 above.

<sup>60</sup> Stilwell et al., 2010, see n. 31 above.

that followed, the agreement signed in 2014 as the very first representative of the SFAs could be expected to show significant improvements in terms of sustainable development. Indeed, the new agreement makes large strides compared to its predecessors. To begin, it relies much more closely on principles and tools from existing international law instruments, citing not only UNCLOS III and the Cotonou Agreement, but also the 1995 Fish Stocks Agreement, the decisions of Regional Fisheries Management Organizations, the FAO Code of Conduct for Responsible Fisheries, and the International Labour Organization (ILO) Declaration on Fundamental Principles and Rights at Work.<sup>61</sup> In this way, the SFA situates itself firmly within a fuller, more developed context of international law.

Both the language and the provisions of the 2014 agreement reflect a stronger sense of responsibility to human and developmental rights on the part of the EU. In terms of sustainability, relevant provisions show a closer engagement with the state of the stocks. It outlines much fewer fishing opportunities for EU vessels in Senegalese waters, accounting for the limitations of the fishing resources.<sup>62</sup> Unlike in the original agreement or the 2002 negotiations, moreover, the 2014 agreement allows for adjustment of financial contribution or of fishing opportunity as necessitated by conservation, and, notably, as determined through joint EU-Senegal deliberation.<sup>63</sup> The new agreement includes provisions for cooperation and consultation between professional fishing organizations,

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<sup>61</sup> Agreement on a sustainable fisheries partnership between the European Union and the Republic of Senegal. 2014. *Official Journal of the European Union* L 304/3.

<sup>62</sup> Council Regulation (EU) No 1118/2014 of October 8, 2014 concerning the allocation of fishing opportunities under the Implementation Protocol to the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Senegal. *Official Journal of the European Union* L 304/41.

<sup>63</sup> EU-Senegal Agreement, 2014, Article 6.

the private sector and the Senegalese society, thus allowing representation of different interests.<sup>64</sup> This approach speaks more directly to the tone of past UNCED conferences and their emphasis on cooperation and equitable participation in promoting soft law principles. In short, overall the provisions of the 2014 SFA seem better aligned with the role of normative influence suggested by the international law framework.

However, there are criticisms that remain unaddressed. The agreement does not include special considerations for small-scale fishermen, nor does it address issues of competition between EU-subsidized vessels and local artisanal fleets. Articles concerning the institutional support, albeit strengthened through the creation of a private-public stakeholder forum, still only offer limited help for self-sufficient development. And fundamental issues for Senegal, such as protein dependence, employment and food security, fall entirely outside the purview of the agreement—whereas their inclusion could both benefit Senegal (especially given the strength of the EU’s seafood market) and demonstrate the EU’s commitment to advancing human rights goals and showcase its leadership in sustainable fisheries governance. Given these weaknesses, the following chapter will discuss recommendations for future protocols and amendments to the 2014 SFA.

#### **4. Discussion**

The analysis of EU-Senegal bilateral fishing agreements over time shows that EU rhetoric has tended to overstate and by far outstrip any positive action in implementing sustainability or developmental principles. Due to its two-level dynamic, EU policy in

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<sup>64</sup> Id., Article 10.

Senegal has proved reluctant and slow in adopting notions from the international law framework even as its stated aspirations have become more and more elaborate. Relevant documents reveal a discrepancy between EU rhetoric and the actual policy implemented. Additionally, policies advanced through the EU-Senegalese bilateral agreements have tended to reflect the shortcomings of international treaties and agreements as opposed to their aspirations or positive contributions.

Although the 1979 agreement precedes much of the relevant international law framework on fisheries, it nevertheless exemplifies one of these trends. The bilateral agreement exhibits concrete issues from the international law it cites (the 1975 Lomé Convention and UNCLOS III), while it does not necessarily implement the law's progressive suggestions. For instance, the bilateral fishing agreement reflects not so much the Lomé Convention's "spirit of cooperation" (that is, its aspiration of promoting equitable trade in post-colonial relations) as the Convention's tendency to promote market dependency. Although Senegalese fishing exports to the EEC/EU increased substantially as a result of the agreement, the Senegalese fishing industry overall did not necessarily benefit from it: given the large percentage of small-scale vessels, the Senegalese exports often had to rely on EU operators. Similarly, in adopting the complementarity principle outlined in UNCLOS III, the agreement has promoted conflict and over-exploitation rather than conservation and cooperation. In short, the 1979 agreement proved unsuccessful at showing itself as a promoter of international law aspirations.

Proponents of the EU's normative power perspective might point out that the 1979 agreement precedes the EEC/EU's legal centralization in the 1980s-1990s, thereby predating the EU's ability and motivation to promote international law principles.

However, protocol and letters over the 1979-2002 period, as discussed above, demonstrate similar limitations as the original agreement. Moreover, as the agreement was never amended in this period, the EU's changing legal structure in the 1980s and 1990s showed little direct impact on the EU-Senegalese fishing relations over the same period. Key advancements of international fisheries governance, such as the FAO's 1995 Code of Conduct and the UN's 1995 Fish Stocks Agreement, were not incorporated into the EU-Senegalese agreement at that point. And finally, the discourse analysis above illustrates a jarring contrast between EU rhetoric on leadership in sustainable development (e.g., Wallström, 2002) and concurrent fishing negotiations with Senegal, in which the EU sought fishing access against payment with little regard to the sustainability of stock levels. Hence, there is stronger evidence for the hypothesis of EU fishing as motivated predominantly by internal political needs.

Further, while the renegotiated 2002 protocol does implement specific principles of sustainable development, it does so both belatedly and incompletely. To begin with, the EU's inclusion of certain conservation aspects into the protocol contrasts sharply with its negotiating position only months earlier. This discrepancy again suggests that political pressure, rather than an internal normative purpose, impacted the EU's decision. A plausible analysis supports the alternative narrative for EU fishing: a combination of Senegal's own position in insisting on sustainable stock levels and of internal EU interests to maintain Spanish vessels' access to foreign waters. Thereby, the sudden 2002 inclusion of sustainability and stock considerations – years after the 1992 Rio Conference, 1995 Code of Conduct and 1995 UN Fish Stocks Agreement – reveals the EU as a reluctant participant in the international fishing management framework. Instead, its policies seem

motivated by internal concessions and two-level politics.

Such a conclusion makes it less surprising that the 2002 protocol includes developmental and equitable trade provisions in a very limited manner compared to the breadth of understanding in UNCED conferences and the FAO Code of Conduct. A normative power EU would be expected to include, in both its negotiations and protocol, provisions that proactively support equitable trade, food security, and poverty eradication. Such policies would have to incorporate measures for enhancing Senegal's market independence or discussions of the socio-economic impacts of tariffs and exports; they would have to consider advanced support for small-scale fisheries, including measures on enhancing their competitiveness with EU fleets; and they would need to put in place institutional capacity building independently from the financial arrangements for fishing access.

The 2002 protocol comes short of implementing or even aspiring to such measures. Provisions on small-scale fishermen, for example, hold very little prominence in the protocol, as they were not present in the CFP political agenda at the time, and are hence limited to "safety" considerations. By contrast, the subsidized access fee and similar elements of the unchanged 1979-2002 agreement represent ongoing support for maintaining EU vessels' competitiveness abroad. Similarly, the 2002 protocol introduces payments for "capacity building" that remain tied to access fees in a manner more consistent with supporting EU market dependence than local self-governance. In short, despite its concessions to certain principles of international law, the 2002 protocol hardly represents the EU's normative power ambitions advanced at the same time by its leaders. Instead, its policies seem more consistent with an ongoing mission to appease internal



interests.

These observations are confirmed by the eight-year long hiatus in EU-Senegal fishing relations after the protocol's 2006 expiration. As discussed earlier, the discontinuation was positively viewed by local small-scale fishermen. It must further be noted that, given the EU's significant financial contribution to Senegal under the 2002-2006 protocol, the Senegalese government's refusal to renew the agreement communicates important political concerns with its structure and implementation. Based on Senegal's position during the 2002 negotiations, it is possible to speculate with some certainty that the reasons for the cancellation were strongly related to issues with sustainability and local development. The hiatus suggests a perspective on EU fishing in Senegal that is consistent with the narrative of exporting overfishing as opposed to supporting local development.

Finally, while it is too early to determine the policy outcome of the 2014 agreement, it is possible to make a few guiding observations. First, it must be noted that the new agreement reflects increased commitment to a more UNCED-coherent style of development support: that is, one that is cooperative, participatory, and focused on soft law. As these are elements vital to the sustainable development pantheon of principles, their emphasis in the 2014 SFA is a step in the right direction.

Still, the agreement's provisions do not entirely match the EU's rhetorical aspirations. Although the new agreement demonstrates increased concern with maintaining stocks at sustainable levels and cooperative governance between both parties, it still falls short of certain developmental targets. For instance, although negotiated concurrently with the FAO's SSF Guidelines, the SFA does not incorporate nearly enough

provisions on the sustenance and job security of small-scale fishermen. Since the SFA is a hard law document, unlike the SSF Guidelines, its inclusion of these principles would truly represent a commitment to propagating them internationally. A normative power perspective might be strengthened by additional provisions on limiting subsidies to EU vessel owners and otherwise maintaining conditions for equitable competition between small-scale and industrial fishermen. In addition, the debate on market dependence and food security in the face of climbing exports is still missing from the SFA discussions.

The missing provisions on subsidies and tariffs seem to be a continuing manifestation of the EU's internal political goals. The new agreement stands to maintain EU vessel owners, especially Spanish ones, as its chief beneficiaries. Thus the strong lobby of Spanish and other external fishing interests continues to exert a clear influence on the outcomes of fishing policy. If the EU is truly committed to enhancing its partner country's independent development, it must find a way to overcome or align these internal goals with its normative aspirations. To do so, the EU could utilize market and subsidiary measures, among other tools. The following and final chapter elaborates upon these recommendations, discussing concrete policies in support of the EU's normative power perspective in the context of the international law framework, and draws conclusions about the EU's future involvement in fishing policy.

## **Chapter 5: Conclusions and Recommendations**

Insights from the Senegal case study show that the EU's bilateral agreements still reflect internal political goals more closely than claims of promoting international norms. Progress in implementing principles from the international law framework has lagged behind important developments in sustainable and responsible fishing (from the UNCED conferences, the FAO's 1995 Code of Conduct and the 2014 SSF Guidelines), even as EU rhetoric, particularly originating from representatives of the European Commission, has included recurring statements of leadership in global environmental and sustainable fishing governance. Overall, EU fishing policies in Senegal have reflected shortcomings of international law, whereas they have been less successful at incorporating its advancements.

This deficiency can be perceived strongly in the context of human rights and development. The EU-Senegalese fishing relations reflect a broader global trend in that, although some progress toward cooperative governance has been made over time, the fishing agreements themselves remain weak tools for advancing sustainable development and human rights. As the Senegal case demonstrates, measures that were designed as tools toward equitable cooperation have instead contributed to curbing food security, undermining the competitiveness of the local fishing sector, and hindering rather than aiding the country's developmental goals. For instance, the non-reciprocal export tariff exemptions outlined under the EU-ACP Lomé Convention and reflected in the EU's bilateral agreements helped achieve a marked increase in Senegalese fish exports and resulting revenue for the state. However, the tariff regime established the EU market as the predominant destination for these exports, thereby creating a market dependency. In

turn, this has raised concerns with conflicts between export-oriented fishing and food security in Senegal, where seafood products constitute a large percentage of the population's main protein intake. Similarly, the dual payment scheme in the FPA/SFAs was meant to support local capacity-building on a cooperative basis; yet its coupling of access fee and sectoral aid in effect has made such support contingent on EU fleet access to local waters, with some problematic implications. First, this contingency propagates power imbalance in EU-Senegalese negotiations, undermining the sectoral payment's stated purpose. Second, the underlying assumption that development support for the fishing sector would only be extended when fishing access is available could potentially incite discord between the recipient country's human rights and stock sustainability priorities.

These observations raise questions about the ability of trade-based relations in post-colonial contexts to overcome the inequalities already ingrained in the international system. At the same time, recurring rhetoric of cooperation and colonialism on both sides of the debate surrounding the EU-ACP fishing agreements highlights just how important issues of development and human rights remain as a normative convergence point in trade relations, despite the inherent challenges. This chapter discusses these issues at some greater length.

In addition, the chapter addresses in more depth the political and structural complexities of the EU's role in this dynamic. Besides highlighting the failures of trade as a developmental tool, the Senegal case study also demonstrates the contradictions between different external fishing goals within the EU itself. Both rhetoric and some of the improved provisions in later protocols and the 2014 SFA agreement indicate that the

normative purpose is not irrelevant to the EU's agenda. At the same time, policy supporting the bilateral agreements, such as the subsidies schemes and tariff regimes, continue to serve the internal goals of maintaining EU (especially Spanish) fleets competitive and of promoting the EU market as a desirable export destination for catch made in Senegalese waters. While previous chapters have discussed the origins of this contradiction to some extent, it must be noted here that this work has presented a simplified picture of internal EU dynamics. In reality, the political interactions between different EU institutions, notably the European Commission, European Council, and European Parliament, combined with the varying influence of member states' interests, account for an additional layer of complexity in achieving goal coherence internally and projecting it to the external dimension of the CFP. This chapter aims to address some of these dynamics.

Exploring these two themes, the chapter also fields some tentative recommendations for future EU policy. These recommendations are made in effort to support the advancement of the EU's normative perspective in concert with human rights principles in international fisheries management. However, noting the inherent difficulties with the EU's stated objectives, this chapter also elaborates upon the complexities of development and international involvement and, accordingly, draws broader implications and conclusions from the present study.

## **1. Discussion and Policy Recommendations**

### *1.1. EU Institutions, Spain, and Subsidies*

While this work has highlighted only some of the dynamics behind the CFP and

its external dimension, the actual political reality is much more complex. Initially drafted by the European Commission (which represents the interests of the EU as a whole), EU legislation must be jointly approved by the Council of Ministers (which consists of the heads of state of EU member states and therefore represents closely member states' interests) and the European Parliament (which is directly elected by nationals of member states and holds, after the 2007 Lisbon Treaty, a much larger prominence in the decision-making process).<sup>1</sup> At each of these institutions, the interests of member states and sub-state groups may manifest differently. Legally, the Commission is obliged to seek opinions from national parliaments, while politically, its role as the drafting institution means that it must *a priori* accommodate at least in part the interests of the other institutions. The Council of Ministers invariably represents the national interests of member states. In the European Parliament, influence can manifest differently depending on representative distribution in the Parliament as a whole and specifically in individual sub-committees tasked to review legislation.<sup>2</sup>

The complexity of this legislative procedure allows for the interests of individual member states to play out at the institutional level. The stakes for this are particularly high with the CFP, which is a highly contested and lobbied policy. Arguably the strongest source of influence on the CFP's external dimension is that of the Spanish long distance fishing industry, exercised both through representation of the Spanish government in the Council of Ministers and through less formal paths of influence, such as individual groups'

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<sup>1</sup> European Commission. 2014. The European Union explained: How the EU works. Luxembourg: Publications Office of the European Union.

<sup>2</sup> Id.

lobbying.<sup>3</sup> For Spain, fishing presents an enormous economic interest: several regions in Spain, including Galicia, Andalusia, and El Hierro in the Canary Islands, are highly dependent on fishing; and in a country where national unemployment averaged 24.63 per cent in 2012 at the height of the financial crisis, the fishing industry retains a remarkably low unemployment rate of 7.2 per cent.<sup>4</sup> Hence, the notable sway of the Spanish fishing lobby in the European Parliament and especially in the Council of Ministers is grounded in significant local and national economic interests; but it also raises a conceptual difficulty: in the light of the financial crisis and its disproportionate effects on Spain, decisions that would negatively affect the Spanish long distance fishing industry are harder to justify politically or implement.



Figure 3: The fishing lobby's sway in the EU.<sup>5</sup>

Because of this, policies that have undermined the EU's normative goals in the past but nevertheless ensure the economic viability of the fishing industry, such as the EU

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<sup>3</sup> E. Bienfeld, "The Basque lobby at the EU level: A matter of expertise and networks," *International Journal of Iberian Studies* 28 (2015): 21-41.

<sup>4</sup> European Commission. 2014. Facts and Figures of the Common Fisheries Policy. Available online: <[http://ec.europa.eu/fisheries/documentation/publications/pcp\\_en.pdf](http://ec.europa.eu/fisheries/documentation/publications/pcp_en.pdf)>; Eurofish, "Overview of the Spanish fisheries and aquaculture sector," available online: <<http://www.eurofish.dk/>>.

<sup>5</sup> Peter Schrank, 2008. Published in "Charlemagne: Fishy tales," *The Economist* (June 14th, 2008). Available online: <<http://www.economist.com/printedition/2008-06-14>>.

fishing subsidies, become much harder to dismiss. As discussed in previous chapters, fishing subsidies in the EU predominantly benefit Spanish fishing boat owners.<sup>6</sup> The policy has faced criticism from multiple sources for its export of Spanish fishing capacity to third countries' waters and for giving the Spanish long distance fleet a competitive advantage against local fleets, especially through encouraging fishing activities at low stock levels.<sup>7</sup> In short, the subsidy regime is starkly inconsistent with the European Commission's rhetoric of promoting norms of sustainability, responsible fishing and equitable development. Enacting change through limiting the subsidy regime would therefore produce significant long-term effects for the EU's partner states, especially through decreasing pressure on local resources and making small-scale fishing communities more competitive than they are now, given pressure from subsidized Spanish vessels.

Yet doing so would carry huge political costs for the EU. In view of the financial crisis, ongoing debates on austerity, and rising euro-skepticism, the fishing subsidies have a significant impact not only on development and sustainability but also on unemployment and right to work, aspects of human rights that are applicable in Spain just as in Senegal. Hence, reform of the fishing subsidies, at least in the short term, could provoke questions of intra-EU justice and human rights even if it would help reinforce the Commission's vision of a normative power Europe.

In the long term, political will for addressing this issue is more consistent with the

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<sup>6</sup> V. M. Kaczynski and D. L. Fluharty, "European policies in West Africa: Who benefits from fisheries agreements?" *Marine Policy* 26 (2002): 75-93.

<sup>7</sup> B. Gorez, "Policy study: EU-ACP fisheries agreements." Report, UK Department for International Development (2005); UNEP. 2002. *Integrated Assessment of Trade Liberalization and Trade-Related Policies: A Country Study on the Fisheries Sector in Senegal*; O. Brown, "Policy incoherence: EU fisheries policy in Senegal." UNDP Human Development Report (2005).



EU's normative international goals and could emerge from the European Parliament, which advocates citizens' perspective. Increasingly influential following the 2007 Lisbon Treaty, the Parliament has become a much more prominent voice in EU governance. Whereas in the past European Parliament elections have suffered from low turnout and prompted questions of a democratic deficit in the EU, studies show a relative increase in the visibility of European policy in national debates and media over the last few years.<sup>8</sup> Furthermore, while the European Parliament elections have predominantly served as a venue for expressing discontent with national politics in the past, the 2014 election more closely reflected citizens' European outlook, even if for the most part this was expressed through euro-skepticism. Additionally, at this point it is unclear whether the increasing influence of the European Parliament will weigh on fisheries policy more heavily toward a protectionist EU employment direction, or a normative, international human rights perspective. In short, the European Parliament today remains an imperfect tool for institutionalizing citizens' normative beliefs, but there are indicators to suggest that this might change in coming years. Provided that the European Parliament could indeed come to represent the cultural and European values of its citizens more closely in the future, it could also constitute a stronger voice for policy coherence in the EU, and in the CFP. It is not to be taken for granted, however, that this voice will necessarily advocate the normative perspective.

### *1.2. Trade Measures for Human Rights and Sustainability*

Analysis of the EU's bilateral fishing agreements in previous chapters has

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<sup>8</sup> S.B. Hobolt, "A vote for the President? The role of *Spitzenkandidaten* in the 2014 European Parliament elections," *Journal of European Public Policy* 21 (2014): 1528-1540.

highlighted concern with political will in the EU for supporting the human rights and sustainability needs of its fishing partner states. An important aspect of these relations is the impact of trade policies: the draw of the EU export market, the EU-ACP tariff regimes, concern with equal standing in trade negotiations, and the effect of EU subsidies on local fleets' competitiveness. Despite the relevance of these issues, and although the CFP itself controls both the EU's fishing efforts and its markets, trade-based policies have so far been absent from either the CFP's external dimension or the debates on ensuring coherence with developmental goals.

Yet the strength of the EU as the world's foremost market for seafood products makes it particularly well-positioned to address normative aspirations such as food security, poverty eradication, and sustainability through trade measures. In other aspects of fishing policy, most notably combating illegal, unregulated, and underreported (IUU) fishing, the EU has already shown initiative to utilize its market influence.<sup>9</sup> In the context of development, as noted above, trade measures have been less successful. Introducing trade more prominently as part of the conversation about the bilateral fishing agreements may help support developmental goals such as food security, poverty eradication, stock sustainability, and maintaining small-scale fishing communities. More specifically, the European Commission must consider addressing the effects of its tariff regime on partner countries' food security and market dependency; and it must amend its sectoral support measures to better support small-scale fisheries.

As discussed earlier, the EU-ACP tariff regime has proved more problematic than

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<sup>9</sup> See Council of the European Union. 2008. Council Regulation (EC) No. 1005/2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing. *Official Journal of the European Union*, L286/1.

initially conceptualized. In 2009, 98 per cent of exports to the EU from ACP countries, including fishing exports, entered the EU duty and tariff free.<sup>10</sup> Yet this non-reciprocal tariff exemptions regime, outlined under the 2000 Cotonou Agreement and valid until 2020, ensures ACP partner countries' dependence on the EU market as an export destination – and on export itself as a valuable source of revenue.<sup>11</sup> For many of these countries, local food security depends on fish products, which then presents a conflict with rising economic incentives for export. In this project, this general trend has been illustrated by the Senegal case study, where 75 per cent of the population relies on fish products for their main protein intake, yet conditions established by the Lomé and Cotonou Agreements have made fish the country's highest export by both volume and value.<sup>12</sup> For Senegal and countries like it, such conflicting incentives could spell significant issues with food security in the future.

In addition, the financial incentive to export is coupled for Senegal and other ACP countries with an equally strong incentive to conduct bilateral access agreements with the EU, both because of the access right and “sectoral support” revenue, and because often these countries' own fleets, consisting predominantly of small-scale vessels, cannot access the EU market as easily. This raises concerns with ecosystem health as well as food security. Developing countries that rely on fish exports for revenue face significant pressure to continue fishing even when stock levels are at unsustainable levels. This

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<sup>10</sup> Delegation of the European Union to Sierra Leone. 2015. “Trade.” Available online:

<[http://eeas.europa.eu/delegations/sierra\\_leone/eu\\_sierra\\_leone/trade\\_relation/index\\_en.htm](http://eeas.europa.eu/delegations/sierra_leone/eu_sierra_leone/trade_relation/index_en.htm)>.

<sup>11</sup> M. Langan, “Decent work and indecent trade agendas: the European Union and ACP countries,”

*Contemporary Politics* 20 (2014): 23-25; UNEP. 2002. Integrated Assessment of Trade Liberalization and Trade-Related Policies: A Country Study on the Fisheries Sector in Senegal.

<sup>12</sup> Id.; D. Belhabib, V. Koutob, A. Sall, V.W.Y. Lam, and D. Pauly, “Fisheries catch misreporting and its implications: the case of Senegal.” *Fisheries Research* 151 (2014): 1-11.

dependency prevents the host country from utilizing the resource in a manner that would be best for the local industry or the communities dependent on the resource.

And finally, all of this is premised on the assumption that stock surplus is constantly available to be fished or exported in ACP waters. Hence, there is a multi-level power imbalance in EU-ACP fishing negotiations, both for trade agreements and for access agreements. Developing countries must often approach fishing negotiations with the EU only through an internal compromise between curbing local food security, harming the sustainability of the local ecosystem, introducing significant competition for local fishermen, and gaining revenue in exchange for exports, access, or development support to the fishing sector. Needless to say, the EU does not face similar levels of uncertainty with the agreements. Thus, the negotiations often contain a distinct power imbalance.

The debate about these issues is entirely absent from current discourse at the EU institutional level. Any meaningful dialogue about these problems must include partner states, and it must begin with an overview of the tariff regime and the structure of the dual payments for bilateral fishing agreements. First, the EU must consider tailoring the tariff regime in respect to all fishing access and trade agreements as a means of remedying the regime's intended purpose of supporting development. In a manner similar to the EU's approach with IUU fishing, the purchasing power of the EU's market could be utilized to encourage seafood products that are more sustainable than others. More specifically, in consultation with partner states, tariff-free status could target only catch that is not vital for these countries' food security. Species that serve as the main source of protein to these countries' citizens, on the other hand, could be removed from the tariff-exempt list, with tariffs imposed proportionally to their importance to the local communities. It is vital,

however, that these measures be devised in close consultation with partner states, to reflect their needs most closely.

As part of its trade considerations, the EU should also implement policies in support of small-scale fishing communities. The previous chapter has already noted the paucity of such measures in the EU-Senegal fishing agreements. Where relevant provisions were adopted, they dealt with the “safety” of artisanal fishermen as opposed to with concerns for employment and sustenance.<sup>13</sup> Additionally, the 2014 EU-Senegal SFA has failed to incorporate a substantial amount of provisions from the FAO’s SSF Guidelines, even though both agreements were negotiated at the same time, and with the involvement of both parties. While there is not necessarily a direct link between the two international tools, implementing measures from the soft law SSF Guidelines would have supported the vision of the EU as a normative actor. Instead, the debate on small-scale fishermen and their relationship to the EU’s fishing policies is limited. In key documents on the 2014 CFP reform, artisanal fisheries are either entirely absent, or are present only as an afterthought.<sup>14</sup>

Trade measures for supporting these communities could be integrated into the EU’s existing capacity building payments. Currently, these payments are geared mainly toward supporting scientific knowledge, data collection and management;<sup>15</sup> but equally, they

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<sup>13</sup> See Proposal for a Council Regulation on the conclusion of the Protocol setting out the fishing opportunities and the financial contribution provided by the Agreement between the European Economic Community and the Government of the Republic of Senegal on fishing off the coast of Senegal for the period from 1 July 2002 to 30 June 2006. COM (2002) 496. *Official Journal of the European Communities* C 20 E/336.

<sup>14</sup> E.g., they are entirely missing from European Commission. 2011. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on the Regions on External Dimension of the Common Fisheries Policy. COM (2011) 424: 10-14; and in the 2009 Green Paper on Reform (see n. 5 above) they are entirely missing.

<sup>15</sup> European Commission. 2011. Communication from the Commission to the European Parliament, the

could be utilized for community-focused development. The FAO's SSF Guidelines point to "poor access to health, education and other social services" as a pertinent challenge faced by small-scale fishing communities.<sup>16</sup> The EU could fruitfully address these issues through its sectoral payments.

More broadly, the EU needs to decouple such payments from its fishing access fees.<sup>17</sup> The current structure introduces a conditionality to capacity building in the sector, which cuts against the advancement of human rights or developmental goals in partner countries' fishing sectors. Although proposals for decoupling sectoral from access payments were featured during discussions on the CFP's most recent reform, the final structure of the agreements does not implement this policy.<sup>18</sup> The dual payment scheme thus leads to incoherence with past agreements on sustainable development, such as the UNCED conferences and FAO soft law instruments. These fora have emphasized the need to promote development without conditionality or prescription, in contrast to making capacity building conditional on fishing access.

Moreover, the pairing of fishing access and sectoral support payments is non-compliant with broader trends in modern international law, including global trade aspirations. Above all, the EU's current payments scheme clashes with the direction of negotiations on fishing subsidies advanced by the WTO. Critics, WTO officials and other

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Council, the European Economic and Social Committee and the Committee on the Regions on External Dimension of the Common Fisheries Policy. COM (2011) 424: 10-14.

<sup>16</sup> FAO. 2014. Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication. Available online: <[www.fao.org/cofi/en](http://www.fao.org/cofi/en)>.

<sup>17</sup> This argument has been made earlier, and a great deal more elegantly, by Beatrice Gorez: "Policy study: EU-ACP fisheries agreements." Report, UK Department for International Development (2005)

<sup>18</sup> European Commission. 2011. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee on the Regions on External Dimension of the Common Fisheries Policy. COM (2011) 424: 10-14.

countries (among which the US, Norway, Australia, New Zealand) have long advocated for limiting subsidies that contribute to overcapacity.<sup>19</sup> By contrast, the EU has a long history of rejecting such proposals and of arguing that its policies should not be considered as subsidies.<sup>20</sup> Yet the EU's dual payment scheme falls under this category because the access fee is mainly paid by the EU, rather than by vessel owners. More importantly, the fees system is particularly problematic in the dialogue on subsidies and sustainability because it makes developmental and institutional support for the fishing sector contingent on fishing access. In this way, measures that are presented as supportive of sustainability goals serve in practice as a Trojan horse for overexploitation.

Decoupling the access fee and capacity building payments can bring the EU closer to a normative role. Because of its significant sway as the world's foremost market for seafood products, the EU would lose relatively little from implementing measures that support decreased dependency and food security in ACP countries. It is likely to retain both its influence and its competitiveness as the world's largest purchasing power for seafood products despite changes in the tariff scheme or dual payments. By contrast, the EU would gain much in the way of respectability as an international actor and a champion of human rights in fisheries. Its market-based support for curbing IUU fishing is already

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<sup>19</sup> U.R. Sumalia, A. Khan, R. Watson, G. Munro, D. Zeller, N. Baron, and D. Pauly, "The World Trade Organization and global fisheries sustainability," *Fisheries Research* 88 (2007): 1-4; S. Harper, D. Bevacqua, R. Chudnow, S. Giorgi, V. Guillonneau, F. Le Manach, T. Sutor, and U.R. Sumalia, "Fuelling the fisheries subsidy debate: Agreements, loopholes and implications," *Fisheries Research* 113 (2012): 143-146.

<sup>20</sup> S. Ponte, J. Raakjær and L. Campling, "Swimming upstream: Market access for African fish exports in the context of WTO and EU negotiations and regulation," *Development Policy Review* 25 (2007): 113-138; S. Harper, D. Bevacqua, R. Chudnow, S. Giorgi, V. Guillonneau, F. Le Manach, T. Sutor, and U.R. Sumalia, "Fuelling the fisheries subsidy debate: Agreements, loopholes and implications," *Fisheries Research* 113 (2012): 143-146.

looked to as a global best practice.<sup>21</sup> Its implementation of similar, and stronger, measures in the development context could accomplish the same.

## **2. Broader Implications**

### *2.1. The EU's Structural Limitations to International Involvement*

Considerable political will is necessary to advance the Commission's normative perspective. However, as noted above, at this time there is a limited amount of political will for advancing developmental goals, whereas there is a strong set of interests in favor of internal economic interests. Furthermore, it is worth noting that the EU's underlying institutional structure continues to change, and is not always in a line consistent with normative goals. This chapter has already addressed some of the uncertainty involved in determining the European Parliament's increasing influence and its likely direction. In fisheries, institutional change can also be observed with the newly established joint Commission for Environment, Maritime Affairs and Fisheries.<sup>22</sup>

The new Commission signals realignment for environmental and ocean policy objectives. On one hand, the fusion of previously separate Commissions grants the Commissioner (Karmenu Vella) more political power; it also constitutes a non-rhetorical action toward managing natural resources systematically, potentially in concert with principles of ecosystem-based management. On the other hand, language from President-Elect Juncker's mission letter to Mr. Vella suggests a much stronger emphasis on "Green

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<sup>21</sup> C. Bretherton and J. Vogler, "The European Union as a sustainable development actor: The case of external fisheries policy," *Journal of European Integration* 30 (2008): 401-417.

<sup>22</sup> J.C. Juncker, "Mission letter to Karmenu Vella, Commissioner for Environment, Maritime Affairs and Fisheries" (Brussels, 10 September 2014), available online: <[http://ec.europa.eu/about/juncker-commission/docs/vella\\_en.pdf](http://ec.europa.eu/about/juncker-commission/docs/vella_en.pdf)>.



Growth” and “Blue Growth” (environment and ocean related jobs and investments).<sup>23</sup> This orientation could prove more akin to the interests of the Spanish fishing lobby to maintain fleet and seafood market competitiveness. At only half a year after the new Commission’s establishment, predictions would be immature; however, overall the new institutional arrangement does not seem intended to advance developmental or human rights in the external aspect of the CFP. Instead, the mission letter communicates goals of targeting sustainable development as a means to economic growth within the EU.

Once again, this raises questions about the future of political will for foreign development, sustainability and human rights in the EU. Examining the CFP’s external fishing goals has shown consistent conflicts between objectives. This tendency has not been limited to foreign fishing only: the length of the last CFP reform negotiations (2009-2013) suggests the inevitable political compromises ingrained into the policy. Objectives generated at different levels of governance (supranational versus national) and within different groups at each level (e.g., between EU institutions such as the Council versus the Commission, or between member states, North versus South) have consistently driven these difficulties. As demonstrated throughout this work, these internal contradictions impact the EU’s external fishing policy significantly. But more importantly, these issues impact many other aspects of EU politics, as well – including, at this time, financial policy and external politics.<sup>24</sup> Hence, the questions raised here about the EU’s mode of participation in the international regime not only remain open, but are ones that deserve due attention from any future research interested in the EU’s global influence.

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<sup>23</sup> Id.

<sup>24</sup> Vis-à-vis the Greek bail out negotiations in the spring of 2015; and foreign relations with Russia 2014-2015.

## *2.2. EU-ACP and International Power Relations*

If the EU's mode of international involvement is in question, so, too, is its relationship with developing countries. In international law, developmental principles are usually advanced through soft law mechanisms of cooperation and multilateralism. This approach is crucial for avoiding the prescription inherent to power relations. Yet the approach is also vulnerable to issues with enforceability. The advancement of soft law principles depends heavily on good political will, but also on an entity's ability to carry out its positive intentions through relevant policy. However, as the bilateral fishing case in this work illustrates, policies intended to promote cooperation can often have the opposite effect. While imperfect, the EU could be argued to enact its policies with relatively more transparency and pro-developmental dialogue than other long distance fishing powers. Even so, its internal inconsistencies and political interests deter it from making as full a positive impact as claimed or intended.

This suggests larger implications about the inherent issues of developmental policies. They must be inclusive but cannot be necessarily equal; they must utilize aid and support originating from developed countries but avoid prescription. These are difficult challenges, and the right approach to meeting them is not necessarily clear. This issue is additionally complicated by the nature of the international system, in which political influence pans out differently in global treaty negotiations and in bilateral relations. Hence, the overview of fishing policy here raises much larger, and much more difficult, questions about power dynamics in the international system and the ability of concrete

policies to address them.<sup>25</sup>

### *2.3. International Law and International Policy*

Finally, this study raises questions about what gets lost in translation when aspirations placed in international law are translated into concrete policy. This is a particularly challenging query when the issues concerned are as comprehensive and multifaceted as the ones discussed here: human rights, equitable development, natural resource use and the environment. The abstractions of these issues call for broader provisions at the international level. Hence, whereas the UNCLOS III negotiations created – albeit in the space of nine years – in a codified hard law regime governing ocean space, the UNCED conferences, in three installments covering twenty years, have produced predominantly soft law mechanisms. In the context of fisheries, this has resulted in divergent policies, compliant with hard law under UNCLOS III but not necessarily with soft law principles advanced by the FAO’s Code of Conduct and SSF Guidelines.

Policies also have difficulty reflecting the aspirations of international law because, while the language of the law can at times afford to be broad (e.g., “eradicating poverty”), policies must, by contrast, be operational. Thus, when international law’s aspirations are synthesized into policy objectives, too often certain nuances are lost in the translation. These are observations without an easy answer. At the same time, however, they are ones that deserve much more attention. Future research might therefore address approaches to

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<sup>25</sup> Although I have not engaged with them here, there are multiple theories that might be of interest to those who would research these issues, including dependency theory and the “resource curse.” See J. Caporaso, “Dependency theory: continuities and discontinuities in development studies,” *International Organization* 34 (1980): 605-628; and M. Ross, “The political economy of the resource curse,” *World Politics* 51 (1999): 297-322.

the deficiency in translations between international law and international policy.

### **3. Conclusion**

While many of the large questions involved in this study remain unanswered, and some of the broader themes it suggests remain unexplored, nevertheless several useful conclusions could be made here.

First, the plethora of norms referenced by rhetoric from the European Commission on international fishing governance draws on a rich history of ideas about human rights and the environment that were first advocated by developing countries. This, in itself, problematizes the Commission's claim of normative influence in fisheries. However, while over time the Commission's rhetoric has come much closer to framing these ideas correctly in a context of international cooperation for development and sustainability, in practice the policies of the EU remain under a strong influence from internal political interests, largely advanced by the Spanish long distance lobby. The discrepancies in the EU's claims and actions are hence manifestations of its institutional composition and its lack of uniform legitimacy among its citizens. In the wake of a financial crisis, it has come to seem that political will for advancing human rights and sustainability in partner states' waters is currently deficient in the EU. These findings have been illustrated through a case study of bilateral agreements between the EU and Senegal over time.

In a broader sense, in seeking to understand the inconsistency between EU rhetoric and EU policy, these chapters have described an entity still struggling with its internal incoherence despite its enhanced legal centralization. At the same time, the EU's policies also reflect the incoherence of the international law framework itself. In particular, they

reflect the difficulties of aiding development without prescribing policy and of exploiting marine resources without depleting them. In short, the broader questions raised by this work are also questions that apply back to the EU's fishing policy in the future. Fair fishing is hardly a county fair.

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