


Essay

A Fairer Governance of High Sea Fishing through a Systemic Interpretation Approach

Liang Yu 

Law School, Tianjin University, Tianjin 300072, China; yu_liang@tju.edu.cn

Abstract: The regulation of high sea fishing would not be successful without cooperation among the states in the current international society, without a world government. However, the ongoing quest for cooperation in the field of fishery governance focuses too much on the unilateral responsibility of a state to cooperate with a RFMO, overlooking the responsibility of state parties of an RFMO or the state seeking to regulate IUU fishing. This essay reveals that the equitable consideration of fishery governance is sometimes prejudiced in the name of conservation. Fishery governance involves food security, employment, free trade, and the environment. An ideal regime of high sea fishing is expected to balance the conflicting values and bring an end to the fragmentation of international law. The systemic interpretation approach, which is based on Article 31, paragraph 3(c) of the Vienna Convention on the Law of Treaties, contributes to a fairer governance of high sea fishing. Such an approach revives the obligation of the state to cooperate in the fishery sector by referring to external legal sources, including human rights laws, WTO laws, and environmental laws.

Keywords: high sea; fishery governance; international law; treaty interpretation; RFMO; IUU fishing



Citation: Yu, L. A Fairer Governance of High Sea Fishing through a Systemic Interpretation Approach. *Fishes* **2022**, *7*, 344. <https://doi.org/10.3390/fishes7060344>

Academic Editor: Yen-Chiang Chang

Received: 30 October 2022

Accepted: 23 November 2022

Published: 24 November 2022

Publisher's Note: MDPI stays neutral with regard to jurisdictional claims in published maps and institutional affiliations.



Copyright: © 2022 by the author. Licensee MDPI, Basel, Switzerland. This article is an open access article distributed under the terms and conditions of the Creative Commons Attribution (CC BY) license (<https://creativecommons.org/licenses/by/4.0/>).

1. Introduction

In recent decades, the international society has strengthened the regulation over high sea fishing for fear of declines in fish stocks in places beyond national jurisdiction. Much progress has been made in this regard, especially through the practice of regional fisheries management organizations (RFMOs) and the cooperative framework provided by the Food and Agriculture Organization (FAO). Law, both international and domestic, has never been absent in this process. The widespread concern regarding over-fishing has promoted the innovation of international law theory and practice in the direction of making RFMOs measures effective and pushing the cooperation with RFMOs by non-parties thereof. Such a habit is further supported by some international and domestic practices. The former includes the making of some landmark treaties, for example, the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (the Fish Stocks Agreement), which stipulates that only the states that are members of the relevant RFMO, or who agree to apply the measures established by the RFMO, shall have access to the fishery resources in question [1] (Article 8). The latter includes the legislation by some port or market states to deter the illegal, unreported, and unregulated (IUU) fishing identified by an RFMO [2], and the legislation or measures by some flag states to voluntarily forbid IUU fishing, even in areas within the competence of an RFMO to which the flag state is not a member. The morally sound language of conserving living marine resources is shaking the foundations of the customary nature of the freedom of the high seas.

To fight against over-fishing on the high seas seems to have become a mainstream discourse in marine governance. This goal cannot be achieved without cooperation among the states in the current international society, without a world government. Indeed, international cooperation has become a cornerstone in international law since the Second World

War. State obligations regarding international cooperation permeate different branches of international law, from human rights to ocean affairs. In the field of fishery governance, for instance, the Fish Stocks Agreement provides that coastal states and states fishing on the high seas have a general duty to cooperate [1] (Article 5). The literal meaning of cooperation entails endeavors from two sides of participators. However, the ongoing quest for cooperation in the field of fisheries governance focuses too much on the unilateral responsibility of a state to cooperate with an RFMO, overlooking the responsibility of state parties of an RFMO or the state seeking to regulate IUU fishing. It reflects a preconceived idea of giving priority to the protection of living marine resources, rather than other legitimate interests. This is understandable at a preliminary stage of seeking regulation, but its fairness deficiencies are also obvious, accompanied by the doubt concerning whether the current RFMOs practice is genuinely running towards their purported goal of conserving living marine resources [3]. It is time to seriously rethink the meaning of state obligation to cooperate in the fishery sector.

Just as the freedom to fish on the high seas is not absolute, the maintaining of fish stocks is also not necessarily a supreme value. Other values, such as human rights, free trade, and the equitable allocation of resources, are equally important in fishery governance. An ideal regime of high sea fishing is expected to balance the conflicting values and to bring the fragmentation of international law to an end. It is generally believed that the systemic interpretation method can harmonize the fragmented branches of international law [4]. The systemic interpretation requires an interpreter to consider other rules of international law in the process of treaty interpretation. Given the central role of states in the international arena and the emphasis of cooperation among states regarding thorny issues in recent international law practice, this essay undertakes to explore how a systemic interpretation approach in regard to state obligations for international cooperation contributes to a fairer governance of high sea fishing. It particularly probes how the conservation and non-conservation concerns shape the meaning of state obligation to cooperate under Article 5 of the Fish Stocks Agreement. It aims to find a way to integrating different aspects of state cooperation in the discourse of high sea fishing regulation.

2. The Unbalanced Problem of the Current Legal Regimes Regarding High Sea Fishing

2.1. International Efforts to Enhance the Authority of RFMOs

Different from the international seabed, the high seas are not defined as the common heritage of mankind. Instead, the fishing resources of the high seas are subject to free exploitation, notwithstanding some limitations on the freedom of the high seas, according to the United Nations Convention on the Law of the Sea (UNCLOS), a basic legal instrument concerning marine affairs. The conservation of fish stocks, which heavily depends on state willingness to cooperate, is *prima facie* fragile due to the historically dominant notion of the freedom of the high seas. In the face of the difficulty in conserving fish stocks, the international law community has endeavored to enhance the authority of, and to promote state cooperation with, relevant RFMOs which usually works by way of setting catch limits and allocations on fishing efforts for a state member and making decisions to forbid or limit certain fishing methods.

The Fish Stocks Agreement, embracing 92 state parties, accounting for approximately half of the international community, has in fact limited the freedom of high sea fishing, to a large extent. For example, non-members of an RFMO are required to abide by their duty to cooperate by becoming members of such an organization, participants in such an arrangement, or by agreeing to apply the conservation and management measures established by such an organization or arrangement [1] (Article 8.3). A non-member state shall not authorize vessels flying its flag to engage in fishing operations for fish stocks which are subject to the conservation and management measures established by such an organization [1] (Article 17.2). The binding effects of the RFMO measures on non-members are still based on state consent, which can be found in the Fish Stocks Agreement. Perhaps

it is too early to assert that the Fish Stocks Agreement has acquired customary status. However, given the fact that most fishing states have joined this agreement and that some non-parties have, in fact, followed the basic principles therein, there is a strong indication that the Fish Stocks Agreement may become customary law in the future, or at least serve as *opinio juris*, which is one of the two conditions for forming customary international law [5]. For example, China, the world's top producer of marine captures [6], has banned its national vessels from catching southern bluefin tuna in the area within the competence of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT)—of which China has not become a member [7]—although China is not a state party to the Fish Stocks Agreement.

In addition to the Fish Stocks Agreement, other treaties also call for state cooperation with RFMOs. For example, although state parties to the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the port State agreement) do not become bound by measures or decisions of an RFMO of which they are not a member, they shall to the greatest extent possible, take measures in support of conservation and management measures adopted by other states and other relevant international organizations, including RFMOs [8]. The newly adopted WTO agreement on fishery subsidies provides that no member shall grant or maintain any subsidy to a vessel or operator engaged in IUU fishing identified by a RFMO, irrespective of whether the state is the member of the RFMO [9]. In so far as conserving fish stocks relates to biodiversity, the currently negotiated treaty on Biodiversity beyond National Jurisdiction (BBNJ) deserves mention. A key goal of the BBNJ negotiation is to strengthen area-based management tools, including marine protected areas (MPAs). A few, if not all, RFMOs may be deemed as MPAs in a broad sense [10]. The latest version of the drafted BBNJ treaty provides that states shall cooperate for the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, including through strengthening and enhancing cooperation with and promoting cooperation among relevant legal instruments and frameworks and relevant global, regional, subregional, and sectoral bodies [11]. This rule, if it were to become a treaty rule, will have served as an evidence of a customary rule, according to the International Law Commission, which states that a treaty rule may reflect a customary rule if it has led to the crystallization of a rule of customary international law that had started to emerge prior to the conclusion of the treaty [5], given that the customary rule of state obligations to cooperate with RFMOs has started to emerge since the Fish Stocks Agreement.

Besides the international law-making process, international judicial organs have also helped to clarify state obligations to cooperate regarding fisheries affairs. For example, the International Tribunal for the Law of the Sea has issued an advisory opinion on state obligations to regulate the IUU fishing conducted by the vessels flying its flag in the exclusive economic zone of another state, including through cooperation with the coastal state [12]. Although the focus of the advisory opinion is the IUU fishing in exclusive economic zones, the rationale articulated by the tribunal may have the potential to justify state obligations to cooperate with RFMOs. From the above narrative, it appears that the current international law practice tends to reinforce the authority of RFMOs, with an eye on the effective regulation of high sea fishing.

2.2. Fairness Concern in the Fisheries Governance

An observation of current RFMO practices may raise some concerns about fairness and justice. Although fairness issues are usually complicated and full of controversy, in the field of fishery governance, fairness can at least be assessed against whether there is a bias among states in terms of the allocation of fishing opportunities on the one hand, and whether there is a bias between state parties of an RFMO as a whole and all other states, in terms of conserving biodiversity, on the other hand.

The fairness concern in regard to allocating justice is either possible among member states, or possible between member states and a non-member of an RFMO. Comparatively,

the former is not as prominent as the latter, because allocating results are per se a compromise among member states, and sometimes internal allocating disputes can be solved through objection procedures and/or compulsory legal proceedings thereafter [13–16]. Usually, these dispute settlement procedures are expected to assess whether the objected decision is inconsistent with the basic document of the RFMO or relative international law, and whether it constitutes discrimination against a member state. So far, real practices of this kind are rare, with perhaps two proceedings conducted before the South Pacific Regional Fisheries Management Organization (SPRFMO) as the only cases in which state objections were reviewed, one initiated by Russia and the other by Ecuador [17]. In these two proceedings, Ecuador did not successfully challenge the decision in question, but Russia won a partial victory by convincing the the penal that the objected decision discriminated against Russia [18,19].

The allocation problems between members and non-members are more pressing, because member states may collectively deprive non-members of fishing opportunities. RFMOs are usually constituted by traditional fishery states, and they allocate catch quotas among themselves. Many industrial fishery states are rich nations and according to a recent study, they have dominated industrial fishing efforts on the high seas [20]. This may provide further incentives for them to preclude non-members from participating in the allocation of fishing opportunities. The constitutional documents of some RFMOs provide that the accession of a new member shall be agreed upon by consensus [13,15]. This may become an obstacle for a new state to participate in the allocation of fishing opportunities. The North-East Atlantic Fisheries Commission (the NEAFC) has even openly stated that non contracting parties should be aware that presently and for the foreseeable future, stocks regulated by the NEAFC are fully allocated, and that fishing opportunities for new members are likely to be limited to new fisheries (stocks not currently allocated) [21]. This problem is rooted in the arrangement of the Fish Stocks Agreement, which calls for state cooperation with an RFMO, but which lacks an adequate guarantee of state rights to participate in the RFMO. For example, Article 17 of the Fish Stocks Agreement provides for the participation by a fishing entity (an administrative region which is not recognized as a state, such as Taiwan), including enjoying benefits from participation, but this article does not mention the participatory rights of an ordinary state. Article 11 provides another example of contempt for fishing opportunities of new states, because they might be tailored by considerations of fishing practices of the new members, their contributions to conservation and management of the stocks, the needs of the coastal states or coastal fishing communities, etc. In this sense, the Fish Stocks Agreement has implied a *de jure* privilege of old members of an RFMO.

Some might believe that the prejudice against non-members could be justified by the mandate of the RFMOs, which claim to pursue conservation and the sustainable use of fish stocks. Such a decently articulated purpose, if performed in good faith, can, to some extent, make up for the fairness deficiency of RFMOs; however, previous research has revealed that most RFMOs are comprised mainly of states with interests in enhancing or maintaining their domestic fishing opportunities, and that conservation interests are poorly represented in RFMOs [3]. Gjerde et al. have criticized that there are insufficient consequences for poor RFMO performance, and there are no penalties for depleting fish stocks, other than lost fishing opportunities [22]. These structural characteristics can, in turn, explain why most RFMOs are reluctant to genuinely embrace ecosystem-based and precautionary approaches. In this sense, it is arguable that a small number of states are monopolizing fishing opportunities under the guise of conserving living resources, which seemingly prevails over other aspects of fairness.

Some previous studies on fishery governance tended to start from the presumption that to contain the decline of fish stocks is superior to other goals [23]. This may lead to some suggestions of a more effective regulation of high sea fishing, represented by ecosystem-centered doctrine, irrespective of the interests of the states with poor fishing ability, but who wish to fish in the future, as well as the interests of the vulnerable population to make a living in fishery sector or to get access to affordable seafood. In a world susceptible to

the tragedy of the commons, it is desirable to embrace the ecosystem-centered approach to fishery governance. However, such an approach alone might turn into wishful thinking and would not be successful, provided that institutional biases are not removed. At this point, Japan's withdrawal from the International Convention for the Regulation of Whaling (ICRW) in 2019 may serve as an example. Japan's withdrawal was stimulated by its failure in the whaling case before the International Court of Justice (ICJ), in which the court was accused of improperly interpreted the ICRW by giving priority to whale conservation and consequently, ignoring sustainable whaling. Although the ICJ's ecosystem approach is inspiring and was welcomed by some lawyers [24], a recent study has illustrated that its method of interpretation is inappropriate, and its interpretation of the exception clause under the ICRW has intruded on the discretionary power of the states [25]. This example indicates that undue burden on the states may frustrate cooperation regarding fishery governance.

Interestingly, a recent aquatic study shows that, where fisheries are intensively managed, fish stocks are above target levels or rebuilding [26] and according to the annual report of the FAO, global marine captures in 2020 were 78.8 million tons, a decline of 6.8 percent from the peak of 84.5 million tons in 2018 [6] (p.12). These surveys may have some policy implications. A possible interpretation is that current fishery governance has yielded some minor progress through oppressive regional governance, which in fact imposes an external burden on underprivileged states and their populations. For example, the lack of a legal framework for a legitimate membership process ("new entrants problem") in many RFMOs, which was previously mentioned, has been widely criticized as an obstacle to effective fisheries management [27]. A more optimistic interpretation may indicate that people should not exaggerate the plight of fish stock decline, and that it is time to reconsider all the legitimate interests, including the freedom of high seas, free trade, the right to food, and the right to the environment, in the process of fisheries governance in a synthetic way.

3. Diversity of State Obligations on Cooperation and a Systemic Interpretation Approach

3.1. Diversity of State Obligations on Cooperation in Need of a Systemic Interpretation Approach

International cooperation has become a cornerstone of current international law, which is embedded in our increasingly interdependent world [28]. The UN charter has articulated general obligations of states regarding international cooperation for all kinds of matters, ranging from "economic and social progress and development," to "international economic, social, health, and related problems," and to "human rights and fundamental freedoms" [29]. The idea of international cooperation has also been mentioned or implied by some treaties on human rights and free trade [30,31], and reiterated by the UNCLOS and the Fish Stocks Agreement, as mentioned above. In this sense, fishery governance not only requires states to cooperate to conserve fish stocks, but also entails state obligations to cooperate in other aspects, such as the food security, free trade, and employment dimensions of fishery issues. Instead of giving priority to the value of conserving fish stocks, this article seeks to coordinate different and even conflicting interests in the process of fishery governance, because other aspects of justice are not less important than the conservation of fish stocks. This stance is supported by the UN 2030 agenda, in which world leaders have promised to achieve 17 Sustainable Development Goals through international cooperation [32]. To end poverty, to achieve food security and improved nutrition, to reduce inequality within and among countries, and to conserve marine resources are among these goals, which are integrated and indivisible [32].

The difficulty exists in how to balance different interests, and this is prominent in the field of international law, which consists of different subsections, each having a set of particular rules and regimes. This phenomenon is referred to as fragmentation, which characterizes, but also disturbs, international law [33]. As a response, many international law scholars and judicial bodies consider the principle of systemic integration to be an appropriate way to deal with the fragmentation of international law. According to the International Law Commission, international law should be viewed as a legal system, and

its rules and principles act in relation to, and should be interpreted against, the background of other rules and principles [33]. Such a method of treaty interpretation, which is based on Article 31, paragraph 3(c) of the Vienna Convention on the Law of Treaties (1969), constitutes the core of the principle of systemic integration. Such an approach gives due regard to external legal sources in treaty interpretation and can help to avoid the irreconcilable conflicts of norms [34]. In this sense, the Fish Stocks Agreement and regional fishery instruments do not exist in a legal vacuum, and therefore, the articles therein concerning state obligations on cooperation should be interpreted in harmony with other rules of international law, especially the customary rule on the freedom of the high seas, which may be better understood in conjunction with human rights treaties and WTO agreements. By the same token, other branches of international law shall in their respective dispute settlement procedures give due regard to state obligations concerning cooperation under the UNCLOS and the Fish Stocks Agreement. Only in this way can fishery governance entertain the equitable allocation of fishing resources on the one hand, and pursue ecojustice genuinely on the other hand. The following sections show how the conservation and non-conservation concerns in the process of fishery governance can be integrated by way of the systemic interpretation of relevant rules concerning freedom of the high seas, the right to food, the right to work, free trade, and the right to the environment.

3.2. Conservation and Non-Conservation Concerns Reconciled through Systemic Integration

The Fish Stocks Agreement was designed as an implementation agreement of the UNCLOS, and Article 4 provides that the agreement shall not prejudice the rights under the UNCLOS and that it shall be interpreted in a manner consistent with the UNCLOS. As previously mentioned, however, the freedom of the high seas in regard to fishing under the UNCLOS, and even under customary law, is at the risk of being de facto spoiled in the name of conservation. Although total freedom is unfavorable to conservation, a thorough denial of freedom of the high seas is also unwise. The freedom of the high seas not only has a customary nature, but may also have a human rights implication.

It is true that the UNCLOS, which articulates the freedom of the high seas, is not a human rights treaty, and therefore, the obligations thereof are state obligations vis-à-vis another state. This treaty does not confer entitlements upon individuals. The main human rights instruments, including the Universal Declaration of Human Rights, do not contain any explicit article on the freedom of the high seas or the right to fish. However, a state obligation vis-à-vis another state may have the potential to give rise to an individual right, under certain conditions. For example, in the *LaGrand Case*, the ICJ confirmed that Article 36(1) of the Vienna Convention on Consular Relations, which provides state obligations vis-à-vis another state, created individual rights [35]. By analogy, it is arguable that the freedom of the high seas, if read in conjunction with the right to food and the right to work, may also produce human rights implications.

The right to food and the right to work find their legal provisions, respectively, in Article 11 and Article 6 of the International Covenant on Economic, Social, and Cultural Rights (ICESCR). The ICESCR contains a general article (Article 2) requiring states to realize human rights “through international assistance and cooperation, especially economic and technical,” and in the article on the right to food, it reiterates the importance of international cooperation. It is now widely accepted in the human rights literature that state obligations on human rights do not end at its borders, and that state obligations extend to extraterritorial situations and to the affairs that must be addressed through cooperation [36]. Although these social rights do not necessarily denote a direct or an absolute access to fishery resources for food or employment purpose, it can be well argued that state parties of RFMOs shall not arbitrarily deprive non-member states of the opportunity to realize the rights of their own population to food and work through high sea fishing [37,38]. It can also be argued that RFMOs should give due regards to the interests of artisanal fisheries that catch fish mainly for human consumption, as opposed to industrial fisheries, 25% of whose catch is destined for reduction to fish meal and other animal feed [39]. In this sense, the

state parties of RFMOs are expected to leave some quotas for non-member states or directly for fishers, or at least to make an appropriate arrangement for their possible participation in the allocation of resources at the minimum level that can reasonably cater to their food and employment demands. It is argued that a rebuffed state which should have been given membership has a legitimate right to at least partially ignore the RFMO's measures [40]. This equally indicates that state parties of RFMOs or other states seeking to conserve fish stocks may better use market state measures to deter IUU fishing, as European Union does in its IUU Regulation [41], which logically do not prevent non-members from fishing for domestic demands (because non-members can do that by staying away from the RFMO, according to the international law principle of *pacta tertiis nec nocent nec prosunt*).

Further questions arise as to whether a market state can take whatever measures it likes, and more difficultly, whether non-members of RFMOs can claim access to the seafood market of a state taking strict measures against IUU fishing. To answer these questions, reference should be made to the notion of free trade, another important value of international law. It should be noted that the WTO regime gives ample discretion to a state to adopt trade restrictions for the purpose of conserving exhaustible natural resources [42]. It seems that the right to food and the right to work, possibly claimed by non-members of RFMOs, do not necessitate the exportation of a fish catch to a foreign state, but they may instead argue that an appropriate amount of exportation is necessary for a robust industry on which their domestic fishers rely to make a living, and which ultimately contributes to affordable seafood by more global competition. Interestingly, rich countries tend to blame market interventions, such as subsidies or export restrictions, for higher food prices [43], but they seldom introspect the negative impacts of their market state measures in combating IUU fishing (import restrictions) on the global food market. Given the important role of trade in realizing global food security, it is submitted that market states bear the responsibility to review the reasonableness of relevant RFMO measures prior to the decision on import restrictions, especially whether the RFMO measures genuinely contribute to conservation and whether the practice of the RFMO unduly discriminates against non-members. In this regard, the European Court of Justice is in a good position to push the EU and its member states to assess the reasonableness of RFMO practices before adopting import restrictions in potential judicial cases challenging the legitimacy of the EU IUU regulation.

The recent WTO Agreement on Fisheries Subsidies provides a good opportunity to reconcile free trade and the conservation of fish stocks. Article 3.1 of this agreement generally forbids subsidies to IUU fishing [9]. Article 3.2 defines IUU fishing according to which a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by "a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence" [9]. The phrase "in accordance with the rules and procedures of the RFMO/A and relevant international law" gives WTO Dispute Settlement Body (DSB) the competence to review the procedural and substantial aspects of RFMO's decision on IUU fishing in anti-subsidy cases. Although the intensity of review remains to be observed in future cases, the broad term of "relevant international law" under Article 3.2 arguably confers plenty of discretionary power, which may include the possibility to assess the systematic problems of an RFMO, upon DSB. In this sense, WTO DSB may serve as an outside supervisor of RFMOs, and it should take this opportunity to promote a fairer fishery governance.

The systemic interpretation approach can not only raise attention regarding non-conservation concerns, but may also entertain conservation interests. The emerging concept of the right to the environment provides external sources for the interpretation of state obligations to cooperate to conserve living resources under the Fish Stocks Agreement. The right to the environment was not internationally recognized as a formal human right until 2022, when UN General Assembly adopted a resolution on the human right

to a clean, healthy, and sustainable environment [44]. Before this historical resolution, environment-related rights were mainly limited to procedural aspects [45], and only a very few states admitted substantial aspects of environmental rights into their constitution [46,47]. The recent UN resolution for the first time declared, internationally, the human right to the environment, not only in procedural aspects, but also in substantive aspects.

In the UN General Assembly resolution, states recognize that the unsustainable management and use of natural resources and the resulting loss of biodiversity and the decline in services provided by ecosystems interfere with the enjoyment of a clean, healthy, and sustainable environment [44]. The resolution recognizes the right to a clean, healthy and sustainable environment as a human right; and calls upon states, international organizations, business enterprises, and other relevant stakeholders to adopt policies, to enhance international cooperation, to strengthen capacity-building, and to continue to share good practices in order to scale up efforts to ensure a clean, healthy, and sustainable environment for all [44]. This not only requires non-members of RFMOs to cooperate with organization, but also requires state parties of RFMOs to collectively pursue a genuine policy of conservation through decision-making procedures in good faith. If state members of RFMOs fail to fulfill their joint obligations to conserve fishing stocks, any state party of the Fish Stocks Agreement may initiate inter-state proceedings (according to Article 30) to invoke state responsibility under Article 35 thereof against those RFMO members who are also state parties of the Fish Stocks Agreement. Unfortunately, the invocation of such a state responsibility is scarcely known. It is submitted that Article 30 (procedural basis) and Article 35 (substantial basis) of the Fish Stocks Agreement should be actively used, in light of the human right to the environment, to push RFMOs to achieve their goals.

4. Conclusions

The systemic interpretation approach is a useful tool to integrate different and even conflicting interests, including food security, employment, free trade, and the environment, in the process of high sea fishing governance. It can entertain both conservation and non-conservation concerns by taking a holistic view of international law. Such an approach calls for, and will trigger, multiple fishery governance in diverse sectors and at different levels, involving the participation of RFMOs, the European Court of Justice, and other regional or domestic courts of seafood market states, WTO DSB, the dispute settlement regime under the Fish Stocks Agreement, and human rights treaty bodies. Policy suggestions and legal strategies for a fairer fishery governance include: RFMOs should make an appropriate arrangement for non-members to participate in the allocation of fishery resources at the minimum level that can reasonably cater to their food and employment demands; national courts, the European Court of Justice, the WTO DSB, and human rights treaty bodies may serve as external supervisors of RFMOs, and they should take this opportunity to promote a fairer fishery governance; states in favor of the environment may actively use the dispute settlement regime under the Fish Stocks Agreement to invoke the international responsibility of the state members of RFMOs as a whole.

Funding: This research received no external funding.

Acknowledgments: The author would like to thank Daniel Guttman and Russell Smith for the online brainstorm meeting.

Conflicts of Interest: The authors declare no conflict of interest.

References

1. Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks. Available online: <https://legal.un.org/avl/ha/aipuncnls/aipuncnls.html> (accessed on 22 November 2022).
2. EU. Council Regulation (EC) No 1005/2008 Establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and Repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999. Available online: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:32008R1005> (accessed on 22 November 2022).
3. Brooks, C.M.; Weller, J.B.; Gjerde, K.; Sumaila, U.R.; Ardrón, J.; Ban, N.C.; Freestone, D.; Seto, K.; Unger, S.; Costa, D.P.; et al. Challenging the “Right to Fish” in a Fast-Changing Ocean. *Stan. Envtl. L. J.* **2014**, *33*, 289–324.
4. Merkouris, P. Principle of Systemic Integration. Available online: <https://opil.ouplaw.com/view/10.1093/law-mpeipro/e2866.013.2866/law-mpeipro-e2866> (accessed on 28 October 2022).
5. International Law Commission. *Draft Conclusions on Identification of Customary International Law*, Yearbook of the International Law Commission; International Law Commission: New York, NY, USA, 2018; Volume II, Part Two.
6. FAO. The State of World Fisheries and Aquaculture 2022. Available online: <https://www.fao.org/publications/sofia/2022/en/> (accessed on 28 October 2022).
7. The Ministry of Agriculture and Rural Affairs of China. Available online: http://www.moa.gov.cn/govpublic/YYJ/202203/t20220310_6391428.htm (accessed on 28 October 2022).
8. Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing; Article 6.2. Available online: <https://www.fao.org/3/i1644t/i1644t.pdf> (accessed on 22 November 2022).
9. WTO. Agreement on Fisheries Subsidies. Available online: https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm (accessed on 22 November 2022).
10. De Santo, E. Implementation Challenges of Area-based Management Tools (ABMTs) for Biodiversity beyond National Jurisdiction (BBNJ). *Mar. Policy* **2018**, *97*, 34–43. [CrossRef]
11. UN General Assembly. Further Revised Draft Text of an Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction, A/CONF.232/2022/5, 1 June 2022. Available online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N22/368/56/PDF/N2236856.pdf?OpenElement> (accessed on 22 November 2022).
12. International Tribunal for the Law of the Sea, Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC) (Request for Advisory Opinion Submitted to the Tribunal), Advisory Opinion of 2 April 2015. Available online: https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.21/advisory_opinion_published/2015_21-advop-E.pdf (accessed on 22 November 2022).
13. Convention on the Conservation and Management of High Seas Fisheries Resources in the North Pacific Ocean. Available online: <https://www.npfc.int/document/convention-conservation-and-management-high-seas-fisheries-resources-north-pacific-ocean> (accessed on 22 November 2022).
14. Convention on Cooperation in the Northwest Atlantic Fisheries. Available online: <https://www.nafo.int/Portals/0/PDFs/key-publications/NAFOConvention-2017.pdf> (accessed on 22 November 2022).
15. Convention for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean. Available online: <https://www.ecolex.org/details/treaty/convention-on-the-conservation-and-management-of-highly-migratory-fish-stocks-in-the-western-and-central-pacific-ocean-tre-001400/> (accessed on 22 November 2022).
16. Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean. Available online: <https://www.ecolex.org/details/treaty/convention-on-the-conservation-and-management-of-high-seas-fishery-resources-in-the-south-pacific-ocean-tre-160003/> (accessed on 22 November 2022).
17. Leroy, A.; Morin, M. Innovation in the Decision-Making Process of the RFMOs. *Mar. Policy* **2018**, *97*, 156–162. [CrossRef]
18. The Review Panel Established under Article 17 and Annex II of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, The Objection by the Russian Federation to a Decision of the Commission of the South Pacific Regional Fisheries Management Organization, Findings and Recommendations of the Review Panel, 5 July 2013, PCA Case No. 2013-14. Available online: <https://pca-cpa.org/en/cases/33/> (accessed on 22 November 2022).
19. The Review Panel Established under Article 17 and Annex II of the Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean, The Objection by the Republic of Ecuador to a Decision of the Commission of the South Pacific Regional Fisheries Management Organization (CMM 01-2018), Findings and Recommendations of the Review Panel, 5 June 2018, PCA Case No. 2018-13. Available online: <https://pca-cpa.org/en/cases/156/> (accessed on 22 November 2022).
20. McCauley, D.; Jablonicky, C.; Allison, E.; Golden, C.; Joyce, F.; Mayorga, J.; Kroodsma, D. Wealthy Countries Dominate Industrial Fishing. *Sci. Adv.* **2018**, *4*, eaau2161. [CrossRef] [PubMed]
21. North East Atlantic Fisheries Commission. Available online: <https://www.neafc.org/becomingacp> (accessed on 28 October 2022).
22. Gjerde, K.; Currie, D.; Wowk, K.; Sack, K. Ocean in Peril: Reforming the Management of Global Ocean Living Resources in Areas beyond National Jurisdiction. *Mar. Pollut. Bull.* **2013**, *74*, 540–551. [CrossRef] [PubMed]
23. Gonçalves, L. *Regional Fisheries Management Organizations: The Interplay between Governance and Science*; Springer: Cham, Switzerland, 2021; p. XVI.

24. Garrido-Muñoz, A. Managing Uncertainty: The International Court of Justice, ‘Objective Reasonableness’ and the Judicial Function. *Leiden J. Int. Law* **2017**, *30*, 457–474. [CrossRef]
25. Wang, L.F.; Li, F.H. Alternative Interpretation to Article VIII of the International Convention for the Regulation of Whaling: Implications from Article XX of the GATT. *Mar. Policy* **2020**, *117*, 103944. [CrossRef]
26. Hilborn, R.; Amoroso, R.O.; Anderson, C.M.; Baum, J.K.; Branch, T.A.; Costello, C.; de Moor, C.L.; Faraj, A.; Hively, D.; Jensen, O.P.; et al. Effective Fisheries Management Instrumental in Improving Fish Stock Status. *Proc. Natl. Acad. Sci. USA* **2020**, *117*, 2218–2224. [CrossRef] [PubMed]
27. Schatz, V.; Proelss, A.; Liu, N. The 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean: A Critical Analysis. *Int. J. Mar. Coast. Law* **2019**, *34*, 195–244. [CrossRef]
28. Raustiala, K. The Architecture of International Cooperation: Transgovernmental Networks and the Future of International Law. *Va. J. Int. L.* **2002**, *43*, 1. [CrossRef]
29. United Nations Charter, Article 55 and 56. Available online: <https://www.un.org/en/about-us/un-charter> (accessed on 22 November 2022).
30. International Covenant on Economic, Social and Cultural Rights, Article 2. Available online: <https://www.ohchr.org/en/instruments-mechanisms/instruments/international-covenant-economic-social-and-cultural-rights> (accessed on 22 November 2022).
31. Agreement Establishing the World Trade Organization, Preamble. Available online: https://www.wto.org/english/docs_e/legal_e/04-wto.pdf (accessed on 22 November 2022).
32. United Nations. Transforming Our World: The 2030 Agenda for Sustainable Development, Adopted on 25 September 2015, A/RES/70/1. Available online: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N15/291/89/PDF/N1529189.pdf?OpenElement> (accessed on 22 November 2022).
33. International Law Commission. *Conclusions of the Work of the Study Group on the Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, Yearbook of the International Law Commission; International Law Commission: New York, NY, USA, 2006; Volume II, Part Two.
34. McLachlan, C. The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention. *Int. Comp. L.Q.* **2005**, *54*, 279–320. [CrossRef]
35. The ICJ. The LaGrand (Germany v. United States of America) Case, Judgment of 27 June 2001, Para.89. Available online: <https://www.icj-cij.org/en/case/104/judgments> (accessed on 22 November 2022).
36. King, H. Extraterritorial Human Rights Obligations of States. *Hum. Rights Law Rev.* **2009**, *9*, 521–556. [CrossRef]
37. Committee on Economic, Social and Cultural Rights, General Comment No. 18: Article 6 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/GC/18, 6 February 2006, Paras. 29–30. Available online: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2fGC%2f18&Lang=en (accessed on 22 November 2022).
38. Committee on Economic, Social and Cultural Rights, General Comment 12: The Right to Adequate Food (Art. 11), E/C.12/1999/5, 12 May 1999, Paras. 36–37. Available online: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2fC.12%2f1999%2f5&Lang=en (accessed on 22 November 2022).
39. Pauly, D. A Vision for Marine Fisheries in a Global Blue Economy. *Mar. Policy* **2018**, *87*, 371–374. [CrossRef]
40. Molenaar, E. The Concept of “Real Interest” and Other Aspects of Co-operation through Regional Fisheries Management Mechanisms. *Int. J. Mar. Coast. Law* **2000**, *15*, 475–531. [CrossRef]
41. Rosello, M. Cooperation and Unregulated Fishing: Interactions between Customary International Law, and the European Union IUU Fishing Regulation. *Mar. Policy* **2017**, *84*, 306–312. [CrossRef]
42. General Agreement on Tariffs and Trade. Available online: https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm (accessed on 22 November 2022).
43. OECD. Better Agro-Food Policies Are Crucial to Improving Global Food Security. Available online: <https://www.oecd.org/agriculture/topics/food-security/> (accessed on 26 October 2022).
44. UN General Assembly. The Human Right to a Clean, Healthy and Sustainable Environment, A/76/L.75, 26 July 2022. Available online: <https://documents-dds-ny.un.org/doc/UNDOC/LTD/N22/436/72/PDF/N2243672.pdf?OpenElement> (accessed on 22 November 2022).
45. Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters. Available online: <https://unece.org/DAM/env/pp/documents/cep43e.pdf> (accessed on 22 November 2022).
46. Norway’s Constitution of 1814 with Amendments through 2014, Article 112. Available online: https://www.constituteproject.org/constitution/Norway_2014.pdf (accessed on 22 November 2022).
47. Portugal’s Constitution of 1976 with Amendments through 2005, Article 66. Available online: https://www.constituteproject.org/constitution/Portugal_2005.pdf (accessed on 22 November 2022).