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*Understanding the European Union's Role in
Protecting Human Rights in Global Fisheries*

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Abstract

Modern laws have established many protections for human rights; the difficulty now lies with enforcing them, and nowhere is this clearer than at sea. This thesis seeks to contribute to scholarship on this challenge by providing a case-study on the role of the European Union, as an innovative actor in global governance with unique capabilities, in protecting human rights in European and global fisheries against several salient issues, including IUU fishing, forced labour, and social, economic, and labour rights violations. By investigating EU primary, secondary, and international legislation through content and context analysis, this thesis provides an outline of the EU's role as a human rights actor in global fishing in theory. Then, drawing on critical theory, global governance theory, and policy diffusion theory, it contrasts these analytical findings with additional data to highlight the factors that make the EU's human rights protections a success or failure in practice. Ultimately, this produces a holistic understanding of the EU's function as a human rights actor in global fisheries, the findings of which exemplify the significance of explicit, legislative attention to human rights issues, and the cost of a missing human rights based approach in EU policy. Overall, these findings demonstrate positive EU successes in protecting human rights internationally that are hampered by legislative shortcomings, supporting scholarship on the EU's potential for human rights action whilst likewise emphasising the contemporary existence of a gap between this potential and reality.

Keywords: European Union, Human Rights, Global Governance, Fisheries, Legislation, Content Analysis

Table of Contents

1. Introduction.....	1
2. Literature Review.....	4
3. Theory and Methodology.....	8
3.1. Theory.....	8
Critical Theory.....	8
Global Governance Theory.....	10
Policy Diffusion Theory.....	12
3.2. Method.....	14
Data Selection.....	14
Analysis.....	17
Content Analysis.....	17
Context Analysis.....	19
4. Investigation.....	21
4.1. The EU's Role in Theory.....	21
The Commitments of Primary Law.....	21
Sector-Specific Secondary Law.....	23
Transposed International Law.....	28
Sustainable Fisheries Partnership Agreements.....	30
4.2. The EU's Role in Practice.....	34
Within Europe.....	34
IUU Fishing.....	34
Forced Labour.....	37
Fishers' Rights.....	38
Beyond Europe.....	42
EU Vessels Abroad.....	42
European Companies.....	45

State-level Interactions	46
5. Discussion.....	52
5.1. Key Findings	52
5.2. Problems.....	56
5.3. The EU's Role in Future	58
6. Conclusions.....	61
Annex I – Content Analysis Results	63
Annex II – Context Analysis Results	64
Bibliography	65

List of Abbreviations

CFP – Common Fisheries Policy

DG IPOL – Directorate General for Internal Policies

DWF – Distant Water Fleet

EJF – Environmental Justice Foundation

EU – European Union

EUMOFA - European Market Observatory for Fisheries and Aquaculture Products

FAO – United Nations Food and Agriculture Organization

FCR – Fisheries Control Regulation

FoC – Flags of Convenience

FTC – Financial Transparency Coalition

HRBA – Human Rights Based Approach

ILO – International Labor Organization

IPOA-IUU - International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing

IUU – Illegal, Unreported, Unregulated [Fishing]

MLC – Maritime Labor Convention

OJ – Official Journal of the European Union

SFPA – Sustainable Fisheries Partnership Agreement

STECF – Scientific, Technical, and Economic Committee for Fisheries

SMEFF – Sustainable Management of External Fishing Fleets

TEU – Treaty on European Union

UN – United Nations

UNGA – United Nations General Assembly

1. Introduction

In 2021, Ridings described the international challenge of ensuring adequate labour standards aboard international fishing vessels as ‘a problem in search of a home’.¹ This “lack of a home” referred to how various states, regional, and international organisations have attempted to establish a functional and unified framework for the protection of fishers’ human rights in international waters but have instead simply created a patchwork of inconsistently implemented regulations.²

This problem of enforcing human rights at sea amidst the complexities of overlapping or absent jurisdictions, the involvement of numerous state and non-state actors, and a lack of political will, amongst other issues, is not unique to just labour standards on fishing vessels either. Rather, it is a common phenomenon across the global fisheries sector that has come under increasing scrutiny in recent years through a growing mix of official, independent, and academic reporting.³ In this context, discussion of human rights in the fisheries industry and the corresponding need for reform is increasingly salient, yet little has changed. In fact, certain problems are growing worse, with increasing numbers of people trapped in forced labour globally, including 128,000 on fishing vessels.⁴

One critical stakeholder in this global crisis is the European Union (EU); an actor with incredibly unique positionality as both a human rights actor, and a central actor within the global fisheries economy. Whilst several actors play large roles in the economic and regulatory dynamics of

¹ P. Ridings, “Labor Standards on Fishing Vessels; A Problem in Search of a Home?”, *Melbourne Journal of International Law*, 22:2 (2021), p. 308.

² Ridings, “Labor Standards on Fishing Vessels”, p. 331.

³ V. Becker-Weinberg, “Time to Get Serious about Combating Forced Labour and Human Trafficking in Fisheries”, *International Journal of Marine and Coastal Law*, Vol. 36 (2021), p. 88.

International Labor Organization (ILO), Walk Free, and International Organization for Migration (IOM), *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, Geneva, 2022, p. 32.

Food and Agriculture Organization of the United Nations (FAO), *The State of World Fisheries and Aquaculture 2022: Towards Blue Transformation*, Rome, FAO, 2022, p. 143.

European Court of Auditors, *EU Action to combat illegal fishing: Control systems in place but weakened by uneven checks and sanctions by Member States*, Publications Office, 2022, pp. 30-32.

⁴ ILO, Walk Free, IOM, *Global Estimates of Modern Slavery*, p. 22; p. 32.

global fishing, such as the USA and China, the EU stands out as not only the largest import market but also an actor with a proven history of committed human rights action.⁵ The EU thus represents potentially the most powerful actor for protecting human rights in the fisheries industry where other actors have failed and, as shall be explored, may already have this capacity.

This thesis will therefore investigate as its central research question:

“What is the role of the European Union in protecting human rights in global fisheries?”

This shall be done by investigating several major themes within the EU’s global fisheries interactions, such as:

- The EU’s role in theory
- The EU’s role in practice
- The distinctions between the EU’s role within and beyond Europe

Through this investigation, this thesis will seek to contribute to human rights scholarship on both the rights-issues of fishing and the role of the EU as a global human rights actor. By engaging with the issues, data, and literature regarding human rights abuses in global fishing and investigating it within the context of the EU’s legal regime, this thesis shall emphasise the significance of rights-issues in fishing as impactful violations of human rights standards which necessitate further recognition and action. By investigating the realities of the EU’s role as a human rights actor in the sector, both theoretically and practically, this thesis shall lend a practical case-study on the EU’s commitments and capabilities for protecting human rights, which potentially offer alternative means of global rights promotion that transcend the typical reliance of human rights on state-centric protections, systems, or international law.

⁵ European Market Observatory for Fisheries and Aquaculture Products (EUMOFA), *The EU Fish Market: 2023 Edition*, Luxembourg, Publications Office of the European Union, 2023, p. 16.

A. Bogdandy, ‘The European Union as a human rights organisation? Human rights and the core of the European Union’, *Common Market Law Review*, 37:6 (2000), pp. 1307-8.

G. Toggenburg, ‘The EU Human Rights Regime: Development, Actors, Policy Framework, and Effectiveness’, in B. Andreassen (eds.), *Research Handbook on the Politics of Human Rights Law*, Cheltenham, Edward Elgar Publishing, 2023, pp. 412-3.

Holistically, this should offer both further insights into the opportunities for protecting human rights in the global fisheries sector, and stress that the EU, as a representative of alternative actors in a contemporary, multilateral human rights environment, can be a “home” for a long-standing, often neglected, and hard-to-address set of global human rights problems.

2. Literature Review

As mentioned, scholarship on the human rights implications of fisheries practices has expanded in recent years, providing a solid foundation for the understanding of fisheries issues as human rights issues that this thesis will draw on, engage with, and seek to contribute to.

One of the most significant categories of fisheries crimes, which this thesis will examine as a central rights-issue in global fisheries, is “Illegal, Unreported, and Unregulated (IUU) Fishing”. Global concern about IUU fishing led to coordinated, multilateral action in 2001 with the adoption of the UN’s “International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing” (IPOA-IUU). This provided a detailed definition of IUU fishing which has since been enshrined into various other international and national legal instruments, and which can be summarised as referring to fishing done in contravention of international law on marine conservation and management, exclusive economic zones, national authorisations, or more.⁶

Human rights do not feature in this definition, nor do broader conceptions of social, economic, or labour rights. Yet, subsequent scholarship has stressed the significance of understanding IUU fishing through a human rights lens as well. For instance, various authors have identified and stressed the significant correlation between vessels being engaged in IUU fishing and ‘a range of other illicit activities’, including ‘forced labour, ... human trafficking’ and ‘physical abuse’ of those on-board.⁷ The rights-violations of IUU fishing thus often impact those on-board, where regulatory oversight and legal standards are already being avoided and which thereby provide ‘a haven for human rights abuses’.⁸ Similarly, both scholars and NGOs have written extensively on

⁶ FAO, *International Plan of Action to Prevent, Deter, and Eliminate Illegal, Unreported, and Unregulated Fishing*, Rome, FAO, 2001, pp. 2-3.

⁷ X. Chen, Q. Xu, and L. Li, “Illegal, Unreported, and Unregulated Fishing Governance in Disputed Maritime Areas: Reflections on the International Legal Obligations of States”, *Fishes*, 8:36 (2023), pp. 4-5.
A. Daniels et al., *Dark Webs: Uncovering those behind forced labor on commercial fishing fleets*, Boston, Financial Transparency Coalition, 2023, p. 51.

⁸ B. Dubner, and L. Vargas, “On the Law of ‘Pirate’ Fishing and its Connection to Human Rights Violations and to Environmental Degradation – A Multi-National Disaster”, *Journal of Maritime Law & Commerce*, 48:2 (2017), pp. 137-43.

the impact of IUU fishing in violating the human rights of local small-scale fishers ‘to their livelihoods and dignity’, and the environmental rights of coastal communities that have traditionally depended on fisheries access and a healthy marine environment.⁹ IUU fishing shall thus be assessed in this thesis as a key rights-issue in global fisheries, against which the EU can take action that protects individual, communal, and environmental rights.

Furthermore, literature has also highlighted how the human rights issues across the global fishing sector extend beyond the implications of IUU fishing, and ultimately threaten a range of individuals’ social, economic, and labour rights. For example, all fishers possess the human right to ‘an adequate standard of living’, yet scholarship has demonstrated that across the world this right is being violated for many, from migrant fishers in Europe being paid an inadequate wage to small-scale fishers struggling amidst declining fish stocks and exploitative industrial practices.¹⁰ Other important social and labour rights for fishers, from the right to ‘safe and healthy working conditions’ or to be free from discrimination or abuse, are also commonly undermined, with evidence of violations within the EU and beyond.¹¹ Additionally, the UNGP’s on Business and Human Rights assert as one of their three key pillars that victims of corporate human rights abuses must be able to access effective remedies, yet research has likewise illustrated that this right is undermined and unfulfilled at various stages.¹² Thus, scholarship has

⁹ Environmental Justice Foundation (EJF), *A human rights lens on the impacts of industrial illegal fishing and overfishing on the socio-economic rights of small-scale fishing communities in Ghana*, London, 2021, p. 27.

E. Selig et al., “Revealing global risks of labor abuse and illegal, unreported, and unregulated fishing”, *Nature Communications*, Vol. 13 (2022), p. 2.

C. Nauen, and S. Boschetti, “Fisheries Crimes, Poverty, and Food Insecurity”, in R.-L. Boşilcă, S. Ferreira, and B.J. Ryan, (eds.), *Routledge Handbook of Maritime Security*, London, Routledge, 2022, pp. 241-2.

¹⁰ UN General Assembly (UNGA), *Universal Declaration of Human Rights*, 1948, Article 25.

UNGA, *International Covenant on Economic, Social and Cultural Rights*, 1966, Article 11.1.

C. Murphy, D. Doyle, and S. Thompson, *Experiences of Non-EEA Migrant Workers in the Irish Fishing Industry: Working Conditions, Immigration Status and Enforcement*, Maynooth, Maynooth University, 2021, pp. 13-14.

J. Sparks, *Letting exploitation off the hook? Evidencing labour abuses in UK fishing*, Nottingham, University of Nottingham Rights Lab, 2022, pp. 30-34.

S. Errico et al., *Human Rights in Fisheries and Aquaculture: A Briefing Note for National Human Rights Institutions*, Copenhagen, The Danish Institute for Human Rights, 2023, p. 8.

¹¹ UNGA, *Economic, Social and Cultural Rights*, Article 7.

UNGA, *Universal Declaration*, Article 3.

Errico et al., *Human Rights in Fisheries and Aquaculture*, pp. 8-9.

Murphy, Doyle, and Thompson, *Non-EEA Migrant Workers in the Irish Fishing Industry*, pp. 13-14.

ILO, Walk Free, IOM, *Global Estimates of Modern Slavery*, p. 33.

¹² United Nations, *Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework*, New York and Geneva, United Nations, 2011, p. 27.

G. Oanta, “Access to Remedy in the European Union in Case of Breaches of Human Rights at Sea by Private

identified an extensive range of pressing rights-issues and abuses in the global fisheries sector, affecting both Europe and the wider world, which my research will engage with and build on by investigating the EU's role in combatting these various, specific rights-issues, and the corresponding impact it achieves in practice, where data allows.

The EU has been selected as the actor of focus for this investigation not only because of its economic importance to the fisheries sector, but also because of its capabilities for global human rights action. Whether the EU can truly be described as a 'human rights organisation' remains the subject of debate in both human rights and international relations scholarship, through discussions of its history, contemporary contributions, inconsistencies and more.¹³ However, whilst many scholars may dispute to what extent the EU is a human rights organisation foundationally, the depth of scholarship nonetheless demonstrates that the EU does possess unique objectives, competencies, and capacities as an international actor that theoretically enable it to act to promote human rights internationally, through both multilateral and unilateral economic, political, and legal means.¹⁴

International ocean governance, through which the regulations governing fisheries practices on the high seas are established, has thus far primarily been managed through multilateral agreements and fora, such as through the UN Convention on the Laws of the Sea or the IPOA-IUU. Accordingly, the EU may possess a uniquely valuable role for the protection of human rights at sea as 'multilateral global governance fora' provide the primary framework for the EU's

Actors", *International Community Law Review*, Volume 23 (2021), p. 357.

European Union Agency for Fundamental Rights, *Business and Human Rights – Access to Remedy*, Luxembourg, Publications Office of the European Union, 2020, p. 6.

J. Sparks et al., "Worker-less social responsibility: How the proliferation of voluntary labour governance tools in seafood marginalise the workers they claim to protect", *Marine Policy*, Vol. 139 (2022), p. 6.

¹³ Toggenburg, "EU Human Rights Regime", in Andreassen, *Politics of Human Rights Law*, p. 411.

A. Rosas, "Is the EU a Human Rights Organisation?", *Cleer Working Papers*, 2011/1 (2011), p. 16.

L. Ferreira-Pereira, "The European Union as a Model Power: Spreading Peace, Democracy, and Human Rights in the Wider World", in F. Bindi, and I. Angelescu (eds.), *The Foreign Policy of the European Union: Assessing Europe's Role in the World*, Brookings Institution Press, 2012, pp. 301-2.

Bogdandy, "European Union as a Human Rights Organization?", pp. 1337-8.

¹⁴ I. Manners, "The normative ethics of the European Union", *International Affairs*, 84:1 (2008), pp. 45-8.

H. Tuominen, "Effective Human Rights Promotion and Protection? The EU and its Member States at the UN Human Rights Council", *Journal of Common Market Studies*, 61:4 (2023), pp. 936-8.

L. Mokra, and K. Jankova, "EU as a human rights actor?", *Bratislava Law Review*, 2:2 (2018), pp. 92-4.

external actions in key policy spheres including human rights.¹⁵ With the EU's 27 member-states coordinating their positions to better promote 'the common positions of the EU on human rights' within UN human rights fora, the EU possesses a wholly unique and privileged position for not just global economic but also multilateral political and legal leadership in the fisheries sector.¹⁶

Previous literature therefore exemplifies the EU's validity as this thesis' subject of research; as an international economic, political, and legal actor with unique capabilities for enabling change in the infamously difficult to govern international fisheries industry. The EU thereby offers a unique and potentially innovative means for the more effective protection of human rights, which this thesis will seek to shed light on. This thesis will not seek to address the debate of whether the EU truly is or is not a "human rights organisation", as this remains a question both deserving and requiring far greater evidence and evaluation. Yet, the findings of this thesis on the role of the EU, both theoretically and practically, may serve to contribute to such scholarship by providing additional insights into the EU's global role through the case-study of global fishing and its challenges to modern international human rights governance.

¹⁵ S. Basu et al., "The European Union's Participation in United Nations Human Rights and Environmental Governance: Key Concepts and Major Challenges", in J. Wouters et al. (eds.), *The European Union and Multilateral Governance: Assessing EU Participation in United Nations Human Rights and Environmental fora*, London, Palgrave Macmillan, 2012, p. 3

¹⁶ D. Zaru and C-M. Geurts, "Legal Framework for EU Participation in Global Human Rights Governance", in Wouters et al. *European Union and Multilateral Governance*, pp. 51-4.

3. Theory and Methodology

3.1. Theory

In the following paragraphs I will outline the theoretical framework of this thesis and how it will be deployed to develop my research design. In the first section I will outline the meaning and significance of “critical theory” as a tool for human rights research. Secondly, I will discuss “global governance theory” as a perspective for analysing the unique positionality of the European Union for human rights action. Lastly, I will introduce “policy diffusion theory” to provide a theoretical lens for analysis of the EU’s local and international actions as means for global human rights change.

Critical Theory

As discussed, human rights issues are present across global fisheries, but some issues very literally span the globe through value chains and financial flows, terminating in the EU single-market as the world’s largest net-importer of fisheries products.¹⁷ In such instances of transglobal and financially-rooted rights issues, human rights scholars often draw upon critical theory as a means of understanding issues through the perspectives of the marginalized, exploited, or otherwise victimized individuals and/or groups, and from this framework centred on ‘human dignity’ offer solutions formulated to overcome the observed (typically socio-economic) challenges perpetuating the issue.¹⁸

Critical theory is uniquely suited to this role because it is closely aligned with the ‘normative foundation’ and ‘normative ambition’ of most contemporary human rights scholarship.¹⁹ Whilst a hard theory to define in a single label due to its interdisciplinary nature and applicability to

¹⁷ EUMOFA, *The EU Fish Market: 2023*, p. 16.

¹⁸ M. Lutz-Bachmann, and A. Nascimento, “Preface”, in M. Lutz-Bachmann, and A. Nascimento (eds.), *Human Rights, Human Dignity, and Cosmopolitan Ideals: Essays on Critical Theory and Human Rights*, Farnham, Ashgate, 2014, p. 2.

¹⁹ S. Bronner, *Critical Theory: A Very Short Introduction*, New York, Oxford University Press, 2017, pp. 1-2. A. Bård, H. Sano, and S. McInerney-Lankford, “Human rights research method”, in A. Bård, H. Sano, & S. McInerney-Lankford (eds.), *Research Methods in Human Rights: A Handbook*, Cheltenham, Edward Elgar Publishing, 2017, p. 3.

varied sources, at its core critical theory can best be understood in contrast to “traditional theory”. For Horkheimer, the ‘traditional conception of theory shows... a purely mathematical system’ that accepts empirical observation as the truth at face-value.²⁰ Yet, Horkheimer argues such a perspective is unfit for social science as researchers’ observations, and particularly their derived interpretations, are not objective or self-evident but are rather shaped by the researcher’s own assumptions and agency. Essentially, ‘the facts which our senses present to us are socially preformed’, undermining the validity of researchers’ findings by guiding their analysis towards a ‘foregone conclusion’ shaped by their background.²¹

Recognising such problematic foundations, Horkheimer advocates instead for the use of critical theory; a means of theorizing in a manner self-aware of the ‘web of relationships’ surrounding both the researcher and research subject.²² Accordingly, critical theory enables a researcher to acknowledge the positionality defining their research and correspondingly adapt their analysis, to reach conclusions that can more effectively operate as ‘a force... to stimulate change’.²³

The themes of Horkheimer’s 1937 essay remain central to contemporary critical theory, but also particularly its application in human rights research. For instance, the importance of recognising the compromising impact of inherent conceptual assumptions on a researcher’s positionality is reflected in the modern argumentation of Moore, who stresses the continued impact of ‘pre-theoretical commitments’ on defining social science research and the need to continuously ‘subject them to critical reflection’.²⁴ Similarly, Horkheimer argues that critical theory is concerned for the ‘abolition of social injustice’, thus presenting a normative foundation that is key to human rights research, as asserted by Bård et al.²⁵ This thesis will therefore engage with critical theory, as defined by Horkheimer, to strengthen the validity of my conclusions for human rights research. Specifically, I intend to acknowledge my positionality as a researcher within the

²⁰ M. Horkheimer, “Traditional and Critical Theory”, in M. Horkheimer, *Critical Theory: Selected Essays*, trans. M. O’Connell et al., New York, Continuum, 1972, p. 190.

²¹ Horkheimer, “Traditional and Critical Theory”, pp. 200-202.

²² Horkheimer, “Traditional and Critical Theory”, p. 211.

²³ Horkheimer, “Traditional and Critical Theory”, p. 215.

²⁴ H. Moore, “Global Anxieties: Concept-Metaphors and Pre-Theoretical Commitments in Anthropology”, *Anthropological Theory*, 4:1 (2004), p. 86.

²⁵ Horkheimer, “Traditional and Critical Theory”, p. 242.

Bård, Sano, and McNerney-Lankford, “Human rights research”, p. 3.

EU, with limited personal experience of its global practical impact, and accordingly seek to approach my analysis of EU fisheries actions from a critical perspective, identifying problematic dimensions through a focus on victims, ‘human dignity’, and ‘social injustice’.²⁶

Hansen’s study on the neglected colonialist dimensions of the EU’s efforts to foster a ‘European identity’ offers a valuable example of a critical theory investigation of an EU policy’s global implications.²⁷ Overall however, Bailey argues that few scholars have applied critical theory ‘specifically on the European Union’s.... role in global governance’.²⁸ My thesis will therefore contribute to a gap in scholarship by critically analysing the dimensions of the EU’s human rights role, actions, and impact in the global fisheries sector from the normative perspective shared by critical theory and human rights research.

Global Governance Theory

“Global Governance Theory” is a collection of theory which explores the structures, systems, and interactions that shape ‘the exercise of authority across national borders as well as consented norms and rules beyond the nation state’, including, of relevance to this thesis, in response to ‘transnational problems’ like human rights issues.²⁹ Scholarship recognises that this exercise of authority internationally has traditionally been done between nationally sovereign actors but, amid globalization’s economic and political transformations, a ‘gap [has developed] between theory and practice’ in the words of the then Director-General of the World Trade Organization.³⁰

Global governance theory seeks to account for and study the key themes of change responsible for these modern developments, from the rise of important ‘world organizations’ to the impact of

²⁶ Lutz-Bachmann, and Nascimento, “Preface”, p. 2.

Horkheimer, “Traditional and Critical Theory”, p. 242.

²⁷ P. Hansen, “European Integration, European Identity, and the Colonial Connection”, *European Journal of Social Theory*, 5:4 (2002), pp. 484-5.

²⁸ D. Bailey, “The European Union in the World: Critical theories”, in J. Wunderlich and D. Bailey (eds.), *The European Union and Global Governance: A Handbook*, London, Routledge, 2011, p. 37.

²⁹ M. Zürn, *A Theory of Global Governance: Authority, Legitimacy, and Contestation*, New York, Oxford University Press, 2018, pp. 3-4.

³⁰ P. Lamy, “Global Governance: From Theory to Practice”, *Journal of Economic Law*, 15 (3), p. 721.

the ‘internationalization of markets’.³¹ The emergence of the European Union typifies both. In fact, its increasing coherence and strength as a global actor has led scholars like Hoeksma to reflect on it as an ‘innovative force for global governance’, with such a radically different positionality for the exercise of international authority that it ‘can no longer be comprehended in the traditional terms... as either a state or an association of states’.³² Rather, the EU is a ‘conceptual *terra incognita*’ as argued by Hoeksma, or a ‘*sui generis* global actor’ as phrased by Dee.³³ For Wunderlich and Bailey, there is thus far no label which ‘describes the complexity of the EU in its entirety’.³⁴ Ultimately though, with the Treaty of Lisbon (2007) granting the EU the full legal personality needed to engage with international organisations, partners, and treaties directly, and the UN General Assembly voting in 2011 to provide the EU with rights to speak and participate in the UN, the EU has evidently transformed into a major global governance actor with the capacity to act both directly and multilaterally, especially on behalf of human rights.³⁵

My thesis will thus draw on global governance theory in my research design by structuring my investigation around the EU’s role in Europe and, separately, beyond Europe. This accounts for the scholarship on the EU’s unique international positionality, with different competencies and capabilities for achieving local and global impact, thereby improving my analysis of the EU’s role as a human rights actor in different contexts. Furthermore, in my analysis I will engage with global governance theory by relating my findings to the existing debates on how the EU contemporaneously functions as a global ‘normative’ or ‘ethical’ actor, as argued by Manners and Frischhut, or as a ‘calculator’ without moral objectives, as advocated by Hyde-Price,

³¹ M. Hewson, and T. Sinclair, “The Emergence of Global Governance Theory”, in M. Hewson and T. Sinclair (eds.), *Approaches to Global Governance Theory*, State University of New York Press, 1999, pp. 5-13.

³² J. Hoeksma., “The EU as an innovative force for global governance”, *European View*, 22:2 (Autumn 2023), pp. 263-4.

³³ Hoeksma, “EU as an innovative force”, p. 264.

M. Dee, *The European Union in a Multipolar World: World Trade, Global Governance and the case of the WTO*, London, Palgrave Pivot, 2015, p. 2.

³⁴ J. Wunderlich and D. Bailey, “Introduction”, in Wunderlich, and Bailey (eds.), *European Union and Global Governance*, p. 4.

³⁵ Treaty of Lisbon amending Treaty on European Union and the Treaty establishing the European Economic Community (2007), *OJ C306/01*, Article 47.

UNGA, Res 65/276, *Participation of the European Union in the Work of the United Nations*, UN Doc A/RES/65/276, 2011, pp. 1-3.

M. Zappia, “The United Nations: A European Union Perspective”, in C. Kaddous (eds.), *The European Union in International Organisations and Global Governance: Recent Developments*, London, Hart Publishing, 2015, p. 25.

D. Brauns and T. Baert, “The European Union in the World Trade Organization Post-Lisbon: No Single Change to the Single Voice?”, in Kaddous, *The European Union in International Organisations*, p. 109.

contributing to scholarship on the EU's international principles and role.³⁶

This will also serve to contribute to human rights scholarship by supporting or disputing Ruggie's arguments encouraging the inclusion of 'other actors' to help meet the 'most pressing societal challenges' globally.³⁷ Ruggie suggested that through this 'new governance theory' a 'convergence of norms', such as to improve global human rights standards, can still be achieved.³⁸ Thus, by utilising the perspective of global governance theory in my research design and analysis, this thesis will contribute to human rights scholarship on the practices, strengths, and limitations of the EU as a "new governance" actor for the effective protection of human rights in 'contested global spaces', like international fisheries regulation.³⁹

Policy Diffusion Theory

To overcome the human rights issues in the global fisheries sector, legislative change will be needed in states around the world to ensure impact is achieved for all fisheries stakeholders globally. Berry and Berry argue that 'there are two principal explanations' for why states adopt new legislative programs: '*internal determinants and diffusion*'.⁴⁰ "Policy Diffusion Theory" seeks to explain the latter through a theoretical framework which emphasises the role of intergovernmental mechanisms in driving states to introduce legislation that emulates 'previous adoptions by other governments'.⁴¹ Whilst most legislative change in any country requires an element of both internal and external pressures, the significance of "diffusion" continues to be recognized by researchers as an important cause of policy adoption.⁴² Furthermore, the EU has

³⁶ Manners, "Normative ethics of the European Union", p. 45.

Frischhut, *Ethical Spirit of EU Law*, pp. 43-44.

A. Hyde-Price, "A 'Tragic Actor'? A Realist Perspective on 'Ethical Power Europe'", *International Affairs*, 84:1 (2008), p. 29.

S. Smismans, "The European Union's Fundamental Rights Myth*", *Journal of Common Market Studies*, 48:1 (2010), p.

³⁷ J. Ruggie, "Global Governance and 'New Governance Theory': Lessons from Business and Human Rights", *Global Governance*, 20:1 (2014), pp. 8-9.

³⁸ Ruggie, "Global Governance", pp. 5-6.

³⁹ S. Gstöhl, and J. Larik, "The European Union and the governance of contested Global Spaces", *Journal of European Integration*, 45:8 (2023), pp. 1107-8.

⁴⁰ F. Berry and W. Berry, "Innovation and Diffusion Models in Policy Research", in P. Sabatier and C. Weible (eds.), *Theories of the Policy Process*, Westview Press, 2014, p. 308.

⁴¹ Berry, and Berry, "Innovation and Diffusion", p. 308.

⁴² Berry, and Berry, "Innovation and Diffusion", pp. 308-310.

already been recognized as using both ‘direct’ and ‘indirect, socio-economic mechanisms of rule diffusion’ to promote standards globally.⁴³

It is on this basis that my thesis will engage with policy diffusion theory in my analysis to provide a theoretical framework for understanding how the EU’s legislation may function to support human rights internationally through diffusion. For example, as shall be discussed, the EU possesses fishing agreements which financially support third-countries but require adherence to human rights standards. Likewise, the EU threatens to ban fisheries trade with any state that does not meet its criteria on anti-IUU fishing action. These represent means by which the EU may theoretically provide the external pressures identified by Berry and Berry needed to facilitate legislative change, functioning as “carrots” and “sticks” to diffuse human rights protections bilaterally.⁴⁴ Recent studies by Kadfak, Barclay, and Song on the ‘policy diffusion’ impact of EU anti-IUU fishing sanctions in Thailand and Australia share this perspective and thereby validate this theory’s validity for use in my analysis.⁴⁵ Policy diffusion scholarship will therefore be leveraged analytically to understand how effective EU legislation is for functionally achieving human rights impact, and its implications for the EU’s global role.

⁴³ S. Lavenex, “The power of functionalist extension: how EU rules travel”, *Journal of European Public Policy*, 21:6 (2014), pp. 885-6.

Y. Naiki, and J. Rakpong, “EU-Third Country Dialogue on IUU Fishing: The Transformation of Thailand’s Fisheries Laws”, *Transnational Environmental Law*, 11:3 (2022), p. 636.

⁴⁴ D. Bodansky, “International Carrots and Sticks”, in D. Bodansky, and H. van Asselt (eds.), *The Art and Craft of International Environmental Law*, Oxford, Oxford University Press, 2024, pp. 332-333.

⁴⁵ A. Song, “IUU Fishing and the Policy Diffusion of the EU-IUU Regulation”, in A. Kadfak, A. Barclay, and A. Song (eds.), *EU Trade-Related Measures against Illegal Fishing: Policy Diffusion and Effectiveness in Thailand and Australia*, London, Routledge, 2023, p. 12.

3.2. Method

To address my research question, this thesis will utilize a qualitative methodological approach to investigate the EU's theoretical human rights obligations in the global fisheries industry. The following paragraphs will outline and explain the methodological considerations underpinning this research design and contextualize them within the field of human rights research.

Data Selection

The primary material I selected for my research is a mixture of public documents from the EU which vary broadly in their nature, origin, and purposes. They include: EU Primary Law, as the general, legal foundations for all EU policy; Secondary Law, specifically legislation that I determined through research was most responsible for governing the fisheries sector at the EU level; Transposed International Law, in this case meaning agreements implementing international standards on fisheries practices into EU secondary law; and Sustainable Fisheries Partnership Agreements (SFPAs), as shall be discussed later. All this data was originally produced and published in English, eliminating potential risks to its reliability from translation errors or miscommunication.

By virtue of their differing nature and purposes, these documents were very different in form, but all possessed a common legal basis and structure that enabled qualitative analysis through the same methodology for all sources, in turn allowing direct comparison of the findings between sources. Much of this material was collected from the “*Official Journal of the European Union*” which publishes all legal acts agreed and implemented by the institutions of the EU, as well as ‘other acts and official information’ from EU bodies, every working day, thereby providing an extensive and authentic basis of reliable primary data on the EU's actions and policies.⁴⁶

Holistically, this range of data will provide a comprehensive understanding of the EU's role in the global fisheries sector. In terms of primary law, the “Treaty on European Union” (2008) and the “Charter of Fundamental Rights” (2012) were both selected for analysis to outline the EU's

⁴⁶ EUR-Lex, *Access the Official Journal [website]*, available at: <https://eur-lex.europa.eu/oj/direct-access.html> [last accessed 11/05/2024]

obligations to fishers and in the fisheries sector. As primary law obligations supersede all secondary law and provide a fundamental understanding of EU principles and objectives, analysis of primary law is necessary for a broad and grounded understanding of the EU's role as a human rights actor, including its priorities and implications for other legislation, which can then be discussed in the context of this investigation's findings from the fisheries sector.

This thesis will also investigate two examples of international conventions transposed into the EU *acquis*: the International Labor Organization's (ILO) "Maritime Labor Convention" (2006), and "Work in Fishing Convention" (2007). The EU cannot ratify ILO conventions as it is only possible for member states of the UN to do so, which the EU is not. Nevertheless, the EU can transpose part of or whole international conventions into EU law, providing further legal obligations that shape the EU's role as a human rights actor in the fisheries sector. Additionally, these transposed conventions reflect non-EU authorship, and thereby represent a valuable source for understanding the EU's role and priorities relative to other actors.

Then, various key EU policies in the fisheries sector shall be examined through analysis of four major directives and regulations: the Common Fisheries Policy established by "Regulation (EU) No 1380/2013" (2013), the Anti-IUU Regulation of "Council Regulation (EC) No 1005/2008" (2008), the Fisheries Control Regulation implemented in "Regulation (EU) 2023/2842" (2023), and the Sustainable Management of External Fishing Fleets (SMEFF) Regulation from "Regulation (EU) 2017/2403" (2017). These documents contain both the legislative preamble, outlining key considerations and principles of the law's design, and the protocol establishing the technicalities of the legislation's implementation. These documents therefore provide a large body of data to qualitatively analyse the EU's policies that directly regulate and impact the fisheries sector both in Europe and internationally.

Lastly, I will also analyse the EU's 14 SFPAs: agreements establishing the legal rights and conditions for EU vessels to fish within a specific third-country's waters, accompanied by numerous obligations and commitments for intergovernmental efforts on key issues, and financial support to develop the nation's fisheries industry. I selected all 14 of the EU's SFPAs that are currently in force to provide the most reliable data basis for this investigation, and to

enable comparison of whether findings on the EU's role differ between or within regions, or with how recently the agreement was drafted. These documents similarly include both an "Agreement" section, describing the key legislative provisions and considerations, and the "Protocol", defining its scope and technical implementation. This provides extensive information for understanding the nature, details, and objectives of the EU's international involvement in the global fisheries sector, and therefore supports my analysis of the EU's direct global role.

The discussion of findings from this primary data will be developed through the inclusion of secondary data from a variety of academic, non-governmental, and institutional sources. Some of this data is official in origin, such as ILO data on the ratification of human rights legislation in EU partner countries. However, other researchers' data will also be included in the discussion of this thesis' findings to provide additional perspectives and information that this thesis could not acquire for ethical or practical reasons, such as interview data on the experiences of migrant workers in European fisheries, or independent datasets on the global status of IUU fishing. This will be used to provide further information on the human rights issues present in the fisheries sector, highlight the EU's positionality within key issues in the field, and ultimately provide evidence to support or challenge the effectiveness of EU policies as deduced from my analysis of the primary data.

Analysis

I will analyse this primary data using two qualitative methods that complement each other's findings to provide a detailed understanding, through both objective and subjective lenses, of the centrality of human rights to the EU's approach to global fisheries.

Content Analysis

The first method that will be employed to analyse the primary data is content analysis. Content analysis is a method of categorising 'qualitative textual data into clusters of similar entities, or conceptual categories, to identify consistent patterns' and themes within and between the data, thereby providing an analytical way 'of deriving meaning' from textual data.⁴⁷ In this thesis, this will be done by calculating the number of references to specific words or phrases, representing my "codes". This method will be utilised because it greatly suits my source material of documentation, with Given recognizing content analysis as 'the most straightforward approach to document content' of all qualitative research methods, and Prior identifying the centrality of 'documentation... in modern textbook discussions of the method', supporting the effectiveness and validity of my research design.⁴⁸

Content analysis will also enable me to engage in a multi-layered analysis of the EU's human rights role in the fisheries sector. Content analysis will first be used to qualitatively examine the centrality of human rights and rights-issue references across the EU's primary, secondary, transposed, and international legislation governing fisheries practice, illuminating the EU's theoretical role as a human rights actor. These results will then also be used to draw comparisons between these legislative categories and highlight the common themes, inconsistencies, and implementation tools that will determine the EU's impact in practice. Holistically, content

⁴⁷ L. Given, 'Content Analysis', in L. Given (eds.), *SAGE Encyclopedia of Qualitative Research Methods*, Los Angeles, SAGE Publications, 2008, available online at: <https://methods-sagepub-com.ludwig.lub.lu.se/reference/sage-encyc-qualitative-research-methods/n65.xml> [last accessed 18/03/2024]

⁴⁸ L. Given, 'Document Analysis', in Given, *Encyclopedia of Qualitative Research Methods*, available online at: <https://methods-sagepub-com.ludwig.lub.lu.se/reference/sage-encyc-qualitative-research-methods/n120.xml> [last accessed 18/03/2024]

L. Prior, "Content Analysis", in P. Leavy (eds.), *The Oxford Handbook of Qualitative Research*, Oxford, Oxford University Press, 2020, p. 542.

analysis will therefore allow me to comprehend the scope of EU human rights responsibilities and actions in the fisheries sector and identify what rights-issues have been legislatively neglected or failed, and thus are likely to be missing from the practical implementation of the EU's human rights commitments.

I will conduct this content analysis using the software NVIVO: a program designed to facilitate qualitative analysis yet under-utilised in human rights research.⁴⁹ I chose to use this program because of its ability to centralize my data across the distinct files, enabling easier comparison between documents, and for its advanced analytical tools, such as its ability to rapidly analyse every word within a given dataset.

Using NVIVO, I will engage in a process of “structured” coding; a methodological approach to coding in which codes are developed ‘before the analysis begins’ from the basis of ‘previous work and theory’.⁵⁰ In my case, this was drawn from my research on the key issues in the global fisheries sector, which identified a numbers of specific issues that I could investigate the prevalence of within EU legislation through references to codes like “forced labour” or “IUU” fishing. I will also utilise a series of codes derived from the themes of critical theory scholarship to highlight possible problematic dimensions within EU legislation responsible for making ships ‘exceptional spaces of exploitation’ through the neglect of important socio-economic issues like ‘social relations’ and ‘slave-like conditions’, which I will investigate through codes like “health”, “discrimination”, and “exploitation”, amongst others.⁵¹

I therefore selected my codes after a period of initial research and chose them to provide analytical insight into how present “rights” and rights-issues were within my various EU sources. To flag references to the rights-issues I had identified reliably, I developed directly descriptive codes as well as a broader list of related words to ensure that references were not missed: from conjugation variations like coding for both “environment” and “environmental”, to synonyms

⁴⁹ L. Xiao, I. Elueze, and J. Kavanaugh, “Human rights researchers’ data analysis and management practices”, *ASIST*, 51:1 (2014), p. 5.

⁵⁰ J. Drisko and T. Maschi, *Content Analysis*, New York, Oxford University Press, 2015, p. 43.

⁵¹ L. Campling, and A. Colás, *Capitalism and the Sea: The Maritime Factor in the Making of the Modern World*, London, Verso, 2021, pp. 108-9.

like “remedy”, “reparation”, and “compensation”. I also used the stemmed filter from NVIVO to identify other alternatives, like “remedial” or “traditions” from “remedy” and “traditional”.

Ultimately, my *a priori* codes were: “Right”, “rights”, “IUU”, “illegal, unreported, unregulated”, “illegal, undeclared, unregulated”, “forced labour”, “standard of living”, “discrimination”, “abuse”, “exploitation”, “conditions”, “environment”, “environmental”, “sustainable”, “sustainability”, “health”, “healthy”, “safe”, “safety”, “remedy”, “reparation”, “compensation”, “cultural”, “indigenous”, “traditional”, and “native”. These codes provided me with a foundation to assess how central, prevalent, or neglected the most important rights-issues, as derived from international human rights law and my research on the fisheries sector, were within EU legislation. The design of these codes will enable comparison in my analysis to determine if any issues received significantly more attention or neglect from the EU, from the human rights to a healthy environment or to be free from exploitation to more specific social, economic, and labour rights protected under human rights law. Given that the United Nations (UN) asserts that human rights are ‘indivisible and interdependent’, and thus deserving of ‘equal attention’, these findings will have significant implications for the EU’s practical role as a normative human rights actor.⁵²

Context Analysis

During my content analysis however, I realized that many of my *a priori* codes were often detected with a meaning I had not anticipated, such as the discussion of “rights to fishing authorizations” which occurred 111 times across my dataset, thus undermining the relevance of my findings from several codes for my investigation.

I therefore decided to also analyse my primary data using a second method of context analysis, through which I would assess the context of each reference to determine if it was relevant to the code’s intended theme, such as by determining if the mention of “rights” was in the context of “*Human / Fundamental / Fishers / Victims’ rights*” rather than company’s or vessel’s rights. This was done personally, introducing an element of subjectivity to the findings that contrasts the

⁵² UNGA, Res. 34/46, *Alternative Approaches and Ways and Means within the United Nations System for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms*, UN Doc. A/RES/34/46, 1977.

objective results of the content analysis executed by the software. Whilst subjectivity risks offering unreliable findings, context analysis is an attested method for supporting documentary research, with Atkinson and Coffey stressing that ‘reading is an activity, not a passive receipt of information’ like that which NVIVO engages in.⁵³ Thus, this secondary, subjective analysis enabled me to ‘give due attention to the peculiarities’ of the selected data and ensure its qualitative context was not misconstrued, ultimately enhancing the accuracy of my findings and, resultingly, the strength of my conclusions.⁵⁴

The final output of this analysis will be two distinct tables, visible in Annexes I and II, calculating the volume of references to my codes through content analysis, and how often they occurred within a context I deemed relevant to my investigation through context analysis. Together, this research design will provide reliable findings for an accurate and focused investigation of the importance of these codes within my data, and thus insight into the role of the EU as a human rights actor.

⁵³ P. Atkinson, and A. Coffey, “Analysing documentary realities”, in D. Silverman (eds.), *Qualitative Research: Theory, Method, and Practice*, London, SAGE Publications, 2004, p. 72.

⁵⁴ L. Given, ‘Context and Contextuality’, in Given, *Encyclopedia of Qualitative Research Methods*, available online at: <https://methods-sagepub-com.ludwig.lub.lu.se/reference/sage-encyc-qualitative-research-methods/n66.xml> [last accessed 19/03/2024]

4. Investigation

In the following section I will analyse the selected primary data using content and context analysis. This analysis will first demonstrate the obligations, responsibilities, and practices of the EU to protect human rights in theory. I will then analyse the realities of the EU's role in practice by contextualising and comparing the findings from content and context analysis to the qualitative and quantitative data provided by secondary sources, to determine the effectiveness of the EU's policies and their strengths and weaknesses for the implementation and enforcement of human rights protections.

4.1. The EU's Role in Theory

The Commitments of Primary Law

Article 2 of the “Treaty on European Union” (TEU), one of the principal treaties composing EU primary law, declares explicitly that the EU ‘is founded on the values of... and respect for human rights’.⁵⁵ Further treaties have reinforced this centrality of human rights, such as the Amsterdam Treaty of 1997 establishing clearly that EU human rights commitments apply internally as well as externally and punishing violating member-states, or the Lisbon Treaty of 2007 elevating the EU Charter of Fundamental Rights into binding, primary law.⁵⁶

Content analysis strongly demonstrates this significance, highlighting twenty-three references to “rights” in the TEU, and a further 106 references in the Charter of Fundamental Rights. Furthermore, content analysis identifies that both primary law documents include numerous references to specific rights-issues affecting the fisheries industry, from five references to “discrimination” to fourteen references to “cultural / traditional / indigenous / native”. These findings support the scholarly consensus that EU primary law today incorporates fundamental rights so strongly that any new piece of EU secondary law will be declared null and void if

⁵⁵ Consolidated Version of the Treaty on European Union (2008), *OJ C326/15*, Article 2.

⁵⁶ Treaty of Amsterdam amending the Treaty on European Union, the Treaties establishing the European Economic Communities and certain related acts (1997), *OJ C340/9*, Article 1.9.
Treaty of Lisbon (2007), Article 1.8.

determined to violate the EU Charter of Fundamental Rights.⁵⁷

EU primary law thus establishes numerous inherent obligations for the EU to protect human rights, which extend to those involved in fishing on EU vessels anywhere, theoretically establishing the EU as an important international human rights actor.⁵⁸ For instance, Union fishers and fishing activity will be governed by social, economic, and labour rights enshrined in the Charter of Fundamental Rights, such as the Rights to Equality and Non-Discrimination at Work (Articles 20 and 21), the Rights to Protection from Violence and Degrading Treatment (Article 4), the Right to Fair and Just Working Conditions (Article 31), and Environmental Protection (Article 37), and such rights should be protected and promoted in EU international actions and agreements too.⁵⁹

However, the findings of context analysis clearly demonstrate that many of these references do not refer to rights-issues in a fisheries relevant context. For example, none of the six references to “cultural / traditional / indigenous / native” provide obligations to protect the traditional fishing access or practices of coastal communities, nor do the labour rights to safe and healthy workplaces stipulate details for adequate conditions aboard fishing vessels. This reflects that for the role of the EU in the fisheries industry, it is secondary law that is in fact of most importance. This is because, despite the hierarchical importance of primary law, secondary law provides the legal framework that govern EU fisheries practices in detail, and thereby shapes the EU’s domestic and international role in the sector. Thus, whilst primary law does provide inherent commitments for the EU to actively protect human rights domestically and internationally, including in global fisheries, context analysis illustrates its overall limitations for making the EU a human rights actor in the sector as there are no specific obligations or technical provisions to ensure these rights are enforced at sea.

⁵⁷ Toggenburg, “EU Human Rights Regime”, in Andreassen, *Politics of Human Rights Law*, p. 416.

⁵⁸ Toggenburg, “EU Human Rights Regime”, in Andreassen, *Politics of Human Rights Law*, p. 411.
M. Frischhut, *The Ethical Spirit of EU Law*, Cham, Springer, 2019, pp. 34-6; p. 131.

I. Manners, “Normative Power Europe: A Contradiction in Terms?”, *Journal of Common Market Studies*, 40:2 (2002), p. 241.

R. Noureddine, “Normative Power Europe and in Field of Human Rights: is the EU a Force for Good in the World?”, *Australia and New Zealand Journal of European Studies*, 8:2 (2016), pp. 113-4.

⁵⁹ Charter of Fundamental Rights of the European Union (2012), *OJ C326/02*, Article 4; Article 20; Article 21; Article 31; Article 37.

Sector-Specific Secondary Law

Secondary law thus contains the main framework governing the realities of EU involvement in fisheries. For example, the Common Fisheries Policy (CFP) establishes the rules and controls governing fleet management, marine conservation, and the fisheries market, applied to both EU and non-EU fishing vessels in EU waters as well as fishing by EU-flagged vessels or member-state nationals internationally. Secondary law therefore represents the main source for understanding the EU's theoretical role as a human rights actor in the fisheries sector.

The first of the four key secondary laws specific to the fisheries industry is the CFP. This, as mentioned, provides a broad range of legal obligations for the EU, member-states, nationals, and foreign vessels, collectively providing a foundation for the EU's fisheries role. Yet, content analysis demonstrates that across the legislation, human rights are only marginally present, with only seven references to "rights" in total. This is evident in the legislation's ten stated objectives, which features just one reference to a rights-issue in a sub-objective declaring an intent to 'contribute to a fair standard of living for those who depend on fishing activities'.⁶⁰ Rather, content analysis reflects a far greater ecological focus, with 71 references to "sustainability" and 31 to "environmental", including its first three objectives.

Content analysis does identify the inclusion of several fisheries rights-issues in the CFP, such as the eight references made to "IUU", four references to "remedy", and a reference to "working conditions". However, other rights-issues affecting fishing within Europe and European value chains are entirely absent from the text, such as "forced labour" or "discrimination".

Additionally, context analysis elucidates that the included rights-issues are always secondary to other objectives, typified by all twenty-nine references to "exploitation" being in the context of marine resources rather than people, and none of the four references to "remedy" applying to victims. The CFP thus establishes a theoretical role for the EU as a human rights actor, through obligations to combat illegal fishing, ensure that fishing activities provide an adequate standard

⁶⁰ Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC (2013), *OJ L354/22*, Article 2.5.F.

of living and safe and fair working conditions, and that human rights are respected in international agreements, but these apply only to a limited range of issues and without specific implementation provisions.

The second selected secondary law is the “Anti-IUU Regulation” which seeks to eradicate IUU fishing. The anti-IUU regulation establishes legal obligations for the EU and member-states regarding the management and oversight of fisheries activities, from asserting that natural individuals should face punishment in instances of IUU complicity to establishing monitoring mechanisms like the Community IUU Vessel List.⁶¹

Yet, content and context analysis demonstrate that within this broad regulatory framework, which includes both legal definitions and technical implementation protocols, rights-issues beyond IUU fishing are entirely absent. There are twelve references to “rights” throughout the regulation, but all twelve contextually refer to the rights of accused vessels rather than people impacted. Additionally, whilst there are 145 references to “IUU”, there are zero references to “forced labour”, “exploitation” of people, “remedy” for victims, “discrimination”, “living / working conditions”, fishers’ “health” and “safety”, or “traditional” rights and access.

This is indicative of a broader failure for the regulation to contextualise the IUU problem or solutions within a human rights framework. Content analysis highlights that the first article of the anti-IUU regulation’s preamble instead explicitly frames the regulation within the EU’s duty ‘to ensure sustainable management of marine resources’, and preamble article 3 further contextualises IUU fishing as a serious threat to ‘sustainable exploitation’ and ‘biodiversity.’⁶² The regulation therefore recognises IUU fishing as an environmental, rather than human rights, issue and imposes obligations accordingly.

Yet, scholarship recognises IUU fishing as a rights-issue even if the legislation does not, and the

⁶¹ Council Regulation (EC) No 1005/2008 of 29 September 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 (2008), *OJ L286/I*, Articles 41-46; Article 27.

⁶² Council Regulation (EC) No 1005/2008, Preamble Article 1; Preamble Article 3.

anti-IUU regulation therefore establishes numerous important legal obligations for human rights. The 145 references to “IUU” include serious provisions for combatting IUU fishing within European waters, such as the Community IUU Vessel List to identify and prohibit vital port access to offending vessels and punish perpetrators. It also establishes international obligations through the “carding system”. Under this system, countries failing to ‘discharge the duties incumbent upon it’ to challenge IUU fishing shall be provided a formal warning of impending identification as ‘non-cooperating’, and given an opportunity to ‘remedy the situation’.⁶³ If this formal warning, known as a “yellow card”, fails to bring about change in the fisheries situation, it will be followed by an official listing as non-cooperative, known as a “red card”. This elicits a formal sanction prohibiting the importation of relevant fisheries products caught by vessels flagged to that state into the EU single-market, the biggest seafood importer globally, posing direct economic harm to sanctioned state’s local fishing industry as well as reputational harm that could cause further economic damage.⁶⁴ Thus, through these “carding” decisions, the EU possesses a tool to theoretically deter third countries from neglecting IUU fishing regulations, thus representing a means of global policy diffusion for rights-standards but only on the rights-issue of IUU fishing.

However, none of these obligations have been designed from a ‘human rights based approach’ (HRBA) to policy as advocated by the UN, evidenced by context analysis’ findings on the absence of references to human “rights”, despite EU commitments to applying a HRBA to ‘EU external action’.⁶⁵ The regulation accordingly includes no framework for resolving the rights-issues resulting from IUU fishing, such as remedy for vulnerable communities impacted by IUU fishing by EU vessels, companies, or nationals, or for tackling other rights-issues using the aforementioned monitoring and enforcement capabilities. The anti-IUU regulation thus provides for a limited EU human rights role, composed of an extensive but coincidental attention to combatting IUU fishing as an environmental issue.

⁶³ Council Regulation (EC) No 1005/2008, Article 31; Article 32.

⁶⁴ Council Regulation (EC) No 1005/2008, Article 38.

⁶⁵ United Nations, *The Human Rights Based Approach: Towards a Common Understanding among UN Agencies*, UNSDG, 2003, pp. 1-3, available online at: <https://unsdg.un.org/resources/human-rights-based-approach-development-cooperation-towards-common-understanding-among-un> [last accessed 13/05/2024]

European Commission, “The Human Rights Based Approach (HRBA)”, *EXACT External Wiki*, available online at: <https://wikis.ec.europa.eu/pages/viewpage.action?pageId=50108948> [last accessed 13/05/2024]

The Fisheries Control Regulation (FCR) however may reflect the inclusion of a HRBA into the EU's fisheries policies. This 2023 regulation outlines the technical provisions and systems for 'the control and enforcement' of the CFP, and serves to update the previous control system from 2009.⁶⁶ Content analysis highlights that this new regulation stipulates that the 'sanctions and other measures' established in the Anti-IUU regulation (2008) and the previous CFP control system (2009) should 'be applied by Member States in a manner that fully respects fundamental rights', retroactively establishing a human rights consideration for the deployment of the EU's fisheries enforcement mechanisms.⁶⁷

Even more significantly however, content analysis emphasises that this new FCR includes amendments to establish new, explicit human rights obligations in a way that the prior fisheries-specific legislation failed to do. Within its technical framework the FCR necessitates regular inspections of both EU and non-EU vessels at port by member state and Union inspectors to check for various indicators of violations of the CFP. The previous FCR (2009) established conditions for inspections and what officials 'shall check in particular', but these were entirely related to technical and ecological focuses like ensuring the 'legality of the catch' or the 'stowage plan'.⁶⁸ Yet, within the same technical scope, content analysis flags that the revised FCR (2023) has introduced 'forced labour' as a consideration for inspectors to investigate and report.⁶⁹ Overall, the FCR includes 13 references to "forced labour", despite the CFP, which it aims to enforce, containing none.

The newest FCR therefore independently incorporates an obligation for EU officials to monitor and protect against forced labour in the fisheries industry. Whilst forced labour was already

⁶⁶ Regulation (EU) 2023/2842 of the European Parliament and of the Council of 22 November 2023 amending Council Regulation (EC) No 1224/2009, and amending Council Regulations (EC) No 1967/2006 and (EC) No 1005/2008 and Regulations (EU) 2016/1139, (EU) 2017/2403 and (EU) 2019/473 of the European Parliament and of the Council as regards fisheries control (2023), *OJ L2842*, Preamble Article 3.

⁶⁷ Regulation (EU) 2023/2842, Preamble Article 74.

⁶⁸ Council Regulation (EC) No 1224/2009 of 20 November 2009 establishing a Community control system for ensuring compliance with the rules of the common fisheries policy, amending Regulations (EC) No 847/96, (EC) No 2371/2002, (EC) No 811/2004, (EC) No 768/2005, (EC) No 2115/2005, (EC) No 2166/2005, (EC) No 388/2006, (EC) No 509/2007, (EC) No 676/2007, (EC) No 1098/2007, (EC) No 1300/2008, (EC) No 1342/2008 and repealing Regulations (EEC) No 2847/93, (EC) No 1627/94 and (EC) No 1966/2006 (2009), *OJ L343/I*, Article 74.

⁶⁹ Regulation (EU) 2023/2842, Article 74.8.

prohibited under Article 5 of the EU Charter of Fundamental Rights, the FCR is nonetheless unique in now explicitly including it within the framework of the EU's fisheries governance.⁷⁰ This demonstrates the capabilities of the EU to possess an active human rights role in fisheries, even without expanding existing competencies, and establishes such a role for the EU in combatting fisheries forced labour within Europe.

Yet, this analysis likewise implies that most long-standing EU legislation upholding ocean governance lacks the HRBA that is contemporaneously salient now, leading to the need for such amendments as those in the FCR. Additionally, the FCR only recognises forced labour as an additional rights-issue necessitating EU action, with context analysis identifying only four references to human "rights" and three references to fishers' "safety" as rights-references beyond "forced labour" and "IUU" fishing, again limiting the EU's theoretical role to action on only two rights-issues.

The final key sector-specific legislation is the SMEFF Regulation, which governs the issuing of fishing authorisations to EU vessels outside of EU waters and non-EU vessels in EU waters, and thereby dictates much of the EU's global impact within the fisheries sector.⁷¹ Yet despite this importance and the legislation's relatively recent ratification in 2017, analysis exemplifies another clear lack of a HRBA; with just two references to "rights", neither of which contextually refer to human rights.

The most rights-adjacent discussion within the regulation is the twenty references made to "IUU", which includes an obligation to refuse fishing authorisation for any vessel on the Community IUU Vessel list or from a non-cooperating state, thereby combatting IUU practices but again without consideration as a human rights issue.⁷² The zero further references to "forced labour", "exploitation", "working/living conditions", "discrimination", "standard of living", "cultural / traditional / native / indigenous", "remedy" for victims, or even "workers" or "fishers"

⁷⁰ Regulation (EU) 2023/2842, Preamble Article 89.

⁷¹ Regulation (EU) 2017/2403 of the European Parliament and of the Council of 12 December 2017 on the sustainable management of external fishing fleets, and repealing Council Regulation (EC) No 1006/2008 (2017), *OJ L347/81*, Article 1.

⁷² Regulation (EU) 2017/2403, Article 5; Article 6.

generally, exemplify this lack of a HRBA or even rights-issues awareness. Human rights thus simply are not considered in the SMEFF regulation, preventing any rights-focused monitoring or enforcement obligations on EU vessels internationally or non-EU vessels in Europe beyond IUU fishing practices, further undermining the EU's theoretical role as a human rights actor that could prevent rights-violating vessels from continuing to operate.

Across the EU's sector-specific secondary legislation, content and context analysis demonstrate a consistent lack of attention to fisheries rights-issues, seemingly connected to a general lack of a HRBA in the fisheries sector that has only been partially rectified now through the 2023 FCR. Content analysis demonstrates that IUU fishing is a broadly recognised and targeted issue, although done on an ecological, not human rights, basis. Additionally, forced labour has been introduced as an issue for action by officials, establishing the EU as a theoretical actor for the combatting of both IUU fishing and forced labour, particularly within Europe. Yet, with context analysis identifying only ten references to human "rights" across the four laws and a total absence of references to important rights-issues like "discrimination" and access to "remedy" for victims, the EU's role as a human rights actor under its secondary legislation appears very limited.

Transposed International Law

The EU also possesses obligations through its subscription to international standards established by multilateral organisations like the UN and, particularly for fishing, the International Labor Organization (ILO). By ratifying international treaties or, in the case of the ILO's treaties and conventions transposing them into EU law, the EU establishes obligations for its governance and conduct in the fisheries sector domestically and globally.

There are two relevant ILO conventions that the EU has transposed into law: the "Maritime Labor Convention" (MLC) and the "Work in Fishing Convention", both of which provide regulations on legal fisheries practices, standards, and port-state responsibilities. Transposing both conventions required extensive consultation and agreement with the "EU Social Partners" which represent European workers and employers, ensuring there was precise consideration of

the objectives, obligations, and implementation of these standards. Notably, these two transposed laws possess a much stronger focus on human rights, as evidenced by both content and context analysis, with 22 contextually-validated references to human “rights” across the two laws. In fact, content analysis highlights that the preamble of both legislations declare that they must function in respect to the ‘fundamental rights and principles’ contained within the EU Charter of Fundamental Rights; providing an explicit link to the significance of all rights in fisheries that is missing from the EU’s originally-authored sector-specific legislation.⁷³

Furthermore, content analysis illustrates that both conventions include repeated references to a broad range of rights-issues in the fisheries sector. The Work in Fishing Convention contains eight references to “Living / Working Conditions”, 30 references to “safety”, 28 references to “health”, and three references to “compensation” for those whose rights are violated. Similarly, the MLC contains two references to “discrimination”, eight references to “living / working conditions”, 45 references to “health”, one reference to “forced labour”, and even five references to “remedy” for victims specifically.

Together, these transposed conventions establish a trove of practical legal protections for fishers on EU vessels, from the protection of their fundamental rights, through ‘the elimination of all forms of forced or compulsory labour... and the elimination of discrimination’, to their social and labour rights, like ensuring the ‘best conditions of safety and health’ and fishers’ ‘right to seek redress’ for violations, enforced by technical implementation provisions like ‘frequent inspections’.⁷⁴ Importantly too, these protections are explicitly defined to include ‘any person who... works in any capacity’ aboard an EU vessel, regardless of nationality, thereby applying these obligations universally.⁷⁵ Content and context analysis thus indicates that transposed

⁷³ Council Directive (EU) 2017/159 of 19 December 2016 implementing the Agreement concerning the implementation of the Work in Fishing Convention, 2007 of the International Labour Organisation, concluded on 21 May 2012 between the General Confederation of Agricultural Cooperatives in the European Union (Cogeca), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises in the European Union (Europêche) (2016), *OJ L25/12*, Preamble Article 19.

Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC (2009), *OJ L124/30*, Preamble Article 18.

⁷⁴ Council Directive 2009/13/EC, Annex Preamble; Annex Regulation 5.1.5; Annex Standard A3.1.3.

Council Directive (EU) 2017/159, Annex Article 5.3.

⁷⁵ Council Directive 2009/13/EC, Article 2.2.

international law establishes obligations for a broad theoretical EU human rights role by explicitly tackling six distinct rights-issues in fisheries. However, these obligations apply only to the governance of EU-flagged vessels, limiting the legislations' global impact.

These transposed conventions evidently display a much stronger awareness of the human rights issues in the fisheries sector than the secondary legislation authored entirely by the EU institutions. Specifically, context analysis identifies 12 more references to human "rights" in half as many legislative texts, and references to the rights-issues of "discrimination", access to "remedy", and fishers' "health" that are absent from the sector-specific legislation. This is almost certainly because these legislations originate from the ILO and were further shaped by representatives of EU fishers, who had no formal input in the other legislation. This supports critical theory scholarship on the importance of positionality, by highlighting how the legislation drafted and shaped by authors operating much more closely with workers ultimately included workers' rights and issues on a far greater scale, providing a stronger theoretical human rights role for the EU than that established by its own original legislation.

Sustainable Fisheries Partnership Agreements

The final major component of the EU's legislative approach to global fisheries are the EU's SFPAs. As explained, these are agreements with non-EU countries that provide EU vessels rights to fish in their waters in exchange for EU-provided financial compensation. Yet, these 14 currently in-force agreements also include a range of other legal obligations which have the capacity to protect human rights. Additionally, with context analysis identifying 90 references to human "rights" across the fourteen SFPAs, the theoretical role of these agreements as EU means for human rights action is evidently recognised and explicitly included.

All SFPAs are divided into an "Agreement" outlining the nature, principles, and objectives of the partnership, and an implementing "Protocol" containing the technical details. Content and context analysis identified both sections as including "rights" and rights-issues. However, content analysis did identify that references to fishers "safety" occur only in the protocols, meaning it was universally absent from the 'principles and objectives' of every SFPAs,

illustrating its more marginal recognition by the EU as a principled rights-issue.

Overall though, context analysis recognises that both sections included references to “rights”, the elimination of “discrimination”, and “IUU” fishing in all fourteen SFPAs, and that references to protecting “traditional” or “indigenous” fisheries access and practices were present in the agreement for Greenland, but the protocol for the Seychelles, Gambia, and Madagascar, suggesting no clear marginalisation. As a holistic set of legislation, SFPAs thus demonstrate a consistent recognition of the significance of human rights within fisheries, and considerable attention to numerous rights-issues, including the issue of discrimination that is entirely absent from the EU’s sector-specific legislation.

These references establish a range of provisions affecting fisheries, from obliging the fulfilment of ILO standards on ‘fundamental principles and rights at work’ on EU vessels, including the elimination of discrimination for recruited third-country fishers, to obliging bilateral cooperation against ‘IUU’ fishing. However, content and context analysis highlights that for several rights-issues these references vary between SFPAs. For instance, fishers’ “safety” is only present in six of the 14 SFPAs, “living / working conditions” and “traditional / indigenous” rights in four, fishers’ “health” in three, “standard of living” in two, and “forced labour” in just one. For EU vessels therefore, fishers’ rights are being legally protected in some waters but not others. Context analysis also highlights that access to “remedy” for victims, of particular concern when regulating EU vessels operating internationally, is not referenced once. SFPAs thus are not uniform or comprehensive in their human rights protections, and thus as global governance tools fail to achieve Ruggie’s desired ‘convergence’ of human rights norms, suggesting limitations on the EU’s international human rights role.⁷⁶

At its maximal form, such as the Madagascar SFPA, content and context analysis demonstrate that an SFPA can provide a considerable theoretical human rights role, with obligations for action on eight identified rights-issues: “forced labour”, “IUU” fishing, “indigenous” rights, and fishers’ “working / living conditions”, “standard of living”, “safety”, “health”, and right to “non-discrimination”. At its weakest form, like the Ivory Coast SFPA, context analysis recognises

⁷⁶ Ruggie, “Global Governance”, pp. 5-6.

obligations against only “discrimination”, establishing in contrast a minimal capacity for human rights action. These findings therefore highlight the weakness of certain SFPAs as EU tools for human rights impact, but simultaneously also oppose Antonova’s condemnation of SFPAs as only reflecting ‘internal political goals’ rather than normative human rights principles, based on the evidence of the Senegalese SFPA.⁷⁷ Context analysis shows this SFPA to be one of the lowest in rights-issue references, which, whilst problematic for the EU’s global role to be one of human rights action, is nonetheless insufficient evidence for a general condemnation given other SFPAs greater inclusions of human rights.

These provisions also apply only to Union vessels, limiting their relevance for the EU’s global governance role to the EU distant water fleet. However, SFPAs possess an additional tool for human rights action internationally through finance. Specifically, SFPAs establish both “financial contributions” and “sectoral support” from the EU to the partner country, with financial contributions compensating the country for EU fishing access, and sectoral support aiming to develop the local fishing industry and support the local implementation of the agreement. The quantity of these differs, with annual “financial contributions” ranging from €550,000 to Gambia to €57,500,000 to Mauritania, and annual sectoral support varying from €275,000 for Gambia or Mauritius to €4,000,000 for Guinea-Bissau.⁷⁸ For each partner country it nonetheless represents a valuable source of government income and investment in the local marine economy and administrative capacities.

Sectoral support payments theoretically serve to provide the EU a direct means to actively challenge rights-issues in global fisheries through the development of local fisheries. This development is done along jointly-agreed objectives which differ between SFPAs, although none explicitly refer to human rights. However, some objectives included repeatedly align with human rights principles and the combatting of rights-issues, such as ‘improving the monitoring, control and surveillance of fisheries activities’, ‘supporting the development of small-scale fishing’, and

⁷⁷ A. Antonova, “The rhetoric of ‘responsible fishing’: Notions of human rights and sustainability in the European Union’s bilateral fishing agreements with developing states”, *Marine Policy*, Vol. 70 (2016), p. 84.

⁷⁸ European Commission, *Sustainable Fisheries Partnership Agreements (SFPAs)* [website], available online at: https://oceans-and-fisheries.ec.europa.eu/fisheries/international-agreements/sustainable-fisheries-partnership-agreements-sfpas_en [last accessed 21/05/2024]

strengthening international cooperation in ‘the fight against’ IUU fishing.⁷⁹ Sectoral support payments thereby provide support for capacity-development and local economies in partner countries in Africa, Asia, and the Pacific, theoretically functioning as a direct EU means for human rights impact globally.

Furthermore, content analysis revealed that all SFPAs declare that both the ‘financial contribution’ and ‘sectoral support’ would be revised or suspended in the event of a ‘violation of one of the essential and fundamental elements of human rights’ codified by Article 9 of the Cotonou Agreement signed by all SFPAs partner-countries (except Greenland, whose SFPAs instead refers to the European Convention on Fundamental Rights with the same conditionality).⁸⁰ This article outlines that ‘respect for all human rights’ must be the foundation of all domestic, international, and partnership policies.⁸¹ The EU thus explicitly connects the maintenance of all its financial contributions to the fulfilment of human rights and the SFPAs’ obligations for all partner-countries. This is recognisable as a policy diffusion “carrot”, intended to positively influence other actors policies through financial incentives, although also interestingly leveraging coercion to use the carrot as a “stick” by tying noncompliance to greater costs than compliance.⁸² SFPAs thus exploit their financial significance to positively incentivise human rights fulfilment and diffuse protections, providing the EU a global role as a human rights actor through policy diffusion means.

⁷⁹ Protocol on the implementation of the Fisheries Partnership Agreement between the Democratic Republic of São Tomé and Príncipe and the European Community (2019), *OJ L333/3*, Article 4.1.

Implementing Protocol to the Fisheries Partnership Agreement between the Gabonese Republic and the European Community (2021-2026) (2021), *OJ L242/11*, Article 15.4.

⁸⁰ Partnership Agreement on Sustainable Fisheries between the European Union and the Islamic Republic of Mauritania (2021), *OJ L439/3*, Agreement Article 15.

⁸¹ Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 (2000), Article 9.

⁸² Bodansky, “International Carrots and Sticks”, pp. 332-333.

C. Mertens, “Carrots as Sticks: How Effective are Foreign Aid Suspensions and Economic Sanctions?”, *International Studies Quarterly*, Vol. 68 (2024), pp. 1-2.

4.2. The EU's Role in Practice

EU legislation evidently establishes a set of legal obligations for the EU to enforce in the fisheries sector, and thereby theoretically function as a human rights actor domestically and internationally, albeit with greater focus on certain rights-issues like IUU fishing or forced labour. However, these obligations often lack a clear legislative framework for implementation. Thus, guided by my analysis' findings and supported by primary and secondary case-study evidence, in this chapter I shall investigate the effectiveness of these obligations as means of protecting human rights in practice.

Within Europe

Much of the discussed EU legislation impacts either predominantly or only the European fisheries industry and fleet. Whilst this could theoretically limit the EU's human rights role, there are numerous fisheries rights-issues within Europe that also necessitate action if the EU is to qualify as a comprehensive, normative human rights actor. From the risk of IUU fishing and the use of forced labour to the presence of discrimination and inadequate conditions on fishing vessels, the EU has many opportunities and responsibilities to operate as a human rights defender within Europe, and as just discussed, possesses the legal obligations to do so.

IUU Fishing

Content analysis demonstrates that the most frequently referenced rights-issue in the sector-specific and transposed legislation, which together regulate European fisheries and waters, is "IUU" fishing, with 203 references in total. Yet, all these references are derived from the EU's sector-specific legislation, and feature in all four secondary laws but none of the transposed conventions, demonstrating that EU concern over IUU fishing exceeds that of other global human rights actors like the ILO.

The largest single source of these references is the anti-IUU regulation, which contains 145 references alone. Comprehensively, these references introduce obligations aiming to eradicate

IUU fishing generally, such as by obliging member-states to punish complicit individuals as well as companies, and in EU waters specifically, through improved local monitoring, enforcement, and ocean governance.⁸³

Understanding the impact of these theoretical obligations is incredibly hard to accomplish, as recognised by the EU’s Directorate-General for Internal Policies which in 2014 declared that ‘there is no objective estimate of the extent of involvement of EU vessels in IUU fishing inside EU waters, on the high seas, or in third country EEZs’.⁸⁴ Yet, various metrics could be utilised to provide at least some insight as to the success of the EU’s efforts to prevent IUU fishing.

Firstly, according to public IUU lists, over recent years the obligations have been a local success. According to the EU’s most recent Community IUU Vessel List, annually updated with reporting from global regional fisheries management organisations (RFMOs), none of the vessels currently engaging in IUU fishing are flagged to a member-state in contrast to the ‘several EU vessels... on the IUU lists’ as recently as 2014.⁸⁵ This suggestion that EU vessels are not currently engaged in IUU fishing is further supported by the independent evidence of the public “Combined IUU Vessel List”, drawn from reporting of 13 different RFMOs and currently listing no EU-flagged vessels either.⁸⁶ Furthermore, the largest study of IUU vessels yet published compiled a dataset more than four times greater by including all national, RFMO, and NGO IUU reporting available from January 2010 to May 2023. Of the 1,045 vessels they identified in their IUU dataset, geographical location of their offence could be determined in half of the instances, which showed that IUU activities only occurred in Europe, including non-EU member states and regions, just 3.26% of the time.⁸⁷ Thus, the findings of both the EU and several leading independent sources would suggest that the EU’s legislative efforts to combat IUU fishing have limited the incidence of IUU fishing, and with it the opportunities for rights-violating fisheries

⁸³ Council Regulation (EC) No 1005/2008, Article 47; Preamble Article 21.

⁸⁴ Directorate-General for Internal Policies (DG IPOL), *Illegal, Unreported and Unregulated Fishing: Sanctions in the EU*, Brussels, European Parliament, 2014, p. 30.

⁸⁵ Commission Implementing Regulation (EU) 2023/1471 of 17 July 2023 amending Regulation (EU) No 468/2010 establishing the EU list of vessels engaged in illegal, unreported and unregulated fishing (2023), *OJ L181/16*, Annex Part B.

DG IPOL, “Sanctions in the EU”, p. 30.

⁸⁶ TMT, *Combined IUU Vessel List* [Website], available online at: <https://www.iuu-vessels.org/Home/Search> [last accessed 21/04/2024].

⁸⁷ Daniels et al, *Dark Webs*, p. 53.

practices, by EU vessels and in European waters successfully.

However, IUU fishing vessels have been commonly known to utilise ‘Flags of Convenience’ (FoC) to obscure their ownership and circumvent punishment, and EU vessels could do the same.⁸⁸ At least one vessel on the 2023 Community IUU Vessel list is suspected of having previously utilised a French flag, and similar examples have occurred over the previous lists.⁸⁹ Thus, whilst IUU monitoring may suggest EU policies have been successful, the actual definition of an “EU vessel” may be misleading, resulting in “non-EU” vessels owned by EU persons engaging in IUU fishing.

The EU has taken steps to challenge this though, including the anti-IUU regulation’s obligation to punish EU nationals for complicity in IUU fishing, regardless of the vessels’ flag.⁹⁰ This is a powerful theoretical obligation, but it has faced practical implementation difficulties. For example, in 2018 five EU member-states disrupted a Mediterranean IUU fishing operation, arresting 79 people supplying tuna to Europe’s biggest seafood companies.⁹¹ However, after three-and-a-half years of attempts, Spanish prosecutors failed to progress the case beyond the first stage despite 80,000kg of evidence, leading to the investigation’s end without any administrative or criminal punishments.⁹² Meanwhile, the 2015 “Operation Sparrow” saw IUU fishing vessels in the Antarctic flagged to Equatorial Guinea successfully traced back to the Spanish “Vidal Armadores” group, leading to more than €25,000,000 of fines against twelve companies and fifteen Spanish nationals, their prohibition from fishing, and vessel seizures.⁹³ However, attempts to criminally prosecute the executives were overturned by the Spanish Supreme Court because international waters don’t possess local laws against IUU fishing, despite the anti-IUU regulation’s theoretical obligation to impose punishment for offences

⁸⁸ EJF, *Off the Hook: How flags of convenience let illegal fishing go unpunished*, London, 2020, p. 11.

⁸⁹ Regulation (EU) 2023/1471, Annex Part B.

⁹⁰ Council Regulation (EC) No 1005/2008, Article 39.

⁹¹ Europol, *How the illegal Bluefin tuna market made over EUR 12 million a year selling fish in Spain* [blog], available online at: <https://www.europol.europa.eu/media-press/newsroom/news/how-illegal-bluefin-tuna-market-made-over-eur-12-million-year-selling-fish-in-spain#:~:text=The%20Spanish%20Guardia%20Civil%20arrested,cash%20and%20seven%20luxury%20vehicles>. [last accessed 22/04/2024]

⁹² C. Schwartz, “La lentitud procesal pone en riesgo la causa judicial contra el comercio ilegal de atún rojo”, *CapitalMadrid*, 31 May 2023, available online at: <https://www.capitalmadrid.com/2023/5/31/65142/la-lentitud-procesal-pone-en-riesgo-la-causa-judicial-contra-el-comercio-ilegal-de-atun-rojo.html> [last accessed 22/04/2024]

⁹³ ClientEarth, *The Spanish legal process for prosecuting illegal fishing: a story of success?*, 2019, p. 9.

anywhere.⁹⁴

Official and independent evidence therefore suggests that EU vessels and waters are not significant contributors to global IUU fishing, implying that the EU's theoretical role as a human rights actor has, on the rights-issue of IUU fishing, proven effective within Europe. However, this conclusion is weakened by FoC undermining the validity of this evidence. Furthermore, the ambitious obligations for punishment in the anti-IUU regulation have successfully led to heavy administrative sanctions against offending EU citizens and companies, contributing to a deterrent effect. Yet, the inability to successfully impose the obliged criminal punishment means that the EU's practical role still falls short of its theoretical capabilities for protecting human rights overseas.

Forced Labour

The ILO estimates that there are 128,000 people 'trapped in forced labour aboard fishing vessels', a number which has grown significantly in recent years, leading Interpol in 2017 to issue a warning on the methods contributing to 'modern slavery in the fisheries sector'.⁹⁵ Whilst evidence demonstrates that incidences are concentrated outside of Europe, forced labour remains a potential rights-issue in European fisheries too, which, as content analysis notes, is fundamentally prohibited through two references in the Charter of Fundamental Rights.

Content analysis demonstrates that this relevance of forced labour to the fisheries sector has been recognised by the EU, illustrated by the 14 references to "forced labour" across the sector-specific and transposed legislation. However, prior to the amendments of the 2023 FCR, there was only one reference to "forced labour" in the EU's fisheries sector-specific legislation from the transposed MLC. Thus, forced labour has evidently been a historically neglected rights-issue within the EU's domestic fisheries legislation.

⁹⁴ ClientEarth, *The Spanish legal process*, pp. 11-13.

⁹⁵ ILO, Walk Free, IOM, *Global Estimates of Modern Slavery*, p. 32.

Interpol, *Modus Operandi: Human Trafficking and Forced Labour: The deceptive and coercive practices undertaken within the recruitment process to work on fishing vessels*, 2019, p. 1.

This has likely contributed to the persistent occurrence of forced labour within European fisheries, with the ILO crediting a series of media and NGO-led reporting for exposing its continued existence in EU member-states.⁹⁶ That authorities failed to identify these cases before journalists emphasises that the lack of references to “forced labour” in EU legislation, and corresponding lack of obligations, meant there was no imperative for EU officials to investigate vessels on the basis of forced labour, or invest precious resources into monitoring and enforcement against it.⁹⁷ Thus, forced labour was able to persist in European fisheries, with the Financial Transparency Coalition (FTC) identifying at least 41 European vessels accused of using forced labour between 2010-2023.⁹⁸ These were also predominantly from EU countries: with 19 instances in Ireland, eight in Spain, and seven in the UK (an EU member-state until February 2020).

Thus, historically, the EU has certainly not effectively functioned to combat forced labour within European fisheries due to the legislative neglect identified by content analysis. However, the exposition of these violations has successfully led to the reformed FCR including thirteen additional references to “forced labour” to combat the issue through obligations for increased on-board monitoring and expanded powers for inspectors. This is a significant increase that should enable a concerted effort to crack-down on the issue across EU fisheries and fulfil the EU’s role as a human rights actor against forced labour, as obliged under primary law, but there is not yet sufficient evidence to assess its practical impact.

Fishers’ Rights

A concerning similar situation is visible for the theoretically obliged social, economic, and labour rights of fishers, where right-issues like discrimination, inadequate standards of living, and poor workplace safety in Europe have also been recently exposed by independent reporting.

⁹⁶ R. Surtees, “Forced labour in fishing: How big is the problem?”, *ILO Newsroom*, 2015, available online at: https://www.ilo.org/global/about-the-ilo/mission-and-objectives/features/WCMS_429031/lang--en/index.htm [last accessed 23/04/2024]

⁹⁷ F. Lawrence et al., “Revealed: trafficked migrant workers abused in Irish fishing industry”, *The Guardian*, 2 November 2015, available online at: <https://www.theguardian.com/global-development/2015/nov/02/revealed-trafficked-migrant-workers-abused-in-irish-fishing-industry> [last accessed 23/04/2024]

⁹⁸ Daniels et al., *Dark Webs*, p. 21.

Content analysis indicates that these rights-issues are not commonly referenced within the EU's sector-specific legislation, with zero references to "discrimination", just one to "living /working conditions", and three to "standard of living". Furthermore, whilst "health", "remedy", and "exploitation" are referenced considerably more, context analysis warns that none of the seven references to "health" relate to fishers or the working environment, none of the mentions of "remedy" relate to fishers or other victims, and "exploitation" is only deployed with regards to marine resources, not the prohibited economic exploitation of people. Context analysis ultimately identifies just four references to the "safety" of fishers and their environment, and one reference to the protection of "traditional" fishing activities, in addition to the four references to "standard of living" and "living/working conditions" as all the mentions of fishers' rights issues. The EU's sector-specific legislation thus provides little attention to the challenges threatening individual rights in European fisheries, and thereby establishes a very limited theoretical role for the EU as a human rights actor, despite obligations to prevent these issues from primary law.

However, the EU also possesses its transposed legislation transposed which content analysis demonstrates pays much closer attention to fishers' labour rights. Specifically, content analysis of the transposed legislation identifies 66 references to "safety", 76 references to "health", as well as 19 references to "living / working conditions", eight references to "remedy", and three references to "discrimination". Notably, context analysis also qualifies that many of these references are related to human rights, with, for example, all references to "remedy" and "discrimination" pertaining to the rights of fishers, in distinct contrast to the sector-specific legislation. These transposed standards thus demonstrate a far greater recognition of fishers' rights than the EU institutions' own sector-specific legislation, and apply them to Union vessels universally, establishing a considerably more comprehensive set of obligations for the EU to protect against rights-abuses in European fisheries and thereby achieve human rights impact locally.

However, even holistically, this theoretical EU role as a human rights actor fails to comprehensively address all the rights it is obliged to protect under primary law. For instance, across all the EU's domestic fisheries legislation, content analysis finds only three references to "discrimination" or "standard of living", without any details regarding obligations for

implementation, monitoring, or enforcement. Thus, across the EU *acquis* regulating domestic fishing, certain fishers' rights issues remain very marginal, and this has likely contributed to their ongoing occurrence. For example, in Ireland, researchers interviewed 24 non-EEA fishers and found more than half had experienced 'racial and verbal abuse' and ten reported 'being paid less than others on the boat', in violation of their rights regarding non-discrimination.⁹⁹ Similarly, in the United Kingdom, 'reports of human rights and labour abuses' aboard fishing vessels have circulated for nearly fifteen years, stretching back to its time as an EU Member State.¹⁰⁰ These reports were confirmed in a 2022 UK study which highlighted prevalent discrimination against migrant fishers over 108 surveys and sixteen interviews: from being paid significantly less on average, to 62% reporting regular verbal harassment and 35% suffering or witnessing physical or sexual violence.¹⁰¹ Ultimately, 'just under 75% of migrant fishers reported feeling discriminated against'.¹⁰²

The lack of references to certain rights-issues that content analysis exposes in the EU's fisheries legislation can therefore evidently have considerable impact on European fisheries, particularly on migrant fishers who are among the most likely to suffer from a lack of effective rights protections. Estimating the full scale of this issue is difficult due to the poor availability and transparency of data. For example, the 2022 EU fishing fleet report lists 3% of the 55,592 fishers on the EU's "Large Scale Fleet" and 32% of those on the European "Distant Water Fleet" (DWF) as being of "unknown" nationality, meaning the EU is even unable to conclude whether the DWF is predominantly made up of EU citizens or non-EEA migrants.¹⁰³ Given that the DWF is also the most likely to risk serious labour abuses due to its work in international waters, beyond oversight mechanisms or access to remedy for up to months at a time, this lack of nationality data is very problematic for understanding the potential scope of rights-issues. But, with at least 10,778 migrant fishers and a further 3,742 unknown fishers present in the EU fishing fleet as of 2020, and in light of the exposed experiences of discrimination in both Irish and British fisheries, the capacity for discrimination and other rights-issues to be a serious

⁹⁹ Murphy, Doyle, and Thompson, *Non-EEA Migrant Workers in the Irish Fishing Industry*, pp. 13-14.

¹⁰⁰ Sparks, *Labour abuses in UK fishing*, p. 6.

¹⁰¹ Sparks, *Labour abuses in UK fishing*, pp. 30-34.

¹⁰² Sparks, *Labour abuses in UK fishing*, p. 34.

¹⁰³ Scientific, Technical, and Economic Committee for Fisheries (STECF), *The 2022 Annual Economic Report on the EU Fishing Fleet*, Luxembourg, Publications Office of the European Union, 2022, p. 72.

problem in European fisheries is evidently both present and likely.¹⁰⁴ The lack of serious recognition for such issues in the EU’s fishing legislation, as highlighted by content and context analysis, has very likely contributed to this situation by failing to establish necessary monitoring, enforcement, and remedy mechanisms that could be used to identify and rectify instances of violations.

Content and context analysis thus highlight a lack of sufficient concern for certain rights-issues in EU fisheries legislation, demonstrated by the minimal references to “discrimination”, “standard of living”, or “remedy” for victims. This has contributed to a lack of official EU data necessary to accurately estimate and address the scope of such issues, in turn reinforcing a lack of official attention to the issue. This undermines the EU’s role as a human rights actor to the full extent of its theoretical obligations by enabling certain issues like discrimination to persist without practical, official opposition. This is particularly exemplified by the much greater attention given to the rights-issues of fishers’ “health” and “safety”, which context analysis shows was referenced across the domestic legislation 71 and 51 times respectively, providing a practical human rights role for the EU to enforce these rights through inspections and sanctions. The EU’s domestic legislation thus can be utilised for human rights action on fishers’ rights within Europe, as is currently proactively done for fishers’ health and safety, but analysis suggests this practical role is currently applied unevenly across fishers’ rights-issues, limiting the overall effectiveness of the EU as a normative, universal human rights actor in practice.

¹⁰⁴ STECF, *2022 EU Fishing Fleet*, p.8; p. 72.

Beyond Europe

The theoretical obligations imposed by the analysed EU legislation establish a role for the EU to function as a human rights actor internationally, through three main dimensions: the practices of EU fishing vessels operating globally, the impact of European companies engaged in transnational seafood value chains, and through its positive and negative interactions against third-countries. In this chapter, I will seek to understand the practical realities of my analysis' findings and these identified obligations through a variety of primary and secondary evidence.

EU Vessels Abroad

76% of the EU's fishing fleet are small vessels which operate primarily within European waters, whilst another 23.7% are larger vessels with the potential to fish further ashore in international waters.¹⁰⁵ However, 'around 20% of catches by EU vessels take place in third countries or on the high seas' and the 249 vessels in the EU's DWF is calculated as being responsible for 15% of the EU's landings alone.¹⁰⁶ Thus, given that the DWF operates exclusively outside of EU, these vessels likely represent around 75% of the EU's direct international fisheries impact and thus represents a key element of the EU's role in global fisheries.

The practices of the DWF are theoretically governed by the same obligations as domestic vessels, demonstrated by the SMEFF Regulation's explicit assertion that the rules apply to EU vessels fishing 'in or outside Union waters'.¹⁰⁷ As previously discussed, no EU-flagged vessels are currently listed on IUU lists, nor have there been any foreign prosecutions of EU vessels for IUU fishing. This suggests that the significant importance of combatting IUU fishing for EU authorities, demonstrated by the 203 references to "IUU" across the EU's domestic fisheries legislation, has led to very successful obligations deterring IUU fishing by EU vessels internationally as well, such as the mandating of Remote Electronic Monitoring for all large EU vessels, which would include all distant water vessels.¹⁰⁸

¹⁰⁵ STECF, *2022 EU Fishing Fleet*, p. 24.

¹⁰⁶ European Court of Auditors, *EU Action to combat illegal fishing*, p. 31.

STECF, *2022 EU Fishing Fleet*, p. 24.

¹⁰⁷ Regulation (EU) 2017/2403, Article 1.

¹⁰⁸ Regulation (EU) 2023/2842, Article 13.

Compounding this, content analysis reflects that “IUU” is referenced extensively in the EU’s international agreements, with 135 references in total, involving every SFPA. These references vary broadly in context, from inclusion in the SFPA’s objectives, to being an important condition for EU vessel fishing authorisations, and a target for bilateral cooperation, such as through joint inspections.¹⁰⁹ The extensive 338 references to “IUU” across the EU’s domestic and international fisheries legislation have thus evidently contributed to EU vessels being successfully monitored, regulated, and deterred from participating in international IUU fishing, suggesting the EU has effectively functioned as a human rights actor against IUU fishing as a global rights-issue.

Similarly, evidence has primarily highlighted that accusations of forced labour on EU vessels are concentrated within Europe, rather than globally. For example, 200 of the 249 EU’s DWF vessels are Spanish, but only five Spanish-flagged vessels are accused of forced labour in the FTC dataset, and without specific geographic location for the incidents, meaning it is unknown if they were operating within Europe or internationally.¹¹⁰ If they were DWF vessels, these incidences would still be the only publicly-identified examples of EU-flagged vessels engaging in forced labour globally, superficially suggesting that EU vessels do not commonly engage in forced labour internationally and, therefore, that the EU is fulfilling its obligations under primary law to prevent forced labour.¹¹¹

However, this is more likely due to the limited size of the EU’s DWF than because of EU legislation. Content analysis highlights that there is only one reference to “forced labour” in one of the EU’s SFPAs, accordingly failing to make it a concern of local officials during the inspections of EU vessels which all SFPAs obligate. Furthermore, the thirteen references introduced into the FCR which do establish those practical obligations for considering forced labour during inspections only apply at member-state ports. The use of Remote Electronic Monitoring, which includes on-board CCTV, is also obliged by the FCR for ‘certain catching

¹⁰⁹ Agreement on Sustainable Fisheries between the European Union and Mauritania, Agreement Preamble. Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Seychelles (2020), *OJ L60/5*, Article 17; Article 11.

¹¹⁰ STECF, *2022 EU Fishing Fleet*, pp. 400-401. Daniels et al., “Dark Webs”, p. 23.

¹¹¹ Daniels et al., “Dark Webs”, p. 10.

vessels’ but is targeted only at parts of the vessels catching or discarding fish, with the ability to identify or monitor people ‘limited to the extent possible’, undermining any potential use for monitoring fishers’ freedom and safety at sea. There is thus little evidenced EU concern, and no practical framework, for prohibiting forced labour on EU vessels internationally despite its greater risk of incidence on the high seas and when employing non-EU fishers, which between 26-58% of DWF crew are.¹¹² The EU thus practically neglects the risks of forced labour on its international vessels, as content analysis demonstrates, despite being an enduring rights-issue on EU vessels as the FTC dataset demonstrates, limiting its global role as a human rights actor.

The last major human rights challenge comes from the EU’s theoretical obligations to protect fishers’ rights on EU vessels internationally. As mentioned, the EU’s transposed international laws, with numerous references to “health”, “safety”, “remedy” for fishers, “discrimination”, and “living/working conditions”, apply universally to fishers on EU vessels, meaning the EU possesses the same obligations on-board DWF vessels. The ILO recognises migrant fishers as being ‘particularly vulnerable’ to discrimination and deficient health and safety, and thus despite a lack of evidence, the greater proportion of migrant fishers on EU DWF vessels, and the distance of these vessels from official oversight, inherently makes them higher-risk for violations of EU obligations to protect fishers’ rights in practice.¹¹³

However, context analysis demonstrates there are 30 references to the right to non-“discrimination” across all 14 SFPAs, with commitments to ‘the elimination of discrimination’ in the agreements’ principles, and obligations to ensure fundamental rights, explicitly including the ‘elimination of discrimination’, for local fishers signed-on to EU vessels.¹¹⁴ Thus, the regulations governing the practices and monitoring of EU vessels in third-country waters are explicit about the protection of fundamental rights, although unevenly: referencing the right to non-discrimination more than the EU’s own sector-specific legislation, but with references to fishers’ “safety” of fishers occurring in only six SFPAs, and references to fishers’ “health” in just

¹¹² STECF, *2022 EU Fishing Fleet*, p. 72.

¹¹³ ILO, *Decent Work for Migrant Fishers: Report for discussion at the Tripartite Meeting on Issues Relating to Migrant Fishers*, Geneva, International Labor Office, 2017, p. 7.

¹¹⁴ Fisheries Partnership Agreement between the European Union and the Republic of Mauritius (2014), *OJ L79/3*, Article 3.9.

Agreement on Sustainable Fisheries between the European Union and Mauritania, Annex I, Chapter IX, Article 5.

three. Whilst there is no data regarding enforcement, the SFPAs do obligate EU vessels to be inspected by local authorities to obtain fishing authorisation, and possibly any time afterwards, spotlighting vessel conditions and crew. Thus, given the explicit protections for fishers' rights in the SFPAs, these rights are more likely to be respected aboard DWF vessels due to their economic reliance on receiving continued authorisation that rights-violations caught by inspection would jeopardise. EU international legislation thus establishes obligations that in practice should serve to protect fishers' individual rights on EU vessels internationally.

European Companies

European companies in the fisheries sector are subject to the same theoretical obligations of EU legislation as any EU vessel, with the FCR stipulating explicitly that the regulation applies to 'vessels flying [a member-state's] flag' and 'their nationals', and that liability extends to any legal person who has had violations 'committed for their benefit by any natural person', similarly to the anti-IUU regulation.¹¹⁵ All EU natural and legal persons thus are subject to the obligations to respect human rights in fisheries, which given the EU's economic centrality and transnational value chains in the global fisheries economy, is highly important for the EU's role as a theoretical human rights actor.

Yet, as mentioned previously, police operations have exposed Spanish companies utilising FoC and a chain of shell companies to control ships engaged in IUU fishing internationally, and whilst administrative sanctions were successfully imposed, the executives were absolved of criminal wrongdoing because of jurisdiction, demonstrating the ability of companies to circumvent EU obligations from within the EU. The FTC likewise identified European ownership in 22.5% of forced labour instances where vessel ownership could be determined.¹¹⁶

Given that only 14% of global forced labour cases occurred in Europe, European companies are evidently responsible for an outsize impact in fisheries forced labour globally, with 10 Spanish companies alone accused of being complicit, likely connected to the significant Spanish DWF

¹¹⁵ Regulation (EU) 2023/2842, Article 93.1; Article 92a.1.

¹¹⁶ Daniels et al., *Dark Webs*, p. 31.

and financial transparency laws.¹¹⁷ Thus, the practical enforcement of the breadth of EU legislative obligations is evidently being undermined by several European companies who leverage FoC and untransparent ownership systems to side-step the EU's obligations. Whilst prosecutions have been attempted, and administrative sanctions leveraged, the continued ability of natural and legal persons within the EU's jurisdiction to perpetuate rights-violations internationally but avoid domestic justice erodes the EU's functional role as a strong human rights actor in global governance.

State-level Interactions

The EU's most direct international action in fisheries are its SFPAs: bilateral agreements with fourteen international governments which contain a series of theoretical obligations to improve human rights in partner countries through policy diffusion. Namely, the EU provides sectoral support towards development objectives often aligned with human rights protection and threatens to suspend payments if human rights principles are violated.

Assessing the practical impact of these obligations is difficult due to the lack of data on human rights in these fisheries sectors. However, within its SFPAs the EU regularly cites ILO conventions by name, 'the ILO standard' on specific issues like seafarers' minimum wage, and aims 'to promote the ratification of ILO... conventions applicable to seafarers', even linking successful implementation to 'the principles of those conventions'.¹¹⁸ The EU therefore regularly utilises the ILO's conventions as a means of internationally standardising adherence to human rights in fisheries, making them a tool for assessing how successful SFPAs have been in practice.

Content and context analysis highlight that the MLC is the most significant ILO convention for fishers' rights, yet only nine of the fourteen SFPAs partners are ratifying parties.¹¹⁹ Furthermore,

¹¹⁷ Daniels et al., *Dark Webs*, p. 19.

¹¹⁸ Fisheries Partnership Agreement between the European Community, on one hand, and the Republic of Kiribati, on the other (2007), *OJ L205/3*, Article 3.5

Fisheries Partnership Agreement between the European Community and the Republic of Cape Verde (2006), *OJ L414/3*, Article 3.5.

Protocol on the Implementation of the Sustainable Fisheries Partnership Agreement between the European Union and the Republic of Madagascar (2023-2027) (2023), *OJ L182/37*, Annex, Chapter V, Article 4.2; Article 1.2.

¹¹⁹ ILO, *Ratifications of MLC, 2006* [website], available online at:

https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312

only one, Senegal, has ratified the Work in Fishing Convention referenced explicitly within SFPAs.¹²⁰ Greenland is not a member of the UN, and thus is theoretically unable to be a signatory. Yet, the Faroe Islands also within the Kingdom of Denmark has independently ratified the MLC, so for my purposes Greenland shall be treated as a non-ratifier to both. The EU's SFPAs thus have not been wholly successful in encouraging the ratification of the fisheries-related ILO conventions as a means of promoting international rights-standards, demonstrating that they are not sufficient policy diffusion tools for the EU to globally protect human rights.

Notably, almost all partner countries have had fisheries partnerships with the EU for decades, with Senegal's first access agreement beginning in 1980. Yet, these original access and partnership agreements evidently did not encourage partner countries to ratify the MLC following its creation in 2006, with Kiribati as the only current partner to ratify by 2012. However, after the EU transitioned to "Sustainable" Fisheries Partnership Agreements in 2013, now including broader human rights provisions, sectoral support for sustainable development, and human rights adherence conditionality, partner ratifications began. Of the nine EU-partners that have ratified the MLC, seven only did so after the signings of their SFPA: with Mauritius ratifying the MLC within four months of their SFPA ratification, and Madagascar just fourteen days afterwards. There is therefore fair evidence to suggest that the SFPAs have nonetheless achieved partial success in encouraging adherence to international rights standards through ratifications, with a majority of partner countries having ratified the MLC only post-SFPA. SFPAs therefore can practically function as policy diffusion tools for promoting human rights in international fisheries, achieving global human rights impact for the EU.

However, that five partner countries remain who have not signed the MLC, and more problematically the failure of 13 of the partner countries to ratify the Work in Fishing Convention likewise suggests that the EU's positive incentivisation of rights-improvement can only achieve limited human rights results. Thus, whilst it does achieve improvement in partner countries, SFPA's are not effective enough to independently challenge the full scope of rights-

[331:NO](#) [last accessed 17/05/2024]

¹²⁰ ILO, *Ratifications of C188* [website], available online at:

https://normlex.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO:11300:P11300_INSTRUMENT_ID:312

[333:NO](#) [last accessed 17/05/2024]

violations globally and achieve normative change. Furthermore, these results depend on the existence of a SFPA, which takes significant time and mutual interest to establish and require direct EU financial cost, thereby limiting their practical applicability for global impact. Thus, SFPA's cannot fully support the scope of the EU's theoretical obligations to function as a human rights actor in global governance.

Instead, the EU must also utilise other tools that can be applied universally and which operate “negatively” to deter and punish violations, functioning as a “stick” in the mechanisms of policy diffusion theory.¹²¹ The most significant of these tools are the trade sanctions established by the anti-IUU regulation. As mentioned, this system enables the EU to warn states not cooperating in the fight against IUU fishing through “carding” decisions, and if reform is not implemented following dialogue, introduce economic sanctions to prevent IUU-derived products entering the Single Market. This theoretically represents an effective means for combatting rights-violations globally through other states, except for that, as content and context analysis demonstrates, the anti-IUU regulation has 145 references to “IUU”, but zero other contextually justified references to human rights. Thus, this carding system only practically supports the EU's role as a human rights actor in the specific issue of IUU fishing, and not the broader milieu of rights-issues.

Overall, 27 yellow cards, and an additional eight red cards to some of those initially warned, have been issued, although the EU Commission claims to have had dialogue ‘with more than 60 countries’ ahead of yellow cards.¹²² Thus, less than half of the countries engaged in dialogue failed to resolve their issues before a formal warning, and only eight violators then further failed to sufficiently resolve their issues and received a red card. Findings in 2018 concluded that trade data highlighted significant decreases in imports from carded countries into the EU both around the time of the entry into force of the anti-IUU regulation, likely in anticipation of sanctions, and when carding decisions were later issued, empirically supporting the economic impact of the regulation's trade-related measures in practice.¹²³ This holistically suggests that the very real

¹²¹ B. A. Simmons, F. Dobbin, and G. Garrett, “Introduction: The International Diffusion of Liberalism”, *International Organization*, Vol. 60 (2006), p. 782.

¹²² I. Popescu, *Illegal, unreported, and unregulated (IUU) fishing*, European Parliamentary Research Service, 2022, p. 1.

¹²³ V. Mundy, *The impact of the EU IUU Regulation on seafood trade flows: Identification of intra-EU shifts in import trends related to the catch certification scheme and third country carding process*, Brussels, Environmental

economic and reputational threat of being identified as a violator of international law through a yellow card, for most states, has proven sufficient to compel standards reform regarding IUU fishing. Furthermore, for the eight states who were not moved by this formal identification to implement expedient reform, three have since implemented the necessary reforms and been delisted from the sanctions list. Overall, then, only five of more than 60 States have not been sufficiently compelled by the threats of the EU carding system to reform their fisheries sector to better act in-line with international regulations on IUU fishing.

The evidence thus seems to strongly suggest that the trade sanction system has proven a highly effective policy diffusion method for achieving positive rights change in global fisheries. With only 8% or less of those addressed by carding dialogue having not been dissuaded by the threat or experience of fisheries sanctions, the “stick” approach appears to be a highly persuasive means of achieving international sectoral reform. Such reform also occurs at a relatively quick pace, when acknowledging that it occurs at the state-level and requires significant capacity development to exercise better ocean governance, with, for example, the three states who have been un-sanctioned having taken 13, 20, and 35 months to achieve sufficient reform respectively.¹²⁴ Additionally, and perhaps more impressively, such change has also proven to be sustainable in the long-term, with only two of the 27 States to have received a yellow card receiving another at a later date. Thus, for a tool that costs the EU economically very little and is administratively straightforward under the anti-IUU regulation’s framework, the EU carding system represents an effective, sustainable, and prolific tool for promoting rights-standards globally through policy diffusion, although designed only for the fight against IUU fishing.

This verdict is supported by the findings of other scholars like Kadfak, who utilises findings from 86 interviews with stakeholders in the Thai fishing industry to evaluate the impact of the EU’s 2015 yellow-carding of Thailand. From this data, Kadfak concludes that this carding decision and the subsequent formal dialogue to resolve it was responsible for the inclusion of IUU fishing into a rapid reform of the fisheries sector later that year; in a reform package shaped at least in part by the input of the EU.¹²⁵ Very notably too, during this bilateral dialogue

Justice Foundation, 2018, pp. 4-5.

¹²⁴ Popescu, (*IUU*) *fishing*, p. 2.

¹²⁵ A. Kadfak, “How is Unilateral Trade-Based Policy Adopted and Integrated from the Perspective of Receiving

regarding Thai fisheries reform to repeal the yellow card, the EU took the unique decision to ‘take on labour issues’, from poor working conditions to human trafficking and forced labour, as a point for discussion and reform as well.¹²⁶

This remains a ‘unique case, to date, for EU IUU policy’ given that this pressure for labour rights reform exceeded the theoretical negotiating mandate enshrined within the anti-IUU regulation, as my content and context analysis highlights by emphasising the lack of references to forced labour or labour rights issues within the regulation itself.¹²⁷ Yet, despite this limitation, the anti-IUU regulation and the threat of trade sanctions was practically leveraged to incentivise not only reform against IUU fishing but the broader human rights issues recently exposed in the Thai fisheries sector. This was highly successful and led Thailand to both implement fisheries reform and ratify international standards like the ILO forced labour convention, resulting in the yellow-card’s withdrawal in 2019. The EU’s use of carding and associated dialogue was thus successfully utilised in Thailand to achieve not only reform against IUU fishing but whole-sale reform for the protection of human rights at sea, demonstrating an EU determination to fulfil its human rights role derived from primary law globally, despite a lack of explicit inclusion of such rights-issues in the relevant fisheries legislation.

This demonstrates that, in practice, the EU can utilise state-level dialogues, denouncements, and sanctions as innovative economic methods, leveraging its unique strength as an economic power, for the successful promotion of human rights globally, supporting global governance scholarship on the EU’s potential and aspirations to operate as an effective international human rights actor.¹²⁸ However, a critical theory lens additionally highlights that, despite the positive impact of these efforts, reform is achieved through the leveraging of asymmetrical power relations. Given that 41% of the carded countries are ‘small island developing states (SIDS)’, the effectiveness of the EU carding tool is rooted in problematic power hierarchies that has focused efforts predominantly against significantly smaller, economically weaker, developing countries,

Countries? Applying EU IUU Regulation in Thailand”, in Kadfak, Barclay, and Song (eds.), *EU Trade-Related Measures against Illegal Fishing*, pp. 22-25.

¹²⁶ Kadfak, “Applying EU IUU Regulation in Thailand”, p. 27.

Naiki, and Rakpong, “The Transformation of Thailand’s Fisheries Laws”, pp. 646-7.

¹²⁷ Kadfak, “Applying EU IUU Regulation in Thailand”, p. 27.

¹²⁸ Manners, “Normative ethics of the European Union”, p. 48.

rather than important global economic or political actors that contribute far more to the persistence of IUU fishing and other rights-issues globally, in particular China.¹²⁹ Thus, in its current form, the carding system may not be suitable for achieving normative change universally across the sector, limiting the EU's human rights role as a global actor in practice.

¹²⁹ Song, "Policy Diffusion of the EU-IUU Regulation", p. 10.
Daniels et al., *Dark Webs*, pp. 22-27.

5. Discussion

5.1. Key Findings

Content analysis highlighted that across the EU’s fisheries-related legislation, “environmental” and “sustainability” issues were the most discussed rights-issues, with 111 and 394 references across all analysed legislation respectively, often relating to the conservation of marine resources and ecosystems. This has likely contributed to the strong action that has been taken against IUU fishing because of its recognition as a threat to sustainable ocean governance, demonstrated by the 338 total references to “IUU” across the legislation. These extensive legislative references have distinguished the EU as a leading actor on IUU fishing both within and beyond Europe, as is visible in my secondary data outlining the EU’s successful efforts in preventing IUU fishing within Europe and by EU vessels internationally, and encouraging ratifications of international standards in partner countries, demonstrating the EU’s ability to achieve ‘normative’ human rights policy diffusion.¹³⁰ This detailed inclusion of IUU fishing into EU legislation and the evidence of its local and global impact therefore supports global governance scholarship on the potential of the EU to act as an innovative, transnational human rights actor that can ‘live by example’, and thereby contribute to global governance ‘as both model and actor’, despite the legislation not actually mentioning IUU fishing’s relevance as a rights-issue.¹³¹

Content analysis has however likewise illustrated that the EU’s fisheries-specific secondary law is still lacking in key obligations, with little to no references to important issues from a human rights perspective; from forced labour to social, economic, and labour economic rights. This is particularly problematic because such protections are guaranteed under EU primary law, and are

¹³⁰ EJF, “Off the hook”, p. 22.; p. 29.

R. Barnes et al., “Introduction: External Aspects of the European Union Common Fisheries Policy”, *International Journal of Marine and Coastal Law*, Vol. 35 (2020), p. 11.

Daniels et al., *Dark Webs*, p. 53.

A. Kadfak, K. Barclay, and A. Song, “Lessons from Thailand and Australia on the Diffusion of Anti-IUU Fishing Trade Policy”, in Kadfak, Barclay, and Song (eds.), *EU Trade-Related Measures against Illegal Fishing*, p. 76.

¹³¹ Manners, “Normative ethics of the European Union”, p. 60.

D. Spence, “The European Commission: How the European Commission constructed European Union governance policy and how it attempts to export it”, in Wunderlich, and Bailey, *European Union and Global Governance*, p. 73.

the focuses of significant international law, including the EU's transposed ILO conventions. Thus, this lack of dedicated focus to human rights issues in the EU's legal foundations for the fisheries sector, which context analysis clearly demonstrates, reflects the lack of a guiding HRBA to fisheries-policy in the EU.

Accordingly, with content analysis pinpointing 189 more references to "IUU" fishing than "forced labour" across the EU's sector-specific and transposed fisheries legislation, this neglect of a HRBA has contributed to the failure of EU authorities to combat individual-centric rights issues in Europe and on EU vessels when compared to use of innovative methods and strict obligations to effectively combat IUU fishing. The impact is empirically clear, with just 3.26% of the geographically identifiable global total of IUU fishing instances occurring in Europe, in comparison to 14% of the global total of forced labour accusations being against European vessels.¹³² Therefore, this lack of explicit recognition of rights-issues in the EU's fisheries legislation has enabled legal loopholes to persist and prevented authorities from investing resources into proper monitoring and enforcement capabilities against rights-issues like forced labour. Thus, despite successes in combating IUU fishing within its jurisdiction, my analysis reflects a problematic lack of a HRBA that fundamentally limits the EU's role in practice as a human rights actor when governing Europe's fisheries and fleet.

Even the significant EU-led collation and reporting of data on IUU fishing vessels and occurrences, which in turn informs more effective anti-IUU action, strongly contrasts the total lack of EU data on the issues of forced labour or fishers' rights within European fisheries. This highlights the impact that greater EU attention, shown by the volume of references, to certain issues in legislation has for practical action on rights-issues, and accordingly how the neglect of certain rights-issues fundamentally undermines the EU's practical approach to fulfilling its theoretical human rights obligations.

Content and context analysis do demonstrate that the EU's transposed international laws regarding fisheries contain significantly more legislative attention to these rights-issues, which could be cited to excuse their absence in the EU's other sector-specific legislation. However, I

¹³² Daniels et al., *Dark Webs*, p. 21.

believe it simply reflects a greater concern for these rights amongst the EU social partners who shaped these convention's implementing agreements, in contrast to the EU institutions which developed the sector-specific legislation without a HRBA. This has likely contributed to a failure for EU authorities to recognise proactively investigating and protecting human rights as objectives for their own work, given that the flagship policies like the CFP and FCR fail to reference or centre them like technical or ecological concerns. Thus, despite these transposed laws theoretically obliging rights protections through these detailed provisions, without proper inclusion and discussion in the EU's other central fishing regulations, authorities efforts to enforce these obligations are likely to be significantly more limited than what is required. This is evident in the exposed persistence of forced labour in European fishers which, despite prohibition under primary law and other non-fisheries secondary law, was not being properly investigated or combatted prior to specific provisions being included into the EU's sector-specific legislation through amendments to the FCR. Content and context analysis therefore reflect a limited self-recognition in the EU's secondary law of its own role as a human rights actor in the fisheries sector, inherently undermining the enforcement of fishers' rights in practice and thereby its effectiveness as a human rights actor within Europe.

In the EU's international role, content analysis of the SFPAs and internationally-impacting legislation like the SMEFF and anti-IUU regulations illustrates that environmental issues remain the most discussed, with 275 references to "sustainability" in the SFPAs alone. This environmental concern has particularly resulted in significant EU international efforts to combat IUU fishing, including necessitating cooperation against IUU fishing in all SFPAs to continue receiving financial contributions, and demanding third countries actively fulfil their anti-IUU duties or face warnings and sanctions through the anti-IUU regulation. From the perspective of critical theory, this is highly significant for the EU's role as a human rights actor in reality because IUU fishing is a rights-issue that primarily affects and exploits the "global South", with 49.8% of instances occurring in Africa alone, generating billions in illicit financial flows away from vulnerable coastal communities and generally to the "global North".¹³³ Accordingly, these IUU fishing vessels are operating within a broader, problematic context of 'colonial capitalism' that continues to dominate the Global South and degrade 'the conditions of human and

¹³³ Daniels et al., *Dark Webs*, p. 52.

ecological sustainability’ as Martins argues.¹³⁴ The proactive anti-IUU efforts of the EU thus demonstrate a commitment to human rights improvement for the world’s most vulnerable individuals and communities, and opposing postcolonial power-relations preserved in certain economic value chains, which holistically supports the practical role of the EU as a impactful, normative human rights actor, rather than limiting its role to Europe.

However, in this internationally-focused legislation, the broad gap between IUU fishing and other rights-issues, with 135 references to “IUU” in SFPAs in contrast to just 90 contextually-valid references to human “rights”, may reflect a similar neglect to that seen in the EU’s domestic legislation. These other issues, centred on individual rather than environmental, rights must also be actively addressed actively to fulfil the full breadth of the EU’s theoretical obligations derived from primary law on EU vessels internationally, and in international fleets that the EU may import from. However, as mentioned, these SFPAs do nonetheless reference rights-issues more than the EU’s own sector-specific legislation, and powerfully tie their financial contributions to the fulfilment of human rights. Thus, if the EU can practically fulfil the human rights supporting objectives of its joint development actions and ensure that partner countries are held to their human rights commitments, particularly by encouraging further international law ratifications and further supporting capacity development, the EU’s SFPAs will function as significantly more human rights aligned legal tools than the EU’s sector-specific secondary law, although still with considerable potential for improvement.

This is evidenced in the successes thus far of the EU’s state-level interactions, such as the impact of SFPAs in contributing to half of partner countries ratifying the MLC and the very successful implementation of the anti-IUU regulation’s trade sanctions. From the perspectives of global governance and policy diffusion theory, the use of these SFPAs, as a positive tool incentivising rights improvement to receive continued financial support, and carding decisions, as a negative tool deterring any wilful neglect of IUU fishing and ocean governance duties, demonstrate the EU’s real role as an international human rights actor in the fisheries sector. Content and context analysis emphasise that this role functions through innovative methods utilising the EU’s unique strengths, like its value as a global import destination, to protect human rights and achieve

¹³⁴ P. Martins, *Critical Theory of Coloniality*, London, Routledge, 2022, p. 14.

reform internationally, supporting Ruggie’s arguments on the value of new approaches to regulating a globalised world.¹³⁵

5.2. Problems

This investigation has consistently identified problems that limit the EU’s role as a human rights actor in practice. Not only is there a significant disconnect between the inclusion of rights in primary law and fisheries-specific secondary law, as content and context analysis have shown, undermining the ‘coherence and consistency’ of EU fisheries policy at the theoretical level, problems also extend beyond this also to affect implementation of the existing protections.¹³⁶ However, certain structural issues particularly hinder the EU’s capabilities as a normative human rights actor in global governance.

Firstly, a lack of legislative references to most fishers’ rights-issues has contributed to a lack of official EU data necessary to accurately estimate the scope of these issues, within Europe and globally, thereby reinforcing a lack of official attention. From failing to understand exactly how many fishers are present in the EU fleet or where they are from, to relying on independent reporting to expose forced labour on EU vessels, there is an evident lack of EU fisheries data. Even the EU’s Community IUU list, likely due to only being updated annually, currently lists 14 less vessels than the “IUU Vessel List” compiled from global RFMOs, preventing action against those vessels.¹³⁷ This poses a direct threat to human rights on EU vessels and within European waters by preventing authorities from being able to exercise targeted monitoring, inspections, and interventions, and thereby limits the effective enforcement of EU protections.

Additionally, in the case of forced labour, it was only with recognition of the problem’s scale that legislative reform was subsequently achieved. Thus, improved data collection is also needed

¹³⁵ Ruggie, “Global Governance”, pp. 8-9.

A. Kazancigil, and P. de Senarclens, “Introduction”, in A. Kazancigil, and P. de Senarclens (eds.), *Regulating Globalization: Critical Approaches to Global Governance*, New York, United Nations University Press, 2007, p. 1.

¹³⁶ Barnes et al., “External Aspects of the European Union Common Fisheries Policy”, p. 17.

¹³⁷ Commission Implementing Regulation (EU) 2023, Annex Part B.

TMT, *Combined IUU Vessel List* [Website], available online at: <https://www.iuu-vessels.org/Home/Search> [last accessed 20/05/2024].

to assess the fulfilment of the EU's rights protections that limited reporting has suggested are, in practice, violated and correspondingly encourage reform before further evidence of violations must build up once again. This can be done by improved obligations for member-state reporting, such as obliging member-states to provide accurate nationality data for all fishers, expanding inspector's checklists to focus on more rights-issues or provide opportunities to speak with crew, and by expanding the remit of Remote Electronic Monitoring on EU-flagged vessels to include checking on crew to provide greater awareness of the conditions on EU vessels internationally.

Furthermore, critical theory inherently opposes 'social injustice', and accordingly highlights problematic elements in the EU's approach to fisheries that hinder its role as a human rights actor in support of social justice.¹³⁸ For instance, 79% of the global fisheries workforce live in Asia, and thus EU sanctions levied against a state's entire fisheries industry through carding decisions are likely to affect many more people when countries in Asia are carded.¹³⁹ Whilst these carding decisions have positive intentions, an economic embargo of a nation's fisheries sector, which lasted 23 months on average across the three nations to have had sanctions repealed, could be catastrophic for these fishers' standards of living as well, undermining the fulfilment of their human rights for failures at the state-level. EU sanctions thus may have very negative human rights impacts in the short-term, and, as previously mentioned, are not levied entirely equally and fairly but rather have largely targeted developing nations with little options other than to abide, leveraging power relations to achieve success, rather than China, who refuses to ratify key international fisheries legislation and harbours more IUU and forced labour accused vessels than any other state.¹⁴⁰ Lastly, as mentioned, the ILO recognises discrimination as one of the rights-issues most likely to affect migrant fishers.¹⁴¹ Thus, its particular neglect as a rights-issue in domestic legislation, with just three references from the transposed conventions in all EU fisheries-specific secondary law, reflects a lack of sufficient concern for protecting the 10,778 non-EEA migrant fishers in the EU fleet, who as the most vulnerable necessitate the most official attention to practically act against social injustice.¹⁴²

¹³⁸ Horkheimer, "Traditional and Critical Theory", p. 242.

¹³⁹ Naiki, and Rakpong, "The Transformation of Thailand's Fisheries Laws", p. 630.

¹⁴⁰ Daniels et al, *Dark Webs*, pp. 22-4.

¹⁴¹ ILO, "Decent Work for Migrant Fishers", p. 7.

¹⁴² STECF, *2022 EU Fishing Fleet*, p. 72.

5.3. The EU's Role in Future

Ultimately, secondary evidence has clearly highlighted the implications in practice from the lack of a HRBA to the drafting of the EU's fisheries-specific legislation that content and context analysis has identified, with a range of rights-issues persisting domestically and globally. Fortunately, though, change is happening. Greater public recognition and discussion of rights-issues plaguing the fisheries sector has led to the start of reform, visible in the inclusions of obligations to investigate and eliminate "forced labour" into the newest FCR and SFPAs with Madagascar, both agreed in 2023. This suggests that recognition for "forced labour" as a fisheries issue has now been achieved at the EU level, and that it shall continue to feature in the new generation of EU domestic and international fisheries legislation. Practically, this may serve to expand the EU's efforts to combat rights-issues globally, developing EU cooperation with third-country partners against IUU fishing to combat forced labour as well. Furthermore, given the identified partly successful impact of SFPAs in promoting greater human rights standards in partner countries through ratifications of international law on issues discussed within the SFPAs, the inclusion of forced labour may serve to function to combat forced labour in partner-countries' fisheries through similar policy diffusion. Contemporary reforms thus imply that the EU is reinforcing its role as a global human rights actor in the fisheries sector through the inclusion of forced labour, recognised as an explicit rights-issue unlike IUU fishing, into legislation as a means to combat it through direct interventions and policy diffusion.

However, the momentum of reform must continue to extend prohibitions against forced labour into legislation governing the EU fleet internationally, such as the SMEFF regulation and thirteen other SFPAs, with corresponding powers and resources for monitoring and enforcement, such as by expanding the applicability of Remote Electronic Monitoring. Likewise, protections must be expanded for the social, economic, and labour rights of fishers, both EU and non-EEA citizens, given their lack of coverage within EU fisheries-legislation that has contributed to a culture of official neglect, typified by inadequate data and limited ocean governance. Furthermore, whilst EU legislation establishes provisions for the prosecution of individuals involved in illegal fisheries practices globally, these must also be supplemented with

opportunities for access to remedy for the impacted individuals and communities, as the Charter of Fundamental Rights demands. However, content and context analysis show victims' access to "remedy" is entirely absent from the EU's own sector-specific legislation and SFPAs, limiting the EU's international capacity to protect and promote human rights, rather than just punish violations.

To further develop its role as a specifically global human rights actor, the EU should seek to continue leveraging its innovative trade-restrictive measures and the bilateral dialogues they initiate to pressure for positive change against broader rights-issues beyond IUU fishing, even when not theoretically obliged to do so under EU legislation as it did in Thailand. With its partners, the EU should meanwhile continue its positive incentivisation of greater rights protections and financial support for capacity development through its SFPAs, but also with more explicit attention to the broader rights-issues impacting global fishing fleets. In particular, forced labour and the protection of coastal communities' traditional rights are both key problems in West Africa where 8 of the EU's 14 SFPA partners are.¹⁴³ Neglecting cooperation against these issues, as demonstrated by the absence of references to "forced labour" and "traditional" rights in SFPAs, must be rectified immediately if the EU is to incorporate a comprehensive understanding of human rights as indivisible and interdependent and therefore of equal value, into its role as a global governance actor.

Internationally too, the inconsistent exercise of the EU's policy diffusion "stick", the anti-IUU carding decisions, to avoid powerful actors like China is reflective of a pragmatic global governance role supported by scholars like Hyde-Price who advocate for the EU to operate as a 'calculator not a crusader'.¹⁴⁴ However, to uphold the central positionality of human rights in the EU's identity, values, and structure, evidenced by the 126 references to human "rights" in the Treaty on European Union and Charter of Fundamental Rights and supported by scholars like Toggenburg, a HRBA is needed not just for the drafting of EU fisheries legislation but in its

¹⁴³ Daniels et al., *Dark Webs*, p. 27; p. 52.

Danish Institute for Human Rights, *Human Rights in Fisheries and Aquaculture in Africa Unpacked*, 2019, p. 3; pp. 6-7.

EJF, *Small-scale fishing communities in Ghana*, pp. 79-80.

¹⁴⁴ Hyde-Price, "A 'Tragic Actor'?", p. 29.

exercise too.¹⁴⁵ Thus, to practically fulfil its theoretical role as a human rights actor in global governance, the EU must exercise external action ‘based on more transparent normative ethics’, as argued by Manners.¹⁴⁶ Practically for fisheries, this means challenging human rights violations through policy diffusion tools, from dialogue to carrots and sticks, in all countries rather than just those who cannot afford to oppose the EU.¹⁴⁷

Lastly, the EU possesses a responsibility to resolve the rights-violations caused by EU fishing fleets and companies globally, but which is currently failing to be fulfilled amidst complex laws of jurisdiction, FoC, and financial opacity. Whilst global, coordinated action will be needed to challenge many of these problems, the EU can still begin to unilaterally combat these human rights violations through the strengthening of data collection efforts utilising new technologies like Remote Electronic Monitoring as mentioned, and obliging greater supply chain transparency. For these purposes, the Corporate Sustainability Due Diligence Directive (CSDDD) could offer a valuable opportunity for improvement within the sector, by imposing thresholds for accountability, transparency, and sustainability on fishing companies’ value chains that would serve to challenge systems of financial opacity concealing rights-violations. However, with revisions to the CSDDD raising the application threshold to companies with more than 450 million euros in annual turnover, the legislation will likely impact only the largest fisheries companies, although there are several with globally-spanning value chains that will qualify.

¹⁴⁵ Toggenburg, “EU Human Rights Regime”, in Andreassen, *Politics of Human Rights Law* pp. 412-3.

¹⁴⁶ Manners, “Normative ethics of the European Union”, p. 60.

¹⁴⁷ Kadfak, Barclay, and Song, “Lessons from Thailand and Australia”, pp. 76-77.

6. Conclusions

This thesis conceptually began from a recognition of the broad difficulties states face in the global challenge to protect human rights at sea, and from this I sought to understand the role that the European Union, as a unique international actor, can and does play in this challenge. This has been done through an investigation of EU legislation, from its primary law foundations to its fisheries-specific secondary laws and international fishing agreements, through the analytical lenses of content and context analysis. My findings, supported by additional secondary evidence, were contextualised within critical theory, global governance theory, and policy diffusion theory as I sought to contribute to human rights scholarship on the role of the EU as a global human rights actor and the means for protecting human rights in commercial fisheries.

My chosen methods of content and context analysis have been employed successfully to analyse the theoretical role of the EU by providing insight into its obligations under primary law, secondary law on the fisheries industry, and international agreements. With such findings, I was able to contrast the obligations between these different categories and identify what has been given appropriate legislative focus and provisions, and in turn what has been neglected in the EU's legislation establishing the foundations for the practices of EU authorities, vessels, and companies.

With such observations of what is both present and “missing” from the EU *acquis*, and the variations that existed for specific rights within EU legislation, I was able to incorporate secondary evidence to evaluate the empirical impact of such inclusion or neglect. Through this, I was able to construct a broader understanding of the role of the EU both theoretically, as demonstrated by content and context analysis, and in practice, relating the findings of my analysis to the trends visible in this secondary data. Together, this enabled me to answer my central research question by assessing to what extent the EU is functioning as a human rights actor in this case-study of the fisheries sector, domestically and globally. This process also enabled me to simultaneously identify key reasons for the successful or troubled practical implementation of the EU's theoretical obligations, which strongly correlated to the relative

inclusion of the rights-issue within the EU's legislative framework; with rights-issues that were discussed extensively having protections implemented far more effectively, like IUU fishing, than those with little to no inclusion in legislation or SFPAs, such as discrimination.

Whilst this methodology was hampered by a lack of empirical data from official actors, this also served as a finding reflecting that the most successfully combatted rights-issues also possessed the strongest data collection obligations to inform more effective action, suggesting more data is needed for neglected rights-issues. I meanwhile leveraged my theoretical framework to highlight how my findings indicated that the EU was functioning as a unique human rights actor by using innovative international approaches discussed in global governance scholarship, particularly policy diffusion tools. However, this success was inconsistent, and a critical theory lens additionally underscored concerns regarding the application of these tools that undermined the normative, universalist ambitions of human rights and thus, the EU's status as a human rights actor.

My findings thus contribute to human rights scholarship by illustrating the EU's unique role as an international human rights actor, that has leveraged legal, political, and economic tools in the global fisheries sector to improve international rights protections with varied success. Yet, to truly uphold the human rights ethic embodied in EU primary law, such practices must operate form within a currently missing HRBA that exercises tools impartially and on behalf of all rights. There are indications that change is developing in this direction, but ultimately, whether the EU's future role in global governance is as a normative or selective human rights actor lies in its own hands.

Annex I – Content Analysis Results

EU Legislation		Content Analysis Reference Frequency														
		"Right / Rights"	"Forced Labour"	"Sustainable / Sustainability"	"Abuse"	"Exploitation"	"Environment / Environmental"	"Remedy / Reparation / Compensation"	"Discrimination"	"IUU"	"Living / Working Conditions"	"Safe / Safety"	"Health / Healthy"	"Standard of Living"	"Cultural / Traditional / Indigenous / Native"	
Primary Law	Treaty on European Union (2008)	23	0	6	0	0	0	4	1	2	0	0	1	0	0	6
	Charter of Fundamental Rights (2012)	106	2	2	1	1	3	3	3	0	4	2	5	0	8	
Sector-Specific Secondary Law	Common Fisheries Policy (2013)	7	0	71	0	29	31	4	4	0	8	1	5	1	2	
	Anti-IUU Regulation (2008)	12	0	6	0	4	5	4	0	145	0	0	1	0	0	
	Sustainable Management of External Fishing Fleets Regulation (2017)	2	0	27	0	2	2	1	0	20	0	0	0	0	0	
	Fisheries Control Regulation (2023)	25	13	7	0	12	8	2	0	30	0	12	5	1	0	
Transposed International Law	Agreement implementing the Work in Fishing Convention (2017)	11	0	0	0	0	1	3	1	0	11	37	0	1		
	Agreement implementing the Maritime Labor Convention (2009)	21	1	0	0	0	3	5	2	0	8	29	0	3		
Sustainable Fisheries Partnership Agreements and Protocols	Mauritania	22	0	38	0	9	6	8	4	18	2	5	2	1	0	
	Seychelles	13	0	20	0	8	6	4	5	13	2	4	1	1	1	
	Ivory Coast	10	0	10	0	7	1	1	3	5	0	1	0	0	0	
	Guinea-Bissau	19	0	24	0	11	3	5	6	5	0	4	16	0	0	
	Kiribati	21	0	20	0	8	5	5	7	13	0	3	1	0	0	
	Cabo Verde	18	0	19	0	8	4	4	5	6	3	0	2	0	0	
	Cook Islands	8	0	15	0	5	2	1	2	9	0	1	0	0	0	
	Gabon	11	0	18	0	13	4	8	4	9	0	5	2	0	0	
	Gambia	12	0	17	0	4	3	3	12	0	1	1	1	0	1	
	Greenland	12	0	24	0	9	1	4	2	8	1	2	0	0	3	
	Madagascar	24	1	18	0	4	9	5	3	18	2	6	7	1	3	
	Mauritius	14	0	16	0	9	5	4	5	9	1	3	2	1	0	
	Senegal	14	0	17	0	4	1	3	3	10	1	1	2	0	0	
	São Tomé	15	0	19	0	8	4	3	3	5	3	4	1	0	0	
	Totals	420	17	384	1	155	111	83	65	338	33	129	125	7	28	

Annex II – Context Analysis Results

EU Legislation		Context Analysis Reference Frequency									
		Human / Fundamental / Fishers' / Victims' "Rights"	"Exploitation" of people	Ecological "Environment"	"Remedy / Reparation / Compensation" for victims / violations of human rights	Elimination of / Non - "Discrimination"	"Safety" of the fishers / working environment	"Health" of the fishers / working environment	"Traditional" access / fishing activities of coastal communities		
Primary Law	Treaty on European Union (2008)	20	0	4	0	2	0	0	0	0	
	Charter of Fundamental Rights (2012)	106	1	3	3	3	2	2	0	0	
Sector-Specific Secondary Law	Common Fisheries Policy (2013)	6	0	31	0	0	1	0	1	1	
	Anti-IUU Regulation (2008)	0	0	5	0	0	0	0	0	0	
	Sustainable Management of External Fishing Fleets Regulation (2017)	0	0	2	0	0	0	0	0	0	
	Fisheries Control Regulation (2023)	4	0	7	0	0	3	0	0	0	
Transposed International Law	Agreement implementing the Work in Fishing Convention (2017)	4	0	1	3	1	28	30	0	0	
	Agreement implementing the Maritime Labor Convention (2009)	18	0	1	5	2	19	41	0	0	
Sustainable Fisheries Partnership Agreements and Protocols	Mauritania	7	0	5	0	3	4	1	0	0	
	Seychelles	7	0	5	0	2	2	0	1	1	
	Ivory Coast	5	0	0	0	2	0	0	0	0	
	Guinea-Bissau	8	0	2	0	3	1	1	0	0	
	Kiribati	7	0	3	0	3	0	0	0	0	
	Cabo Verde	9	0	2	0	3	2	0	0	0	
	Cook Islands	3	0	1	0	1	0	0	0	0	
	Gabon	4	0	2	0	2	3	0	0	0	
	Gambia	5	0	1	0	2	0	0	1	1	
	Greenland	10	0	1	0	1	0	0	0	3	
	Madagascar	5	0	8	0	1	3	2	3	3	
	Mauritius	6	0	3	0	2	2	1	1	0	
	Senegal	6	0	0	0	2	0	0	0	0	
	São Tomé	8	0	2	0	3	2	0	0	0	
Totals	248	1	89	11	38	72	78	9			

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