

Towards Apt Instruments

The relevance of including small-scale fisheries in fisheries legislation and instruments cannot be overemphasized, even if the issue is rather complicated

Sustainable development, and more specifically, human development, within fisheries is intrinsically linked to local fishing communities. The 2012 UN Conference on Sustainable Development explicitly recognized the important contribution that small-scale fisheries (SSF) can make to sustainable development. According to the Food and Agriculture Organization of the United Nations (FAO), small-scale fisheries provide work to 90 per cent of the people employed in capture fisheries. Women account for approximately 50 per cent of the workforce in small-scale fisheries, particularly in the areas of processing and trade.

unambiguous; millions of people, the majority of whom live in developing coastal states, depend on fisheries for their food security and livelihood. Moreover, development and poverty eradication in fishing communities have a strong spill-over effect on aspects of the development process such as education and gender. In light of its potential contribution to human development, this article explores the position of the SSF in legal fisheries instruments.

The position of small-scale fisheries in fisheries instruments: due consideration to local fishing communities in developing countries

This section analyses the extent to which the SSF subsector is reflected in fisheries instruments. Although there are various angles through which fisheries instruments can refer to this subsector, this section will focus on the references to, or inclusion of, the SSF subsector arising from the general obligation for states to have due consideration to local fishing communities in developing countries.

Whilst the majority of the references to the needs and interests of local fishing communities relate to the objective of conservation of marine resources, specific reference is also made to SSF. The 1995 UN Fish Stocks Agreement (UNFSA) Convention requires that, when adopting conservation measures, “States shall take into account the interests of artisanal and subsistence fishers”. (In this context, Article 5(i) needs to be read in combination with Article 3(3) of the agreement that formulates that “States shall give due consideration to the respective capacities of developing States to apply articles 5,

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There is, however, no unambiguous way to define the small-scale fisheries subsector. The term small-scale fisheries often functions as an umbrella to address all types of fisheries other than large-scale fisheries. When taking a closer look, the subsector can be described by a list of characteristics, as it has been concluded that a single definition will not do justice to the complexity of the subsector and its differences per country or region. The difficulty of defining small-scale fisheries can make any reference to this subsector within legal fisheries instruments complicated.

The relevance of fisheries for sustainable (human) development is

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6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement”). In giving effect to this requirement, UNFSA underlines the need to avoid adverse impacts “on, and ensure access to, fisheries by, subsistence, small-scale and artisanal fishers and women fish workers, as well as indigenous people in developing States, particularly small island developing States”. The 1992 Convention on Biological Diversity emphasises the need to support local populations in order to combat environmental degradation. (Article 10(d) of the 1992 Convention on Biological Diversity emphasises that “States shall support local populations to develop and implement remedial action in degraded areas where biological diversity has been reduced”).

The “needs of coastal fishing communities which are dependent mainly on fishing for the stocks” or the “needs of coastal States whose economies are overwhelmingly dependent on the exploitation of

living marine resources” are, moreover, taken into account when determining the nature and extent of participatory rights attributed to new members of (sub)regional fisheries organizations (Article 11(d) and (e) of UNFSA) Without specific reference to developing countries, the UNFSA requires that states, while implementing the precautionary principle, take into account “socioeconomic conditions” (Article 3(1) of the agreement broadens the scope of the agreement by formulating that Article 6 also applies to areas under national jurisdiction.)

Reference to the interests of local fishing communities is made in several of the conventions underlying Regional Fisheries Organizations, mainly referring to the need to take account of their interests in the management and conservation of regulated fish stocks. Reference to the contribution of the small-scale fisheries subsector in economic development and food security is made in the 2002 Agreement establishing the Caribbean Regional

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A fishermen's village in the Mannar District of Northern Sri Lanka. Sustainable development and, more specifically, human development within fisheries is intrinsically linked to local fishing communities

Fisheries Mechanism, which emphasizes the need to provide “due recognition to the contribution of small-scale and industrial fisheries to employment, income and food security, nationally and regionally”. The Western and Central Pacific Fisheries Commission (WCPFC) recognizes the special requirements of developing states in the duty to co-operate in conservation and management measures. In that case, account shall be taken of:

(a) the vulnerability of developing States Parties, in particular small island developing States, which are dependent on the exploitation of marine living resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to, fisheries by subsistence, small-scale and artisanal fishers and fishworkers, as well as indigenous people in developing States Parties, particularly small island developing States Parties.

However, in general, any further explanation of what constitutes local fishing is lacking. The 2001 South African Development Community Protocol on Fisheries

small-scale artisanal and indigenous fishers”. Likewise, the 1995 Kyoto Declaration underlines the “important economic and social role of subsistence, artisanal and commercial fisheries” who “seek to provide an environment in which they can make an optimum contribution to economic and social welfare”.

According to 1995 FAO Code of Conduct for Responsible Fisheries (CCRF), “due recognition should be given ... to the traditional practices, needs and interests of indigenous people and local fishing communities which are highly dependent on fishery resources for their livelihood”. It requires that conservation and management measures provide, inter alia, that “the interests of fishers, including those engaged in subsistence, small-scale and artisanal fisheries, are taken into account”. (According to Article 8.11.3, the same is required on when it regards coastal area management plans dealing with management systems for artificial reefs or fish aggregation devices.) Specifying measures that should be taken by states to minimize problems such as discards or catch of non-targeted species, may include the establishment of “areas and zones reserved for selected fisheries, particularly artisanal fisheries”.

The CCRF, moreover, emphasizes the need to establish an appropriate legal and institutional framework, which is considered to be a starting point for the achievement and integrated use of marine resources while “taking into account...the needs of coastal communities”. It should furthermore serve “to determine the possible uses of coastal resources and to govern access to them, taking into account the rights of coastal fishing communities and their customary practices to the extent compatible with sustainable development”. The 1996 Plan of Action of the World Food Summit draws attention to the “social and economic organization of the rural population”, while placing particular emphasis on the development of small-scale fishers, whilst the 2009 Declaration of the World Food Summit continues a

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defines small-scale commercial fisheries as “fisheries that generate profits and earn income large enough to meet the basic needs of life, employ staff or operate as profit-sharing collective enterprises”. The majority of the provisions referring to the small-scale fisheries subsector is, however, not specified, with legal instruments only tending to emphasize, in a general way, the need to take account of the interest and needs of small-scale, traditional, or artisanal fisheries. For example, the 1992 Cancun Declaration on Responsible Fishing formulates that “States should take measures to ensure respect for the interest of

special focus on ‘smallholders and women’. Both instruments aim at actively involving local communities in decision-making processes, monitoring, and the evaluation of development programmes. The formulation of such a framework is expressed in progressive terms in the 1999 International Plan of Action for the Management of Fishing Capacity, which holds that:

“States should reduce and progressively eliminate all factors, including subsidies and economic incentives and other factors which contribute, directly or indirectly, to the build-up of excessive fishing capacity, thereby undermining the sustainability of marine living resources, giving due regard to the needs of artisanal fisheries.”

Reference to local fishing communities is also linked to their livelihood, which is highly dependent on fishing activities. The CCRF requires international organizations dealing with fish trade and export production to not neglect the interests and needs of “people for whom the fish is critical to their health and well-being and for whom other comparable sources of food are not readily available or affordable”. It, moreover, emphasizes the relevance of livelihoods when it concerns the use, conservation and management of fisheries resources. In the decision-making process in these fields, due consideration should be given “to the traditional practices, needs and interests of indigenous people and local fishing communities which are highly dependent on fisheries resources for their livelihood”. (According to Article 9.1.4 of the Code, states should ensure that “the livelihoods of local communities, and their access to fishing grounds, are not negatively affected by aquaculture developments”.) An exceptional position is attributed to small-scale or subsistence fisheries in the UNGA’s resolution on large-scale pelagic drift-net fishing; it excludes small-scale drift-net fishing that is traditionally conducted in coastal waters, especially by developing countries “which provides an important contribution to their

subsistence and economic development”.

Moreover, provisions on the small-scale fisheries subsector stress the need for further research in this field. As far as it concerns the impact of small-scale fisheries on fish stocks, the 2003 Strategy for Improving Information on Status and Trends of Capture Fisheries asserts that international organizations “should recognize that many small-scale fisheries and multi-species fisheries,

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particularly in developing countries, are not well monitored and awareness needs to be raised on the importance of monitoring these fisheries”. The CCRF urges states to “investigate and document traditional fisheries knowledge and technologies, in particular those applied to small-scale fisheries, in order to assess their application to sustainable fisheries conservation, management and development”.

The right to food

Fisheries instruments often speak the language of ‘environment’. The use of the concept of food security—a concept that has its roots in the environmental, as well as the developmental, pillar of sustainable development—increasingly stands out as an important principle that provides a recourse to address the small-scale fisheries subsector in fisheries instruments.

It is mainly the non-legally binding instruments that link food security to small-scale fisheries. For example, the 1995 Kyoto Declaration recognizes “the significant role which marine fisheries, inland fisheries and aquaculture play in providing food security for the world, both through food supplies and through economic and social well-being”. Specific reference is made

to the important role of small-scale and artisanal fisheries in CCRF:

“States should appropriately protect the rights of fishers and fishworkers, particularly those engaged in subsistence, small-scale and artisanal fisheries, to a secure and just livelihood, as well as preferential access, where appropriate, to traditional fishing grounds and resources in the waters under their national jurisdiction.”

A link between local communities and a specific type of resource relevant for their livelihood can be found in the 1999 International Plan of Action for the Conservation and Management of Sharks. Its guiding principles on nutritional and socioeconomic considerations acknowledge sharks as a traditional and important source of food, employment, and/or income for local fishing communities, which provide a continued source of food. Local communities are, moreover, addressed by the 1995 Kyoto Declaration, which requires that trade in fish and fishery products should promote food security, but it should not “adversely impact the nutritional rights and needs of people for whom fish and fishery products are critical to their health and well-being”. The CCRF also prioritizes the nutritional needs of local communities.

The 1999 Rome Declaration on the Implementation of the CCRF emphasizes that “the achievement of the sustainable management of both capture fisheries and aquaculture was of great importance for world food security...and the well-being and livelihoods of individuals and families involved in fisheries”. Fisheries instruments that primarily deal with the conservation of living resources often refer to the negative or adverse effects on food security due to the likes of excessive fishing capacity or illegal, unreported, and unregulated (IUU) fishing. (The introduction to the 2001 IPOA-IUU formulates that “IUU fishing undermines efforts to conserve and manage fish stocks in all capture fisheries....This situation leads to the loss of both short and long-term

social and economic opportunities and to negative effects on food security”, whereas para. 1 of the 1999 IPOA-Management of Fishing capacity states, “Excessive fishing capacity is a problem that, among others, contributes substantially to overfishing, the degradation of marine fisheries resources, the decline of food production potential, and significant economic waste”.)

Just as states are accorded the primary responsibility for development and poverty eradication, the responsibility to attain food security resides predominately with individual governments. The 1996 Rome Declaration on World Food Security derives from that responsibility the need to adopt policies that establish infrastructure for achieving food security. Its Plan of Action elaborates on sound environmental policies in which food-related investment can fulfil its potential. It encourages developing countries to “reverse their neglect of investment in agriculture and rural development and mobilize sufficient investment resources to support sustainable food security”. However, achieving food security is not solely the responsibility of governments of individual states; the international community is also tasked with providing financial and technical assistance. For example, the Plan of Action of the World Food Summit formulates that:

“the international community has a key role to play in supporting the adoption of appropriate national policies and, where necessary and appropriate, in providing technical and financial assistance to assist developing countries and countries with economies in transition, in fostering food security.”

Observations

Local fishing communities are considered an important element of sustainable development in international fisheries law. However, fisheries instruments do not define this subsector and barely specify the general references that are made. In contrast to academic literature and international organizations, which

make use of a comprehensive list of characteristics, fisheries instruments do not specify the meaning or definition of the subsector referred to. Due to this lack of a definition, a “random” use of terms such as subsistence, artisanal, traditional, local, indigenous, or small-scale fisheries occurs. With the use of such diverse terms, it is not always clear whether the instruments address a specifically defined group or use different references for the whole group of what they consider to be a generic term for “poor fishermen”. This lack of clarity and demarcation could negatively affect the application of measures as it risks omitting the most vulnerable or difficult groups.

A significant amount of the references made regarding the obligation to take into consideration the interests and needs of the small-scale fisheries subsector within developing countries, is provided through negative formulations: States should avoid adverse impacts on local fisheries. While the majority of the fisheries instruments refer to the small-scale fisheries subsector, they generally fail to specify their interests and needs. Emphasis is often on the economic or conservational needs of coastal fishing communities. Non-legally binding instruments also frame the interests and needs from a human-development perspective, including the concept of livelihood or the development of coastal communities and their fishing.

Overall, the lack of significant reference to the small-scale fisheries subsector in fisheries instruments undermines the crucial role that they can play in human development. There is a lacuna between their (potential) significant impact on poverty eradication and the development process, on the one hand, and their current—minimal—role in the legal discourse, on the other.

The human-rights discourse plays an important role in providing (legal) content to human development. The eradication of poverty, in general and in the context small-scale fisheries subsector, is considered a central

aspect in dialogue surrounding the issue of human rights. Strengthening of the human-rights discourse, an existing and developed legal discourse, could lead to a better integration of human development in fisheries law; its use could, moreover, improve the link between the ‘human’ and ‘resource’ focus in fisheries law.

The way forward

Although consensus exists in relation to significance of food security, explicit linkage between fisheries and food security and poverty eradication is often minimal. In an era where these themes are prioritized by the international community, regulation of fisheries could be expected to be based on a human-development approach as much as upon a resource-centred approach. While the resource dimension aims at continuously providing fish as food for present and future generations, additional emphasis could be placed on human development in relation to the use of resources in order to expand the amount of limited options currently available for people who live in poverty and depend on fisheries. From that perspective, the concept of food security can provide a bridge between the human-development and resource-centred approaches.

In 2012, the Special Rapporteur to the UN General Assembly on the right to food, confirmed that the small-scale fisheries subsector is “an extremely important, albeit undervalued, source of livelihood, providing employment and income to millions of people, including women, in the post-harvest subsector.” It provided that as the small-scale fisheries subsector has a limited role in the fisheries instrument, issues that affect this subsector could be addressed through “policy responses grounded in the right to adequate food’ while guided by human rights obligations of the States.” The report concludes that States should comply with their duties to respect, protect and fulfil the right to food in the fisheries sector, “by moving towards sustainable resource use while ensuring that the rights and livelihoods of small-scale

fishers and coastal communities are respected and that the food security of all groups depending on fish is improved”.

The Voluntary Guidelines for Securing Sustainable Small-scale Fisheries in the Context of Food Security and Poverty Eradication (2014) have the potential to be used as a means of reducing the current gap between human development and resource-centred approaches. The Guidelines, developed to complement CCRF, are considered to represent “a global consensus on principles and guidance for small-scale fisheries governance and development”. They aim to provide complementary guidance with respect to small-scale fisheries in support of the overall principles and provisions of the Code. The Guidelines should be “interpreted and applied consistently with existing rights and obligations under national and international law and with due regard to voluntary commitments under applicable regional and international instruments”. The added value of the Guidelines is their potential to inspire new and/or supplementary legislative and regulatory provisions. More concretely, they are “directed at those involved in the subsector, and intend to guide and encourage governments, fishing communities and other stakeholders to work together and ensure secure and sustainable fisheries for the benefit of small-scale fishing communities and society at large”.

This could not only lead to a more comprehensive inclusion of the SSF subsector in fisheries instruments—acknowledging its significant role in achieving sustainable human development—but also result in a shift away from the inclusion of SSF in a passive (avoiding negative impact) manner, towards a more active reference throughout relevant instruments. In order to provide guidance in this context, the FAO Guidelines cover a broad spectrum of factors relating to SSF to be included in fisheries instruments. In addition to providing key guiding principles, the Guidelines specify ways to contribute to responsible governance

of tenure and sustainable resource governance. They provide a comprehensive picture of the SSF subsector and their spill-over effect to development. Aspects that affect the SSF include regulations affecting social development, employment and decent work. Fisheries instruments could, moreover, recognize and address the role that the SSF post-harvest subsector plays in the value chain of fisheries.

The remarkable lack of reference to the participation of women in fisheries, despite their significant participation in the SSF subsector, is also addressed by the Guidelines, which urge fisheries instruments to acknowledge and address the role of women in the subsector. In addition to content-wise issues to be addressed with fisheries instruments, importance is also attributed to enabling the implementation of such measures. 3

For more

sustainabledevelopment.un.org/content/documents/733FutureWeWant.pdf

United Nations Conference on Sustainable Development, Rio +20, Future We Want—Outcome Document, para 52

fao.org/publications/sofia/2016/en/
FAO SOFIA (2016)

fao.org/fishery/code/en
Code of conduct for responsible fisheries SSF guidelines at FAO