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**MEETING OF THE INFORMAL OPEN-ENDED TECHNICAL AND ADVISORY
WORKING GROUP OF THE GLOBAL RECORD OF FISHING VESSELS,
REFRIGERATED TRANSPORT VESSELS AND SUPPLY VESSELS**

Rome, Italy 23-27 February 2015

**DRAFT FOR DISCUSSION – GOVERNANCE FRAMEWORK FOR THE GLOBAL
RECORD: EXPLORING ALTERNATIVES UNDER INTERNATIONAL LAW**

I. Introduction: The need for the Global Record in addressing Illegal, Unreported, Unregulated (IUU) fishing

The term “IUU fishing” refers to a wide range of fishing activities, which can be considered in violation of, or conducted without a regard to, applicable international, regional or national fisheries regulations and standards.¹

IUU fishing is major global threat to the long-term sustainability of fisheries and the maintenance of productive and healthy ecosystems as well as the stable socio-economic condition of many of the world’s small scale and artisanal fishing communities.² The first global review of IUU fishing, conducted in 2000, identified major concerns within coastal States fisheries jurisdictions, management areas of regional fisheries organizations and the high seas. A recent study indicates the losses attributed to IUU fishing are massive, worth an estimated USD10 to USD23 billion per year globally.³

Since 1990 the international community has been engaged in global and regional discussions regarding how better to combat and deter IUU fishing activities. A number of international binding agreements as well as soft law instruments have been adopted to prevent, deter and eliminate IUU fishing and to promote the sustainable management of fisheries resources.

As part of this effort, the 2005 Rome Declaration on IUU Fishing included a key recommendation to “develop a comprehensive Global Record of fishing vessels within FAO, including refrigerated transport vessels and supply vessels, that incorporates available information on beneficial ownership, subject to confidentiality requirements in accordance with national law”.⁴

¹ Promoting Sustainable Fisheries: The international legal and policy framework to combat IUU fishing, Palma, Tsamenyi, Edeson. 2010 pag.37.

² Strategy Document Global Record, May 26, 2014 (COFI 2014 SBD 2)

³ Id. Pag. 4

⁴ The 2005 Rome Declaration on Illegal, Unreported and Unregulated Fishing adopted by the FAO Ministerial Meeting on Fisheries, Rome 12 March 2005

As subsequently emphasized at a 2008 Expert Consultation on the Development of a Comprehensive Global Record of Fishing Vessels, the Global Record would be an essential tool to ensure the effectiveness of port State measures, and critical for improving traceability, transparency, risk assessment and decision-making on a broad range of topics.⁵ The Global Record is envisaged as a one-stop-shop of vessel and vessel related information that can be used to identify the vessel, describe its capacity and capability, identify its owners and associate interest, identify its fishing authorizations, provide a history of non-compliance, provide information on vessels involved in transshipment and refueling operations, provide other data and provide an access point to other complementary information⁶.

This paper will examine (i) the role of FAO in the development of a Global Record, (ii) the regional approach and the work of Regional Fisheries Management Organizations (RFMO) to advance the Global Record, (iii) the international binding agreements and soft law instruments supporting the establishment of the Global Record and (iv) different options for a possible legal framework in the formalization of the Global Record, including advantages and disadvantages of each option.

II. The role of FAO in the development of a Global Record

Over the past twenty years a number of initiatives have called for the development of a Global Record of all fishing vessels.

The Food and Agriculture Organization of the United Nations (FAO) has played a major role in developing this initiative and continues to be a main player today. Since the negotiation, under the auspices of FAO of the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas⁷ (the “Compliance Agreement”) which focuses on the international problem of “reflagging of fishing vessels”⁸ (a precursor of the fight against IUU fishing), States have been required to maintain a record of fishing vessels and to make that record of available to FAO⁹.

The 2005 Rome Declaration on IUU Fishing¹⁰ included a key recommendation to “develop a comprehensive Global Record of fishing vessels within FAO, including refrigerated transport vessels and supply vessels, that incorporates available information on beneficial ownership, subject to confidentiality requirements in accordance with national law”. After this Declaration in 2006 FAO undertook a Feasibility Study on the Global Record, which concluded that the Global Record could be established on a step-by-step basis. It also pointed out the need to introduce a Unique Vessel Identifier (UVI) that would remain with the vessel over time regardless of changes in name, flag, ownership, etc.¹¹ In 2007 the 27th Session of the FAO Committee on Fisheries (COFI) encouraged the convening of an

⁵ Id.Paragraph 4

⁶ Strategy Document Global Record, May 26, 2014 (COFI 2014 SBD 2). Paragraph 4.

⁷ Accessible at: http://www.fao.org/fileadmin/user_upload/legal/docs/012t-e.pdf

⁸ FAO Res. 15/93 Reproduced in 1995 10 IJMLC 417-425 as an appendix to a commentary by FAO Legal Counsel Gerald Moore pp.412-416.

⁹ Articles IV and VI of the Compliance Agreement

¹⁰ The 2005 Rome Declaration on Illegal, Unreported and Unregulated Fishing adopted by the FAO Ministerial Meeting on Fisheries, Rome 12 March 2005

¹¹ Strategy Document Global Record, May 26, 2014 (COFI 2014 SBD 2). Paragraph 2

Expert Consultation to “further develop the concept of a comprehensive Global Record of fishing vessels as described in FAO’s feasibility study, mindful of the need to clarify the project’s objectives, sensitivity and costs, confidentiality requirements and the need to link it to other reliable information sources such as national registers and RFMO lists”¹². In 2008 the Expert Consultation assessed the Global Record concept and reinforced the Rome Declaration call for a broad scope. The Consultation found that the Global Record was an essential tool to ensure the effectiveness of port State measures, and that it could improve traceability, transparency, risk assessment and decision-making on a broad range of topics.¹³ The 28th session of COFI (2009) supported the development of the Global Record, while highlighting the importance of cost-effectiveness.

A Technical Consultation (TC) to identify a Structure and Strategy for the Development and Implementation of the Global Record of Fishing Vessels, Refrigerated Transport Vessels and Supply Vessels took place at FAO headquarters in November 2010. The TC recommended that FAO host and manage the Global Record and develop a phased implementation approach, in conjunction with member countries, keeping in mind the need to provide assistance to developing countries in this regard. The 29th session (2011) of COFI “reiterated its support for the Global Record as one of the useful tools to combat IUU fishing... The Committee further recognized that the Global Record should be developed as a voluntary initiative under FAO’s supervision with a need for a flexibility and a phase approach to implementation.”¹⁴ Finally the 30th Session of COFI (2012): (a) reiterated support for the Global Record development by FAO, using a phased approach, to keep it cost-effective and to ensure coordination with other initiatives, (b) recognized the necessity of a global unique vessel identifier (UVI) as a key component of the global Record to identify and track vessels; (c) suggested the UVI, as first step, be applied to vessels above 100 GRT; (d) noted the necessity for RFMOs to coordinate their vessel records with the Global Record; and (e) appreciated FAO’s work to assist developing states in strengthening their national or regional vessel registries.

In the last two years the international community has again expressed the urgency of making the Global Record operational. The 68th United Nations General Assembly (UNGA) in September 2013 Resolution number A/RES/68/71 on sustainable fisheries encouraged “the FAO in cooperation with States, regional economic integration organizations, the International Maritime Organization (IMO) and, as appropriate, regional fisheries management organizations and arrangements to expedite efforts to develop and manage a comprehensive global record of fishing vessels, refrigerated transport vessels and supply vessels, including with a UVI system, using the IMO numbering system for fishing vessels above 100 gross register tonnage as a first step”. At the Global Oceans Action Summit for Food Security and Blue Growth in April 2014, global leaders, ocean practitioners, business leaders, scientist, civil society and international organizations stressed the need to “accelerate the implementation of the Global Record of Fishing Vessels, Refrigerated Transport vessels and supply vessels (including a UVI for all vessels) as well as additional information on vessel activities in support of effective implementation of port State measures¹⁵.”

¹² Id. paragraph 3

¹³ Id. paragraph 4

¹⁴ Id. paragraphs 6 and 7

¹⁵ Id. paragraph 10

III. The regional initiatives: recording of fishing vessels and vessel authorized to transship fish and the IUU vessel listing

The Regional Fisheries Management Organizations (RFMO) play a fundamental role in combating IUU fishing as was recognized by the IPOA-IUU¹⁶. RFMOs have the mandate to adopt resolutions or conservation and management measures, which are binding on their members. Most RFMOs require their members to provide information on vessels authorized to fish within their areas of competence similar to those required under Article VI of the Compliance Agreement.¹⁷ From the information provided by members and cooperating non-members, a regional record of fishing vessels is established by a RFMO. In general any fishing vessel that is not included in the record, is deemed not to be authorized to fish for, retain on board, transship or land species regulated by the RFMO. RFMOs also maintain records of vessels authorized to transship at sea, and have established lists of vessels engaged in IUU fishing, which has proven to be one important deterrent in combating IUU fishing¹⁸ although not the only solution. Some RFMOs also include in their IUU listings non-contracting Parties' vessel lists¹⁹. RFMOs are coordinating their efforts with FAO and among themselves to increase transparency and traceability. FAO is collaborating at the moment with the European Union Community Fleet Registry, the Consolidated list of Authorized Vessels and the North Atlantic Fisheries Commission²⁰ to integrate the work already developed by those into the Global Record.

IV. International binding agreements and soft law instruments supporting the establishment of the Global Record

Over the years a number of soft law instruments and binding agreements have called for the establishment of records of fishing vessels. The Code of Conduct on Responsible Fisheries in Article 8.2.1. recognizes the duty of the Flag States to “maintain records of fishing vessels entitled to fly their flag”. This concept has also been reflected in the FAO Compliance Agreement, a binding international agreement²¹ which in Articles IV and V requires all States to maintain a record of their fishing vessels operating on the high seas and to make that record readily available to FAO. The Agreement requested the State Parties to “cooperate as appropriate in the implementation of this Agreement, and...in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures.”

The International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) also identified in paragraph 42 the following information

¹⁶ International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, 2001.

¹⁷ Promoting Sustainable Fisheries: The international legal and policy framework to combat IUU fishing, Palma, Tsamenyi, Edeson. 2010 p. 209

¹⁸ IPOA-IUU paragraph 81.4

¹⁹ For example under the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Conservation Measure 10-07(2009). Palma, Tsamenyi and Edeson, op. cit, p. 212

²⁰ Id.3

²¹ The FAO Agreement to Promote with international conservation and management measures by fishing vessels on the high seas ‘the Compliance Agreement’ entered into force in 2003

that may be included in a record of fishing vessels: “the previous names of the fishing vessels, if any and if known, name, address and nationality of the natural or legal person in whose name the vessel is registered, name, street address, mailing address and nationality of the natural or legal persons responsible for managing the operations of the vessel; name, street, address, mailing address, and nationality of natural or legal persons with beneficial ownership of the vessel; name and ownership history of the vessel, and, where this is known, the history of non-compliance by that vessel, in accordance with national laws, with conservation and management measures or provisions adopted at a national, regional or global level; and vessel dimensions and where appropriate, a photograph, taken at the time of registration or at the conclusion of any more recent structural alterations, showing a side profile view of the vessel.”

The UN Fish Stocks Agreement²² Article 4 of Annex I also provides for the collection of similar vessel related data although it does not require Parties to include such data in their record of fishing vessels.²³

Pursuant to Article VI of the FAO Compliance Agreement FAO established the High Seas Vessels Authorization Record (HSVAR) to address the requirements of the Compliance Agreement. The database contains distinctive and descriptive elements of high seas fishing vessels as well as information on registration and authorization status, infringements etc. The value of the HSVAR was analyzed during the FAO 2008 Expert Consultation²⁴, which identified specific weaknesses both in the Compliance Agreement and the HSVAR:

- Only State Parties to the FAO Compliance Agreement are obliged to provide data to the HSVAR.
- The HSVAR has both poor quality of data and inadequate quantity of data. Some State parties do not provide any data, and those that do, will often provide incomplete data.
- The Compliance Agreement is specifically restricted to the high seas and most IUU fishing occurs within zones of national jurisdiction.
- Fishing vessels, which are less than 24 meters in length are exempted from the Compliance Agreement, and an increasing number of vessels are being constructed which are hence “invisible” by being less than 24 meters.
- The HSVAR gives inadequate recognition to the needs of developing States.
- The Compliance Agreement lack any form of review mechanism.

The Expert Consultation in 2008 concluded that the “the HSVAR could not be used for the global record without considerable investment, which would be better directed towards a new and more comprehensive system. This new system is the FAO ‘Global Record’²⁵.”

The Global Record is also in synergy with two other international instruments:

- (a) The Port State Measures Agreement to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (the PSM)²⁶ which sets minimum requirements for entry into

²² Accessible at: http://www.un.org/depts/los/convention_agreements/convention_overview_fish_stocks.htm

²³ Palma, Tsamenyi and Edeson, op. cit., p.124

²⁴ Report of the Expert Consultation on the Development of a Comprehensive Global Record of Fishing Vessels, Rome 25-28 February, 2008. FAO Fisheries Report No.865.

²⁵ Gail Lugten, “Current Legal Developments, Food and Agriculture Organization” IJMCL 23 (2008)

²⁶ Accessible at: http://www.fao.org/fileadmin/user_upload/legal/docs/1_037t-e.pdf

port, inspection and enforcement actions on foreign fishing vessels accessing their ports. The existence of a Global Record will support implementation of the PSM by providing certified up to date information on the vessel identification and characteristics, fishing authorizations and history of non-compliance²⁷.

- (b) The Voluntary Guidelines for Flag State performance, which among other things require the flag State to take measures to ensure that persons subject to its jurisdiction, including owners and operators of vessels flying its flag, do not support or engage in IUU fishing or fishing related activities in support of such fishing²⁸. The Global Record will provide information where to verify vessel records and history (registration and ownership) as well as history of non-compliance that can be very useful for the flag state to take decisions on registration, licensing and monitoring.²⁹

V. Alternatives for a possible legal framework in the formalization of the Global Record

(i) Preliminary considerations

The Expert Consultation on the Development of a Comprehensive Global Record of Fishing vessels, refrigerated vessels and fishing support vessels of February 2008 considered four options to advance the Global Record:

- (1) To rename the HSVAR as the “FAO Global Record”.
- (2) To develop or extend HSVAR into a new extensive vessel database.
- (3) To amend the HSVAR related provisions of the FAO Compliance Agreement and the contents of the database in order to establish the Global Record and
- (4) To attach the Global Record to a new legally binding instrument such as the PSMA.

None of these alternatives were adopted. The Expert Consultation recommended that COFI consider progressing the Global Record through both mandatory and market driven approaches such as the use of international binding and non-binding instruments and any other means such as catch certification, trade documentation and port State measures³⁰.

The 29th session (2011) of COFI “reiterated its support for the Global Record as one of the useful tools to combat IUU fishing... The Committee further recognized that the Global Record should be developed as a voluntary initiative under FAO’s supervision with a need for a flexibility and a phased approach to implementation.”³¹

The Open-ended Technical Advisory Working Group is encouraged to consider different alternatives to advance the development of the tool, to regulate its relationship to data providers and provide guidance to the latter on ways to integrate with or participate in to the system. Consideration must be given to the relative merits of a voluntary or binding international instrument that would define relevant issues, govern the interactions with other instruments and lay the basis for successful implementation.

²⁷ Op. Cit., 3 Appendix 1

²⁸ Paragrah 2 (e) Voluntary Guidelines for Flag State performance

²⁹ Op. Cit., 3 Appendix 1.

³⁰ Report of the Expert Consultation on the Development of a Comprehensive Global Record of Fishing Vessels, Rome 25-28 February 2008. Fisheries Report no.865

³¹ Id. Paragraphs 6 and 7

To assist in the consideration of alternatives a number of questions will need to be answered:

1. What type of information would the Global Record contain in this first phase?
2. Who will be in charge of providing the information to the Global Record?
3. What will FAO's role be in managing the Global Record?

The Strategy Document of the Global Record³² stipulates that during the first phase, apart from the UVI and Core Information related to vessel identification, characteristics and ownership, attention should focus on three information modules, namely:

- Historical details
- Authorization
- Record of non-compliance

The Global Record will not include any data retrieved independently from public sources, and data will be provided by authorized data providers on a regular basis via secure channels. Data will be disseminated through an information portal on a vessel-by-vessel basis and should be to a great extent freely and openly accessible to all users, while taking into due account the confidentiality of the data. FAO will hold the global repository of data and will disseminate the data through an information portal on a vessel-by-vessel basis.

(ii) Legal framework options for the Global Record.

The purpose of this section is to describe different legal options for the Global Record in its first phase of implementation.

OPTION 1: No legal framework: Data repository

In this option, the Global Record is simply a data repository. In this first phase the States, RFMO, fishing entities and intergovernmental organizations responsible for fisheries will provide information to the Global Record without the need to establish a specific legal framework or arrangement. Expert Technical Consultations will identify the issues to be considered to move forward with the Global Record and decisions will be taken by the Committee on Fisheries (COFI).

Advantages:

- a) No need to discuss and agree on a separate legal document (binding/non-binding)
- b) Informal consultations and emphasis on discussing technical issues
- c) Decisions made by the Committee on Fisheries (COFI)

Disadvantages:

- a) Participants in the Global Record who are not COFI members may be reluctant to contribute information.

³² COFI/2014/4.2./REV.1

- b) COFI members may not see this tool as a crucial and defined instrument to fight IUU fishing and a priority where to focus their efforts, thus leading to a stagnant situation.
- c) Over time, there will be an accumulation of data and information under FAO without a clear mandate of how to use, disseminate or protect such data.
- d) There may be difficulties in defining who is a member of the Global Record, how they participate, what information is protected and what is the level of protection.

OPTION 2: Voluntary Guidelines for the operation of the Global Record

This option would follow the example of the Code of Conduct on Responsible Fisheries, which include a number of non-binding technical guidelines providing direction on how the Code can be implemented by States and other actors. These guidelines will have flexibility and can be revised at any time.

Advantages

- a) The guidelines will include technical issues relevant to the implementation of the Global Record and thus set the framework for FAO and countries to move forward.
- b) The guidelines are non-binding and therefore the countries, RFMO etc. can adhere to them without the need to obtain political approval.
- c) They can be changed by the participants at any time and they can evolve depending on identified needs.
- d) They will regulate how data is contributed, disseminated and shared.

Disadvantages:

- a) The guidelines will not protect data or data sources – there will need to be other mechanisms for protection.
- b) The responsibility to provide information will not be binding, hence raising concerns about completeness and accuracy.
- c) FAO as the depository of the information will need to enter in separate agreements for the protection of data confidentiality.
- d) Although flexibility of the system may work in the first phase of the project, once the Global Record enters into a second phase including Port State Measures inspection data, IUU fishing vessel lists, and other more confidential information, the stability of the system may be in peril and would need to be guaranteed by a binding instrument.

OPTION 3: Binding Agreement

As analyzed in section IV, the Global Record has synergies with a number of voluntary and binding international instruments such as the Compliance Agreement, the Port States Measures Agreement, as well as the Voluntary Guidelines of Flag State Performance. However, none of these instruments specifically refer to the establishment of a Global Record. In the case of the Compliance Agreement the HSVAR is more limited in its scope and would need to be adapted to the needs of a Global Record. As explained in section IV

the Expert Consultation of 2008 already rejected this idea. The PSMA does not include any reference to the Global Record and its development under the Agreement may take time, be financially burdensome and at the end may discourage countries to enter into the PSMA. The Voluntary Guidelines of Flag State Performance relate specifically to the obligations of the flag states and hence has a more limited scope.

Under this option, therefore, a binding instrument would be entered into that would have a specific objective of establishing the Global Record as a fundamental tool to combat IUU fishing.

Advantages

- a) The agreement will support the specific objective of establishing the Global Record.
- b) The parties to the agreement will have an obligation to provide information on a regular basis.
- c) Information and data will be protected through the Agreement.
- d) There will be no need to negotiate a separate arrangement for later phases, since the agreement would serve as a framework for all phases of the project.

Disadvantages

- a) Countries may not be interested dedicating time and funds to this endeavor until the Global Record is up and running and has been tested.
- b) Binding instruments take longer to reach agreement and approval.
- c) Since the Global Record is still a work in construction, the need may arise to change the arrangement considerably to adapt to the final product.