

# Unsustainable and Illegal: EU Fisheries Policy in West Africa

Milan Ilnyckyj, B.A. (University of British Columbia)

Until 21 September 2005:

3402 Norcross Way  
North Vancouver, British Columbia  
Canada V7R 4E4  
(604)985-3053

After 21 September 2005:

Care of: Wadham College  
Oxford  
OX1 3PN

milan.ilnyckyj@gmail.com

## Abstract:

The present European Union policy of negotiating access agreements with West African states in order to gain access to their maritime fisheries resources is not in keeping with either the principles of environmental sustainability or the dictates of international law. This paper will demonstrate the first with regards to the scientific literature on the matter and the second with reference to the relevant international agreements. The agreements can be shown to cause considerable harm to some of the poorest nations in the world, contribute to a lack of economic development, and violate both the letter and spirit of key treaties within the European Union.

I would like to thank Dr. Ian Townsend-Gault of the University of British Columbia Law School, and Dr. Daniel Pauly, Dr. Jacqueline Alder, and Dr. Rashid Sumaila of the UBC Fisheries Centre and Sea Around Us Project for their considerable assistance and helpful suggestions.

## Keywords:

West African Fisheries, European Union, International Law

## 1. Introduction and background

CONVINCED that, thus ‘United in diversity’, Europe offers them the best chance of pursuing, with due regard for the rights of each individual and in awareness of their responsibilities towards future generations and the Earth, the great venture which makes of it a special area of human hope.<sup>1</sup>

-Preamble to the European Constitution

Within the European Union (EU), as in other political systems, there is a constant tension between principle and pragmatism; ideas that are easy to embrace publicly and trendy to include in public statements can prove difficult to implement, even when the people trumpeting them have a genuine intent to do so. Usually, that disjoint is just a normal part of politics, which is, after all, what Bismarck called the ‘art of the possible.’<sup>2</sup> Such a tension exists between the interests of the EU fisheries lobby and the principles of sustainable development and the equitable treatment of developing nations. Under the present arrangement, environmental and developmental concerns are ignored in favour of short-term economic and political considerations.<sup>3</sup> This paper will demonstrate how the ‘cash for access’ agreements negotiated between the EU and West African states in order to exploit the living resources within their Exclusive Economic Zones (EEZs) are fundamentally unsustainable. These agreements impede the economic development of West African states and have numerous adverse consequences, such as malnutrition and increased pressure on terrestrial resources.<sup>4</sup> The absence of effective mechanisms to ensure sustainability, coupled with the apparent

---

<sup>1</sup> *Treaty Establishing a Constitution for Europe*, Rome, October 29, 2004, not in force.

<[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c\\_169/c\\_16920030718en00010105.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_169/c_16920030718en00010105.pdf)>

<sup>2</sup> Friedman, Thomas. “How to Run the World in Seven Chapters.” *The New York Times*. 17 June 2001.

<<http://query.nytimes.com/gst/fullpage.html?res=950DE5D61E3FF934A25755C0A9679C8B63>>

<sup>3</sup> See: Munro, Gordon, and Ussif Sumaila. “The impact of subsidies upon fisheries management and sustainability: the case of the North Atlantic.” *Fish and Fisheries*. 2002. (3) p. 233-250

<sup>4</sup> Brashares, Justin S., Peter Arcese, Moses K. Sam, Peter B. Coppolillo, A. R. E. Sinclair, and Andrew Balmford. “Bushmeat Hunting, Wildlife Declines, and Fish Supply in West Africa.” *Science*. Vol 306, Issue 5699, 1180-1183, 12 November 2004

<<http://www.sciencemag.org/cgi/content/full/306/5699/1180?ijkey=/9QOBr53ndzWI&keytype=ref&siteid=sci>>

lack of concern about doing so is both unjust and a violation of international laws as well as those of the EU.

The access agreements between EU and West African countries yield starkly different levels of benefit to each party. The lion's share of the value of these resources is captured by European fishermen and governments, in exchange for relatively small sums paid to the governments of the African nations in question.<sup>5</sup> Less than 10% of the landed value of the fish remains in the region.<sup>6</sup> This imbalance also seems likely to be projected into the future due to the consequences of serious overfishing. The economic incentives currently presented to European fishermen can lead only to the collapse of West African fisheries: few of a dwindling number of viable fisheries worldwide. What's more, the behaviour of the EU and the fishing fleets of its constituent nations is a violation of international law, of the internal law of the EU, and of these access agreements. This issue goes beyond commonplace accusations of hypocrisy largely because those who are bearing the costs of this harmful and ecologically senseless policy are the present and future inhabitants of some of the world's poorest countries – countries the EU has repeatedly committed itself to helping. Given the persistent problems remaining as a result of past European colonialism, the argument that present-day fishing policies should not be essentially neo-colonialist is further strengthened.

In order to understand the significance of these agreements, two stories need to be told. The first concerns politics in the EU: especially with regards to nations such as Spain that are heavily dependent on fisheries, both culturally and economically. The second story is ecological: the history of a process of fishing waters to the point of depletion and then moving on to repeat the process

---

<sup>5</sup> See: "Evaluation of the Fisheries Agreements Concluded by the European Community. Summary Report." 10 December 1997. <[http://europa.eu.int/comm/fisheries/doc\\_et\\_publ/liste\\_publ/studies/rsen.pdf](http://europa.eu.int/comm/fisheries/doc_et_publ/liste_publ/studies/rsen.pdf)> Table 7. p. 32

Kaczynski, Vlad and David Fluharty. "European policies in West Africa: who benefits from fisheries agreements?" *Marine Policy*. 26. 2003. Table 3. p. 86

<sup>6</sup> Alder, Jacqueline and Ussif Sumaila. "Western Africa: A Fish Basket of Europe Past and Present." *Journal of Environment & Development*. 2 June 2004. p. 169

elsewhere. In order to understand what is at stake, it is necessary to examine this story first. The North Sea, Canada's Grand Bank<sup>7</sup>, and the Mediterranean were once all rich and widely exploited fisheries. In his much-referenced 1943 book The Fish Gate, Michael Graham explains what he calls the Great Law of Fishing: "Fisheries that are unlimited become unprofitable... [and] inefficient."<sup>8</sup> That process is only accelerated by systems of subsidies where governments, and ultimately taxpayers, help to finance the cost of developing fishing capacity, as well as bearing some of the direct and indirect costs of fishing activity.<sup>9</sup> Subsidies are also problematic insofar as they are difficult to revoke when evidence of ecological harm comes to light. Indeed, the increasing depletion of the Grand Bank led to additional subsidies, this time for the decommissioning of existing fishing capacity.<sup>10</sup> Alder and Munro discuss at length the unintended consequences that arise from such buy-back programs, particularly when such programs are anticipated by fishermen.<sup>11</sup> All too often, that 'decommissioned' capacity actually ends up operating in places like Africa.<sup>12</sup> Simply retiring a vessel's license to fish in the territorial waters and EEZ of its host state by no means ensures that the vessel will stop fishing.<sup>13</sup> With unfortunate frequency, such buy-backs finance the purchase of superior fishing gear that is then put to work in the waters of some distant shore. Such behaviour is both encouraged by the kind of fisheries agreements the EU has made with certain African countries and provides added pressure for additional such agreements to be concluded.

---

<sup>7</sup> See: Christensen, V. et al. "Hundred-year decline of North Atlantic predatory fishes." *Fish and Fisheries*. 2003. (4) p. 1-24

<sup>8</sup> Graham, Michael. The Fish Gate. London: Faber and Faber, 1943. p. 155

<sup>9</sup> Munro, Gordon, and Ussif Sumaila. "The impact of subsidies upon fisheries management and sustainability: the case of the North Atlantic." *Fish and Fisheries*. 2002. (3) p. 233-250

<sup>10</sup> For a discussion of some of the problems involved with so-called buyback subsidies. See: Munro, Gordon, and Ussif Sumaila. "The impact of subsidies upon fisheries management and sustainability: the case of the North Atlantic." *Fish and Fisheries*. 2002. (3) p. 242

Clover, Charles. The End of the Line: How Overfishing is Changing the World and What We Eat. London: Random House Press. 2004. p.114-121

<sup>11</sup> Munro, Gordon, and Ussif Sumaila. "The impact of subsidies upon fisheries management and sustainability: the case of the North Atlantic." *Fish and Fisheries*. 2002. (3) p. 233-250

<sup>12</sup> Clover, Charles. *Ibid.* p.120

<sup>13</sup> Pauly, Daniel, and Jay Maclean. In a Perfect Ocean: The State of Ecosystems and Fisheries in the North Atlantic. Washington: Island Press. 2003. p. 98

Unlike agriculture, where investments in technology and capital can increase long-term yields, the process of technological development in fishing can, in the absence of regulation, only lead to a more rapid depletion of the resource. Fishing can only remain renewable when exploitation does not exceed regeneration.<sup>14</sup> That balance must be at the core of any sensible fisheries policy, such as those that are emerging in Iceland and New Zealand.<sup>15</sup> The comparative barrenness of the North Sea and the Grand Bank shows that this balance has not been respected - even when the states in question are the richest, most technologically capable, and most scientifically advanced in the world.<sup>16</sup> Dr. Daniel Pauly, of the University of British Columbia (UBC) Fisheries Centre, equates this process of fishing outwards to a hole being burned through a piece of paper.<sup>17</sup> At the centre are the now depleted waters of Europe and much of the Atlantic. Two thirds of Europe's commercial fish stocks are already outside their biological safety limits, according to Clover, while cod stocks have collapsed from Canada to Sweden.<sup>18</sup> The flames have now reached the coasts of Antarctica, Australia and New Zealand, Africa, and elsewhere. They have reached into trenches and onto sea-mounts previously inaccessible to fishermen.<sup>19</sup> This process is concealed by a system of world trade that keeps kitchens and restaurants throughout the developed world supplied with fish, many of which come from thousands of kilometers away. This both perpetuates the process of fishing outwards and conceals the fact that it is happening. As well as fishing out, there has been a process of 'fishing down' on successively lower levels in the food web: a process that eventually yields

---

<sup>14</sup> Pauly, Daniel, and Jay Maclean. Ibid. p. 17-19

<sup>15</sup> In New Zealand, for example, the fishing licenses of those skippers caught engaging in illegal fishing are revoked for life. The need for such harsh punishments demonstrates the difficulty of enforcing even the best of regulations within a system that allows for huge amounts of cheating.

<sup>16</sup> See: Alder, Jacqueline and Ussif Sumaila. "Western Africa: A Fish Basket of Europe Past and Present." *Journal of Environment & Development*. 2 June 2004. p. 173

<sup>17</sup> Clover, Charles. Ibid. p.31

Pauly, Daniel. Professor: UBC Fisheries. Director: UBC Fisheries Centre. Personal interview 29 Oct. 2004.

<sup>18</sup> Clover, Charles. The End of the Line: How Overfishing is Changing the World and What We Eat. London: Random House Press. 2004. p.266

<sup>19</sup> Clover, Charles. Ibid. p.72-74

ecosystems containing nothing more than “jellyfish and plankton.”<sup>20</sup> Removing the top predators of an ecosystem does not, as early ecological science predicted, vastly increase the numbers of smaller animals. Doing so seems, more often, to destabilize a complex dynamic relationship better characterized as a web than as a chain. With a resource as bountiful and as poorly understood as the sea it should be elementary to embrace caution when carrying out activities that have had tragic consequences in the past. That principle is doubly valid when the fishing is happening in the waters of states in undeniably more dire conditions than those of the developed world, which owns and profits from the fleets accessing these resources.

Once a particular ocean, such as the Mediterranean or the North Sea, is depleted, it leaves a mass of fishing capacity that can no longer be used there. The trawler fleets that once fished the waters off Naples or Plymouth are now required to go ever farther afield in order to fill their holds. Disheartening evidence from the Grand Bank, the North Sea, and elsewhere suggests that the fisheries for which this extraction capacity was initially designed will not soon recover. Ecological literature refers frequently to the Allee Effect: the phenomenon where depleted resources are less productive than healthy ones, as well as behaving differently. This effect can drive species that are not entirely depleted by humans to extinction regardless, as happened to the passenger pigeon.<sup>21</sup> When presented with such worrisome examples, the incredible harvesting capacity of modern fishing fleets becomes deeply troubling. Much of existing fishing capacity is the product of past subsidies which directly and indirectly created incentives to enlarge and modernize fleets. Modern fleets are often huge and self-contained, with massive ships carrying fuel, hospitals, and other necessities serving swarms of freezer trawlers capable of remaining at sea for weeks and operating

---

<sup>20</sup> Clover, Charles. *Ibid.* p.33

<sup>21</sup> Clover, Charles. *The End of the Line: How Overfishing is Changing the World and What We Eat.* London: Random House Press. 2004. p.93

over thousands of kilometres.<sup>22</sup> Even subsidies intended to reduce fishing capacity have often perversely achieved the opposite.<sup>23</sup> The pressure to find new areas in which to use that capacity can be enormous and the damage that the introduction of a modern fleet of trawlers and seiners can have on an ecosystem is considerable.<sup>24</sup> Since that industrial fishing capacity started to operate in West Africa during the 1960s, there has been a very significant decline in West African fish stocks. Writing in the *Journal of Environment & Development*, Jacqueline Alder and Ussif Samaila cite “a decline in biomass by a factor of 13 for fisheries” off the northwest coast of Africa.<sup>25</sup> Daniel Pauly claims that fish stocks off West Africa have declined by fifty percent since industrial exploitation began forty years ago.<sup>26</sup> No adequate studies exist to allow us to know at what point that decline will prove irreversible.

To make decisions that are sensible in the long term requires the will to discipline present demands in consideration of future needs.<sup>27</sup> That discipline forms the core of the definition of ‘sustainable development’ in Our Common Future:<sup>28</sup> the report of the 1987 Brundtland Commission. That report did much to shape the discussion at the 1992 United Nations Conference on Environment and Development (UNCED), which in turn has been central to subsequent

---

<sup>22</sup> “Fishing Vessels.” Microsoft Encarta Online Encyclopedia 2004.

<[http://au.encyclopedia.msn.com/encyclopedia\\_761553481/Fishing\\_Vessels.html](http://au.encyclopedia.msn.com/encyclopedia_761553481/Fishing_Vessels.html)>

<sup>23</sup> Milazzo, Matteo. “Subsidies in World Fisheries: A Re-examination.” World Bank Technical Paper No. 406. Washington, World Bank.

Clover, Charles. Ibid. p.118-121

<sup>24</sup> See: Drammeh, Ousman. “Illegal, unreported and unregulated fishing in small-scale marine and inland capture fisheries.” 15 May 2000.

<[http://www.dpie.gov.au/corporate\\_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf](http://www.dpie.gov.au/corporate_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf)> p.1

<sup>25</sup> Alder, Jacqueline and Ussif Sumaila. “Western Africa: A Fish Basket of Europe Past and Present.” *Journal of Environment & Development*. 2 June 2004. p. 169

<sup>26</sup> Clover, Charles. Ibid. p.41

<sup>27</sup> Sumaila, Ussif. “Intergenerational cost-benefit analysis and marine ecosystem restoration.” *Fisab and Fisheries*. 2004. (5) p. 329-343

<sup>28</sup> World Commission on Environment and Development. Our Common Future. Oxford: Oxford University Press. 1987.

international environmental lawmaking.<sup>29</sup> Sensible long-term decision-making requires the cooperation of all those able to access the resource in question.<sup>30</sup> It requires the courage to confront those groups, individuals, and organizations who benefit most from the status quo and who will fight to perpetuate it. It also requires the courage to accept scientific findings that are sound but politically inconvenient, as were many of the early warnings about Canada's Atlantic cod stocks. Within an international legal climate in which the importance of sustainable development has been almost universally recognized, the legal obligations of states must be interpreted in the light of that principle and those responsibilities. The requirement to confront those with vested interests increases the need for multilateral action.<sup>31</sup> If states are behaving recklessly – and particularly if such recklessness is in violation of treaties and other legal obligations – they must be called to account for it. Otherwise, the lobbying of those with a short-term interest in unsustainable fishing will dictate policy. It is important to remember that, ecologically, 'short-term' can mean the length of a human lifetime – even of many. To paraphrase John Kennedy: all this will not be finished in 100 days, nor in 1000 days, nor in the life of an administration, nor perhaps in our lifetime on this planet. But let us begin.<sup>32</sup> Beginning means both ensuring that our own fisheries policy conforms to our most considered judgments of scientific fact and prudent decision making, and putting pressure on those not behaving similarly.

---

<sup>29</sup> See: Elliot, Lorraine. "From Stockholm to Rio." The Global Politics of the Environment. London: Macmillan. 1998. p.7-26

<sup>30</sup> The problem of open access leading to poor long-term decision-making is famously formulated by Garrett Hardin in his essay: "The Tragedy of the Commons." *Science* 162. 1998. p.1243-1248

See also: Clover, Charles. The End of the Line: How Overfishing is Changing the World and What We Eat. London: Random House Press. 2004. p.133-134

<sup>31</sup> See: World Development Report 2003. Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and the Quality of Life. Washington, D.C.: World Bank. 2003. p. 185

<sup>32</sup> Kennedy, John. "Inaugural Address." 20 January 1961.

<<http://www.americanrhetoric.com/speeches/johnfkennedyinaugural.htm>>

## 2. The terms and conditions of the access agreements

EU lawmaking is not based on such long-term considerations. Kaczynski and Flurarty open their universally cited paper<sup>33</sup> with a summary of the general characteristics of the fishery access agreements negotiated by the EU. They are described as “purely commercial deals that are designed to maximize access to coastal state fishery resources, secure employment for European harvesting and processing industries and supply European seafood consumption markets at the lowest possible cost.” The EU covers a very significant portion of these access costs, both in terms of the fixed cost for access in general and in terms of per-ton costs. Alder and Sumaila explain that the fraction of the total cost of accessing these resources borne by the fishermen themselves varies between 6% and 32% of the total.<sup>34</sup> These subsidies promote unsustainable practices and increase the pressure on a resource that is already at risk of overexploitation due to the depletion of other fishing areas worldwide. Kaczynski and Flurarty assert that unless the current policies of the EU are changed, “West African coastal countries will face severe overexploitation of their resources.”<sup>35</sup> Alder and Sumaila explain that significant benefits could accrue, both in terms of economic development and environmental sustainability in coastal states, “if the real price to fish was paid by foreign fleets.”<sup>36</sup> Those benefits would largely be the product of a different incentive structure that forces individuals to conform their actions more closely to the long-term interests of all.

The EU has concluded agreements on fishery access with the following West African nations: Angola, Gambia, Guinea-Bissau, Guinea, Mauritania, Senegal, Gabon, Equatorial Guinea,

---

<sup>33</sup> Kaczynski, Vlad and David Fluharty. “European policies in West Africa: who benefits from fisheries agreements?” *Marine Policy*. 26. 2003. Table 3. p. 75-93.

<sup>34</sup> Alder, Jacqueline and Ussif Sumaila. “Western Africa: A Fish Basket of Europe Past and Present.” *Journal of Environment & Development*. 2 June 2004. p. 170

“Evaluation of the Fisheries Agreements Concluded by the European Community. Summary Report.” 10 December 1997. <[http://europa.eu.int/comm/fisheries/doc\\_et\\_publ/liste\\_publi/studies/rsen.pdf](http://europa.eu.int/comm/fisheries/doc_et_publ/liste_publi/studies/rsen.pdf)> Table 10. p. 34

<sup>35</sup> Kaczynski, Vlad and David Fluharty. *Ibid.* p. 75

<sup>36</sup> Alder, Jacqueline and Ussif Sumaila. *Ibid.* p. 174

Sao Tome and Principe, Seychelles, Cape Verde, and Cote D'Ivoire.<sup>37</sup> Problematically, these agreements include few if any provisions designed to maintain the sustainability of these ecosystems. The agreement between the EU and Senegal, for example, involves no catch quotas whatsoever designed to maintain fish stocks.<sup>38</sup> Charles Clover cites Dr. Ndiaga Gueye, the director of marine fisheries for the government of Senegal, explaining that during the eighteen months of negotiations on the access agreement “the EU actively resisted numerous conservation measures and drove a hard bargain on price.”<sup>39</sup> Such an approach is inconsistent with policies designed to aid the development of African nations and maintain the sustainability of marine resources. Where restrictions on fishing practice do exist within the agreements – most often in terms of a designated distance from shore within which only local artisanal fisherman can operate – they are routinely violated: an issue I will discuss further in section 6. An important motivation for these requirements, as well as those restricting the minimum mesh size of nets, is to avoid the inadvertent catch of a large number of juvenile members of locally important species. Unfortunately, that theoretical concern has not been widely manifested in practice.

### 3. The importance and promise of West African fisheries

Alder and Sumaila highlight the particular importance of fisheries to the present and future well being of West African states. They refer to “marine resources [as] their only low-cost source of economic growth.”<sup>40</sup> More vitally, they refer to the role played by these fish stocks in maintaining the food security of the many people who rely upon fish as a cheap source of protein.<sup>41</sup> The loss of

---

<sup>37</sup> “Evaluation of the Fisheries Agreements Concluded by the European Community. Summary Report.” 10 December 1997. <[http://europa.eu.int/comm/fisheries/doc\\_et\\_publ/liste\\_publi/studies/rsen.pdf](http://europa.eu.int/comm/fisheries/doc_et_publ/liste_publi/studies/rsen.pdf)> Table 1. p. 29

<sup>38</sup> Clover, Charles. *The End of the Line: How Overfishing is Changing the World and What We Eat*. London: Random House Press. 2004. p.42

<sup>39</sup> Clover, Charles. *Ibid.* p.43

<sup>40</sup> Alder, Jacqueline and Ussif Sumaila. “Western Africa: A Fish Basket of Europe Past and Present.” *Journal of Environment & Development*. 2 June 2004. p. 169

<sup>41</sup> Alder, Jacqueline and Ussif Sumaila. *Ibid.* p. 171

that source of nutrition can have particularly perverse effects, such as those demonstrated through the research of Brashares et al into the illegal hunting of endangered species of large primates in Ghana: a trend he partially attributes to the depletion of local fish stocks by European fishing fleets.<sup>42</sup> Brashares et al explain that: “Reduced fish stocks have already severely damaged the region's artisanal fisheries sector and recent collapses of mammal populations in some areas of West Africa have been linked to geographic patterns of poverty and malnourishment.”<sup>43</sup> The connection between depleted coastal fisheries and the hunting of bushmeat is also made by Pauly.<sup>44</sup> The people of extremely poor nations can only be fairly asked to refrain from hunting endangered species and animals in protected areas when other options are open to them. By maintaining a set of policies and subsidies that essentially leave people with a choice between malnutrition and the destruction of their precious biodiversity, the EU is putting many people in African nations in an extremely unfair position. According to a study<sup>45</sup> carried out by the United Nations Environment Program (UNEP), the growth of export-based fisheries in Senegal has led to protein deficits due to disrupted domestic supplies.<sup>46</sup> Under such circumstances, it is difficult to criticize those individuals choosing to hunt endangered species to counter the protein-deficiency they would otherwise face.

---

<sup>42</sup> Brashares, Justin S., Peter Arcese, Moses K. Sam, Peter B. Coppolillo, A. R. E. Sinclair, and Andrew Balmford. “Bushmeat Hunting, Wildlife Declines, and Fish Supply in West Africa.” *Science*. Vol 306, Issue 5699, 1180-1183 , 12 November 2004  
<<http://www.sciencemag.org/cgi/content/full/306/5699/1180?ijkey=/9QOBr53ndzWI&keytype=ref&siteid=sci>>

Suzuki, David. “Unsustainable Fishing Has a Price.”  
<<http://cnews.canoe.ca/CNEWS/Science/Suzuki/2004/11/17/718619.html>>

<sup>43</sup> Brashares, Justin S., Peter Arcese, Moses K. Sam, Peter B. Coppolillo, A. R. E. Sinclair, and Andrew Balmford. “Bushmeat Hunting, Wildlife Declines, and Fish Supply in West Africa.” *Science*. Vol 306, Issue 5699, 1180-1183 , 12 November 2004  
<<http://www.sciencemag.org/cgi/content/full/306/5699/1180?ijkey=/9QOBr53ndzWI&keytype=ref&siteid=sci>>

<sup>44</sup> Pauly, Daniel. Professor: UBC Fisheries. Director: UBC Fisheries Centre. Personal interview 29 Oct. 2004.

<sup>45</sup> United Nations Environment Program. “Integrated Assessment of Trade Liberalization and Trade-Related Policies: A Country Study on the Fisheries Sector in Senegal.” 2002.  
<[http://www.unep.ch/etu/publications/CSII\\_Senegal.pdf](http://www.unep.ch/etu/publications/CSII_Senegal.pdf)>

<sup>46</sup> Referenced in: Alder, Jacqueline and Ussif Sumaila. *Ibid.* p. 171

The overall value and importance of small scale fisheries, such as the artisanal fisheries in the waters off West Africa, is discussed by Ousman Drammeh, the Gambian Director of Fisheries, in an expert consultation organized by the Government of Australia.<sup>47</sup> He highlights the ways in which local fisheries provide more than mere income for communities, but also provide numerous secondary benefits. He contends that:

Small-scale fishing communities tend to be critically dependent on fish resources for their food and livelihood security and are highly vulnerable to external pressures and shocks. Small-scale fishing communities are highly dynamic and provide significant direct and indirect employment. They are labour intensive and generally equitable in the sense that large income disparities tend to be avoided. Small-scale fisheries are usually well integrated with local marketing arrangements thereby tending to have a positive impact on food security and gender involvement (since women are frequently key players in fish processing and marketing).<sup>48</sup>

It is unrealistic to expect African nations to be able to develop, sustainably or otherwise, in the absence of resources and industries from which they can benefit. No amount of foreign aid can eliminate the need for food and employment, both of which can be provided indefinitely by a well managed fishery. In the absence of such opportunities, there is no choice for many in fishing communities but to join the growing shift towards urbanization: a shift that has produced numerous social and economic problems of its own. It is important to understand the serious secondary and tertiary effects of the industrial exploitation of West African fisheries: effects that we cannot expect to be properly understood and documented when even the primary effects have not been submitted to appropriate scrutiny.

---

<sup>47</sup> Drammeh, Ousman. "Illegal, unreported and unregulated fishing in small-scale marine and inland capture fisheries." 15 May 2000.

<[http://www.dpie.gov.au/corporate\\_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf](http://www.dpie.gov.au/corporate_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf)>

<sup>48</sup> Drammeh, Ousman. "Illegal, unreported and unregulated fishing in small-scale marine and inland capture fisheries." 15 May 2000.

<[http://www.dpie.gov.au/corporate\\_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf](http://www.dpie.gov.au/corporate_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf)> p. 1

In an angry chapter called “Robbing the Poor to Feed the Rich,” Charles Clover expounds upon the inequity of these agreements.<sup>49</sup> He asserts that, because of these access agreements “the neo-colonial days live on for Spain, which maintains a fleet of over 200 trawlers off the coast of West Africa, largely at other EU nations’ expense.”<sup>50</sup> He makes the provocative accusation that:

[T]he European Commission listens only to vested interests and talks of good governance while bribing Africans to persist with unsustainable practices and to allow the pillaging of their waters by EU vessels. The present access agreement with Europe has only hastened the onset of disaster.<sup>51</sup>

If the EU is to retain credibility on issues of development and the environment, let us hope that he is wrong. Fisheries have an enormous ability to boost human welfare in diverse ways, whether by providing sport, the staples of diverse cuisines, or much needed protein. For the EU to adopt domestic and international policies that safeguard these benefits in the long term is a pre-requisite for it being properly considered an environmentally responsible body.

#### 4. EU policies as a breach of international law

When considering issues of international law relating to the conduct of the EU and its member states with regards to West African fisheries, it is essential to begin with the relevant treaties and the norms that are becoming increasingly widely recognized. Most significant among the latter, perhaps, is the precautionary principle. The sea is a resource that sustains the planet as a whole and one in which all nations necessarily have an interest. All environmentally concerned nations would do well to reconsider both their own policies, in light of issues of sustainability, and their ongoing acquiescence to policies such as those of the EU. We do not know for certain at what point the exploitation of West African fisheries will cause permanent harm, but we do know with certainty that the industrial fleets of Europe and the rest of the developed world reached and crossed that

---

<sup>49</sup> Clover, Charles. The End of the Line: How Overfishing is Changing the World and What We Eat. London: Random House Press. 2004. p.37-46

<sup>50</sup> Clover, Charles. *Ibid.* p.40

<sup>51</sup> Clover, Charles. The End of the Line: How Overfishing is Changing the World and What We Eat. London: Random House Press. 2004. p.46

point in places like the North Sea some time ago. We have learned the painful lesson that it is possible to destroy a fishery that was once considered inexhaustible, as was the Grand Bank of Newfoundland. Continued tolerance of misbehaviour will eventually harm everyone.

Numerous articles in the United Nations Convention on the Law of the Sea (UNCLOS) refer to the importance of sustainability and cooperation towards environmental ends;<sup>52</sup> indeed, these two concepts can legitimately be seen as guiding principles of the entire agreement as regards renewable marine resources. UNCLOS has been ratified by the states in question, both in Europe<sup>53</sup> and West Africa<sup>54</sup>. The treaty places obligations related to sustainability and environmental management on both coastal states and those co-operating with them in the use of natural resources. Part V, Article 61(3) of UNCLOS provides that:

[The coastal State] taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. *As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.*<sup>55</sup>

More generally, UNCLOS must be interpreted within the context of an international system that has embraced the concept of sustainable development and that is increasingly recognizing the wisdom of

---

<sup>53</sup> UNCLOS has been ratified by the following states within the European Union: Spain (15 January 1997), United Kingdom of Great Britain and Northern Ireland (25 July 1997), Sweden (25 June 1996), Denmark (16 November 2004), Belgium (13 November 1998), Ireland (21 June 1996), Finland (21 June 1996), France (11 April 1996), Belgium (13 November 1998), Poland (13 November 1998), Luxembourg (5 October 2000), Hungary (5 February 2002). It was also ratified by the European Community (1 April 1998). It has also been ratified by Norway (24 June 1996).

“Chronological lists of ratifications of, accessions and successions to the Convention and the related Agreements as of 17 November 2004.”

<[http://www.un.org/Depts/los/reference\\_files/chronological\\_lists\\_of\\_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea](http://www.un.org/Depts/los/reference_files/chronological_lists_of_ratifications.htm#The%20United%20Nations%20Convention%20on%20the%20Law%20of%20the%20Sea)>

<sup>54</sup> It has also been ratified by the following West African States: Gabon (11 March 1998), Equatorial Guinea (21 July 1997), Mozambique (13 March 1997), Guinea (28 July 1995), Côte d'Ivoire (28 July 1995), Seychelles (15 December 1994), Sierra Leone (12 December 1994), and Mauritius (4 November 1994).

Ibid.

<sup>55</sup> *United Nations Convention on the Law of the Sea*. Montego Bay, December 10, 1982, in force November 16 1994. <[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/closindx.htm](http://www.un.org/Depts/los/convention_agreements/texts/unclos/closindx.htm)> Emphasis mine.

the precautionary principle. That principle is based on the idea that, when faced with scientific uncertainty about the potential consequences of an action, policy should favour a cautious approach, with the onus on proponents of potentially harmful policies to prove the wisdom of the choice. This principle is endorsed in Article 174 of the Amsterdam Treaty of 1997:

Community policy on the environment shall aim at a high level of protection taking into account the diversity of situations in the various regions of the Community. It shall be based on the precautionary principle and on the principles that preventive action should be taken, that environmental damage should as a priority be rectified at source and that the polluter should pay.<sup>56</sup>

Albert Einstein famously remarked that “it has become appallingly obvious that our technology has exceeded our humanity.” It is equally fair to say that, in many areas, it has exceeded our science as well, to the point that we simply don’t know what effect major human activities will ultimately have upon the planet and future generations. The realities of the intergenerational consequences of human activity are increasingly being recognized. According to Eric Neumayer, Article 5.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) of the World Trade Organization (WTO) “enshrines the precautionary principle.”<sup>57</sup> While the extent to which the precautionary principle has been adopted by the WTO and other organizations remains disputed, the repeated references to it demonstrate the importance of its consideration when making policy. The precautionary principle can also be seen as recognition of the extent to which policymakers must sometimes defer to scientists who possess the necessary knowledge and techniques to produce our best guesses about the state of the environment and who, conveniently, are more often free of the kind of truth-distorting interest politics that no politician can escape.

---

<sup>56</sup> *Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts*, October 2, 1997, in force May 1, 1999.

<<http://europa.eu.int/eur-lex/lex/en/treaties/dat/11997D/htm/11997D.html>>

<sup>57</sup> Neumayer, Eric. “Trade and the Environment: A Critical Assessment and Some Suggestions for Reconciliation.” *Journal of Environment and Development*. Vol. 9, No. 2. June 2000. p. 151

While not a manifestation of EU policy, per se, there are also numerous documented cases of illegal fishing in waters such as those of Canada and New Zealand. These violations, often by Spanish vessels, have sometimes resulted in dramatic chases and international consternation. The latter has largely been the result of the failure of the Spanish authorities to impose any punishment upon those caught violating the rights of other states through illegal fishing. That kind of inaction feeds a culture in which illegal fishing is tolerated and indirectly encouraged rather than punished and stigmatized. Appropriately enough, questions of maritime jurisdiction and the right of hot pursuit of ships that the coastal state has “good reason to believe [are violating] local law” go back at least to the early nineteenth century, where disputes between Spain and others prompted the consideration of the legal questions involved.<sup>58</sup> The right of coastal states to pursue vessels fishing illegally in their territorial waters was likewise reinforced by the *Taiyo Maru* case (1974) and the case of *US v. Gonzalez* (1985).<sup>59</sup> Churchill and Lowe describe the right of hot pursuit as one of the six principal rights of coastal states recognized and elaborated on by UNCLOS.<sup>60</sup> Despite such regulations and the occasionally vigorous attempts at enforcement that have accompanied them, tolerance for illegal fishing is widespread in the EU.<sup>61</sup> The history of the law of hot pursuit shows that this kind of international regulation is not by any means a new phenomenon, but rather a long-standing response to well identified and realistic dangers. As is the case with the Biodiversity Convention<sup>62</sup> and the Kyoto Protocol<sup>63</sup>, it is the role of science to inform law and the role of law to

---

<sup>58</sup> Churchill, R. R. and A. V. Lowe. The Law of the Sea: New Revised Edition. Manchester: Manchester University Press, 1988. p. 112-113

<sup>59</sup> Churchill, R. R. and A. V. Lowe. The Law of the Sea: New Revised Edition. Manchester: Manchester University Press, 1988. p. 117

<sup>60</sup> Churchill, R. R. and A. V. Lowe. *Ibid.* p. 140

See also: Malanczuk, Peter. *Akehurst's Modern Introduction to International Law: Seventh Revised Edition*. London: Routledge, 1997. p.187

<sup>61</sup> Clover, Charles. The End of the Line: How Overfishing is Changing the World and What We Eat. London: Random House Press. 2004. p.146

<sup>62</sup> *Convention on Biological Diversity*, Rio de Janeiro, June 5, 1992, in force December 29, 1993.

<sup>63</sup> *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, Kyoto, December 11, 1997, in force February 16, 2005.

make practice conform to what sound ecology demands. The importance of policymaking based on science is underscored in the preamble to the Convention on Biodiversity, which identifies: “the urgent need to develop scientific, technical and institutional capacities to provide the basic understanding upon which to plan and implement appropriate measures.”<sup>64</sup>

Indeed, the issue of hot pursuit leads us into what is simultaneously the most important and the most complex way in which the fisheries policy of the EU in West Africa is a violation of international law. The world has rejected the idea that fishing fleets can go wherever they wish and take advantage of the marine resources that exist there. Likewise, the world has accepted the fact that there must be limits to fishing activity if the viability of fishery resources is to be maintained.<sup>65</sup> Treaties like UNCLOS and the Biodiversity Convention must be seen as part of a larger legal framework founded on the principle of sustainability.<sup>66</sup> Fed by the currents created by desert winds and one of the great Atlantic up-wellings, the coastal waters of West Africa are one of the richest marine habitats in the world, with more than 1200 species of fish.<sup>67</sup> It was in order to preserve exactly this kind of environment, which is rightly called “a common concern of mankind,” that the Convention on Biological Diversity was created. It was with the intent of codifying the meaning of the sea as a common concern of mankind that UNCLOS was created. The 1996 *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons* given by the International Court of Justice recognizes:

that the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn. The existence of the general obligation of states to ensure that activities within their jurisdiction and control

---

<sup>64</sup> Preamble to the *Convention on Biological Diversity*, Rio de Janeiro, June 5, 1992, in force December 29, 1993.

<sup>65</sup> That said, the cod wars between Iceland and other European countries about where the extent of the zones of maritime jurisdiction could be drawn show how difficult it can be to develop and enforce policies intended to conserve a resource.

<sup>66</sup> Townsend-Gault, Ian. Email to Milan Ilhnyckj. 21 December 2004.

<sup>67</sup> Clover, Charles. *The End of the Line: How Overfishing is Changing the World and What We Eat*. London: Random House Press. 2004. p.38

respect the environment of other states or of areas beyond national control is now part of the corpus of international law relating to the environment.<sup>68</sup>

The principles of conservation and sustainability are therefore embedded not only in legislation, including many central documents of the EU, but within a broader context of norms that form the basis of customary international law. It has been these principles, largely, that have been driving the creation of international law pertaining to resources and the environment for at least the past thirty years. It is in the continued defiance of the letter and spirit of this extensive combination of legal instruments and ideas that the present fisheries policy of the European Union operates.

##### 5. EU policies as a breach of the internal law of the EU

It is the responsibility of the European Commission (EC) to uphold the laws of the European Union: a responsibility first assigned in Section 3 of Part 5 of the Treaty of Rome.<sup>69</sup> Foremost among those laws are the foundational documents of the Union, such as the Maastricht Treaty of 1992. Article 130u of Title XVII of that document “commit[s] [the] EU to ensure that relations with developing nations should help to reduce poverty and promote sustainable development.”<sup>70</sup> Under the section entitled “The Union’s Objectives” within the *Treaty Establishing a Constitution for Europe*, Part 4 holds that: “In its relations with the wider world, the Union shall uphold and promote its values and interests. It shall contribute to peace, security, *the sustainable development of the Earth*... as well as to strict observance and development of international law.”<sup>71</sup> While not part of an EU Constitution, the passage demonstrates the kind of values with which the EU sees itself as being primarily concerned. It does not take extensive analysis to see that these

---

<sup>68</sup> *Nuclear Weapons Opinion* [1996] 1 I.C.J. Rep. 226. ILM 35 (1996), 809, at 821, para. 29

<sup>69</sup> *Treaty Establishing the European Economic Community*, Rome, March 25, 1957. (as amended) <<http://www.hri.org/docs/Rome57/Part5Title1.html#Pt5TitICha1Sec3>>

<sup>70</sup> *Treaty on European Union*. Maastricht, February 7, 1992, in force July 29, 1992. <<http://europa.eu.int/eur-lex/lex/en/treaties/dat/11992M/htm/11992M.html#0001000001>>

<sup>71</sup> *Treaty Establishing a Constitution for Europe*, Rome, October 29, 2004, not in force. <[http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c\\_169/c\\_16920030718en00010105.pdf](http://europa.eu.int/eur-lex/pri/en/oj/dat/2003/c_169/c_16920030718en00010105.pdf)>

principles are disregarded and violated in the formulation of fisheries access agreements with West African states. These agreements neither promote sustainable development nor conform strictly with international law.

The particular responsibility of the EC to develop and uphold sustainable fisheries policies is underscored by Niki Sporning, a Fisheries Policy Officer of the World Wildlife Fund and author of the “WWF Manifesto for the review of the EU Common Fisheries Policy.”<sup>72</sup> The report highlights the connections between subsidies, overcapacity, technological progress, and over-exploitation of fisheries. While focused on domestic European fisheries, many of the recommendations of the report refer to unsustainable practices being employed even more extensively in West African waters. Sporning highlights how, as a party to the UN Biodiversity Convention and the *UN Agreement relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*<sup>73</sup>, “the EU also has an obligation to ensure that its fleet is operating sustainably outside the waters of Member States.”<sup>74</sup> The problem is not one of absent legal obligations. Title XX, Article 177 of the Treaty Establishing the European Community states that “Community policy... shall foster: the sustainable economic and social development of the developing countries, and more particularly the most disadvantaged among them.”<sup>75</sup> It is a problem of failing to respect and uphold principles that are spelled out in myriad pieces of EU law: both binding and non-binding.

---

<sup>72</sup> Sporning, Niki “Put environment at the heart of European fisheries policy: WWF Manifesto for the review of the EU Common Fisheries Policy.” World Wildlife Fund. 2001.

<[http://www.panda.org/downloads/marine/manifesto\\_1.pdf](http://www.panda.org/downloads/marine/manifesto_1.pdf)>

<sup>73</sup> *Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, New York, August 4, 1994, in force December 11, 2001.

<sup>74</sup> Sporning, Niki “Put environment at the heart of European fisheries policy: WWF Manifesto for the review of the EU Common Fisheries Policy.” World Wildlife Fund. 2001.

<[http://www.panda.org/downloads/marine/manifesto\\_1.pdf](http://www.panda.org/downloads/marine/manifesto_1.pdf)> p. 14

<sup>75</sup> *Treaty Establishing the European Economic Community*, Rome, March 25, 1957. (as amended)

<<http://www.hri.org/docs/Rome57/Part5Title1.html#Pt5TitICha1Sec3>>

One problematic aspect of the EU fisheries system is the artificial segregation between certain institutions and related responsibilities. The Directorate General for Fisheries (DGXIV) refers regularly to the strictly ‘business character’ of these agreements, thereby attempting to circumvent obligations such as those in the Maastricht Treaty.<sup>76</sup> Considerations of sustainable development are nominally the jurisdiction of the Directorate Generalship for International Cooperation (DGVIII), but the fact that sustainability requirements entrenched in EU and international law are not being recognized is not in any way defanged by the revelation that institutional problems are contributing to that malfeasance.<sup>77</sup> The separation of the fisheries mandate between two sub-components of the EU could even be seen as an intentional choice to ensure that sustainability obligations are not considered when extraterritorial fisheries policy is being formulated. The perpetuation of agreements that violate the oft-repeated principles of the EU demonstrates the degree to which the watchdog bodies of the EU, such as the European Commission, have been at best ineffective and at worst complicit in the violation of principles the EU espouses.<sup>78</sup>

#### 6. The practice of EU fleets as a breach of the access agreements themselves

Despite the very favourable terms established for European fishermen by these access agreements, the provisions of the agreements themselves are neither respected nor enforced. Clover cites Pauly as to how the access agreements specify that the area within 10km of the coast is exclusively accessible to local, artisanal fisherman. These provisions, he maintains, are routinely broken.<sup>79</sup> Clover alleges that incursions into these exclusive zones, often conducted at night, have contributed to accidents, such as the collision between an EU trawler and a Senegalese *pirogue* in

---

<sup>76</sup> Kaczynski, Vlad and David Fluharty. “European policies in West Africa: who benefits from fisheries agreements?” *Marine Policy*. 26. 2003. Table 3. p. 77

<sup>77</sup> Pauly, Daniel. Professor: UBC Fisheries. Director: UBC Fisheries Centre. Personal interview 29 Oct. 2004.

<sup>78</sup> Townsend-Gault, Ian. Professor: UBC Faculty of Law. Personal interview 30 Nov. 2004.

<sup>79</sup> Clover, Charles. The End of the Line: How Overfishing is Changing the World and What We Eat. London: Random House Press. 2004. p.41

1997 which killed nine fishermen.<sup>80</sup> These examples illustrate a pattern of non-compliance with the agreements themselves that further demonstrates the culpability of the EU. In his report, produced in cooperation with the Australian Government and the United Nations Food and Agriculture Organization (FAO), Ousman Drammeh cites the existence of “ample evidence of large scale fishing vessels operating illegally in fishing zones, which are exclusively reserved for small-scale fisheries.”<sup>81</sup> These encroachments are “habitual” and also include the use of prohibited gear, for example nets with a mesh size smaller than that allowed by legislation.<sup>82</sup> Clover, Drammeh, and others cite the tendency of European industrial fishing vessels to catch juvenile forms of locally important species before they have matured or even spawned. These species are generally caught unintentionally and discarded as ‘trash fish’ or ‘by-catch.’ Nevertheless, their removal from the ecosystem contributes to the loss of biodiversity, reduced sustainability, and consequences for human health and welfare. The lack of any by-catch limitations is also a policy that is open to abuse. Kaczynski and Fluharty point out, for example, how trawlers supposedly targeting shrimp off the coast of Guinea-Bissau were able to use the 25mm mesh nets authorized for use in shrimp fishing rather than the 65mm mesh nets meant to be used for finfish. Because the vessels were allowed to keep whatever came into their nets, and because compensation payments to the coastal state were based on the shrimp catch the ships were meant to be focused on, fishing vessels could catch non-shrimp fish with shrimp nets and, at the same time, avoid paying per-ton fees for them. According to Kaczynski and Fluharty: “the state of Guinea-Bissau fishery resources” were “seriously affected”

---

<sup>80</sup> Clover, Charles. Ibid. 2004. p.41

<sup>81</sup> Drammeh, Ousman. “Illegal, unreported and unregulated fishing in small-scale marine and inland capture fisheries.” 15 May 2000.

<[http://www.dpie.gov.au/corporate\\_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf](http://www.dpie.gov.au/corporate_docs/publications/pdf/fisheries/eciouuf/ausiuu20007.pdf)> p.1-2

<sup>82</sup> Drammeh, Ousman. Ibid. p.4

by this practice.<sup>83</sup> Other vessels, supposedly intending to catch cephalopods, produced a large by-catch of demersal fish for which no compensation was paid to coastal states.<sup>84</sup>

These violations are not isolated occurrences, but rather part of a pattern of misbehaviour. Drammeh describes the encroachments as habitual in the whole West African sub-region, including Mauritania, Cape Verde, Senegal, The Gambia, Guinea Bissau, The Republic of Guinea, and Sierra Leone.<sup>85</sup> This conclusion is based on data from aerial surveillance missions<sup>86</sup> that demonstrate extensive illegal fishing in Western Africa.<sup>87</sup> Such malfeasance is not in any way restricted to West African fisheries. In Madagascar, two-thirds of the catch of industrial shrimp trawlers in 1998 was taken within the two-mile zone defined by law as exclusively for artisanal fishermen.<sup>88</sup>

Given the general lack of enforcement capacity on the part of the coastal states, the EU must recognize that if rules are to be upheld, it will have to be as the result of enforcement activities either carried out or funded by developed nations. Relying on states incapable of affording techniques such as aerial surveillance and satellite tracking ensures that whatever meagre restrictions have been included for environmental reasons will be ignored. Additionally, the failure of states like Spain to prosecute nationals who have been proven to be involved in illegal fishing sends a clear signal that environmental laws are not to be respected.

## 7. Conclusions and recommendations

When I spoke with Dr. Pauly<sup>89</sup>, I described how the most scientifically advanced and ecologically concerned nations of the world have largely failed to maintain the health of their own

---

<sup>83</sup> Kaczynski, Vlad and David Fluharty. "European policies in West Africa: who benefits from fisheries agreements?" *Marine Policy*. 26. 2003. Table 3. p. 85

<sup>84</sup> Kaczynski, Vlad and David Fluharty. *Ibid.* p. 86

<sup>85</sup> Drammeh, Ousman. *Ibid.* p.4

<sup>86</sup> Ousman cites: Surveillance Operations Co-ordinating Unit (SOCU). Report of February 2000 (Sub-regional Aerial Surveillance Project).

<sup>87</sup> Drammeh, Ousman. *Ibid.* p.4

<sup>88</sup> Drammeh, Ousman. *Ibid.* p.4

<sup>89</sup> Pauly, Daniel. Professor: UBC Fisheries. Director: UBC Fisheries Centre. Personal interview 29 Oct. 2004.

marine ecosystems and asked how, given that record, the impoverished states of West Africa might be expected to do so. His response was neither optimistic nor encouraging. In his view, wherever sustainable fishing has been practiced in the past, it has been practiced accidentally as the result of various natural limitations. In his view, we need to invent deliberate sustainability. Given the multiple violations of domestic and EU laws, as well as the agreements themselves, described above, it is not outside the realm of possibility that the EU and the nations within it conducting these fishing operations will eventually be held accountable. For whatever reason, the EU has chosen to ignore the disjoint between its fisheries policy and international law, as well as the best advice of scientists. Given the general inability of the EU to uphold their own regulations when the central interests of major nations are in question – the beleaguered Stability and Growth Pact comes immediately to mind<sup>90</sup> – it seems unlikely that the impetus for change will arise from within the EU itself. That said, if the EU does indeed wish to be a world leader in environmental issues, it would do well to begin by curbing some of its own environmentally irresponsible activities. Brashares et al explain that an “immediate route to increasing production and sustainability of [West African] domestic fisheries... [would be] to limit the access of large and heavily subsidized foreign fleets to fish off West Africa.”<sup>91</sup> The benefits of such a move would be tangible and important, as well as accruing to the citizens of nations with dire needs.

The big advantage of the doctrine of state sovereignty as regards to the environment is that states are permanent entities charged with responsibility and able to be held to account for their past

---

<sup>90</sup> See numerous articles in *The Economist*, including: “Loosening those bonds.” *The Economist*. 17 July 2003. <[http://www.economist.com/displaystory.cfm?story\\_id=1928604](http://www.economist.com/displaystory.cfm?story_id=1928604)>

<sup>91</sup> Brashares, Justin S., Peter Arcese, Moses K. Sam, Peter B. Coppolillo, A. R. E. Sinclair, and Andrew Balmford. “Bushmeat Hunting, Wildlife Declines, and Fish Supply in West Africa.” *Science*. Vol 306, Issue 5699, 1180-1183 , 12 November 2004 <<http://www.sciencemag.org/cgi/content/full/306/5699/1180?ijkey=/9QOBr53ndzWI&keytype=ref&siteid=sci>>

and present activities.<sup>92</sup> International law can only be enforced through the voluntary actions of states or through the collective enforcement of treaty obligations.<sup>93</sup> If these kinds of agreements are not discontinued, and the kind of practices they encourage not stopped, the entire world will pay the price. That price will be paid in lost biodiversity, the value of which we may never discover. That price will be paid in the depletion of one fishery after another, with all the attendant human misery and ecological destruction that will involve. That price will be paid in losing the chance to benefit from a resource that we have exploited without really understanding for at least 6000 years. Lastly, in the case of Africa and elsewhere, that price will be paid disproportionately by the poorest: those with the fewest alternatives. All that must inform our decision to either take action against a looming threat or simply sit by while an enormous humanitarian crisis is manufactured.

---

<sup>92</sup> I have developed this idea at greater length elsewhere. See: Ilnyckyj, Milan. "Sovereignty and Environmental Protection: Not Incompatible Values." *UBC Journal of International Affairs*. 2004. p. 93-102

<sup>93</sup> Townsend-Gault, Ian. Professor: UBC Faculty of Law. Personal interview 30 Nov. 2004.