

## UNDERSTANDING IUU FISHING AS TRANSNATIONAL ORGANIZED CRIME WITH SPECIAL EXAMPLE OF BENJINA CASE

### (MEMAHAMI IUU FISHING SEBAGAI TRANSNATIONAL ORGANIZED CRIME DENGAN CONTOH KHUSUS KASUS BENJINA)

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#### **Abstrak**

Illegal, unregulated, and unreported fishing (*IUU fishing*) atau pencurian ikan adalah sebuah masalah bagi negara yang berdaulat, industri perikanan dan perkembangan masyarakat pesisir. *IUU fishing* berkontribusi pada eksploitasi berlebihan terhadap ikan, kerusakan pada lingkungan laut, dan juga mempengaruhi kesejahteraan ekonomi dan sosial terhadap masyarakat yang menggantungkan kehidupannya baik dari segi pemasukan maupun untuk makanan sehari-hari dari perikanan. Operasi *IUU fishing* sangat sering terjadi secara transnasionl karena biasanya pelaku melakukan operasi tersebut di dalam teritori suatu negara tanpa ada izin resmi ataupun dokumen-dokumen syah untuk melakukan penangkapan ikan di wilayah tersebut. Kegiatan ilegal ini sudah terjadi secara massif dan juga memiliki hubungan yang sangat kuat dengan kejahatan terorganisasi sehingga penulis berpendapat bahwa sudah seharusnya *IUU fishing* dipandang sebagai kejahatan yang bersifat transnasionl dan terorganisasi. Jurnal ini akan menganalisis dan meneliti kegiatan ilegal yang terjadi dalam lingkup illegal fishing (*penyelundupan manusia, penyelundupan pekerja*) di daerah Benjina, Indonesia. Setelah melakukan analisis mengenai hubungan *IUU fishing* dan kejahatan transnasionl terorganisasi dilakukan, lebih lanjut jurnal ini akan menjawab apakah *IUU fishing* pantas dikatakan sebagai kejahatan transnasionl terorganisasi.

**Kata kunci:** *IUU Fishing, pencurian ikan, industri perikanan, kejahatan transnasionl terorganisasi, kasus Benjina.*

#### **Abstract**

Illegal, unregulated, and unreported fishing is a problem for the sovereignty of states, the fishing industry and the development of the coastal community. It contributes to the overexploitation of fish, damage to marine environments, and importantly, it also affects the economic and social well-being of fishing communities, especially in developing countries where coastal communities depend on their income or food from fish resources. The activity of *IUU fishing* can be understood as transnational, because usually perpetrators commit their action within the territory of states without any permit or official approval to fish legally. Given the large scale of this illicit fishing activity and its strong relationship with organized crime, it is argued that *IUU fishing* should be regarded as a transnational organized crime. This study will examine illegal activity that occurs within the scope of illegal fishing i.e. trafficking in persons or smuggling of migrants in the region of Benjina, Indonesia. Having explored the links between *IUU* and transnational organized crime, the study will try to establish whether the *IUU fishing* is merit to be declared as transnational organized crime.

**Keywords:** *IUU Fishing, illegal fishing, fishing industry, Transnational Organized crime, Benjina case.*

## **INTRODUCTION**

Fisheries crime has emerged as a major legal issue in the last five years, especially in relation to illegal, unregulated, and unreported fishing (*IUU fishing*). Illegal, unregulated, and unreported fishing is a problem for the sovereignty of states, the fishing industry and the development of the coastal community.<sup>1</sup> It contributes to the overexploitation of fish, damage to marine environments, and importantly, it also affects the economic and social well-being of fishing communities, especially in developing countries where coastal communities

depend on their income or food from fish resources.<sup>2</sup> Furthermore, this type of illicit activity can also involve other offences which can be categorized as transnational organized crime.

The activity of *IUU fishing* can be understood as transnational, because usually perpetrators commit their action within the territory of states without any permit or official approval to fish legally. The increase in amount of *IUU fishing* is the result of the expansion

<sup>1</sup> United Nations Office on Drugs and Crime (a), *Fisheries Crime*, Austria: United Nations, 2016

<sup>2</sup> The Environmental Justice Foundation (EJF), Oceana, The Pew Charitable Trusts and WWF, "The EU *IUU Regulation: Building on Success of EU Progress in the Global Fight against Illegal Fishing*", Februari 2016, (online), ([https://ejfoundation.org/resources/downloads/IUU\\_report\\_01-02-16\\_web.pdf](https://ejfoundation.org/resources/downloads/IUU_report_01-02-16_web.pdf), accessed November 5<sup>th</sup> 2017).

into new “business ventures” by transnational organized criminal groups.<sup>3</sup> Given the large scale of this illicit fishing activity and its strong relationship with organized crime, it is argued that IUU fishing should be regarded as a transnational organized crime. As such, the international community should take necessary action to strengthen the capacity of the international legal framework that specifically addresses IUU fishing criminal activity.

A number of legal scholars have claimed that many criminal activities have happened in the IUU fishing operation.<sup>4</sup> In addition, organized criminal groups also have been using IUU fishing as an alternative way to support their primary illicit activity.<sup>5</sup> In this context, this study will examine illegal activity that occurs within the scope of illegal fishing i.e. trafficking in persons or smuggling of migrants in the region of Benjina, Indonesia.

Moreover, for a country that has a strong reliance on the maritime environment and security such as Indonesia, it is crucial to determine the status of IUU fishing. This is because IUU fishing is not only undermining national jurisdictions but also compromising both national security and coastal community development in Indonesia. Indonesia has suffered up to USD 20 billion loss per year because of IUU fishing,<sup>6</sup> which also threatens 65% of Indonesia’s coral reefs, more than 85% of global fish stocks<sup>7</sup> and economic activities of small-scale fishermen.<sup>8</sup> International community through competent organization has issued IUU fishing, Code of Conduct

for Responsible Fisheries, and Palermo Convention which have ratified and or adopted by Indonesian government and become its positive law.<sup>9</sup>

### Research Aims

This research aims to see whether IUU fishing as one of the types of fisheries crime could be categorized as transnational organized crime. Furthermore, IUU fishing also may have been used by organized criminal groups to support their illicit activity which raises a question on the nature of IUU fishing as a crime. This article wants to answer that specific question to define the position of IUU fishing whether it is an ordinary crime that has a transnational element on it or the otherwise, it is a transnational organized crime that should be ruled using a specific international legal framework. The writer also wants to raise an awareness whether IUU fishing activity should be included in the Palermo Convention and specifically on a possibility if IUU fishing could be regulated as transnational organized crime within a protocol in which supplement the Palermo Convention.

The topic of fisheries crime such as IUU fishing is very interesting to be discussed especially in the transnational organized crime discourse. Because the activity of IUU fishing is not only happened locally but also extend to another jurisdiction. In addition to that, IUU fishing also could be supporting organized criminal group which could give them the flexibility to roam and commit more criminal activity. IUU fishing activity is a very complex nexus which involves many stakeholders such as government, port state authority, organized criminal groups and sometimes “beneficial owners” of the vessels that has been used to commit a crime. Other than that, for a country that has a strong reliance on maritime environment and security such as Indonesia, it is very crucial to determine the status of IUU fishing in the transnational organized crime perspective.

### RESEARCH METHODS

The writer will combine the positivist with the socio-legal approach to discuss this study. The positivist legal approach is chosen because it is a framework of interpretation for both determining and setting out what falls within the relevant source material.<sup>10</sup> It helps to examine the variety of legal documents as primary resources and books or

<sup>3</sup> Anastasia Telesetsky, “Laundering Fish in the Global Undercurrents: Illegal, Unreported, and Unregulated Fishing and Transnational Organized Crime”, *Ecology Law Quarterly*, Vol. 41, Issue 4, 2015.

<sup>4</sup> Don Liddick, “The Dimensions of Transnational Crime Problem: The Case of IUU Fishing”, *Trends in Organised Crime*, Vol. 17, Issue 4, December 2014, pp. 290-312.

<sup>5</sup> Teale N. Phelps Bondaroff, Wietse Van Der Werf, & Tuesday Reitano, *The Illegal Fishing and Organised Crime Nexus: Illegal Fishing as Transnational Organised Crime*, Geneva: Global Initiative Against Transnational Organised Crime and The Black Fish, 2015.

<sup>6</sup> Fanny Octavianus, “30 Percent Illegal Fishing Occurs in Indonesia”, 18 July 2014, (online), (<http://www.antaraneews.com/en/news/94901/30-percent-illegal-fishing-occurs-in-indonesia>, accessed December 17<sup>th</sup> 2017); Liza Yosephine, “US, Indonesia Step Up Collaboration to Tackle Illegal Fishing” *Jakarta Post*, 28 January 2016.

<sup>7</sup> World Wild Life, “More Than 85 Percent of Global Fish Stocks Are at Significant Risk of Illegal Fishing”, (online), (<https://www.worldwildlife.org/press-releases/more-than-85-percent-of-global-fish-stocks-are-at-significant-risk-of-illegal-fishing-wwf-report>, accessed December 17<sup>th</sup> 2017).

<sup>8</sup> FAO, “Country Profiles: The Republic of Indonesia”, (online), (<http://www.fao.org/fishery/facp/IDN/en#CountrySector-StatusTrends>, accessed December 17<sup>th</sup> 2017).

<sup>9</sup> United Nations Office on Drugs and Crime (b), *United Nations Convention against Transnational Organised Crime and the Protocols Thereto*, Newyork: United Nations, 2004.

<sup>10</sup> Michael Salters and Julie Mason, *Writing Law Dissertations: An Introduction and Guide to the Conduct of Legal Research*, England: Pearson Longman, 2007, pp. 46.

journal articles as secondary resources specifically in relation to the characteristic element of transnational organized crime and also the IUU fishing as a crime.

The socio-legal approach will be used to cover and to give balance to the limitations of the positivist approach, especially if it involves only a strictly legalistic overview and excludes all supposedly external factors and focuses on law in books rather than law in practice, where the politics of law reform or law enforcement happen. Non-legal factors such as public policy and arguments based on moral and political values are very important to determine the shape of the law and its effectiveness.<sup>11</sup> This approach will be used to examine the implementation of the law and maritime security policy relating to IUU fishing and transnational organized crime. Furthermore, the socio-legal approach will be utilized in response to the Benjina case in Indonesia.

Data will be collected from primary as well as secondary sources, and will include an interview with a related stakeholder in the Benjina case regarding IUU fishing. The interview will be conducted with semi-structured method by the researcher with government appointed officials from the Presidential Special Task Force to Combat Illegal Fishing 115 of Republic of Indonesia (SATGAS 115) which operates under the supervision of the President of Republic of Indonesia and Ministry of Maritime Affairs and Fisheries. The perspective of the interviewee will supplement secondary sources on IUU fishing, since it will present the response of the Indonesian government to illegal fishing in practice.

The analysis of this study will only cover the criminality aspect of IUU fishing operations and the response to such issues in relation to transnational organized crime discourse. The environmental aspect of IUU fishing will not be taken into account. Hence, this article will consider and focus on the nature of illegal, unregulated, and unreported fishing (IUU fishing) as a criminal act that can be included within the scope of transnational organized crime. Furthermore, the chapter will also be talking about the case of Benjina where IUU fishing is happening on a massive scale. The chapter will be followed by several sub-chapters to facilitate deliberation about transnational organized crime.

## DISCUSSION

### IUU Fishing and Transnational Organized Crime

#### A. The Nature of Transnational Organized Crime

Transnational organized crime is simply defined as a criminal activity that occurs transnationally. For example for money laundering matters, criminal

networks take advantage of offshore centers to launder proceeds of crimes and seek safe haven in foreign jurisdictions.<sup>12</sup> Corruption also often involves a transnational element as well, such as when foreign bribery happened or when corrupt officials conceal evidence and embezzled funds abroad.<sup>13</sup> Other transnational crimes activity such as drugs trafficking also happen transnationally at every stage such as cultivation, production, trafficking, and distribution before reaching local drug dealers or consumers.<sup>14</sup> From all of those criminal acts, the only way to make the transnational criminal activity to occur smoothly is to have it organized and operated by criminal networks which mostly consists of organized criminal group.

That definition is one of the more challenging tasks to defined. Indeed, even before defining transnational organized crime, many scholars have tried to reveal the definition of it in which mostly agreed that organized crime constitutes the planned commission of criminal offenses to acquire profit or power.<sup>15</sup> Furthermore, such criminal offenses have to be, "each or in their entirety, of a major significance and be carried out by more than two participants and the activity is using commercial-like structures, violence or intimidation, or influence on politics, media, public administration, justice, and legitimate economy".<sup>16</sup>

Unfortunately, that definition is not providing any legal condition. It is because the concept of organized crime is too vague to be defined into a full-fledged terminology that could create legal controversy which might complicate criminal trials.<sup>17</sup> Because of that reason, it turned out to be impossible to adopt a uniform definition of organized crime, the European Union (EU) in the early 1997 developed the characteristics of organized crime. Some of the characteristics are also taken from the definition

<sup>12</sup> Marie Chene, "Mutual Legal Assistance Treaties and Money Laundering", (online), (<https://www.u4.no/publications/mutual-legal-assistance-treaties-and-money-laundering.pdf>, accessed December 17<sup>th</sup> 2017)

<sup>13</sup> *Ibid.*

<sup>14</sup> Matthew S. Jenner, *Drug Trafficking as a Transnational Crime*, in Philip Reichel and Jay Albanese (eds), *Handbook of Transnational Crime and Justice*, California: SAGE Publications, 2014.

<sup>15</sup> Letizia Paoli and Tom Vander Beken, *Organized Crime: A Contested Concept*, in Letizia Paoli (ed), *The Oxford Handbook of Organized Crime*, Oxford: Oxford University Press, 2014.

<sup>16</sup> *Ibid.*

<sup>17</sup> Michael Levi, *The Making of the Uiter Kingdom's Organised Crime Control Policies*, in Cyrille Fijnaut and Letizia Paoli (eds), *Organised Crime in Europe: Concepts, Patterns and Policies in the European Union and Beyond*, Berlin: Spinger, 2004.

<sup>11</sup> *Ibid.*, pp. 152.

mentioned above. There are eleven characteristics of organized crime:<sup>18</sup>

1. Collaboration of more than two people
2. Each with their own appointed tasks
3. For a prolonged or indefinite period of time
4. Using some form of discipline and control
5. Suspected of the commission of serious criminal offences
6. Operating on an international level
7. Using violence or other means suitable for intimidation
8. Using commercial or businesslike structures
9. Engaged in money laundering
10. Exerting influence on politics, the media, public administration, judicial authorities, or the economy
11. Motivated by the pursuit of profit and/or power

Based on these characteristics, we could find the presence of organized crime if the criminal groups involved have at least four of the above components of which 1,3,5, and 11 were considered mandatory.<sup>19</sup> Many of the policymakers and law enforcement officials seem to agree that all criminal groups indulging in criminal activities with profit-making motive fulfil the characteristics and the requirements, hence belong to organized crime.

The definition of transnational crime is varied. One of the definitions states that "it is a crime undertaken by an organization based in one state but committed in several host countries, whose market conditions are favorable, and risk apprehension is low".<sup>20</sup> Other definitions mention "those activities involving the crossing of national borders and violation of at least one country's criminal laws and the criminal activities are economically motivated and involve some form of smuggling".<sup>21</sup>

In 1995, The United Nations (UN) released a study that identified transnational crime as transnational offences, whose inception, perpetration and/or direct or indirect effects involve more than one country.<sup>22</sup> The study also made a list of 16 categories of transnational offences including

money laundering, terrorist activities, theft of art and cultural objects, theft of intellectual property, illicit arms trafficking, aircraft hijacking, maritime piracy, insurance fraud, computer crime, environmental crime, human trafficking, trade in human body parts, illegal drug trafficking, fraudulent bankruptcy, infiltration of legal business, and the corruption and bribery of public or party officials.<sup>23</sup>

The criminal activity that has been listed mostly operating with a handful of associates, making the emphasis on transnational crime is heavily associated with organized crime. Thus, the two terms have been fixed into transnational organized crime. Unfortunately, although the UN has asked the Member States to participate in the survey to list cases of transnational organized crime in their jurisdictions, the study has fallen short as just few states are able to provide satisfactory answers.<sup>24</sup> It is because much of the domestic legislation of member states still lacked clear definitions of this type of crime in which there are blurred distinctions between national and transnational nature of the crime.<sup>25</sup>

In 2000, the UN tried to bridge the terminology of transnational organized crime in the international treaty that focus on the issue of transnational organized crime. The bridge of the terminology is not about the definition of organized crime nor transnational crime but more about the characteristics of actors that involved in it. Indeed, the Palermo Convention which came into force in September 2003, specifically defined the organized crime group as a "structured group of three or more persons existing for a period of time and acting in concert with the aim of committing one or more serious crime or offences established in accordance with this Convention, in order to obtain, directly or indirectly, a financial or other material benefit".<sup>26</sup>

Other than that, the Convention also identified "serious crime" as "conduct constituting a criminal offence punishable by a maximum deprivation of liberty of at least four years or a more serious penalty".<sup>27</sup> It addressed the issue of what is entailed by transnational crime and does not mention a definition of transnational crime nor what kinds of crime are to be listed as transnational crime, instead it provides a classification and typical features of what offences constitute transnational crime. The offence is transnational in nature if:

- (a) it is committed in more than one state; (b) it is committed in one state but a substantial part

<sup>18</sup> Toon van der Heijden, "Measuring Organized Crime In Western Europe", (online), (<https://www.ncjrs.gov/policing/mea313.htm>, accessed December 17<sup>th</sup> 2017).

<sup>19</sup> *Ibid.*

<sup>20</sup> Michael P. Roth, *Historical Overview of Transnational Crime*, in Philip Reichel and Jay Albanese (eds), *Handbook of Transnational Crime and Justice*, California: Sage Publications, 2014, pp. 3.

<sup>21</sup> Peter Andreas and Ethan Nadelmann, *Policing the Globe: Criminalization and Crime Control in International Relations*, Oxford: Oxford University Press, 2006, pp. 255.

<sup>22</sup> United Nations Office on Drugs and Crime (d), *Results of a Pilot Survey of Forty Selected Organized Criminal Groups in Sixteen Countries*, Newyork: United Nations, 2002.

<sup>23</sup> *Ibid.*, pp. 4.

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> United Nations Office on Drugs and Crime (b), *Op. Cit.*, pp. 5.

<sup>27</sup> *Ibid.*, pp. 5.

of its preparation, planning, direction or control takes place in another state; (c) it is committed in one state but involves an organized criminal group that engages in criminal activities in more than one state; or (d) it is committed in one state but has substantial effects in another state.<sup>28</sup>

Criminologist Jay Albanese refines the above components into three categories:

“illegal activities that somehow transcend international borders, transnationally mobile criminal organizations-respectively, criminal organizations with a presence in more than one country, and the extension of illegal governance across international borders”<sup>29</sup>

It should be noted that the characteristics provided by the Convention are not a cumulative provision. That means the four characteristics and requirements do not have to be satisfied for an offence to be included as transnational in nature. Because of such characteristics from transnational organized crime within the Convention, it can be understood that organized criminal group is a group engaging in profit-making illicit activity or illicit trade that happened transnationally and has a serious crime interest. Furthermore, Philip Reichel and Jay Albanese highlight them “as criminal enterprises that work to profit from illicit activities through use of force threats, monopoly, and corruption”.<sup>30</sup>

The Palermo Convention is supplemented by three additional protocols. These protocols address the issue of certain criminal activity in which Convention criteria are fulfilled. The three additional protocols rule regarding the activity of trafficking in persons,<sup>31</sup> protocol against smuggling of migrants,<sup>32</sup> and protocols that address illegal arms trafficking.<sup>33</sup>

<sup>28</sup> *Ibid*, pp. 5.

<sup>29</sup> Von Lampe Klaus, *Transnational Organized Crime in Europe*, in Jay Albanese and Philip Reichel (eds), *Transnational Organized Crime: An Overview from Six Continents*, California: Sage, 2014, pp. 75.

<sup>30</sup> Jay Albanese and Philip Reichel (eds), *Transnational Organized Crime: An Overview from Six Continents*, California: Sage, 2014, pp. 1.

<sup>31</sup> United Nations, Protocol to Prevent, Suppress and Punish Trafficking in Person, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, Treaty Series No. 2237, 2000, pp. 319.

<sup>32</sup> United Nations, Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime, Treaty Series No. 2241, 2000, pp. 507.

<sup>33</sup> United Nations, Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime, Treaty Series No. 2326, 2007, pp. 237.

There are also several acts that are worth to be mentioned as transnational organised crime activity based on the characteristics given in the convention. Inside the Palermo Convention there are money laundering and criminalization of corruption,<sup>34</sup> the latter is also being independently regulated in the stand alone convention with the United Convention against Corruption (UNCAC).

Another act that unregulated under UNTOC framework but labelled as transnational organized crime is drug trafficking. Drug trafficking has been around for almost a century. There have been many cases of drug trafficking such as drug cartels in Mexico, illicit production of opium in Afghanistan.<sup>35</sup> The United Nations addresses the issue of drug trafficking by making the United Nations Convention against Illicit Traffic in Narcotics and Psychotropic Substances 1988 where the issue of drug trafficking is also regarded as transnational crime activity in which the involvement of organized criminal group is relevant.<sup>36</sup>

Of course the reason why those types of crime take on the label of transnational organized crime act is because they meet the characteristics of transnational organized crime provided for in the Convention. Thus, the Palermo Convention is not limiting the scope of application to hierarchically structured or mafia-type organizations but also to cover more loosely organized criminal groups, committing serious crimes which are transnational in nature, because such a broad definition is reasonable given the diversity of the phenomenon.<sup>37</sup> Hence, the inclusion of new types of crime as transnational organized crime act can be initiated if the crime in question can provide such characteristics that match with the components in nature of transnational organized crime provided by the convention.

## B. IUU Fishing as Transnational Organized Crime

According to the United Nations Office on Drugs and Crime (UNODC) and the United Nations Commission on Crime Prevention and Criminal Justice (CCPJ) in its twentieth session in 2011, one of the challenges that arises from the transnational organized crime dimension is the problem of

<sup>34</sup> United Nations Office on Drugs and Crime (b), *Op. Cit*, pp. 9-10.

<sup>35</sup> Arndt Sinn, “Transnational Organised Crime: Concept and Critics” in Sven Peterke and Pierre Hauck (eds), *International Law and Transnational Organised Crime*, Oxford: Oxford University Press, 2016, pp 36.

<sup>36</sup> United Nations, Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, Treaty Series No. 1582, 1988, pp. 95.

<sup>37</sup> United Nations Office on Drugs and Crime (b), *Op.Cit*, pp. 5.

combating those committed at sea.<sup>38</sup> The UNODC stated that one of the most detrimental issues to occur connected to transnational organized crime activity committed at sea is fisheries crime.<sup>39</sup> Fisheries crime activity has been perceived as 'one of the most long-standing and recurring grounds for interference with foreign vessels on the high seas'.<sup>40</sup> Continuing from that notion, the UN General Assembly and the UNODC also reiterates the possible connections between present organized crime activity and the activity of fisheries crime.<sup>41</sup> Furthermore, many of the organized criminal groups use fishing vessels with a number of illegal activities such as drug trafficking,<sup>42</sup> to smuggle migrants<sup>43</sup> and weapons,<sup>44</sup> and for acts of terrorism via the transshipments method.<sup>45</sup>

Currently, there is no legal definition of fisheries crime, but the close interpretation may suggest that IUU fishing is an actual form of fisheries crime. IUU fishing is not just fishing activities conducted on the high seas, it also occurs in the exclusive economic zones (EEZs), territorial seas of coastal states, and even in internal waters, such as river and inland fisheries, committed by both local and foreign fishers.<sup>46</sup> The brief definition of IUU fishing is 'fishing that violates international, regional, or domestic fisheries management, conservation, or reporting laws'.<sup>47</sup> According to the voluntary instrument

released by FAO in 2001 regarding the International Plan of Action on IUU fishing (IPOA-IUU), the extent definition of IUU fishing is constructed in three critical components:

1. 'Illegal Fishing' is fishing activities conducted by national or foreign vessels in waters under the jurisdiction of the state, without the permission of that state, or in contravention of its laws and regulations. It also includes fishing which violates the laws and conservation and management measures adopted by vessels flying the flag of states, or generally in violation of national laws or international obligations, including those undertaken by cooperating states to a relevant regional fisheries management organization (RFMO).<sup>48</sup> These activities include fishing without a license (unlicensed fishing), fishing over a quota, fishing in a closed area or marine protected area, fishing of prohibited species or using outlawed gear.<sup>49</sup>
2. 'Unreported fishing' is fishing activities which have not been reported, or have been misreported, to the relevant national authority, in contravention of national laws and regulations, or undertaken in the area of competence of a RFMO without adhering to the reporting procedures of the RFMO.<sup>50</sup> It can be both intentional or unintentional which consists of falsified catch documentations, false record of vessels locations, or offloading the catch at ports of convenience where regulatory and inspection standards are lower.<sup>51</sup>
3. 'Unregulated fishing' refers to fishing conducted by vessels without nationality in the area of application of a relevant RFMO, or vessels flying the flag of a non-member of the relevant RFMO, or by a fishing entity that is inconsistent with or contradicts the conservation and management measures of RFMO, or conducted in areas without applicable conservation or management measures but performed inconsistently with state responsibilities for the conservation of living marine resources related to fisheries under international law.<sup>52</sup>

Other definitions of IUU fishing can be found in the document provided by the European Union (EU) and the Organization for Economic Co-operation

<sup>38</sup> United Nations Office on Drugs and Crime (e), *Combating Transnational Organized Crime Committed at Sea*, New York: United Nations, 2013, pp. 39.

<sup>39</sup> *Ibid.*

<sup>40</sup> *Ibid.*

<sup>41</sup> United Nation, Resolution Adopted by the General Assembly on 4 December 2009: 64/72 Sustainable Fisheries, Including Through the 1995 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, and Related Instruments, UN Doc A/RES/64/72, 19 March 2010.

<sup>42</sup> United Nations Office on Drugs and Crime (f), *Drug Trafficking as a Security Threat in West Africa*, New York: United Nations, 2008, pp. 11.

<sup>43</sup> United Nations Office on Drugs and Crime (g), *Smuggling of Migrants into, through and from North Africa*, New York: United Nations, 2010, pp. 11-2 & 28.

<sup>44</sup> United Nations Security Council, *Report of the Panel of Experts on Somalia Pursuant to Security Council Resolution 1474 (2003)*, New York: United Nations, 2003, paragraph. 7&73.

<sup>45</sup> United Nations Office on Drugs and Crime (c), *op.cit.*

<sup>46</sup> FAO, "Illegal, Unreported and Unregulated (IUU) fishing", (*online*), (<http://www.fao.org/fishery/iuu-fishing/en>) accessed 1 July 2017).

<sup>47</sup> Margaret A. Young, *Trade-Related Measures to Address Illegal, Unreported and Unregulated Fishing*, Geneva: International Centre for Trade and Sustainable Development (ICTSD) and World Economic Forum, 2015, pp. 2.

<sup>48</sup> Food and Agriculture Organization of the United Nations, *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, Rome: FAO, 2001.

<sup>49</sup> Teale N. Phelps Bondaroff, *Op.cit.*, pp 12.

<sup>50</sup> Margaret A. Young, *Op.cit.*, pp. 49.

<sup>51</sup> Teale N. Phelps Bondaroff, *Op.cit.*, pp 12.

<sup>52</sup> Margaret A. Young, *Op.cit.*, pp. 49.

and Development (OECD). However, the definition from the EU<sup>53</sup> and OECD<sup>54</sup> are not as comprehensive as the IPOA-IUU definition of IUU fishing on the application level. Although, the European Union inserts IPOA-IUU definition of IUU fishing inside their Council Regulations (EC), it limits the application only towards commercial exploitation of fishing resources or commercial fishing,<sup>55</sup> disregarding the possibility of there being artisanal fishers who may also conduct small-scale IUU fishing. The same approach to IPOA-IUU has also been taken by the OECD, however the OECD's definition is only focusing on IUU fishing activities on the high seas and foreign vessels activity within national exclusive economic zone (EEZ), excluding territorial seas from its application.<sup>56</sup> However, none of those definition interpret IUU fishing as a criminal activity or transnational organized crime rather just as fisheries management and conservation problem.

The bold link between IUU fishing and transnational organized crime activity is not uncommon. At first, the connection between both of the subjects was debated at the 9<sup>th</sup> Meeting of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea (UNICPOLOS) in 2008<sup>57</sup> and at the Conference of Parties to the UNTOC in 2008.<sup>58</sup> Until recently, in 2011, the UN General Assembly through Resolution A/RES/66/68<sup>59</sup> and a study conducted by the UNODC on transnational organized crime in the fishing industry<sup>60</sup> in the same year have clearly marked the interlinks between the fishing industry and other

forms of transnational organized crime including human trafficking, drug smuggling, smuggling of migrants, and other related crimes such as corruption and money laundering.

The report conducted by the UNODC confirmed that there is a close association between fishing industry and human trafficking in the context of forced labor.<sup>61</sup> Victims of human trafficking were recruited to be labor on fishing vessels without any abilities nor qualifications, as required by International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F 1995),<sup>62</sup> as a fishing vessels crew. Furthermore, they have been harmed by false promises regarding work conditions and payment and were mostly abducted from their homes without any idea of or consent for what will they be doing.

They were illegally transported to another country to be employed in the fishing vessels engaging in IUU fishing and are subjected to cruel and inhumane treatments, such as excessive working hours in poor and gross living conditions in the vessel with a limited food and medical treatment supply.<sup>63</sup> It should be noted that the victims are not only men or women but also children who are also exposed to physical and psychological abuse, sexual exploitation and subject to physical confinement or deprivation of liberty such as locking up and chaining for weeks, for disobeying instructions.<sup>64</sup>

In South Africa, the activity of IUU fishing perpetrated by organized crime syndicates depleted abalone stocks, which led to the closure of the fishery in 2008.<sup>65</sup> Furthermore, it is associated with money laundering, drug trafficking, and racketeering which harms the economic aspects, for the criminals continue to smuggle abalone catches out of the country and export it from neighboring states, hence causing losses in export taxes.<sup>66</sup> In relation to drug trafficking, it is believed that fishing vessels play an integral part to the transshipment of cocaine from the Andean region to Mexico, activities which include the provision of offshore refueling services for ships carrying drugs, the transport of cocaine from

<sup>53</sup> Council of the European Union, Council Regulation (EC Regulation) No 1005/2008 on establishing a Community System to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Amending Regulations (EEC) No. 2847/93, (EC) No. 1936/2001 and (EC) No. 601/2004 and Repealing Regulations (EC) No. 1093/94 and (EC) No. 1447/1999, Luxembourg: Publication Office of the European Union, 2010.

<sup>54</sup> High Seas Task Force, *Closing the Net: Stopping Illegal Fishing on the High Seas*, France: High Seas Task Force, 2006.

<sup>55</sup> Council of the European Union, *Op.Cit*, Art 2(5)

<sup>56</sup> High seas task force, *Op.Cit*, pp. 94-5.

<sup>57</sup> United Nations, Report on the work of the United Nations Open-ended Informal Consultative Process on Oceans and the Law of the Sea at its ninth meeting, *UN Doc A/63/174 & A/63/174/Corr.1 par 10(e)*, 25 July 2008.

<sup>58</sup> United Nations, Report of the Conference of the Parties to the United Nations Convention against Transnational Organized Crime on its fourth session, held in Vienna from 8 to 17 October 2008, *UN Doc CTOC/COP/2008/19 par 210*, 1 December 2008.

<sup>59</sup> United Nations, Resolution Adopted by General Assembly on 6 December 2011, *UN Doc A/RES/66/68 par 60*, 28 March 2012.

<sup>60</sup> United Nations Office on Drugs and Crime (c), *Op. Cit*.

<sup>61</sup> *Ibid*, pp. 25-57.

<sup>62</sup> International Maritime Organization, *International Convention on Standards of Training, Certification and Watchkeeping for Fishing Vessel Personnel (STCW-F) 1995*, London: IMO Publishing, 1995.

<sup>63</sup> United Nations Office on Drugs and Crime (c), *Op. Cit*, pp. 26-8.

<sup>64</sup> *Ibid*, pp. 29-31.

<sup>65</sup> Don Liddick, *Op. Cit*, pp. 295.

<sup>66</sup> Marine Resources Assessment Group, *Study and Analysis of the Status of IUU fishing in the SADC region and an Estimate of the Economic, Social and Biological Impacts*, London: MRAG, 2008.

larger ships to remote landing sites and commercial ports, and direct point-to-point delivery cocaine shipments.<sup>67</sup>

In other situation, fishing vessels also acted as “mother ships” in the transshipment of drugs to faster speedboats, as in Costa Rica when there was cocaine that had been smuggled from Ecuador and Columbia to Central America.<sup>68</sup> In fact, the UNODC’s report confirmed that from 2007 to 2010 the European Maritime Analysis & Operations Centre (Narcotics) (MAOC(N)) received intelligence on 40 interruptions and interdictions at sea of which almost 52,3 tons of cocaine were seized during those maritime operations.<sup>69</sup> Staggeringly, 20% of that seized cocaine was smuggled through fishing vessels.<sup>70</sup>

From all of the connection between IUU fishing and other forms of transnational organized crimes, it is not enough to call IUU fishing as a form of transnational organized crime if we are just using linkages and connection between the IUU fishing and the forms of transnational crime. However, another interesting point we can draw from the connection is that IUU fishing has definitely been used by many organized criminal groups to help their actions. With that being said, the scope of fisheries crime also touches the sphere of transnational organized crime which can be a catalyst for other forms of transnational crime activity to flourish. Many experts have clearly stated that transnational organized crime addressed within the UNTOC framework is mostly connected to fisheries crime as a form of fisheries-related crime.<sup>71</sup> Such a notion is a clear indication that IUU fishing as a form of fisheries crime must claim the status of transnational organized crime independently as the predicate crime not just as a medium crime to bring other forms of crime initiated.

To label IUU fishing as transnational organized crime, we have to carefully affiliate the characteristics between IUU fishing and the components of transnational organized crime. The effort to compare both subjects can be instigated

from the *modus operandi* of such activities. Starting from that point, we can draw the line as to whether the characteristics of transnational organized crime activity can be satisfied by the IUU fishing activity.

Recently there has been a development to properly classify the *modus operandi* of IUU fishing, and amongst others there are:<sup>72</sup>

1. Forgery of vessel’s document. It includes but not limited to falsifying transfer of ownership documents.
2. Double flagging and double registered vessels.
3. Fishing without proper licenses or appropriate documents.
4. Illegal modification of vessel including altering the name of the vessel, marked down, changing call sign and also machine modification.
5. Sailing without port and seaworthiness clearance.
6. Using foreign captain and seamen.
7. Deactivation of vessel’s transmitter.
8. Illegal transshipment at sea.
9. Falsifying and/or forgery of logbook record.
10. Absence of health certificate and export declaration.
11. Violation of fishing ground.
12. Using prohibited fishing gear.
13. Marking down of vessel’s gross tonnage (GT).
14. Not having/partnering with a fish processing unit including non-compliance in owning the processing unit.
15. Not landing the catch on the designated port or unlawful landing of catches.

From all of these methods, IUU operators are potentially violating more than one offence. For example, for IUU fishing operation can smoothly occur, the operators can falsify the ownership documents of the vessel while at the same time they might not have proper licenses to do the fishing activity. The continuation from one offence to another offence can happen frequently. Hence, the activity is forming a chain of operation of method, combining from one method of offence to another.

One of the common offences of IUU fishing is the non-authorized transshipment or illegal transshipment of fish at sea. The activity of illegal transshipment can be called “the mother offence” because it relates to several offences which form part of the chain such as dumping of fish (high-grading or the practice of discarding fish which have a lower market value), falsifying catch record, fish

<sup>67</sup> United Nations Office on Drugs and Crime (h), Report of the Sixteenth Meeting of Heads of National Drug Law Enforcement Agencies, Latin America and the Caribbean, Held in Buenos Aires from 23 October to 27 October 2016, *UN Doc UNODC/HONLAC/2006/5*, pp 11, 9 November 2006.

<sup>68</sup> Don Liddick, *Op. Cit*, pp. 296.

<sup>69</sup> United Nations Office on Drugs and Crime (c), *Op. Cit*, pp. 81.

<sup>70</sup> *Ibid*.

<sup>71</sup> Mary Ann Palma-Robles, “Tightening the Net: The Legal Link between Illegal, Unreported and Unregulated Fishing and Transnational Crime under International Law”, *Ocean Yearbook*, Vol. 29, Issue 1, 2015, pp. 154. (144-165)

<sup>72</sup> Yunus Husein, “Strategy on Combating IUU Fishing and Post Moratorium Policies Plan”, Presentation delivered at the Symposium on Fish CRIME, Cape Town, 12-13 October 2015,



laundering, overfishing, falsifying catch weights, fishing without a license, utilizing banned gear, or probably falsely labelling products and direct sales as a means of avoiding taxation.<sup>73</sup>

Illegal transshipment is the transfer of fish at sea in which legal and illegal catch of fish are blended, and is the way in which illegal fish are laundered. It is a highly organized system as reefers (refrigerated transport vessels) arrive at a pre-arranged time and place, bringing supplies of fuel, food, bait and even a change of crew, and take away the catch with boxes of frozen fish destined for foreign markets across the globe.<sup>74</sup> The reefers are collecting the fish from numerous individual fishing vessels which has been supported with supplies from the reefers, and because they do not fish, these reefers are often exempt from catch record or documentation and monitoring by the authority.<sup>75</sup>

Generally speaking, the transshipment of fish is not an illegal activity, provided the operation can prove the legality and that they are not violating related regulations such as what Indian Ocean Tuna Commission (IOTC) has made in relation to establishing a program for transshipment by large-scale fishing vessels in Resolution 12/05.<sup>76</sup> If the fishing vessel offloads or transships the catch in the regulated state-port where it can be monitored to ensure the catch was legally caught, the controlling measure will be less difficult. However, many of the transshipment activity happened on the high seas or EEZ which makes it very difficult to control. The activity itself is frequently without license, permit or authorization to transship. Hence, the IUU operators take advantage to launder the illegal fish with legal fish and to assume the legal documentation for the illegal fish.<sup>77</sup>

Based on the above perspective the author argues that IUU fishing can be labelled as transnational organized crime in the spectrum of UNTOC. Indeed, IUU fishing has transnational activity in nature because it can be committed within territorial waters, transboundary, EEZ, on the high seas, or traversing between them in the subject of jurisdiction of the state which means cross border activity is inevitable. The illegally-caught fish from such activity can be transshipped, transported, and even entered into markets in several countries which makes the operators motivated by profit through

illicit operations. The operation of illicit fisheries business can be established in one country but the fishing operations may be conducted in other countries' jurisdiction. The illicit profit can also be laundered in another different country. Moreover, the transitional character of IUU fishing is further evidenced by the common use of flags and ports of convenience.<sup>78</sup> Hence, based on these arguments, the transnational in nature of IUU fishing unquestionably satisfy the requirements of Article 3(2) of UNTOC.<sup>79</sup>

The perpetrators of IUU fishing can be either corporations or organised criminal groups. IUU fishing operations are impossible to operate alone. The size of the operations is massive since it also involves commercial activity and several chain of methods that has to be well prepared. Numerous individuals, from the fishers themselves, boat/ship owners, funders, backers and others collaborate in financing and executing fishing operations, as well as in the eventual sale of the fish.<sup>80</sup> Furthermore, the corporate criminal responsibility can be triggered if the corporations engage in this illicit activity.

Lastly, the status of IUU fishing as a serious crime. The only explanation of serious crime in the UNTOC is controversially just based simply on the length of penal sentence which lets the states interpret this broadly.<sup>81</sup> If we just look into that perspective IUU fishing might not fall into those characteristics. Indeed, as an offence, IUU fishing is not punishable by maximum imprisonment as stated like in the UNTOC due to constraint imposed by international legal instrument such as Article 73(3) of United Nations Convention on the Law of the Sea, which favors derisory penalties for IUU fishers.<sup>82</sup>

However, it should be noted that the definition of serious crime remains unclear.<sup>83</sup> The only close interpretation of serious crime is just that it "should not go beyond intentional crimes, with lethal or other extremely grave consequences".<sup>84</sup> Using that interpretation means IUU fishing can be labelled as

<sup>73</sup> Marine Resources Assessment Group, *Op. Cit.*

<sup>74</sup> Stop Illegal Fishing, 'Transshipment', (*online*), (<https://stopillegalfishing.com/issues/transshipment/>), accessed 4 July 2017)

<sup>75</sup> Teale N. Phelps Bondaroff, *Op. Cit.*, pp. 24.

<sup>76</sup> Indian Ocean Tuna Commission (IOTC), *Resolution 14/06 on Establishing a Programme for Transshipment for Large-scale Fishing Vessels*, Seychelles: IOTC, 2014, Sec 2&4.

<sup>77</sup> Teale N. Phelps Bondaroff, *Op. Cit.*, pp. 24.

<sup>78</sup> Teale N. Phelps Bondaroff, *Op. Cit.*, pp. 24.

<sup>79</sup> United Nations Office on Drugs and Crime (b), *Op. Cit.*, Art 3(2).

<sup>80</sup> Teale N. Phelps Bondaroff, *Op. Cit.*, pp. 41.

<sup>81</sup> United Nations Office on Drugs and Crime (b), *Op. Cit.*, Art 2(b).

<sup>82</sup> United Nation, *United Nations Convention on the Law of the Sea*, Montego Bay: United Nation, 10 December 1982, UNTS 3 Art 73(3) (UNCLOS).

<sup>83</sup> International Covenant on Civil and Political Rights, Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Sudan: United Nation, 29 August 2007, *CCPR/C/SDN/CO/3*, para. 19.

<sup>84</sup> United Nations, Safeguards Guaranteeing Protection of the Rights of Those Facing the Death Penalty, *ECOSOC Res 1984/50*, 25 May 1984.

a serious crime because it is intentionally planned and bear massive impact. The operations is surely intentional crimes because of the complexity of preparation of the act, as shown by how organized the chain works.<sup>85</sup> The consequences of IUU fishing is also massive as it damages marine ecosystem and also causes environmental harm by recklessly destroying resources needed for future generations.<sup>86</sup>

IUU fishing also initiates economic loss since many illicit activity happened frequently such as smuggle of fish, fish laundering, tax evasion, and etc which undermines legitimate fishing operations and deprives the funds of the state.<sup>87</sup> Based on a 2008 study, the global annual IUU catch was between 11 million to 26 million metric tons of fish, which equals to 1,800 pounds of fish stolen every second.<sup>88</sup> The loss from the operation is range between US\$10 billion to US\$23 billion globally.<sup>89</sup> FAO estimates, the IUU fishing in Indonesian waters alone costs Indonesia of US\$ 24.7 billion per year.<sup>90</sup> Furthermore, several African countries such as Senegal, Ghana, and Sierra Leone collectively costs an estimated US\$4.9 billion annually and approximately US\$1.5 billion also losses from Western and Central Pacific Ocean.<sup>91</sup>

IUU fishing also harms social development. Artisanal fishing communities and vulnerable populations of coastal states can be threatened because of food insecurities. It also has a detrimental impact on the welfare of local fishers. Finally, such operations also create a problem of maritime and national security. In terms of maritime security, conflicts between IUU vessels and local fishers commonly happen in Liberian waters and how patrol boats off the coast of Mozambique and Somalia are frequently met with armed resistance,<sup>92</sup> which worsens the security situation in the region. The national security is also compromised as IUU fishing has a significant connection to other forms of crime. The Secretary General of the UN also corroborates the issue of IUU fishing as one of threat of maritime and national security matter, when he identified seven specific threats to maritime security in his report.<sup>93</sup>

<sup>85</sup> Teale N. Phelps Bondaroff, *Op.Cit*, pp. 27-9.

<sup>86</sup> Anastasia Telesetsky, *Op.Cit*, pp. 969.

<sup>87</sup> OECD, *Evading the Net: Tax Crime in the Fisheries Sector*, Paris: OECD, 2013, pp. 14.

<sup>88</sup> The PEW Charitable Trusts, *How to End Illegal Fishing*, Philadelphia: PEW, 2013, pp. 1.

<sup>89</sup> United Nation, Resolution Adopted by the General Assembly on 4 December 2009, *Op.Cit*, pp. 39.

<sup>90</sup> Teale N. Phelps Bondaroff, *Op.Cit*, pp. 71.

<sup>91</sup> *Ibid*, pp. 20 & 48.

<sup>92</sup> Don Liddick, *Op.Cit*, pp. 302.

<sup>93</sup> United Nations, *Oceans and the Law of the Sea: Report of the Secretary General, UN Doc A/63/63*, 10 March 2008, pp. 33.

It is clear that the activity of IUU fishing has checked all of the components provided by the UNTOC. The grave consequences, its transnational nature and the worrying development of the crime have been alarming. We can see by how IUU fishing is like a double-sided knife. It can be used as a medium for other transnational crime to flourish or as a standalone crime that can also harm the society.

### C. IUU Fishing in Benjina as Transnational Organized Crime

Major IUU fishing cases have happened, back in the 2015 in Benjina, one of remote island located near Maluku, Indonesia. The operation of IUU fishing in Benjina is related to human trafficking case which involves victims of trafficking from Thailand, Indonesia, Myanmar, Cambodia and Laos with more than 1,000 victims.<sup>94</sup> The victims were fisherman who were found stranded and locked in cages.<sup>95</sup> In the same year as the case developed, Associated Press released an article covering the tragic condition suffered by the fishermen and/or fishing vessel crew in Benjina due to abusive and inhumane treatment.<sup>96</sup> The inhumane treatment received by the fishers and seafarers are including working years without payment, trapped by debt, no repatriation, placed in remote areas with tight control that makes it impossible to escape, and a working environment where they are vulnerable to accidents.<sup>97</sup> The criminal activity in IUU fishing operation in Benjina can be divided into two major offences. The first is slavery of the fisherman who are forced to work under duress without their consent. The second offence is the offence of IUU fishing. Both of the offence had a serious link in the operation of IUU fishing.

<sup>94</sup> Associated Press, "4,000 Foreign Fishermen Stranded on Remote Indonesian Islands", (*online*), (<https://www.theguardian.com/world/2015/mar/28/4000-foreign-fishermen-stranded-on-remote-indonesian-islands>, accessed 6 July 2017).

<sup>95</sup> Associated Press and Tim Macfarlan, "Released from Misery of Slavery at Last: Hundreds of Fishermen Race to be Rescued from Remote Indonesian Island after Being Held Captive to Catch Fish for Western Restaurants", (*online*), (<http://www.dailymail.co.uk/news/article-3024148/Fishermen-rush-rescued-amid-Indonesian-slavery-probe.html>, accessed 6 July 2017).

<sup>96</sup> Robin Mcdowell, Margie Mason and Martha Mendoza, "AP Investigation: Slavery Taints Global Supply of Seafood", (*online*), (<https://apnews.com/98053222a73e4b5dab9fb81a116d5854/ap-investigation-slavery-taints-global-supply-seafood>, accessed 6 July 2017).

<sup>97</sup> International Organization for Migration, Indonesian Ministry of Marine Affairs and Fisheries and Coventry University, *Report on Human Trafficking, Forced Labour and Fisheries Crime in the Indonesian Fishing Industry*, Jakarta: International Organization for Migration, 2016, pp. 25.

The trafficking in person case in Benjina started when the Pusaka Benjina Resources (PBR) Company recruited a numerous number of fishing crews. PBR Company was a company located in Benjina affiliated with a bigger company in Thailand which engaged in IUU fishing in Indonesian waters for many years. The Indonesian Presidential Task Force to Combat Illegal Fishing and Thailand Police were working together to accelerate a joint investigation regarding this case. The results of the investigation were very alarming as it found that the recruitment process was deceptive and exploitative.<sup>98</sup> The process of recruiting could be recruiting children and the disabled, lying about wages and even drugging and kidnapping migrants in which they will be sold into captains of fishing boats or the companies that own them.<sup>99</sup>

The recruited fishing crew who were almost all from Myanmar, Cambodia, Thailand, and Laos, were promised to be employed in Thailand. After they arrived in Thailand, all of their documents for working were forged including their seafarer book (travel permit) with fake name and signature. They were made unconscious by any ways necessary such as drugging, beating and physical confinement, before being trafficked to Benjina island and were forced to sign a fake contract. Victims of trafficking were subjected to abuse treatment comparable to practice of modern slavery such as extended working hours, starved, physical beaten, and torture.<sup>100</sup> The level of abuse on the fishing vessel could last for months with resulting physical injuries and/or deaths of the crew. There were also 77 mass graves in Benjina that suspected to be used to bury victims of trafficking of the deceased crew.<sup>101</sup> The investigation conducted by Task Force further disclosed that several IUU fishing offence has happened such as illegal transshipment, use of prohibited fishing gears, forgery of vessels and seafarers document, and double flagging.<sup>102</sup>

The illegal transshipment happened when illegally caught fish from Indonesia was transshipped in the Indonesian EEZ, thus preventing interception by the Indonesian authorities.<sup>103</sup> In several occasions, the process also took place in the Indonesian EEZ sea

that adjoined or traversed Papua New Guinea waters with Thailand's reefers.<sup>104</sup> Allegedly, the mother company in Thailand have 3 groups and involve 33 vessels and 3 reefers in which the reefers wait for the vessels in the border sea between Indonesian EEZ and PNG waters for the transshipment at sea.<sup>105</sup> 78% of fishers stated that they witnessed the transshipment at sea and larger vessels from their own company had collected the fish or was transferred to cargo ships for export.<sup>106</sup>

Double flagging was also spotted on the fishing vessels operating in Benjina. The fishing vessels reflagged on a regular basis with 48% fishers witnessed vessels reflagging at sea and 61% of these noted the Thailand flag was replaced with the Indonesian flag once the vessels enter Indonesian waters.<sup>107</sup> It also turned out that most of the fishing vessels were built in Thailand and using at least Indonesian, Thailand and PNG flags.<sup>108</sup> In order to catch the fish they also utilized prohibited fishing gears, as it can decrease global fish stocks. The seafarers and vessels document also have been forged.<sup>109</sup>

Both of the offences haven been allegedly perpetrated by PBR company and several affiliation of the company. The Task Force and the Ministry of Marine Affairs and Fisheries of the Republic of Indonesia (MMAF) found that PBR Company was a local private company, registered and operate in Indonesia, that owned by a foreign company registered in British Virgin Island (BVI) that is affiliated with a Hong Kong company<sup>110</sup> and a Thailand company, owned by two Thailand citizens.<sup>111</sup> The company's fishing vessels are generally ex-Thailand and some open register countries such as Panama, operating far from their original countries.<sup>112</sup> Those finding have been perceived as one of the main characteristics of

<sup>98</sup> *Ibid.*

<sup>99</sup> Robin Mcdowell, Margie Mason and Martha Mendoza, *Op.Cit.*

<sup>100</sup> *Ibid.*

<sup>101</sup> International Organization for Migration, Indonesian Ministry of Marine Affairs and Fisheries and Coventry University, *Op.Cit.*, pp. 85.

<sup>102</sup> Interview with Deputy Head of Presidential Task Force to Combat Illegal Fishing, Interview by face by face in Indonesia, 14 June 2017.

<sup>103</sup> International Organization for Migration, Indonesian Ministry of Marine Affairs and Fisheries and Coventry University, *Op.Cit.*, pp. 4.

<sup>104</sup> Minister of Marine Affairs and Fisheries of the Republic of Indonesia, "Fisheries Crime as Transnational Organized Crime", Presentation delivered at INTERPOL Environmental Compliance and Enforcement Events, Singapore, 16-18 November 2015.

<sup>105</sup> *Ibid.*

<sup>106</sup> International Organization for Migration, Indonesian Ministry of Marine Affairs and Fisheries and Coventry University, *Op. Cit.*, pp. 16.

<sup>107</sup> *Ibid* 17.

<sup>108</sup> Interview with Deputy Head of Presidential Task Force to Combat Illegal Fishing, Interview by face by face in Indonesia, 14 June 2017.

<sup>109</sup> Robin Mcdowell, Margie Mason and Martha Mendoza, *Op.Cit.*

<sup>110</sup> Minister of Marine Affairs and Fisheries of the Republic of Indonesia, *Op.Cit.*

<sup>111</sup> International Organization for Migration, Indonesian Ministry of Marine Affairs and Fisheries and Coventry University, *Op.Cit.*, pp. 24.

<sup>112</sup> *Ibid.*

organized transnational illegal fishing operators in Indonesia. Furthermore, the owner of the vessels frequently bribes local authorities in Indonesia to operate illegally as illegal Thailand are falsely registered to fish in Indonesia through graft or with the help of government authorities.<sup>113</sup>

Based on the case of Benjina, it corroborates the fact that IUU operations have a negative effect towards fishermen in terms of working conditions, forced labor and trafficking.<sup>114</sup> Furthermore, it operates transnationally as operators of organized IUU fishing, mostly company, register their fishing vessels with a state that is unable or unwilling to fulfill its international obligation of ensuring the compliance aspect of its flagged vessels according to national and international laws.<sup>115</sup> Even though the corporation cannot be seen as organized criminal group, we can see the PBR Company and its affiliation were deliberately engaged in the IUU fishing operation and trafficking in person activity. It shows how the company can also involve in the illicit activity and making illicit profit or benefit on the same domain as organized criminal group operation.

The Benjina case is one from many cases that supports the finding of UNODC about organized crime activity in the fishing industry particularly in IUU fishing operations.<sup>116</sup> It also shows further evidence on how IUU fishing activity is very serious in nature as it can undermine maritime and national security in which the international community should act accordingly to label it as transnational organized crime to ensure the effective and collective measure against the crime.

## CONCLUSION

The dimension of IUU fishing clearly marks the territory of transnational organized crime. IUU fishing is not just an ordinary crime since there is an element of transnational organized crime in the activity. Other than that, the activity is significantly related to other forms of organized crime. Organized criminal groups frequently use IUU fishing activity to cover their true intention to commit transnational criminal crime. Hence, the activity of IUU fishing slowly becomes one of the alternatives to bridge the activity of other transnational crimes. UNODC has

reported how the IUU fishing operation and chain is utilized to smuggle drug, terrorist activity, and many other forms of organized crime. IUU fishing alone, is also transnational crime since the operation crosses the boundary of the state.

It is an operation that needs to be carried out with organized plan with structured group and sometimes also perpetrated by companies to chase illicit profit. IUU fishing can damage the sustainable development of marine ecosystem and the development of coastal state communities. It harms the development of the state's economy. More importantly, IUU fishing undermines national security because of its rampant activity. The Benjina case is just one of the examples of how threatening the issue of IUU fishing is. The forced labor, the trafficking in person, forgery of the documents, reflagging, and illegal transshipment of fish in Benjina confirms that IUU fishing is a serious crime. The whole operation from the preparation until the execution is a whole chain of method which in each of the stage is an offence.

IUU fishing is a criminal offence that is transnational and multidimensional in nature, causing massive global problems, thus requiring a unified international response and extraordinary approach. Labeling IUU fishing as transnational organized crime will be one step forward and necessary approach to tackle this issue. The redefinition of IUU fishing to a form of transnational organized crime under the UNTOC framework will enable the involvement of criminal justice system and will change the public attitude and response towards IUU fishing. The problem of IUU fishing can be eradicated with a solid legal regime, international cooperation, and tougher sanctions to provide a sufficient power of deterrence to IUU fishing perpetrators.

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<sup>113</sup> Robin Mcdowell, Margie Mason and Martha Mendoza, *Op.Cit.*

<sup>114</sup> International Labour Office, *Caught at Sea: Forced Labour and Trafficking in Fisheries*, Geneva: International Labour Organization, 2013, pp. 5.

<sup>115</sup> International Organization for Migration, Indonesian Ministry of Marine Affairs and Fisheries and Coventry University, *Op.Cit*, pp 24.

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