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Trans-border Fishing Group Discussion



Moderator: V.Vivekanandan
Co-Moderator: Maneoba Issacs
Rapporteur: Thomas Moth Paulson

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The Question

- How can the problems of arrest and detention of small-scale fishers be addressed through bi-lateral and multi-lateral mechanisms to protect human rights and livelihoods of small scale fishers?

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Cases

- Achenese fishermen in Indian waters
- Indonesian Fishermen in Australia
- Papua New Guinea fishermen—Australia
- Eritrean and Yemen fishermen
- Senegal Mauritania
- Kenyan fishermen in Somalia
- Gabon's treatment of immigrant fishermen

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- Indian and Pakistan fishermen
- Indian and Sri Lankan fishermen
- India and Bangladesh fishermen
- Thai fishermen in Malaysia, Vietnam and Cambodia

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Reasons for crossing borders

- By mistake or drifting due to engine failure
- Continuation of pre-Law of the Sea movement across borders
- Moving with the fish shoals, seasonal

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- Depletion on one side, better resources on the other side
- For better markets or cheaper inputs
- Mixed up with other illegal activities (smuggling, illegal migration, etc.)

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Response of Authorities

- Turning a blind eye
- Allowing vessels up to a certain size and Hp
- Chasing them back
- Arrest & detention followed by repatriation without legal action or punishment
- Arrest & detention followed by punishment (fines, etc.) and repatriation
- Long term detention in some cases (on remand)

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- Prosecuted for violating other laws: illegal entry, passport act, anti-smuggling, anti-spying, anti-pollution (!)
- Fishermen exchanged like Prisoners of War
- Shooting at sight
- Vessels may be returned, confiscated or even burnt (!)

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Social and political differences

- Social acceptance of trans-border fishing in many cases (“we are brothers”, wives across borders)
- However Political/administrative system unwilling to accept
- It is the other way in some cases (Govt. not bothered, but locals demand action against “poachers”)

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Fishers—Attitudes/Responses

- Do not know where the border is
- Do not care where the border is
- Know there is a risk, but will take the risk
- Only way to survive or pursue livelihood
- Boat owners want more catch, crew take risks
- Crew take risks, owners loose boats

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Human Rights Issues

- Lack of information for families after arrest
- Long period of remand and impracticality of bail
- Foisting of other cases
- Loss or damage of boats
- Loss of income and distress of families

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Overall analysis & recommendation

- Small Scale fishers crossing borders is a wide spread phenomenon
- Reasons vary considerably as well as the consequences—from mild discomfort to tragic loss of life
- Should not be lumped under generic category of IUU fishing and seen as a mere “enforcement” issue
- Important issue for concerned countries and international community to address
- Contradiction of countries unwilling to share resources with small fishers from neighbouring countries, ready to licence industrial vessels from other countries
- Principle of preferential treatment of small scale fishing needs to be applied across borders

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Specific recommendations

- Set up mechanism to provide timely information on arrests and detention to affected families
- Set up mechanisms at lower levels for direct communication between countries and measures to build rapport between relevant offices/officials across borders to reduce chances of unjust treatment
- Mechanisms to distinguish genuine fishers from those involved in other illegal activities (identity cards, exchange of boat lists)

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- Follow UNCLOS Art 73 in letter and spirit
- While systems of humane treatment and mechanisms for early release from detention required in all cases, long term measures to address roots of problem needed
- Explore licensing or legalising activity where social acceptance is high and threat to resources low—Bilateral agreements
- Multi-lateral agreements when sea shared by many countries to share opportunities for small scale fishers
- Improved fisheries management in own EEZ to reduce pressure on fishers crossing borders—specific projects

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- FAO needs to document trans-border fishing and highlight key issues and possible solutions
- International and regional consultations to sensitise policy makers about dimensions of problem
- Facilitation between countries for bilateral solutions—FAO and regional fisheries bodies could help

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Finally

For Heaven's Sake Do Not
Shoot!