



## **The Humboldt Squid Needs a Hero**

Unless you are a marine biologist, a pretty serious *National Geographic* fan, or someone who makes their own ceviche, the odds are that you have never heard of the Humboldt squid. This particular squid breed is one of the most wildly consumed, with over 30% of “global squid volumes” being produced from a fishery off the Western shore of South America.<sup>1</sup> In contrast to having the honor of being “the single most-important squid fishery in the world,” this fishery is

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<sup>1</sup> Christian Molinari, *SPRFMO risks “non-cooperative” consideration in fight against IUU, CALAMASUR warns*, Seafood Source (Feb. 16, 2022) <https://www.seafoodsource.com/news/environment-sustainability/sprfmo-risks-non-cooperative-consideration-in-fight-against-iuu-calamasur-warns> [<https://perma.cc/S27Q-XT7E>].

victim to a massive international criminal industry; illegal, unreported, unregulated (IUU) fishing.<sup>2</sup> Biologists are wary the Humboldt squid is “vulnerable to overfishing”, but unfortunately Chinese fishing boats have swarmed these waters in the recent years, jumping from an estimated “54 [Chinese-flagged fishing vessels] in 2009 to 707 in 2020.”<sup>3</sup> These boats are not only contributing to the IUU enterprise, but also engaged in illegal stealth practices in order to avoid detection.<sup>4</sup> The Western shore of South America is turning into veritable den of thieves, and countermeasures against it are failing,<sup>5</sup> so what can be done, who will protect the Humboldt Squid?

Under the United Nations (“UN”) Convention on the Law of the Sea, each country is entitled to “sovereign rights . . . conserving and managing the natural resources” of the Exclusive Economic Zone (“EEZ”) which can include up to 200 nautical miles from the coast of the country.<sup>6</sup> All other waters that aren’t the EEZ or inland waters are determined to be High Seas, and open to any state.<sup>7</sup> Even while upon the High Seas, all nations are charged with a duty of (1) abiding by signed fishing treaties, (2) cooperating with a states’ conservation programs, and (3) determine “allowable catch” and other conservation efforts based upon “the best scientific evidence available.”<sup>8</sup>

China has been an adopter of the Convention since 1996, and is subject to its provisions, including agreement to binding the settlement of disputes according to international tribunals or the International Court of Justice (“ICJ”).<sup>9</sup> As with most redress in the UN, for a grievance to be

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<sup>2</sup> *Id.* IUU fishing is an extremely lucrative illegal industry, generating somewhere “between USD 15 billion and USD 36 billion.” *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> Linda Lew, *Chinese boats caught up in suspicions of illegal fishing in Argentina’s waters*, South China Morning Post (June 5, 2021) <https://www.scmp.com/news/china/diplomacy/article/3136138/chinese-boats-caught-suspicions-illegal-fishing-argentinass>.

<sup>5</sup> See Molinari, *supra* note 1.

<sup>6</sup> UN Convention on Law and Sea, articles 56, 57, & 62. [hereinafter: “UNCLOS”].

<sup>7</sup> *Id.* at Art 86.

<sup>8</sup> *Id.* at articles 116-119.

<sup>9</sup> *Id.* at Art. 287.

levied against China under the convention in the ICJ, the illegal actions need to be state-sponsored.<sup>10</sup> However, because all fishing vessels are required to be registered with a country,<sup>11</sup> the connection between a privately-owned Chinese-flagged fishing vessels and the Chinese government is more substantial than, for example, a privately-owned Chinese company. It's likely the connection is substantial enough to prove state action,<sup>12</sup> and further likely to prove a breach of conservation efforts, considering Chinese-flagged vessels hauled almost forty percent of all squid fishing in 2020.<sup>13</sup> So while bringing a claim against China is likely possible due to their commitment to the UN Convention, there remains an issue of feasibility. Unfortunately, the “[e]xisting international instruments addressing IUU fishing have not been effective due to a lack of political will, priority, capacity and resources.”<sup>14</sup>

While a claim may be levied against China, the implementation in policing and catching these fishing boats is not likely to adequately address the current needs.<sup>15</sup> Tragically, the Humboldt squid will instead need to continue to rely on States policing their own EEZs, rather than hoping for a hero from the United Nations. Thankfully all hope is not lost, in recognizing the crisis, Argentina has moved to increase their maritime presence by deploying their brand-new fleet of

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<sup>10</sup> Statute of the International Court of Justice, art. 34. “Only states may be parties before the Court.” *Id.*

<sup>11</sup> See UNCLOS, *supra* note 6, at art. 92 (“Ships shall sail under the flag of one State only and . . . shall be subject to its exclusive jurisdiction on the high seas.”).

<sup>12</sup> The ICJ has previously decided a dispute of sovereign maritime rights between Nicaragua and Colombia, wherein Colombia naval forces would not allow Nicaraguan vessels to fish within their rights to a delineated “Integral Contiguous Zone.” International Court of Justice, Press Release No. 2013/36 (Nov. 27, 2013), pg. 1. <https://www.icj-cij.org/public/files/case-related/155/17806.pdf>

<sup>13</sup> See Molinari, *supra* note 1.

<sup>14</sup> *Fisheries and Aquaculture*, Food and Agriculture Organization of the United Nations (Last visited: Mar. 6, 2022) <https://www.fao.org/fishery/en/ipoa-iuu/en>

<sup>15</sup> See *id.*

offshore patrol vessels within the EEZs.<sup>16</sup> While the Argentinian navy has yet to prosecute a single case of IUU fishing,<sup>17</sup> hopefully neighbor nations take similar initiative.

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<sup>16</sup> Wilder Alejandro Sanchez, *Argentina Deploys New Patrol Ships to Ward Off China's Squid Fleet*, The Maritime Executive (Feb. 6, 2022 2:228 PM) <https://www.maritime-executive.com/editorials/argentina-deploys-new-patrol-ships-to-ward-off-china-s-squid-fleet>.

<sup>17</sup> *See id.*