The fisheries regulatory framework

At the multilateral level
Why do we have a mandate on SDG14 (Targets 4, 6, b)

Environmental problem:
Damage to marine ecosystems
Exhaustion of marine resources
“too many boats chasing too few fish” + IUU fishing

Economic / trade problem - Who captures the scarce and declining resource?
(The one with or without the subsidy?)

Difficulty of competing for access to the resource with the treasuries of developed countries

Strong competition for access to resources and markets (small-scale fishermen)
The framework

Fragmented & Heterogeneous hard law / soft law

Fisheries Instruments non specific / specific
The fisheries regulatory framework
At the multilateral level

UN Convention on the Law of the Sea

Rio Declaration + Agenda 21

WSSD + RIO + 20

IPOAs
Sharks 1999
Capacity 1999
IUU 2001

International Guidelines
e.g.: Guidelines for securing sustainable small-scale Fisheries

Code of Conduct for Responsible Fisheries

Compliance Agreement

Strategies
e.g.: Status & Trends on Capture Fisheries

Port State Measures
Model Scheme 2005 + 2009 Agreement
The fisheries regulatory framework
The instruments

What are the instruments?
What are their implications for sustainable fisheries management?

The fundamental Legal framework governing the use of the oceans and seas

- freedom of fishing
- freedom of navigation on the high seas,
- states that these freedoms are subject to restrictions.
- stipulates that coastal States and fishing flag States have a duty to cooperate on conservation and management
- specifies that flag States have a right to exercise jurisdiction over their vessels anywhere (the high seas) + control the activities of vessels flagged by them.
UN Fish Stocks Agreement (UNFSA) 1995

Agreement for the Implementation of the Provisions of UNCLOS relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks

Enforcability

binding international agreement

- Requires cooperation for the conservation of straddling and highly migratory fish stocks

- Requires the application of precautionary approach by setting limit reference points for MSY

- RFMOs are encouraged as a means of fulfilling the duty of States to co-operate
FAO Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas

1993

Provides an instrument for countries to take effective action, consistent with international law, to ensure compliance with applicable international conservation and management measures for living marine resources of the high seas.

- Seeks to strengthen ‘flag-state responsibility’ and deter ‘re-flagging’ practices

- Requires the maintenance of authorization and recording system for high seas fishing vessels

Enforcability

binding international agreement
Port State Measures Agreement
2009

To prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing through the implementation of robust port State measures

Enforcability:
- Enables countries to close their ports to illicit fishing products
- Allows port authorities to require vessel information, fishing permits and undertake verification

binding international agreement

Ensuring that international trade in specimens of wild animals and plants does not endanger their survival

Enforcability = binding international agreement

Appendix II species

Controlled trade that is not detrimental to the survival of the species

- Sturgeon
- Paddlefish species
- Caribbean queen conch
- Whale shark
- Basking shark
The Code of Conduct is a voluntary instrument, although parts of it are based on relevant sections of UNCLOS.

Enforcability

Non-binding international agreement

Establishes principles, in accordance with the relevant rules of international law, for responsible fishing and fisheries activities, taking into account all their relevant biological, technological, economic, social, environmental and commercial aspects.
IPOA for the management of fishing capacity
1999

Efficient, equitable and transparent management of fishing capacity.

- Seeks to prevent or eliminate excess fishing capacity and should ensure that levels of fishing effort are commensurate with sustainable use of fishery resources.

- Assessment and monitoring of fishing capacity, plan of actions, commensurate efforts.

- Progressively reduce subsidies

Enforcability

Non-binding

Plans of Action
To prevent, deter and eliminate IUU fishing by providing all States with comprehensive, effective and transparent measures by which to act, including through appropriate regional fisheries management organizations established in accordance with international law.

Measures:
- National action plans
- Port measures
- Coastal states measures
- Market related measures
Target 6

By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to IUU fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation …

- Concept of “sustainable development”
- Recognition of the “special situation and needs of developing countries”
- The ecosystem-based approach to fisheries and aquaculture
  At the institutional level (e.g. United Nations, ICP)
The roadmap as 4 point plan:

- Require countries to provide information on subsidies they are providing.
- Prohibit those subsidies that contribute to overfishing and IUU fishing.
- Introduce new policies tools to deter the introduction of new harmful subsidies.
- Provide special and differential treatment to developing countries.
The fisheries regulatory framework
ENFORCEABILITY TO ADDRESS
FISHERIES SUBSIDIES

Binding? Non-Binding?
Targeted?
<table>
<thead>
<tr>
<th>ENFORCEABILITY</th>
<th>FISHERIES SUBSIDIES SPECIFICITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>BINDING</td>
<td>Effective for the purposes of SDG 14 target 14.6</td>
</tr>
<tr>
<td>NON-BINDING</td>
<td>wishful</td>
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<tr>
<td></td>
<td>DISCIPLINES ON SUBSIDIES DISCIPLINES ON FISHERIES SUBSIDIES</td>
</tr>
<tr>
<td></td>
<td>NO REFERENCE to SUBSIDIES</td>
</tr>
<tr>
<td></td>
<td>Ineffective for the purposes of SDG 14 target 14.6</td>
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<tr>
<td></td>
<td>Unclear and prone to disputes</td>
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<tr>
<td>Instruments</td>
<td>Availability of dispute settlement or arbitration</td>
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<td>--------------------------------------------------</td>
</tr>
<tr>
<td><strong>WTO Agreements</strong></td>
<td><img src="checkmark" alt="Check" /></td>
</tr>
<tr>
<td><strong>TPP</strong> <em>(Not yet in force)</em></td>
<td><img src="checkmark" alt="Check" /></td>
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<tr>
<td><strong>UNCLOS &amp; UN FSA</strong></td>
<td><img src="checkmark" alt="Check" /></td>
</tr>
<tr>
<td><strong>Port State Measures Agreement</strong></td>
<td>Compulsory jurisdiction with few exceptions under ITLOS, ICJ</td>
</tr>
<tr>
<td><strong>FAO Compliance Agreement</strong></td>
<td>Under ITLOS, ICJ or arbitration but with Parties consent)</td>
</tr>
<tr>
<td><strong>CITES</strong></td>
<td>PCA Hague or arbitration with Parties consent)</td>
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Enforcability: ![Binding](binding)  References to Fish Subsidies: ![Not specific rules on fish subsidies](npt)

Unilateral measures under a multilateral umbrella: ![Not yet in force](ntf)
<table>
<thead>
<tr>
<th>Code of conduct of responsible Fisheries</th>
<th>INSTRUMENTS</th>
<th>Availability of dispute settlement or arbitration</th>
<th>Non-availability of dispute settlement mechanism</th>
<th>Remedial actions</th>
</tr>
</thead>
<tbody>
<tr>
<td>IPOA IUU</td>
<td>Trade Dispute Resolution System</td>
<td>Binding resolution but not retaliatory measures</td>
<td>Consultations, conciliation &amp; mediation</td>
<td>Monitoring, reporting and information</td>
</tr>
</tbody>
</table>

Enforcability: Non-binding

- References to Fish Subsidies
- No specific rules on fish subsidies
CONCLUSIONS

- We need to consider the EXISTING regulatory framework for fisheries in trade and fish subsidies negotiations.
- While not all agreements dispose of trade retaliatory measures to ensure compliance there are other measures that can have significant effect.
- There is a clear gap in the existing framework for a specific and enforceable solution for fisheries subsidies.
- Cooperation among relevant agencies is essential.
- WTO MC11 (December 2017) provides an important opportunity to address this issue.
THANK YOU