



Máster Internacional en
GESTIÓN PESQUERA SOSTENIBLE
(7ª edición: 2017-2019)

TESIS

presentada y públicamente defendida
para la obtención del título de

MASTER OF SCIENCE

Conflicts and cures:
fisheries conflicts and international fisheries
policy instruments

LOL IANA DAHLET
Septiembre 2019



Universitat d'Alacant
Universidad de Alicante



GOBIERNO
DE ESPAÑA

MINISTERIO
DE AGRICULTURA, PESCA
Y ALIMENTACIÓN



CIHEAM
Instituto Agronómico
Mediterráneo de Zaragoza

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Alicante
a 5 de septiembre de 2019

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A work conducted at the Food and Agriculture Organization of the United Nations in Rome, under the supervision of Dr. Rebecca Metzner.

And submitted in partial fulfilment of the requirements for the award of Master of Science in Sustainable Fisheries Management by the University of Alicante through its Faculty of Science and the International Centre for Advanced Mediterranean Agronomic Studies (CIHEAM) through the Mediterranean Agronomic Institute of Zaragoza (IAMZ).

On September 05th 2019,

Approval: Director

Author


Dr. Rebecca Metzner

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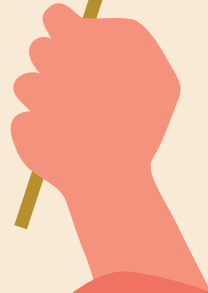
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**FISHERIES
CONFLICTS**
&
INTERNATIONAL FISHERIES
POLICY INSTRUMENTS



Acknowledgements

This thesis, embodied in a few pages, is the concrete culmination of an unquantifiable amount of learning and enriching exchanges, both in theoretical terms as well as experience of living.

¿Cómo no dirigir, en primero lugar, mis más sinceros agradecimientos al Máster en Gestión Pesquera Sostenible de la Universidad de Alicante por recibir y formar tan bien a las/os alumnas/os con sus diferentes orígenes y culturas, reclutadas/os desde los cuatro cantos del mundo; y, más específicamente al professor Dr. José Luis Sánchez Lisazo por sus enseñanzas magistrales, el constante apoyo, la confianza y incentivo determinantes en mi aprendizaje y realización académica? Siempre les seré agradecida, y les dedico, muy feliz, este trabajo.

I would like to deeply thank Dr. Rebecca Metzner, who supervised this work and my 11-months internship at the Policy, Economics and Institutions Branch of the Fisheries and Aquaculture Department of FAO - from the working guidance, to the opportunities provided allowing me to take part in diverse conferences, workshops and meetings. It was a unique opportunity.

This thesis owes her and FAO, the valuable sample analyzed here.

Special thanks go to the fisheries Tenure and User Rights team for their warm reception and integration starting from my first moments in Yeosu, South Korea, advices, mentoring, discussions and friendship: to Mr. KwangSuk, Amber, Helga, Mr. Shin, Jokim, Jiayi, Juan and Yumi.

I would also like to express all my gratitude to Tony Charles who made himself so kindly available for discussions and clarifications.

E, claro, eu não poderia deixar de agradecer profundamente ao Instituto Oceanográfico da Universidade de São Paulo (IOUSP), e mais especificamente ao LabPesq e à professora Dra. Maria de los Angeles Gasalla, pela sólida formação acadêmica, e o acompanhamento tanto científico quanto pessoal, ininterrompido desde então. Me proporcionaram com conhecimento teórico e capacidade reflexiva e crítica únicos durante o meu bacharel, que sem dúvidas foram - e continuarão sendo - decisivos no traçado dos meus caminhos.

Esta tese não estaria tão bonita se não fosse a participação especial da Lu Bercovici (@oceanvice), minha greenie, com seus talentos de designer; e do Vitor Brito pelo mapeamento dos casos de estudo no QGIS. Muito obrigada de coração!

To the lifelong friends I met during my Roman stay; in particular, to those whose love and presence were invariably both propellers and places of rest: Bia, Max, Ana Giselle, Jessie, Ceci, Annachiara, y Maricela. Las/os amo mucho!

And to other levels of (roman(tic)) confluences, at the same time unexpected and self-evident: to meine liebe Xilef.

À mes parents, Véronique et Patrick. Pour vos aspirations à - et vos discours sur - un monde socialement plus juste, qui se reflète dans votre passion à enseigner et à apprendre, et dans lesquels je puise et puiserai toujours mon inspiration d'être. Merci de la joie procurée par ces merveilleux partages constants. À minha irmã, mais nova funcionária da FAO: te amo.

Abstract

In the context of an apparently ever-globalized world, fishing resources are prey to quickly evolving interests from an increasing number of stakeholders. Fisheries conflicts must be assessed if we want to address the sustainability of a sector that employs over 40.3 million fishers, extracts 90.9 million tons of marine seafood a year (FAO 2018). Using 66 questionnaires and case studies from 42 countries gathered at the “Tenure and UserRights in Fisheries 2018: Achieving Sustainable Development Goals by 2030” (UserRights 2018) global conference, this study aims to: (1) showcase the different types of fisheries conflicts and resolution mechanisms found in the 66 cases; and (2) assess whether three existing fisheries policy instruments - the Code of Conduct for Responsible Fisheries (CCRF, FAO 1995), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs, FAO 2012), and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines, FAO 2014) - address these conflicts and provide solutions to them. Based on Charles (1992) typology of fisheries conflicts, 92.4% of the cases reported conflicts, mostly associated with management mechanisms and internal allocation arguments. Regarding conflict resolution, 69% of the cases rely on legal and/or judicial systems. Among the three fisheries international policy instruments, the VGGTs provide basis for fisheries dispute resolution. However, there is room for more international instruments sensitive to fisheries conflicts, that are able to provide both issue and context-specific guidance to support fisheries stakeholders at all levels, embedded in a sustainable fishery governance objective.

Key words: fisheries, conflicts, resolution mechanisms, fisheries policy instruments, governance

Resumen

En el contexto de un mundo que parece siempre más globalizado, los recursos pesqueros se vuelven presa de intereses cambiantes por parte de un número creciente de actores. Los conflictos en la pesca deben de ser evaluados si se quiere abordar la sostenibilidad de un sector que emplea alrededor de 40.3 millones de pescadores, extrae 90.9 millones de toneladas por año de productos marinos (FAO 2018). Utilizando 66 cuestionarios y casos de estudio de 42 países reunidos en la conferencia global “Tenure and UserRights in Fisheries 2018: Achieving Sustainable Development Goals by 2030” (UserRights 2018), este estudio tiene como objetivos: (1) exponer los diferentes tipos de conflicto en la pesca y mecanismos de resolución de conflictos encontrados en los 66 casos; y (2) analizar si tres instrumentos políticos fundamentales para la pesca – el Código de Conducta para la Pesca Responsable (CCRF, FAO 1995), las Directrices voluntarias sobre la Gobernanza responsable de la tenencia de la tierra, la pesca y los bosques (VGGTs, FAO 2012), y las Directrices voluntarias para lograr la sostenibilidad de la pesca en pequeña escala (SSF Guidelines, FAO 2014)- abordan esos conflictos y como solucionarlos. Basado en la tipología elaborada por Charles (1992) de los conflictos en la pesca, 92.4% de los casos reportaron la existencia de conflictos, mayoritariamente asociados con mecanismos de gestión y asignación interna de los recursos. En lo que se refiere a los mecanismos disponibles para la resolución de estos conflictos, 69% de los casos cuentan con sistemas legales y/o judiciales como vía para solventarlos. De los tres instrumentos políticos internacionales analizados, las VGGTs son el instrumento político internacional que proporciona mejores criterios para la resolución de disputas en la pesca. Sin embargo, aún existe margen para instrumentos internacionales sensibles al conflicto, que se adapten a contextos y problemas específicos para apoyar a todos los agentes involucrados en la pesca a todos los niveles, inscribiéndose en una gobernanza sostenible de los recursos pesqueros.

Palabras clave: pesca, conflictos, mecanismos de resolución, instrumentos políticos pesqueros, gobernanza

Résumé

Dans le contexte d'un monde qui se décline comme toujours plus globalisé, les ressources halieutiques sont soumises aux variations des intérêts concurrentiels d'un nombre croissant d'acteurs. Si l'on vise le développement durable de la pêche, qui emploie approximativement 40.3 millions de personnes et extrait annuellement 90.9 millions de tonnes de fruits de mer (FAO 2018), les conflits qui traversent le secteur doivent être réfléchis. Exploitant un échantillon de 66 questionnaires et études de cas en provenance de 42 pays recueillis dans le cadre de la conférence globale "Tenure and UserRights in Fisheries 2018: Achieving Sustainable Development Goals by 2030" (UserRights 2018), cette étude a comme objectifs: (1) d'exposer les différents types de conflits liés à la pêche ainsi que l'ensemble des modalités adoptés pour leur résolution; (2) d'analyser si les trois instruments politiques fondamentaux que sont pour la pêche, d'une part le Code de conduite pour une pêche responsable (CCRF, FAO 1995), d'autre part, les Directives volontaires pour une Gouvernance responsable des régimes fonciers applicables aux terres, aux pêches et aux forêts (VGGTs, FAO 2012), et enfin, les Directives volontaires visant à assurer la durabilité de la pêche artisanale (SSF Guidelines, FAO 2014), se saisissent de ces problématiques conflictuelles et promeuvent des solutions. L'analyse a permis de dégager que 92.4% des 66 cas étudiés ont signalé l'existence de conflits, majoritairement associés à des mécanismes de gestion et allocation interne de droits de pêche, pour reprendre la typologie classificatrice des conflits de la pêche élaborée par Charles (1992). Par ailleurs, si l'on considère les dispositifs disponibles pour la résolution de ces conflits, 69% des réponses convoquent un système de régulation légale et/ou judiciaire. Les VGGTs constituent l'instrument politique international qui offre le plus de recours pour la résolution de conflits relatifs à la pêche. Il serait cependant opportun de concevoir des instruments internationaux complémentaires, capables de mieux intégrer au traitement des conflits, la pertinence des problématiques et contextes locaux, si l'on souhaite soutenir l'ensemble des acteurs de la pêche et inscrire la gestion des conflits dans une gouvernance durable des ressources halieutiques.

Mots-clés: pêche, conflits, mécanismes de résolution, instruments politiques pour la pêche, gouvernance

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List of acronyms

BMU	Beach Management Unit
CCRF	Code of Conduct For Responsible Fisheries
CFS	Committee on World Food Security
COFI	Committee on Fisheries
CR	Conflict Resolution
CRM	Conflict Resolution Mechanism
D	Developed countries
DPG	Developing countries
EAF	Ecosystem Approach to Fisheries
EEZ	Exclusive Economic Zone
FAO	Food and Agriculture Organization of the United Nations
FCA	Fishery Cooperative Association
EFPP	Equatorial Fund Populorum Progressio
HDI	Human Development Index
HR	Human Rights
IATTC	Inter-American Tropical Tuna Commission
ICARRD	International Conference on Agrarian Reform and Rural Development
IF	Industrial Fisheries
IFAD	International Fund for Agricultural Development
IUU	Illegal, Unreported and Unregulated fishing
LDC	Least Developed Countries
MARF	Marine Areas of Responsible Fishing
MPA	Marine Protected Area
NGO	Non-Governmental Organization
NPFMC	North Pacific Fishery Management Council
RFMA	Responsible Fishing Marine Area
RFMO	Regional Fisheries Management Organization
SDGs	Sustainable Development Goals
SFF	Small-Scale Fisheries
SIDS	Small Island Developing States
SSF Guidelines	Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication
TR	Tenure Rights
TURF	Territorial Use Rights for Fisheries
UNCLOS	United Nations Convention on the Law of the Sea
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNHCR	United Nations High Commissioner for Refugees
VGGTs	Voluntary Guidelines Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security
WFP	World Food Programme

“On dit d’un fleuve emportant tout qu’il est violent, mais on ne dit jamais rien de la violence des rives qui l’enserrent.”

Bertold Brecht

“Talking about a river that sweeps everything away, we say it is violent, but we never say nothing about the violence of the shores that bound it.”

Bertold Brecht

1 INTRODUCTION

With a quickly evolving globalization and an increasing global population expected to exceed 9 billion people in 2050¹, the intensity of anthropogenic exploitation of natural environment inherent to the current capitalistic system results in degraded ecosystems, while social inequalities keep growing^{2,3}. The cushioning and channelling of these external factors add to the challenge that represents managing natural resources. Fishing activity is directly affected by this dynamic tangle of exogenous global drivers, being at the same time a local and global source of food, culture, but also of geopolitical power⁴. Globally, capture fisheries directly employ 120 million people by landing around 90 million tons annually (FAO 2018), approximately 38% of which comes from the small-scale sector. For the many who rely on their catch for subsistence, there is little margin for coping with change.

In this context, fisheries conflicts find a myriad of leverage points. Conflicts can primarily be defined as a situation where two parties, bodies, have divergent interests (Bobbio *et al.* 1998). Glaser *et al.* (2018, p.8) define fishery conflict as “an incident in which a fisheries resource is contested, disputed, or the source of conflict between a minimum of two human actors, at a discrete temporal moment, and in a discrete location.”

This definition however doesn't give a sense of the extent to which fisheries conflicts: (1) are both embedded in, and driven by, a broad socio-politico and economic context, from the social structure, power or class relations, to the aspirations for individual utility maximization (Bennett *et al.* 2001) and; (2) can raise (at least initially) from a negative interaction with stakeholders *non-related* to the fishery, i.e. tourism, agriculture and many other sectors responsible for the Ocean Grab (Franco *et al.* 2014). On the other hand, and more specifically in the scope of marine social-ecological systems, conflicts are further shaped by a variety of ecological drivers such as climate change that lead to a shift in the stock distribution (Pinsky *et al.* 2018), and other sources of habitat degradation (Pomeroy *et al.* 2016).

Understanding and managing fisheries conflicts is therefore a very complex task, but necessary to address, in order to avoid an escalation of intensity and negative outputs. In fact, a conflict can also bring positive social transformation. It can be catalyser of positive change, and even a necessary step for most marginalized groups to be able to locally transform a *status quo* of inequality (Buckles & Rusnak 1999). The output of a conflict will depend on the conflict resolution mechanisms (CRM) in place and/or activated. CRM are diverse in their forms and expressions. They may be institutionally

¹ United Nations, Department of Economics and Social Affairs, Population Division (2017). World Population Prospects: The 2017 Revision, Volume I: Comprehensive Tables. ST/ESA/SER.A/399. Available at: <https://population.un.org/wpp/Publications/>. Consulted in April 2019.

² Piseagrama, edition 10, “Recursos” [Resources]. Available in Portuguese at: <https://piseagrama.org/cat/10-recursos-2/>. Consulted in April 2019.

³ “Hundreds of millions of people living in extreme poverty while huge rewards go to those at the very top. There are more billionaires than ever before, and their fortunes have grown to record levels. Meanwhile, the world's poorest got even poorer.” In “5 Shocking facts about extreme global inequality and how to even it up”, OXFAM. Available at: <https://www.oxfam.org/en/even-it/5-shocking-facts-about-extreme-global-inequality-and-how-even-it-davos>. Consulted in April 2019.

⁴ Here the definition of ‘geopolitics’ used is the one mentioned in Germond B. (2015) as an academic discipline that “aims at explaining how geography somewhat constrains politics, how states try to bypass those constraints, and (in the case of critical geopolitics) how they try to use geography to their advantage, including in discourses through series of geo-informed representations.”

implemented and active at different institutional levels, as well as they may emerge at a more local, non-institutionalized and/or inter-personal scale. What mechanism is deployed in response to a conflicting situation around the fishing activity will depend on many factors, among which the characteristics of the conflict itself (geographical and temporal scale, actors involved) and the local socio-political context.

At the global level, international soft-laws are crucial instruments that guide and support sustainable fisheries management primarily at the States level, but also highly impacting the local levels. Such instruments could therefore play an important role in addressing fisheries conflicts and promote effective CRM. The Food and Agriculture Organization of the United Nations (FAO) is one of the United Nations agency to make use of such non-binding instrument, aiming at setting global consensual baselines and frame policy-makers efforts in order to progress towards the accomplishment of the Sustainable Development Goals⁵ (SDGs). FAO has published three key documents that address fisheries issue. They are: the Code of Conduct for Responsible Fisheries (CCRF, FAO 1995), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs, FAO 2012), and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF, FAO 2014). In order to ensure a sustainable fisheries management, such instruments should not only address fisheries conflicts, as well as contemplate possible resolution mechanisms.

The overall objective of this thesis is to highlight an array of fisheries conflicts and conflict resolution mechanisms around the world, and see if the CCRF, VGGTs and SSF provide effective guidance around these processes.

⁵ There are 17 Sustainable Development Goals, as established by the 2030 Agenda for Sustainable Development. The Agenda 2030 was adopted by all United Nations members in 2015, during a summit that took place at the UN headquarters in New York. The 2030 Agenda as well as the 17 SDGs can be found at: <https://sustainabledevelopment.un.org/post2015/transformingourworld>.

2 METHODOLOGY

2.1 Description of the data

The data used in this study ensue from ongoing efforts undertaken by FAO, aiming at gathering information and assessing the state of knowledge of fisheries tenure and user rights around the world. In this context, one strategy used to collect such information was the elaboration and delivery of a semi-structure questionnaire. This questionnaire was originally intended to be complemented with a case study on the focused fishery chosen by the respondent. In turn, this case study had to be presented and discussed during the FAO Tenure and User Rights in Fisheries Conference (UserRights 2018) held in Yeosu, South Korea, in September 2018, and jointly organized with the Ministry of Oceans and Fisheries of the Republic of Korea.

The semi-structured questionnaire started to be elaborated by the Fisheries Tenure and User Rights team one year before the UserRights 2018 conference. A first draft developed based on bibliography research was reviewed by the whole team. A second version followed, which was sent to experts from the Fisheries and Aquaculture department of FAO for review. Approximately one third of the voluntary reviewers answered with suggestions and corrections, allowing a third draft of the questionnaire to be made. This latter was sent to the same experts, as well as to FAO's regional experts and international consultants. When the questionnaire got finalized, it was sent by e-mail to the respondents, to be filled 3 months before the UserRights 2018 Conference. The respondents were selected either by the Lake Victoria Fisheries Organization (for African case studies), either by INFOPESCA (for the Latin American case studies), either by FAO. Therefore, the case studies and questionnaire reported are a function of the choice of the respondents made by these institutions. From the 74 presenters in the UserRights 2018 Conference, 66 of them effectively answered and sent back the questionnaire, most of them after having received a "reminder" e-mail. Some questionnaires and case studies were only sent after the Conference had taken place.

In this occasion, 66 questionnaires and case studies were collected from participants representing 42 countries, distributed by continent as shown in Figure 1. Among them, 62.1 % are classified as developing countries, 19.7% as developed countries, 13.6% are least developed countries, and 4.5% are Small Island Developing States (SIDS) (UN 2019) (Figure 2). The semi structured questionnaire was available in French, English and Spanish. It is composed of 86 questions, systematized under 4 main categories: (i) Description of the fishery; (ii) Governance of fishing rights; (iii) Observed changes in the fishery and (iv) Challenges in fishing rights. It discloses a total of 52 open-ended questions, including the space for explanation if the option of answer 'OTHER' was ticked (i.e. when none of the provided answers applied), and full open-ended questions (e.g. "Describe in detail these conflicts and why you believe they exist.").

This study explores the sub-section (ii) 'Conflict' of section (iv) 'Challenges to fishing rights' of the questionnaire. This sub-section of the questionnaire is composed of 4 questions, 2 of them related to conflicts, and the others related to conflict resolution mechanisms (CRM), as follows in Box 1.

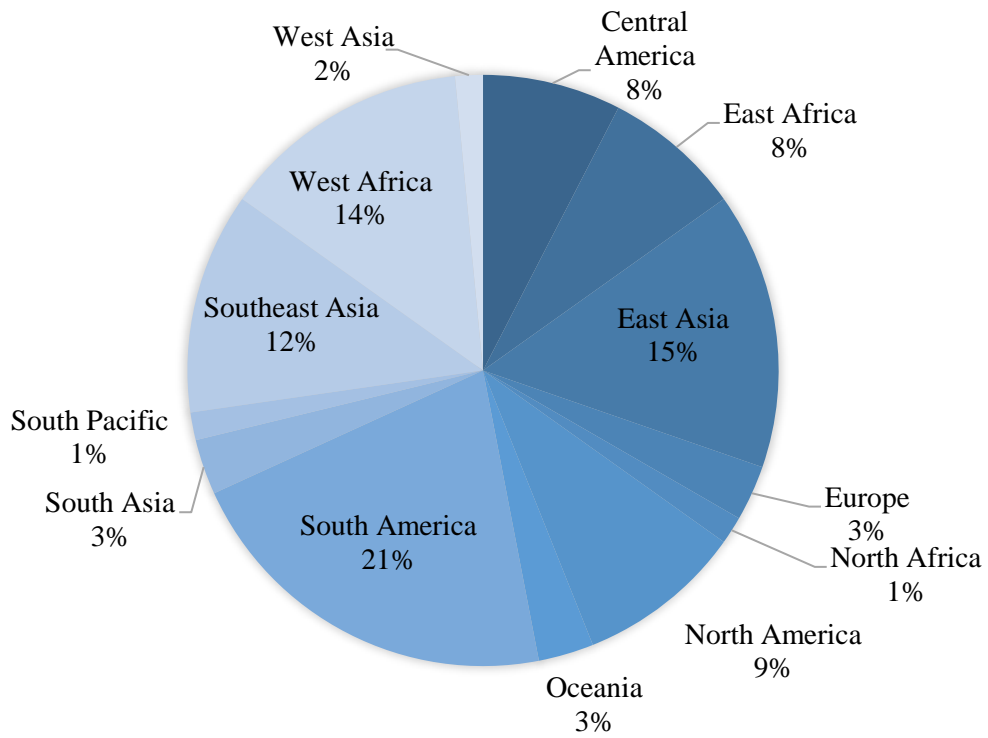


Figure 1 - Repartition of the studied fisheries by continents and regions.

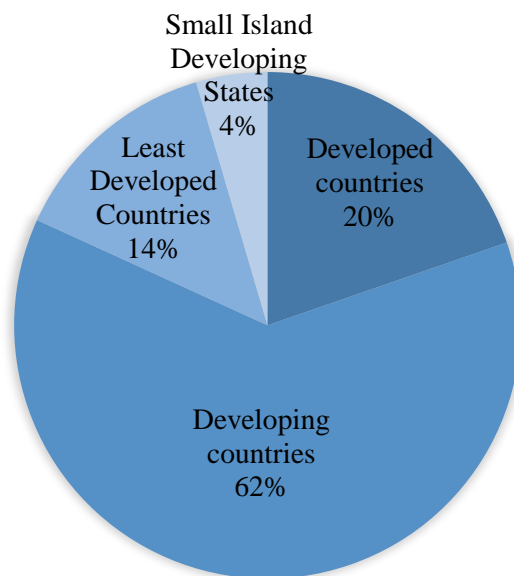


Figure 2 - Classification of the countries from the case studies and questionnaires used in this study based on their economic development rate.

Box 1- The 4 questions of the sub-part (ii) 'Conflicts' from the semi-structured questionnaire used in this analysis.

1) What types of conflicts exist between stakeholders in the fishery?

- There are no conflicts between stakeholders in this fishery.
- Allocation conflicts (e.g. communities asking for an equitable allocation of rights)
- Disagreements between those that manage the fishery and fishers regarding management
- Competition between communities over the resource
- Competition between fishing communities and seasonally migrant fishers
- Conflicts between local small-scale fisheries and national industrial fishers
- Conflicts between local small-scale fisheries and foreign industrial fishers
- Conflicts between national industrial fishers and foreign industrial fishers
- Conflicts between fishers with fishing gear targeting the same species
- Conflicts between fishers with fishing gear targeting different species
- Conflicts between fishing community and recreational fishery
- Other: _____

Please describe in details these conflicts and why you believe they exist.

2) Which types of non-fishery sectors are in conflict with this fishery's participants?

- There are no conflicts between this fishery's stakeholders and other sectors.
- Agriculture (irrigation, pollution, etc.)
- Pastoralist groups looking for access to water
- Aquaculture
- Tourism
- Infrastructure projects and industrial progress (for example, ports, harbours, etc.)
- Mining, oil, or natural gas extraction
- Other: _____

Please describe in details these conflicts and why you believe they exist.

3) What types of conflict resolution mechanisms are available for stakeholders in the fishery to resolve conflicts?

- The fishery does not have an established conflict resolution mechanism
- Legal Systems (e.g. courts of justice or other authorities)
- Governmental fisheries management authority
- Customary Systems (e.g. tribal council)
- Other: _____

4) How effective are the established conflict resolution mechanisms at reducing conflict?

- Not at all effective
- Rarely effective
- Sometimes effective
- Moderately effective
- Very effective

The content of the case study was structured in 4 main sections (Table 1), namely: (i) Introduction; (ii) Management of the fishery and rights-based approach; (iii) Contribution of the rights-based approach to fishery management in achieving sustainability; and (iv) Main challenges and way forward.

Table 1 - Sections and expected contents to be fulfilled in the case studies gathered at the User Rights 2018 Conference in Yeosu, South Korea, in September 2018. Source: FAO 2018.

Section	Expected Contents
(i) Introduction	An overview of the fishery: the fishery resource, fishing activity and its socio-economic importance, stakeholders. This section includes information on the ongoing conflicts in this fishery.
(ii) Management of the fishery and rights-based approach	An in-depth description management of the fishery, the type of rights-based approach to fishery management that exists for the fishery, as well as allocation mechanisms and characteristics of the user rights. This section includes information on the resolution mechanisms for fisheries conflicts.
(iii) Contribution of the rights-based approach to fishery management in achieving sustainability	An evaluation of the impact of the rights-based approach on the sustainability of fishery resource, economic viability of the fishing activity, and social equality.
(iv) Main challenges and way forward	Personal opinion about what should be changed in the rights based system for helping to achieve ecological, economic, and social sustainability.

2.2 Data analysis

2.2.1 Conceptual framework for understanding fisheries conflicts and solutions

Within the sub-section (ii) ‘Conflicts’ of the questionnaire, 2 of the 4 closed questions inquire about conflicts both between stakeholders in the fishery and with non-fishery sectors, providing a framework to systematize them (see Box 1).

There are several other published typologies of fisheries conflicts. They all vary among them following various aspects, as a reflection of the complexity of the conflicts. For example, the number of clusters a typology presents will influence the precision through which conflicts are depicted within the framework, including the spatial scale and institutional level. Also, one type of conflict generally overlaps with another one, illustrating their non-linearity, or even their circularity⁶ (Bennett *et al.* 2001). The

⁶ Bennett *et al.* (2001) state that conflicts are not linear, but instead are circular in the sense that the output of a conflict can provide a feedback, either positive or negative overall, into the initial conflict situation, leading it to evolve into a new second situation.

typology can also be based either on the different causes of the conflict, on the stakeholders that are involved and opposed, or on a combination of both, as is the case in Charles (1992). The author suggests a classificatory framework for fisheries conflicts related to the: (1) Fishery jurisdiction; (2) Management mechanisms; (3) Internal allocation; and (4) External allocation. Each of these clusters contains sub-categories, as schematized in Table 2.

Table 2 - Typology of fisheries conflicts suggested by Charles (1992).

Fishery jurisdiction	Management mechanisms	Internal allocation	External allocation
Property rights	Fishery management plans	'Gear wars' conflicts	Domestic vs. foreign fisheries
The role of government	Enforcement conflicts	User group conflicts	Fishers vs. aquaculture
Intergovernment conflicts	Fishers/government interactions	Fishers vs. processors	The fishery vs. competing aquatic uses

If the factors disclosed in this typology are concrete triggers of fisheries conflicts, they do not stand-alone. Instead, they are embedded in a socio-political context shaped by the governmental policy objectives. Charles (1992) suggests envisioning the conflicting situation within the policy goals triangulated by politic priorities towards 'Economic performance', 'Conservation' and/or 'Community welfare' (Figure 3). Institutions of different scales and levels can be weighed within this triad, from community-based management systems to the national governments. The Conservation paradigm refers to the vision following which the environmental conservation, and in this case the fish stock, is the main strategy for sustaining the fisheries. The Economic performance paradigm, also called by the author 'rationalization paradigm' is the expression of the aim of maximizing the profits out of the fishing activity, i.e. fishing more while spending less. Charles (1992) lists the following two implications of that: "(1) reducing to an 'optimal' level the number of fishers, who are viewed as profit-maximizing 'firms, and (2) instituting private property rights to the fish.'" The Community welfare/equity group perceives the fishing activity as first and foremost an activity to secure social and cultural well-being.

Bennett *et al.* (2001) goes further by interestingly building upon Charles (1992) and Warner (2000) to generate a framework for the specific case of tropical countries. In fact, since these latter are strongly affected by their socio-political condition, globally more instable than Northern countries, an entire fifth category is conceded to issues regarding the "Relationship between fishers and non-fishery issues (e.g. economy, environment, corruption)", which are therefore comprehended as vectors of fisheries conflicts (Table 3).

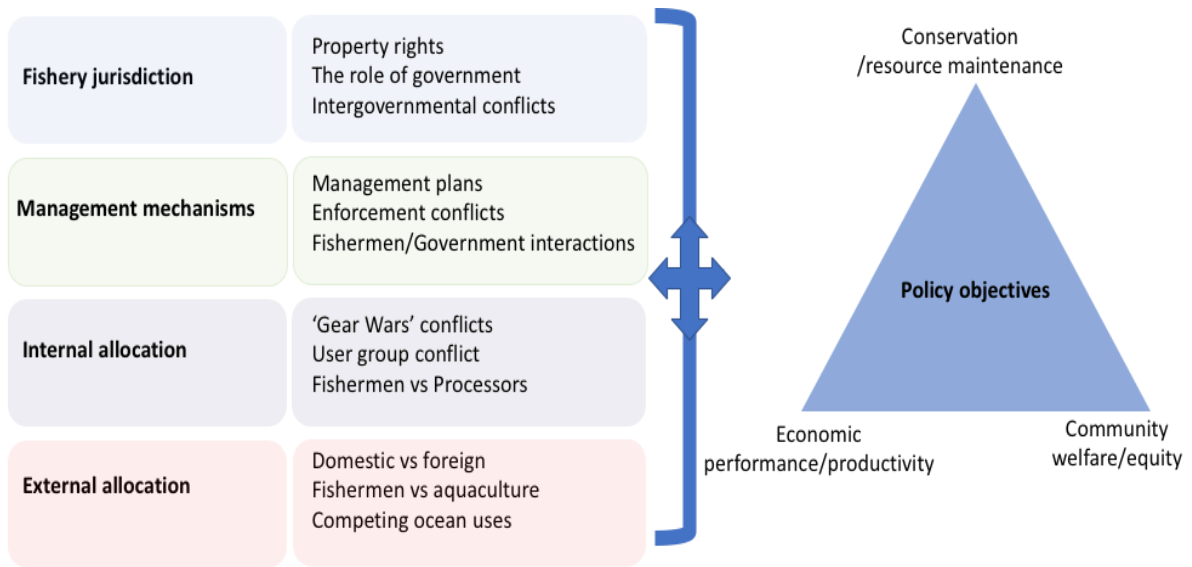


Figure 3 - Adapted scheme of the typology of fishery conflicts proposed by Charles (1992).

Table 3 - Revised typology of fisheries conflicts suggested by Bennett *et al.* (2001).

Type 1 Who controls the fishery	Type 2 How the fishery is controlled	Type 3 Relations between fishery users	Type 4 Relations between fishers and other users of the aquatic environment	Type 5 Relationship between fishers and non-fishery issues
e.g. Access issues	e.g. Enforcement issues, quota allocation issues, co-management issues	e.g. Issues between different groups (linguistic, religious, ethnic). Issues between different scales of users (artisanal, semi-industrial)	e.g. Issues with tourism, conservation and industrial development	e.g. Issues over the environment, politics, economic changes, elites, corruption

Type 1 to 4 from Bennett *et al.* (2001) speaks to Charles (1992) categories, and can also be considered as 'negotiable conflicts' (Engel & Korf 2005), i.e. conflicts that consist in a lack of consensus and different interests over matters related to the exploitation of a natural resource. On the other hand, Type 5 of conflicts reflect the authors intend to capture the political context as a main driver of fisheries conflicts, or what we can call 'non-negotiable conflicts'⁷, i.e. conflicts that arise from the precarious situation of fishers regarding human's basic needs such as secure land tenure, food, health, education and sanitation. In this study and after revising the case studies, socio-politico and

⁷ The terms 'negotiable' and 'non-negotiable' is used by Engel & Korf (2005) to differentiate conflicts that are prone, or not, to be solved through consensual negotiations, as a function of the nature of these conflicts. The authors do not present it as a framework for natural resource conflicts, but I find this distinction useful, and I will go back over it when addressing: (1) the debate around how environmental change leads to social conflict, or the dichotomy between a technical vs. political approach to fisheries conflicts, and (2) fisheries conflict resolution in the case of negotiable or non-negotiable conflicts.

environmental factors mentioned as drivers of fisheries conflicts were also recorded in a fifth category, as explained below.

Building on the typology for fisheries conflicts provided by the questionnaire, Charles (1992) typology and Bennett *et al.* (2001), a merged typology ensued (Table 4), which allowed the recording of both the closed and open-ended answers. The categorization of the merged typology is a result of a combination of those mentioned above, enhanced with a fifth sub-category, namely, “Other political, social, economic and environmental factors” added because related conflicts had been mentioned in the case studies. The definition of each category and the types of conflicts it embraces are adapted to best reflect the conflicts that arose from the 66 cases, as follows:

(1) Fishery jurisdiction

This category broadcasts conflicts that emerge from different perspectives on the questions: who has/should have the authority to explore the resources? These conflicts are therefore related to who owns the right to fish, starting from historical claims from under-represented groups, to conflict between countries for the jurisdiction. It encompasses more long-term tensions, and often sheds light on the role carried out by the decision-taking entity enabled to distribute and concede these rights, often the governments.

Property rights, in the words of Charles (1992), is a sub-category linked with the contestation around “the relative desirability of fishery property option”, including historical claims for recognition of rights, or disagreements on the property right system in place.

The role of government opposes different views on how strong and (des)centralized⁸ the fisheries management system is. A strong and centralized management can lead to conflicts, and often goes hand in hand with a non-participatory management.

Intergovernment conflicts include frictions between governments and provinces, in the pursuit of control and access to fishing grounds, mostly in transboundary cases. It is often related to Illegal, Unreported and Unregulated (IUU) fishing.

(2) Management Mechanisms

Those are conflicts upon the management plans in terms of the precise regulations they support as well as the management processes.

Fishery management plans: Conflicts embedded in the contestation of the levels of output and input control as well as other regulations within the fishery. These conflicts generally take place between fishers and the decision-making authority.

Enforcement conflicts arise from the perception of a group of fishers of over- or under- enforcement applied to other users.

Fishers/government interactions can lead to conflicts mainly when the process is not being participative (enough) and fishers are excluded of the management process, either by not having their knowledge taken into account, either by not being included in the spaces of discussion.

⁸ It is interesting to mention that “Decentralization of natural resources has often focused more on the devolution of powers to local communities (commonly known as community-based natural resource management) rather than to local governments.” In Larson A.M. 2003. Decentralization and forest management in Latin America: towards a working model. Public Administration and Development. 23:211–226.

(3) Internal Allocation

This category includes conflicts that take place within the fishery for various reasons.

'Gear wars' conflicts are clashes issued from the deployment of different gears at sea, including linked with a difference of technology assets from vessel to vessel.

User group conflicts happen among different types of fisheries (e.g. disputes between large-scale and small-scale fisheries) and they can consist in both short and long-term tensions. This category does not include disputes around post-harvest issues.

Fishers vs processors is a sub-category that embraces conflicts between fishers and processors or conflicts within the post-harvest sector.

(4) External Allocation

Refer to conflicts between fishers and actors external to the fishery system, such as foreign fleets, other industries and/or users of the marine space like aquaculture and tourism that compete for space and resources.

Domestic vs foreign fisheries include conflicts taking place in Exclusive Economic Zones (EEZs) and that involves the nation's fleet against foreign fleets. This category does not include illegal fishing.

Legal vs. illegal is a sub-category that groups conflicts between legal fishers from a certain fishery and illegal fishers that invest the same fish stock or fishing ground. The illegal fishers may be from a foreign country or the same nation that has the jurisdiction over the invested fishery.

Competing aquatic/space uses refers to conflicts involving additional external actors such as shipping, ocean mining, tourism and forestry. These are more global disputes that create tensions over the use of the aquatic space, and land use (for example by interfering in landing sites and processing sites). More specifically:

- Agriculture: Conflicts with the agriculture sector comprises problems in the fishery issuing from irrigation systems, and agricultural pollution among others;
- Pastoralist groups looking for access to water;
- Tourism;
- Aquaculture;
- Infrastructure and industrial projects (e.g. ports, harbours, dredging);
- "Mining, oil, gas extraction" encompasses conflicts between the fishery and companies practicing mining, oil and gas extraction, may it be due to an accident having affected the company facilities that afterwards contaminate the environment, harming the fishery, or a dispute over the use of the aquatic space;
- In the category "land owners" are included all conflicts related to usurpation of fisher's lands, tentative of hampering access to fishing grounds and threats to the continuity of the landing and/or processing/fish selling site coming from land owners;
- "Conservationists/Marine Protected Areas" encompasses conflicts issuing from the implementation of a protected area, which generally provokes tensions with the excluded groups of people, or impacts the customary fishing system.

Table 4 - Merged typology of fisheries conflicts, resulting from a combination of: (1) Charles (1992) typology for fisheries conflicts (Typology source 'C'), (2) the questionnaire's categorization (Typology source 'Q'), and (3) new categories included for this study (with *).

Typology source ('Q' = questionnaire; 'C' = Charles (1992))	C	1 - Fishery jurisdiction			2 - Management mechanisms							
		Property rights	The role of government	Intergovernment conflicts	Management plans	Enforcement conflicts	Fishermen /government interactions					
	Q	Type of conflicts existing between stakeholders in the fishery										
		Allocation conflicts				Disagreements between those that manage the fishery and fishers regarding management						
	C	3 - Internal allocation										
		'Gear wars' conflicts			User groups conflicts			Fishermen vs processors				
	Q	Fishers with fishing gear targeting the same species	Fishers with fishing gear targeting different species	Local SSF and national industrial fishers	Fishing community and recreational fishery	Competition between communities over the resource	Fishing communities and seasonally migrant fishers					
	C	4- External allocation										
		Domestic vs Foreign			Competing ocean/space uses							
	Q	Type of conflicts involving non-fishery sectors and the fishery's participants										
		Local SSF and foreign industrial fishers	National industrial fishers vs foreign industrial fishers	Legal vs Illegal	Agriculture	Pastoralist groups looking for access to water	Tourism	Aquaculture	Infrastructure and industrial projects	Mining, oil, or natural gas extraction	Land owners*	Conservationists/ MPAs*
		5 - Other political, social, economic and environmental factors *										
	Political instability	Labour conditions	Cultural loss	Lack of education	Environmental degradation	Economy health	Lack of infrastructure					

(5) Other political, social, economic and environmental factors

This category encompasses socio-political and environmental challenges that interfere in the fishing activity, by directly affecting the fisher livelihood and environment and therefore are direct drivers of fisheries conflicts. These are related to:

- Political instability;
- Labour conditions;
- Cultural loss;
- Lack of education;
- Environmental degradation;
- Economy health; and
- Lack of infrastructure.

2.2.2 Compilation of the data

Once the merged typology was set, the data was compiled. First, the questionnaires were listed and each of them was attributed a unique identification number (UID number). The list of cases and corresponding UID number is in Annex 1. In order to compile the questionnaires data first, the closed answers were coded. 0 recorded the 'No' or an answer not selected, 1 was equivalent to a 'Yes' or a selected answer, while '-8888' stands for 'not applicable' and '-9999' for 'unanswered question'. The open-ended questions from the questionnaire as well as the case studies were subsequently coded. This implied to first identify key-words in individual and/or a group of answers. The key-word itself could become the name of a new category of answer for the question being treated, or grouped with similar key-words in order to form a new category.

Taking it into consideration, in the case studies, apart from the word 'conflict', the content related to key-words such as 'issue', 'challenge', 'disputes', or even 'risks' and 'constraints' were spotted in order to embrace the complexity of conflicts and avoid loss of information. However, when the conflicting situation was not explicitly explained, the conflict hasn't been recorded. Furthermore, other conflicts or challenges were also identified in the case studies even when these key-words were missing. An example is given by the following extract:

“The fact that fishing effort is highly limited and controlled for the indigenous fishers and that they are not allowed to sell their catch, puts them into a very unfair position towards the transporters and other middlemen, who can easily exploit this situation.”

(Case study on the Indigenous fishing in the Bermejo river, Argentina)

It reports several conflicts (of interest) and/or issues that were subsequently recorded, such as:

- “[...] the fishing effort is highly limited and controlled” is considered a ‘Management plans’ and ‘Enforcement’ conflict;
- “[...] they [indigenous fishers] are not allowed to sell their catch” becomes a Property right and allocation conflict;
- “[...] puts them [the indigenous fishers] into a very unfair position towards the transporters and other middlemen, who can easily exploit this situation.” can be recorded as a Fishermen vs. processors conflict.

2.2.3 Statistical analysis

Exploratory statistics were made with basic frequency counting and graph visualization in Excel. This allowed a comprehensive overview of the most striking results that called for further investigation. The relative frequencies (%) of occurrence of the different type of conflicts for each of the 5 big categories were calculated by standardizing the sum of conflicts recorded for each of them with the number of sub-classification. This was done to take into account the fact that a higher number of sub-categories would result in a higher number of recorded conflicts. For example, to get the frequency of conflicts related to *Fishing Jurisdiction*, the total N conflicts recorded within the whole category was first summed, and this result was divided per 3, equivalent to the 3 sub-classifications nested to *Fishing Jurisdiction*, namely *Property rights*, *Role of government* and *Intergovernment conflicts*. This procedure was rerun for each of the 4 other big categories of the merged typology.

Quantitative trends in fisheries conflicts were investigated by confronting the occurrence of the different types of conflicts with: (1) the development rate of the countries where they take place; (2) whether it related to inland or marine fisheries; (3) the fisheries management system in place.

To account for the development rate of the country, the Gini Index was used, and downloaded from the online database developed by the World Bank Development Research Group. The Gini Index is a measure of the wealth distribution of a country⁹. A Gini Index of 0 corresponds to a perfect distribution, and 1 is a perfect inequality situation. Data on the type of fishery (inland or marine) as well as the management system in place issue from the questionnaire's answers.

Results on the types and effectiveness of conflict resolution mechanisms in place in the 66 cases are also reported through pie chart and graphs. For a given type of CRM, the relative frequency of its perceived effectiveness was calculated as follows:

$$FCRM_a = (\sum f(CRM_a)) / (\sum f(CRM))$$

where $FCRM_a$ is the relative frequency of perceived effectiveness 'a' of the given CRM type; and f is the absolute frequency of a variable.

2.3 Exploring the international fishery instruments to address fisheries conflicts

Internationally, many institutions with different status and composed by an array of member States, contribute to the governance of fisheries¹⁰. They provide and disseminate information based in scientific advice for decision-making, promote policy advices to member States in line with the Sustainable Development Goals (SDGs), supporting them in its effective development and implementation, and strengthening cooperation. This is the case of the Food and Agriculture Organization of the United Nations (FAO). Concretely, among other accomplishments, FAO

⁹ The Gini Index is calculated "based on the comparison of cumulative proportions of the population against cumulative proportions of income they receive." Income inequality, OCDE webpage. Available online at: <https://data.oecd.org/inequality/income-inequality.htm>. Consulted in February 2019.

¹⁰ For more information on international fishery bodies, see: Lugten G. 2010. The role of international fishery organizations and other bodies in the conservation and management of living aquatic resources. FAO, Rome. 123 pp. Available at: <http://www.fao.org/3/i1493e/i1493e.pdf>.

produces, publishes and disseminates voluntary international instruments and codes of practice in fields related to its mandate¹¹. Such non-binding instruments¹², which differentiate into international and regional ones, set globally consented guidance towards the achievement of the SDGs.

In this perspective, this study analyses three documents published by FAO in the fisheries field, in order to verify (1) if, and how, they address fisheries conflicts, and (2) if they provide solutions to these conflicts. These are: the Code of Conduct for Responsible Fisheries (CCRF, FAO 1995), the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGTs, FAO 2012), and the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication (SSF Guidelines, FAO 2014) (Figure 4).

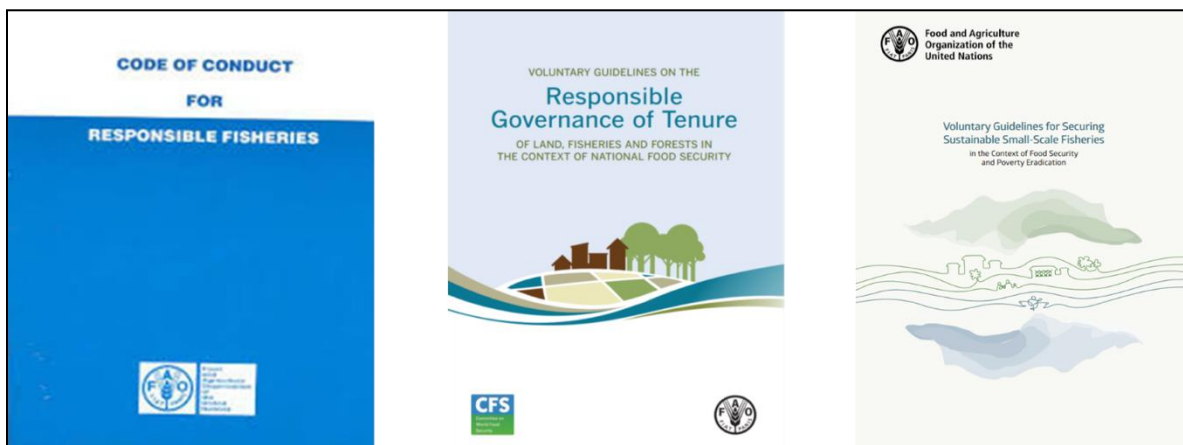


Figure 4 - The CCRF, VGGTs and SSF Guidelines: three key international fisheries policy instruments published by FAO.

The choice of these three instruments answers to different considerations. On the one hand, the CCRF is a key international instrument with a broad scope intended to address fisheries management sustainability, published in the mid- 90's. On the other hand, the VGGTs and SSF Guidelines, dating from the 2010's are advocates of a strong recognition of the social aspects and importance of fisheries, and more specifically the small-scale sector, with a great emphasis in marginalized groups. All of them are highly referred to nowadays in the scope of fisheries management, as well as used as baselines for all FAO's fisheries initiatives. Therefore, by analyzing the three publications together, different periods of time with their specific running global paradigms regarding fisheries management as well as FAO's vision could be covered. It also ensured that both high seas/industrial fisheries as well as coastal and inland fisheries/small-scale sector would be contemplated.

¹¹ To give a sense of FAO's main lines of action, the organization is composed of 8 departments which are the: (i) Agriculture and Consumer Protection, (ii) Climate and Biodiversity, (iii) Land and Water Department, (iv) Economic and Social Development, (v) Fisheries and Aquaculture, (vi) Forestry, (vii) Corporate Services and Technical Cooperation and (viii) Programme Management.

¹² Non-binding international instruments such as codes of conduct and guidelines are also referred to as 'Soft Law' instruments.

2.3.1 The Code of Conduct for Responsible Fisheries (CCRF)

The development of the Code of Conduct for Responsible Fisheries (CCRF, FAO 1995) ensues from two pivotal moments. In 1991, the Committee on Fisheries¹³ (COFI) called to develop new conceptualized tools in order to support the realization of sustainable fisheries. The year after, the development of these tools was further upheld at the International Conference on Responsible Fishing that took place in Cancún, Mexico. The CCRF was published in 1995, succeeding in 13 years only the very symbolic United Nations Convention on the Law of the Sea¹⁴ (UNCLOS), which established, among other rights and duties, the limits of the Exclusive Economic Zones (EEZs). CCRF is also concomitant to the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas, speaking to the strong interest in transboundary-related issues and high seas that was hovering over global fisheries debates at that time. In this context, the CCRF intended to provide “principles and standards applicable to the conservation, management and development of all fisheries”, while “it also covers the capture, processing and trade of fish and fishery products, fishing operations, aquaculture, fisheries research and the integration of fisheries into coastal area management” (Paragraph 1.3. Article 1).

The code spans over 41 pages, 12 articles and 2 annexes (see Annex 2 for details on the table of contents).

2.3.2 The Voluntary Guidelines on the Responsible Governance of Tenure (VGGTs)

The Voluntary Guidelines on the Responsible Governance of Tenure in the Context of national Food Security (VGGTs) were endorsed by the Committee on World Food Security¹⁵ (CFS) in 2012. They build on the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security (FAO 2005). The VGGTs issue from a highly participatory elaboration process that involved open-ended working groups in regional consultations, with stakeholders representing a variety of interests. The main objective of this document is to “[...] improve governance of tenure of land, fisheries and forests [...] for the benefit of all, with an emphasis on vulnerable and marginalized people, with the goals of food security and progressive realization of the right to adequate food, poverty eradication, sustainable livelihoods, social stability, housing security, rural development, environmental protection and sustainable social and economic development.” (Paragraph 1.1.–Part 1 – 1. Objectives). These guidelines have 40 pages, divided in 7 parts (see Annex 3 for details on the table of contents).

¹³ The Committee of Fisheries (COFI) is a subsidiary body of FAO composed of representatives of member-states as well as non-member states, non-governmental organizations, and other stakeholders. Its mandate, among others, is to serve as a forum where non-binding international instruments such as guidelines, are negotiated. Source: <http://www.fao.org/about/meetings/cofi/en/>. Consulted in January 2019

¹⁴ The UNCLOS became effective in 1994, ratified by 168 parties (167 States and the European Union). Source: https://www.un.org/depts/los/convention_agreements/convention_overview_convention.htm. Consulted in January 2019

¹⁵ Similarly to the Committee on Fisheries, the Committee on World Food Security supports the development of international guidance within the food security and nutrition fields. It reports to the UN General Assembly and the FAO Conference. Source: <http://www.fao.org/cfs>. Consulted in January 2019.

2.3.3 The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (SSF Guidelines)

The Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries in the Context of Food Security and Poverty Eradication was published by FAO in 2014, with forewords from Director-General José Graziano da Silva. The SSF Guidelines are embedded in the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food, the VGGTs, as well as the Principles for Responsible Investment in Agriculture and Food Systems¹⁶. The process of elaboration of the SSF Guidelines had its milestone during the COFI meetings of 2011 and 2012, simultaneously to a participatory and bottom-up global process with different fisheries stakeholders from around the world. These guidelines are intended to “support the visibility, recognition and enhancement of the already important role of small-scale fisheries and to contribute to global and national efforts towards the eradication of hunger and poverty.” (Preface, p. ix).

The SSF Guidelines are constituted of 18 pages, and the detailed table of content can be found in Annex 4.

2.3.4 Analyzing fisheries conflicts through the lenses of the CCRF, VGGTs and SSF Guidelines

The present study verifies if, and how, the CCRF, VGGTs and SSF Guidelines address the fisheries conflicts found in the 66 cases and provide solutions to it. For doing so, in a first moment, the three international instruments were reviewed through a careful content analysis to highlight what types of conflicts obtained in the resulting classificatory typology of fisheries conflicts were mentioned in the publications. In a second moment, keywords of the conflict and conflict resolution lexicon were highlighted, summarized in a table showing the absolute frequency of citation of these words in each of the documents (excluding citations from the Table of Contents and Preface and other meanings of the keywords not pertinent to the conflict (resolution) lexicon), and schematized. Finally, an argumentative analysis discloses a comparison among the three instruments. The analysis presented in this work is supported with quotas extracted from the case studies, identified by their unique identification number (UID number) (c.f. Annex 1).

¹⁶ The Principles for Responsible Investment in Agriculture and Food Systems were endorsed by the CFS in 2014 and are available at: <http://www.fao.org/3/a-au866e.pdf>.

3 ASSESSING FISHERIES CONFLICTS

3.1 Discussion on common who's, why's and where's of fisheries conflicts around the world: a literature review

The 5 types of conflicts found in the merged typology of fisheries conflicts were already reported in many parts of the world. This section illustrates and discusses each type of conflict based on findings from a literature review.

3.1.1 Conflicts over Fishery Jurisdiction

In the literature, this category of conflict is widely reported, and they relate to *Property rights* issues, which are very often linked to the *Role of government*, and/or to *Intergovernment conflicts*. Salayo *et al.* (2006) highlights such fishing issues in Southeast Asia, and more specifically Cambodia, Philippines, Thailand and Bangladesh, while Bennett *et al.* (2001) shed light on Bangladesh, the Turks and Caico Islands and Ghana. In these cases, the reported conflicts are mainly related to *Property rights* issues, which are in turn linked to the centralized and often top-down role of government. In Ghana however, the important local customary institutional framework to fishery management, i.e. a less centralizer government, is a component that can partly explain the lack of such conflicts. Fisheries conflicts over *property rights* revealed different groups disputing the access to the fishing resource and fishing grounds. However, two common opponent constellations are: (1) large-scale owners (of property rights) against the small-scale ones, and (2) the right holders legitimated by the State, against communities that have historically practiced fishing in the area. Often, these confrontations are embedded within each other, and the large-scale producer is favored by the State in the perception of the traditional small-scale harvester. Bavinck *et al.* (2014) explain that one of the origins of such imbalance can be situated between the late XIXth – XXth centuries, linked to the post-colonialism global setting. Most developed nations boosted an export-oriented market, based in technological improvement that left those who “weren’t able to upgrade their activities” (Bavinck *et al.* 2014, p. 153) behind, remaining poor. This *status quo* remains until nowadays and is the cause of the type of conflict addressed here through *property rights*. An illustration is the Lower Songkhram River Basin case, in Northeast Thailand, as reported by Khumsri *et al.* (2009). Set in the turbulent political history of the second half of the XXth century and in a move towards governmental decentralization, individually owned barrage fishing grounds were aimed to be converted into the common property belonging to the local communities. However, the difficulty to achieve such a conversion led to various conflicts arising from an unequal access to barrage fishing, conflict that keep pulsing nowadays.

Interestingly, conflicts around the specific *role of government*, i.e. a more centralized or decentralized management, are less systematically reported as a fisheries conflict per se. In a study on conflicts around small-scale fisheries (SSF) in Colombia (Saavedra-Díaz *et al.* 2015), the debate over the role of government is not cited by fisheries experts nor the fishers, as a cause of conflict when asked about the government-administration and institutions issues. In fact, these bipolarized views on a more or less (des)centralized approach in fisheries management is most likely mentioned as a factor hampering a successful fisheries management, while a weak governance and

a low participation of fisher in the decision-making process is instead recurrently pointed out as main drivers of fisheries tensions. This is addressed in Southeast Asia (Pomeroy *et al.* 2016), Africa (Bené *et al.* 2009), Latin America and the Caribbean (Gasalla & de Castro 2016), and Europe (Mikalsen & Jentoft 2008).

Intergovernmental conflicts have been largely reported at different spatial scales and institutional levels. They involve claims between countries for marine jurisdiction through the Exclusive Economic Zones (EEZs), disputes between fishers from different countries over transboundary stocks or fishing grounds (often due to a weak definition of the fishing rights), or fishing communities being prey to external threats (sometimes life threatening). Often, these types of conflicts are linked with Illegal, Unreported and Unregulated (IUU) fishing perpetrated by *outsiders*. A global panorama of international fisheries conflicts over the last 40 years suggests that intra-continental conflicts respond for 64.8% of all fisheries conflicts recorded, while inter-continental ones were less frequent (35.2% of the records). Furthermore, in descending order, the countries most involved in these conflicts were: the United States of America, followed by Canada, Japan, China and the European Union (Spijkers *et al.* 2019)¹⁷. Another well documented intergovernmental conflict is the so-called ‘Cod wars’. Iceland and the United Kingdom were involved in a dispute over the delimitation of fishing limits. It started with Iceland expanding its marine jurisdiction to 12 nautical miles in the 1950’s, and this decision not being respected by the British fleet. The conflict escalated to violent acts such as boat ramming, gun shooting and destruction of nets¹⁸. Finally, an inland case of transboundary fisheries conflicts is currently going on in two of Tanzania’s major lakes (Glaser *et al.* 2018). In Lake Tanganyika, fishers were attacked by rebel groups, sometimes leading to death, for their fishing gears and vessels, while in Lake Victoria, disputes over fishing grounds between Kenyan, Ugandan and Tanzanian fishers are still ongoing.

3.1.2 Conflicts over Management Mechanisms

The category of conflicts around the development of *fishery management plans* is very much linked to allocation contestations, both internal as well as external. In the literature, this specific type of conflict has not been found to be mentioned as such. Pomeroy *et al.* (2001) however identify conditions that enhance the effectiveness of co-management systems in Asia, and, when these are lacking, conflict may arise. Nevertheless, in some cases, it is the total lack of regulation that is the main trigger of conflicts, as is the case of SSF in Colombia (Saavedra-Díaz *et al.* 2015).

Conflicts linked to *Enforcement*, both over-enforcement as well as lack of enforcement were very much cited in the literature. Although it is not always the case, it seems that the first could rather be recurrent in developed countries, while the latter is more susceptible to characterize poorer countries with weaker governance (Bennett *et al.* 2001; Okeke-Ogbuafor *et al.*, *in press*). Salayo *et al.* (2006) reveal that these kinds of conflicts take place in the study areas in Cambodia, Philippines, Thailand and Bangladesh. Conflict over enforcement may also be linked to corruption, when fisher pay the enforcing authorities to overlook them infringing the law (Islam *et al.* 2017).

¹⁷ The type of conflicts considered in the study were classified as a function of their intensity and number of fish species involved.

¹⁸ For further details on the ‘Cod wars’ through an interesting international politics perspective, see: Steinsson S. 2016. The Cod Wars: a re-analysis. European Security [online]. <http://dx.doi.org/10.1080/09662839.2016.1160376> Consulted in January 2019.

The *Interaction between fishers and the government* is often cited as a source of conflicts in fisheries, mainly when fishers feel they are not being taken into account in the decision-making process. The interaction strongly varies with how (des)centralized is the fisheries governance structure and the management system in place, apart from the own perception of the fishers. For example, in the Turks and Caico Islands, although the access to the responsible official bodies (in this case the Department of Environmental and Coastal Resources and the Ministry of Natural Resources) is relatively high, fishers don't feel sufficiently part of the decision-making process (Bennett *et al.* 2001).

3.1.3 Conflicts over Internal Allocation

Conflicts that fall under this category are most well recorded when they relate to *gear wars* conflicts and *user groups* conflicts, but conflicts between harvesters and post-harvesters stakeholders seem to be less emphasized. The first two are generally linked to competition for a common resource or competition for access to the same fishing ground (Kaiser 2014), and may interweave (Charles 1992, Okeke-Ogbuafor *et al. in press*), often related to poorly defined fishing rights. In fact, *Gear wars* conflicts may involve clashes between static and mobile gears, and those, in turn, can relate to subsistence/small-scale fishing and large-scale vessels respectively, since these latter are likely to be powerful enough to pull a fishing gear under water. This is for example depicted in detail in the case of European Union's fisheries (Kaiser 2014), as well as in Australia and Indonesia (Richardson *et al.* 2018). In Southeast Asia (but also West Africa, Pomeroy *et al.* (2016, p. 96) exemplifies 'Violence among fishers operating at different scales' with events such as "domestic purse seiner destroying nets laid by small-scale fishers" or "foreign trawlers navigating aggressively towards or colliding with artisanal fishers", in the words of the authors. This type of conflict can be classified as *user groups* conflicts as well as *gear wars*, since they both raise from the competition over a fishing ground. Another driver of *gear wars* is the introduction or change in the gears technology that may: (1) enhance competition as reported in 47% of the inland fisheries conflicts addressed in Tanzania (Glaser *et al.* 2018) but also in Brazil (Joventino & Johnsson 2018), (2) provoke discontentment due to the ascertainment that the more technological gear is destroying the aquatic habitat at stake. The typical user group conflict is illustrated by the dichotomy between small-scale versus industrial fisheries, well discussed from a legal pluralist perspective in the South by Bavinck (2005). These types of conflicts are particularly key to address as they represent the second cause of fishing gear loss and therefore largely contributes to ghost fishing in Southeast Asia and Australia (Richardson *et al.* 2018), but also because they can lead to violent hostility acts.

Fishers migration have been undertaken for several centuries, but the triggers and conditions of such movements are constantly changing. In an interesting description of mobility dynamics of fishers in Africa, Westlund *et al.* (2008) highlight important factors at play in this process: (1) traditionally migrations were mostly moved by the geographical variability of the stocks (Randall 2005 cited in Westlund *et al.* 2008), (2) seasonally migrants constitute one type of emigrate ¹⁹ defined as "Fishing people, sometimes including family members, that stay in foreign fishing settlements for one or two seasons and then return home for a certain amount of time." (p. 86); (3) causes of contemporary migrations are diverse but mostly political from avoiding social obligations, political/civil conflicts, poverty, lack of socio-economic infrastructure, to lack of

¹⁹ The 5 other types of fisheries migration defined by the authors are: (1) Internal migration; (2) Short-term migration; (3) Long-term migration; (4) Permanent migration; and (5) Contractual migration.

alternatives to fisheries and environmental degradation/reduction in fish stock abundance; and finally (4) ensuing conflicts often express the clash between the newcomers and local inhabitants, mainly when they use the same gears or exploit the same resource, but also arising from cultural and religious differences. Nowadays, other factors are progressively increasing their influence upon fishers migration, as is the case of climate change (Belhabib *et al.* 2016), the construction of infrastructure and industrial projects such as hydroelectric dams²⁰, as well as creation of marine protected areas (Crespi *et al.* 2014).

Finally, conflicts between fishers and post-harvesters generally involve a situation where fishers find themselves impaired due to the low purchase price imposed by a monopolized market, but also intermediary taking advantages on the producers, or indebting fishers (Saavedra-Díaz *et al.* 2015). An example in Ghana is given by Bennett *et al.* (2001) who reported recurrent conflicts over the fish price: the fishers claim that the intermediaries, who are mostly women, set the price of initial purchase too low, while the women argue that fishers are not realistic about the catch value.

3.1.4 Conflicts over External Allocation

If the first 3 big categories of fisheries conflicts (*Fishery Jurisdiction, Management Mechanisms* and *Internal Allocation*) are more documented for the marine realm, *External Allocation* conflicts are particularly threatening inland fisheries, and interestingly the threats that are of bigger concern seem to slightly differ with those over marine fisheries. In Latin America, they are mainly related to infrastructure projects and others linked to the hydrological system (reservoirs, channels), and specifically hydroelectric dams (FAO 2018), present worldwide (Marmulla 2001). Increased external allocation conflicts take place between fisheries and aquaculture, industries, mining, oil and gas extraction, as well as tourism, agriculture, navigation and sand quarrying. These enterprises often hamper or preclude the access by fishers to the fishing grounds, affect fish migration, pollute the environment as well as modify the local social tissue. This process is designated as ‘Ocean grab’²¹ at the global marine level by Franco *et al.* (2014) under the light of political ecology. Conflicts between fishers and conservationists initiatives such as the implementation of protected areas are recurrent in South American, Indian and South Pacific fisheries (Franco *et al.* 2014). This type of conflict is often due when the protected area is created without including fishers in the process of creation of the protected area. In Brazil for example, fishers from Taperebá argue that fish stocks collapsed after the creation of the Cabo Orange Natural Park in the 1990’s since local fishers wouldn’t exercise their customary surveillance anymore. As they are not able to fish anymore, fishers often migrate, therefore modifying the local economic dynamics and highly impacting their livelihoods.

All types of illegal fishers and outsiders were also considered as external allocation agents since they are not officially recognized as stakeholders of the fishery. Illegal fishing is estimated to provoke worldwide fishing losses between 10 \$ bn to 23.5 \$ bn annually, with developing countries being the most exposed to such practice (Agnew *et al.* 2009). Illegal fishing is cited as

²⁰ “Construction of the Belo Monte dam has cast men, women and children who lived rich lives along the Xingu River to the outskirts of Altamira, Brazil’s most violent city. [...] At least 40,000 people were torn from their homes so Belo Monte could be built. Roughly 1,500 are *ribeirinhos*. There are also farmers, fishermen, and urban residents who lived in areas flooded by the dam.” They owned an island, now they are urban poor: the tragedy of Altamira, The Guardian, 06/02/2018.

²¹ The equivalent term ‘Land grabbing’ was first used to refer to the process of unequal appropriation of terrestrial resources.

both (1) an outcome of fisheries conflicts when, among others, the property rights are not well defined and/or enforcement over these regulations is weak or lacking, when there is overfishing (Pomeroy *et al.* 2016), fishers have their livelihood threatened (Franco *et al.* 2014) or a protected area is created against the communities' consent (Crespi *et al.* 2014); as well as (2) a trigger of fisheries conflicts (Pomeroy *et al.* 2016).

3.1.5 Other political, social, economic and environmental factors

Fisheries conflicts are intrinsically linked to socio-political and economic factors. Poverty, lack of education, lack of health services, ethnic and gender inequalities, political marginalization and low conditions of life can directly explain the raise of fisheries conflicts. Some scholars mention such parameters as to set the context where the conflict takes place, or arguing that they are drivers of fishery scarcity, which, in turn feed the 'fish wars cycle' (Pomeroy *et al.* 2016). It is argued here that they are *per se*, direct triggers of fisheries conflicts. In fact, instead of the recurrent expression of 'lack of political will', in several occasions there is instead a generalized and more or less diffuse will, at the global as well as governmental level to maintain the *status quo* of marginalization of fishers and social inequalities, in line with Franco *et al.* (2014)'s arguments.

At the nation's level, different levels of democracies, types of governments and their political line in place highly influence the rate and modalities of exploitation of natural resources, together with the functioning of the fisheries management institutions. If a more participatory and human rights based approach allows more effective fisheries co-management to take place, conflicts are likely to be lower than under authoritarian governance which tend to enhance the marginalization of small-scale fishers (de Castro *et al.* 2016). Bavinck (2005) and Bennett *et al.* (2001) discuss the role of institutions, both formal and informal, in addressing fisheries conflicts. It is important to note the issues of harmful subsidies (Arthur *et al.* 2019) and recurrent corruption (Sumaila *et al.* 2017) in the fisheries sector as important role-players, among others, in the degradation of the environment and maintenance of concentration of property rights in the hands of most powerful fishing enterprises.

Similarly, low levels of wellbeing and other decent livelihood parameters lead to insecurity and are directly responsible for fisheries conflicts. Drug trafficking and violence affect SSF fisheries in Colombia (Saavedra-Díaz *et al.* 2015), as well as provoke violent civil unrest in various African regions. In Sierra Leone, Okeke-Ogbuafor *et al.* (in press) go further to identify several characteristics of a 'wicked problem'²² in small-scale fisheries; even the Ebola outbreak in 2014-2016 was found to be linked to a conflicting situation in the fishing activity.

Regarding environmental changes, coastal and natural erosion (Bennett *et al.* 2001), pollution, as well as climate change (Pinsky *et al.* 2018) are other important settings that can originate fisheries conflicts.

²² In the words of the authors, a 'wicked problem': is difficult to define, has no stopping rule, and solutions to them are not clear, not true or false but good or bad, among many others.

3.1.6 Common features of fisheries conflicts

Natural resource conflicts present underlying and common characteristics that are important to highlight as a framework to understand and address fisheries conflicts.

First, a conflict typically shows different phases from the moment it occurred, until it is resolved. Castro & Engel (2007) identify, in a first moment, a latent conflicting situation, that evolves to a visible and expressed conflict, triggered by a specific event²³. The 'latent' phase is the moment where a situation of discordance is installed between stakeholders, embodied in (a) social tension(s). Either the parties are not conscious of these discrepancies, either they are not able to express them. This phase is also equivalent to the 'formation' phase of the conflict (Cox *et al.* 2002). While the conflict progressively 'emerges', at some point it becomes 'manifest', i.e. the parties involved express their differences. The emerging process can be sustained by one or more specific events, and eventually evolve to the escalation of the conflict in terms of magnitude and amplitude. Figure 5 schematizes this sequence.

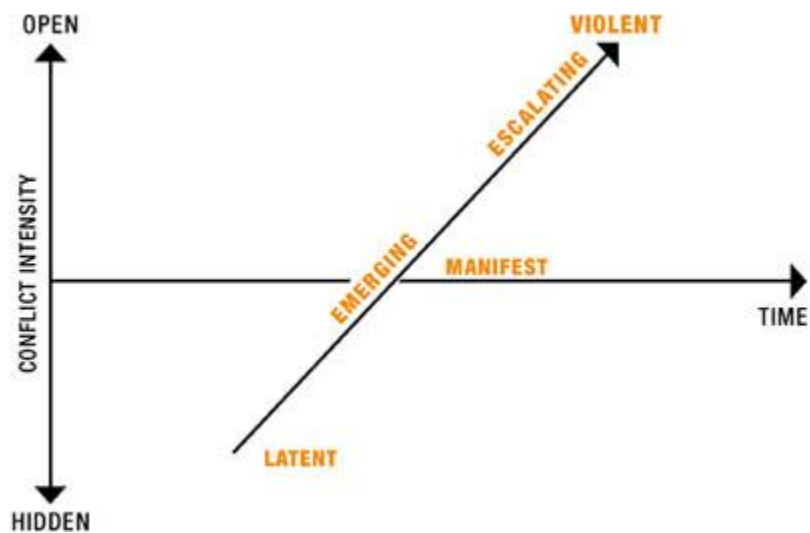


Figure 5 - Scheme of the stages of a conflict over time. Source: Castro & Engel (2007).

Cox *et al.* (2002) also refer to this moment as the 'manifestation' phase, defined as the moment when the dispute manifests itself as conflict. Cox *et al.* (2002) further suggest that after 'manifestation', there are the 'endurance' and 'transformation' moments in which the conflict pursues in a dynamic way, and then evolves into another situation, either of conflict, either of agreement between the parties and end of the conflict.

The political, social, economic and environmental factors are determinant in this process. Conflicts can be latent and not expressed for a variety of reasons: there might be a potential conflicting situation but the trigger situation has not taken place yet; there might be no political arena for externalizing and negotiating the conflict; or the parties might not have enough tools to express and advocate for their claims. For instance, Belhabib *et al.* (2019) associate the fewer international fisheries conflicts over EEZs in Africa to lower levels of enforcement together with the flexibility of release of fishing licenses for foreign fleets to obtain a license. However, if this situation is likely to stimulate the small-scale fisher's discontentment as they will see their fishing

²³ This specific event therefore cannot be considered as the cause of the conflict by its own, and this is an aspect of the complexity of fisheries conflicts, that will be addressed in the aftermath.

activity threatened in socio-economic as well as ecological aspects, the question that arises is whether this discontentment is being (able to be) manifested. In this context, it is key to verify the existence of a democratic setting, i.e. the existence of the possibility of all parties to express and participate equally in the dialogue that names, constructs and transforms the conflict.

Secondly, the evolution of a conflict (Figure 5) is not linear, but rather cyclical. For example, the transformation phase can lead the initial conflict to evolve into a higher or lower-intensity level of conflict, or cause a new conflicting situation. This depends on how and when the conflict is addressed, as well as if it is highly connected with contextual factors and the original setting in which the initial situation burgeons. Salayo *et al.* (2006) show how 5 different types of fisheries conflicts studied in Southeast Asia, induce different threats to: livelihood (income), food security, as well as provoke environmental degradation and sometimes threatens fisher's life. In turn, a situation where human wellbeing is insecure enhances the propensity of conflicts to arise within and between communities.

Thirdly, conflicts have different intensities, expressed through levels of hostility. Bennett *et al.* (2001) and Salayo *et al.* (2006) study showcase non-violent conflicts, while Belhabib *et al.* (2019) findings suggest that, among the studied areas over the African continent, the Mediterranean, the Guinea current and Somali current present high levels of concern over fisheries-related security dimension; while the Canary current, Benguela and Agulhas current are classified as 'medium' relative level of concern. In the words of Bavinck *et al.* (2014), fisheries conflicts in general nowadays are more explosive and long-lasting than before. A contemporary expression found in the literature refers to more violent situations as 'fish wars', defined by Pomeroy *et al.* (2007) as "Conflicts and wars related to the rights over the use of land and water", that, among others, legitimates the increasingly used concept of 'maritime security' (Germon 2015). While States address 'maritime security', its agenda includes the fight against IUU, and other disruptive actions, including fisheries related, taking place in the marine domain.

Fourthly, a conflict exists through the perspective that each stakeholder²⁴ absorbs and emits towards it. And the positioning of an individual in the situation of a conflict will depend on this person's value and perceptions. Kaiser (2012, cited in Johnson *et al.* 2018) defines values as "reference points for evaluating something as positive or negative, as desirable or objectionable", and adds that it depends on the individual's dynamic rational and emotional premises, which, in turn, are shaped by this individual's history of life. To illustrate it, Saavedra-Díaz *et al.* (2015) find that perceptions of small-scale fisheries conflicts in Colombia varied not only geographically between the Pacific and Caribbean coast, as well as between clusters of stakeholders. When questioned about the causes of fisheries conflicts, local leaders primarily highlighted issues related to public infrastructure deficit, displaced people and institutional fragility, while fishers put forward the bad state of fishing resources, illegal and unreported fishing, as well as outsiders penetrating in their fishing grounds.

Finally, when conflicts and disputes are mentioned, it generally carries a negative connotation. However, such situations can be positive in their outcome and/or provoke social transformation. Based in theoretical arguments, Bavinck *et al.* (2014, p. 58) acknowledge that conflicts are a source of pressure for changes in interests, discourse and relationships (Lederach 2005 in Bavinck *et al.* 2014) within and among societies. In fact, in his "Apology of the polemic", Amossy (2014, p. 215) states that "the persistence of the clash is not a sign of failure, but a characteristic of the functioning of democracy." Therefore, just as reaching a consensus or

²⁴ Here, it is interesting to note the different definition that the word "stakeholder" may encompass. Ramirez (1999) cite a personal communication from Bisset (1998) who explained that modern definition of a stakeholder is "a person with an interest or concern in something", while "in the context of natural resource management, [...] Röling and Wagemakers (1998, p.7)" argue that "Stakeholders are [...] natural resource users and managers."

mitigating a conflict, the conflict itself is also a mechanism that enables people to coexist. Still, reaching a consensus and/or cooperation is commonly seen as the primary objective and ideal outcome when addressing a conflict. It was the outcome for example, of the conflict at the aftermath of the World War II. Nations increasingly claimed for their jurisdiction over their coastal waters and all the resources it included, both living and non-living ones, triggering the so-called ‘Cod Wars’. These episodes were key to trigger the process of establishment of a 200 nautical-miles limit that the United Nations Convention on the Law of the Sea (UNCLOS, 1982) would name the EEZs. This new delimitation helped in the establishment of bilateral agreements at the same time as it acted as preventer of intergovernmental conflicts (Nemeth *et al.* 2014).

3.2 What conflicts did we find?

From the 66 questionnaires, 43 of them - totaling 65% of the studied cases - concerned fisheries located in the tropical area (Figure 6). The fisheries belong, for 62% of the questionnaires, to the artisanal sector, while 19.7% are industrial, 15.2% encompass both industrial and artisanal sectors, and 3% were unidentified/unidentifiable. A total of 61 conflicting situations were recorded. In 5 cases, it was reported that there are no conflicts between the stakeholders in the fishery.

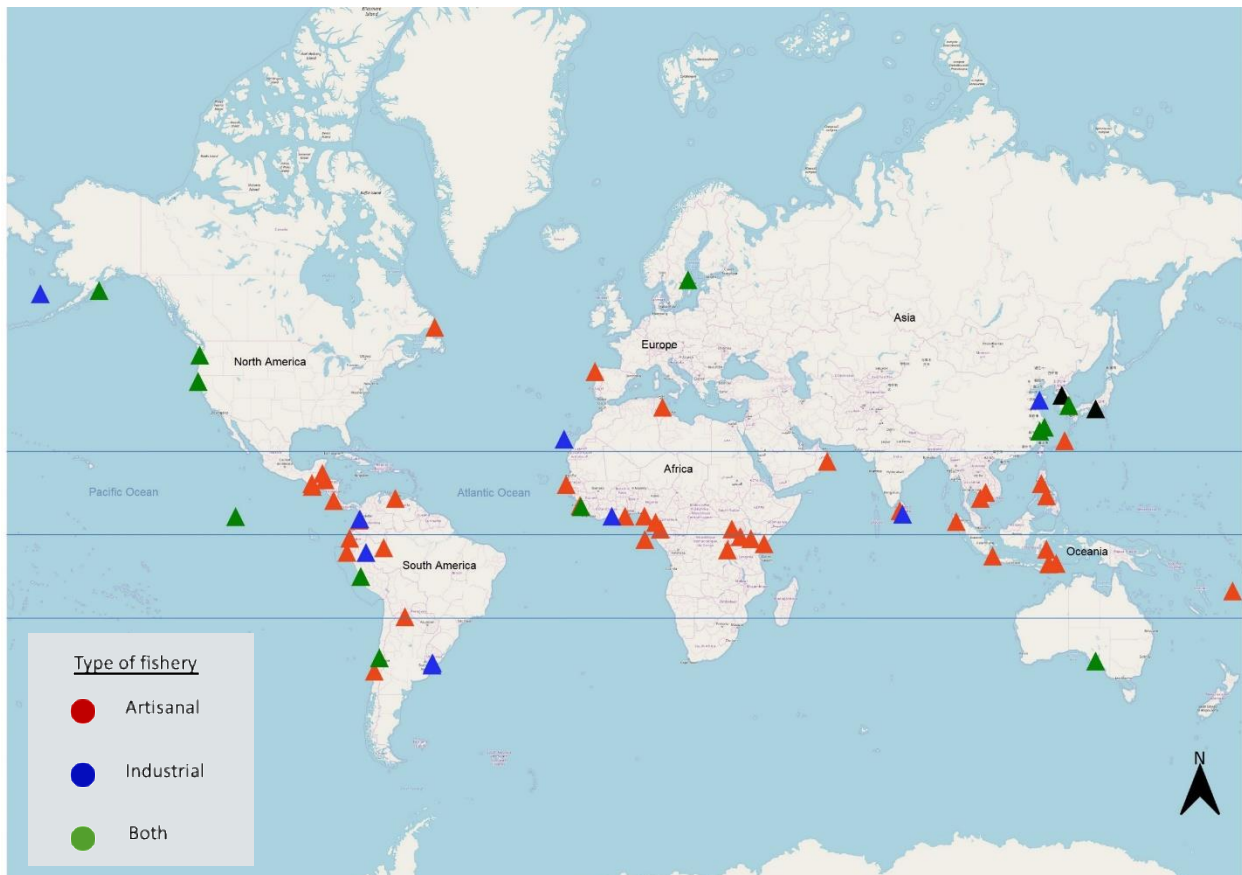


Figure 6 - Map of the approximate location of the fisheries portrayed by the 66 questionnaires. All the 66 points are not visible in the map because some countries were referred to by more than one questionnaire. The black color indicates that the fishing sector was not specified by the questionnaire’s respondent.

The resultant matrix from the compilation of fisheries conflicts was 66 (questionnaires) x 31 types of conflicts, equaling 2046 records of 0 (for ‘no presence of this types of conflict’) and 1 (meaning that the corresponding type of conflict was effectively verified for the corresponding fishery). Conflicts recorded totaled 364. Using the 5 categories of the classificatory typology built, 92.4% of the cases recorded conflicts (Figure 7). *Management mechanisms* issues accounted for 32% of the conflicts, and 29% were attributed to *Internal Allocation*. *Fishery Jurisdiction* and *External Allocation* conflicts accounted, respectively for 17% and 16% of the conflicts. *Other political, social, economic and environmental factors* summed 6% of all conflicts. In the aftermath, each category of conflict will be detailed, and illustrated by conflicts reported by the case studies.

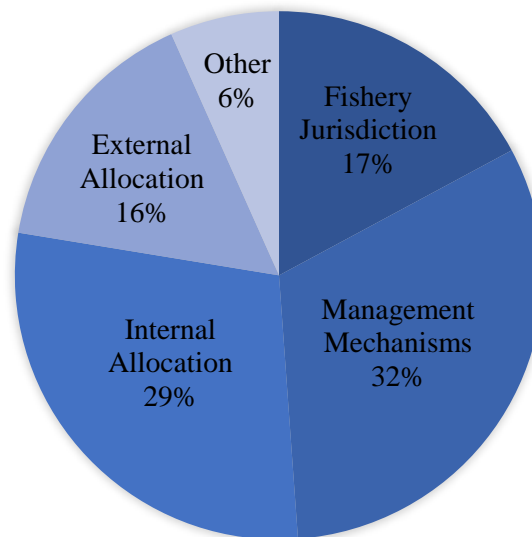


Figure 7 - Frequency of occurrence (in percentage) of each category of fisheries conflict found in the 66 cases. ‘Other’ refers to *Other political, social, economic and environmental factors*.

3.2.1 Conflicts over Fishery Jurisdiction

Within the group of cases that presented conflict(s) related to *Fishery jurisdiction*, 72% of them related to *Property rights*, followed by a quarter of *Intergovernmental issues* (Figure 9). Fishery Jurisdiction conflicts are, by far, concentrated in Developing countries (Figure 8).

Property rights conflicts were identified in the inland fisheries of Guatemala, where the traditional and ancestral tenure systems have been impacted since the imposition of a natural resource exploitation system at the colonization times. Nowadays, this disruption still influences and leverages a variety of conflicts between government institutions and traditional communities, and violation against ancestral organizational forms. A similar situation is also verified in Honduras and Japan, where the governmental authorities do not recognize the right to fish of native communities, unlike what happens to colonizers descendants or immigrants, now inhabitants in the regions, who have been granted fishing rights by the respective governments. *Property issues* in Cambodia are marked by the return of democracy in 1993, and together, the reoccurrence of

fishing lots, auctioned by the State. Such system benefited the local elite who were able to pay for these lots, regardless of the most marginalized communities.

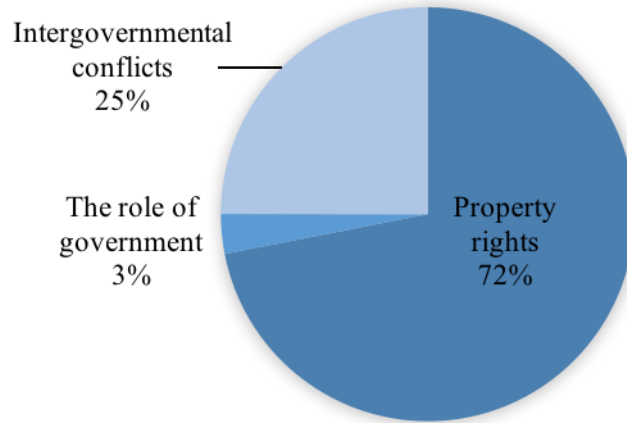


Figure 9 - Frequency of occurrence (in percentage) of each category of fisheries conflict related to Fishery Jurisdiction issues.

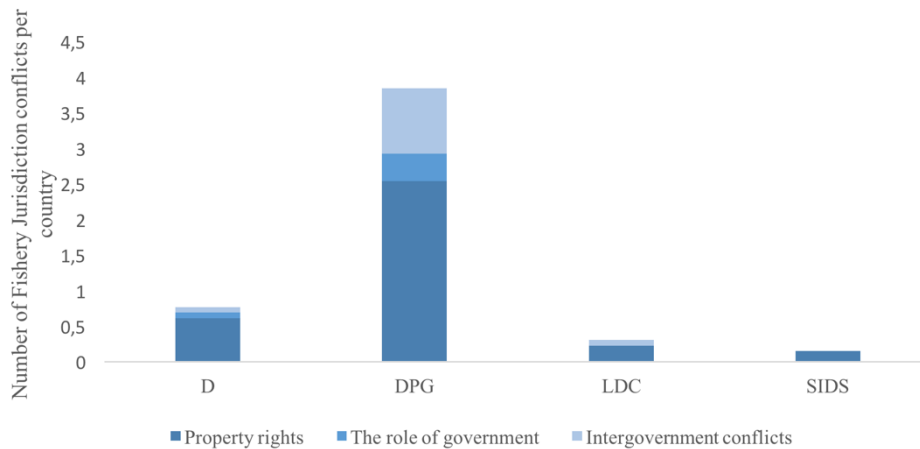


Figure 8 - Number of Fishery Jurisdiction conflicts recorded per country as a function of their economic development level. 'D' refers to Developed countries; 'DPG' are Developing countries; 'LDC' stands for Least Developed Countries; and 'SIDS' are the Small Island Developing States.

Intergovernmental conflicts mainly take place between neighboring countries, around shared stocks. The situation between Burundi and Tanzania illustrates the common case of unharmonized policies that lead to *Intergovernment conflicts* around the transboundary Lake Tanganyika SSF. In the Burundian side, the fishing regulation imposes closing seasons and forbids gillnets, while in Tanzania, gillnets are allowed and the closing fishing season is not practiced as it is in Burundi.

This poses an unfair situation that leads some fishers to blame the other shore of over-harvesting the resources as well as increasing their rents at their expense. A similar situation takes place in the transboundary region of the Colombian Amazon forest, where fishers from one country enter the neighbor's jurisdiction waters fishing with forbidden gears. Another conflict mobilizes the issue of the flag a vessel may have. Artisanal fisheries of Equatorial Guinea face conflicts with foreign fishers whose activities are not transparent while practicing flag of convenience

The role of government has been identified as a source of conflict in the case of the indigenous fishery in the Bermejo River, Argentina. This fishery was reported to suffer from a top-down management that hampers the participation of fisheries stakeholders in the decision-making process, while it doesn't provide any legal mechanism that guarantees consultative processes. The absence of regional offices further leaves rural communities aside from the governmental fisheries management.

3.2.2 Conflicts over Management Mechanisms

In this category, 68% of the conflicts relate to *management plans* (Figure 10), with the developing countries and SIDS leading in terms of number of conflicts recorded per country (Figure 11). Issues with *fishermen-government interactions* account for 19% of the *Management Mechanisms*-related conflicts, while *enforcement conflicts* were reported in 13% of the conflicts over the category.

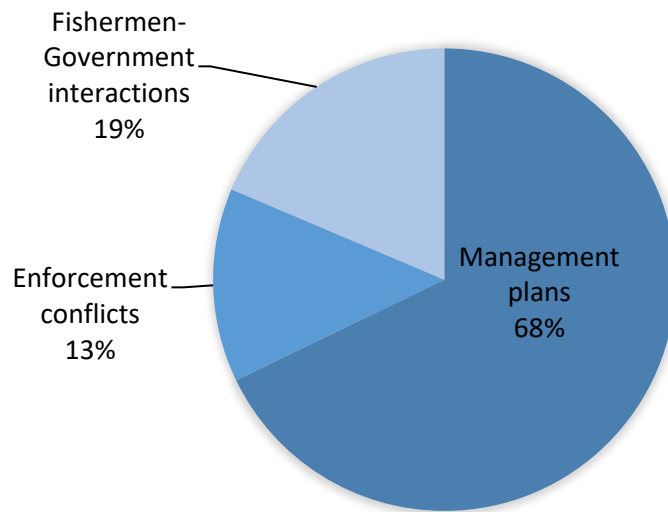


Figure 10 - Frequency of occurrence (in percentage) of each category of fisheries conflict related to Management Mechanisms issues.

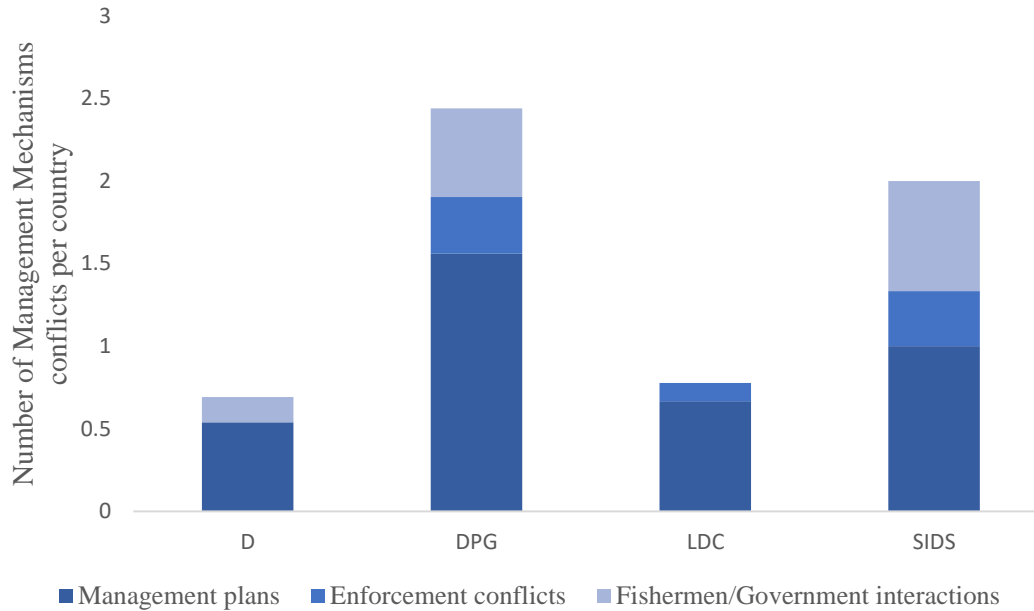


Figure 11 - Number of Fishery Jurisdiction conflicts recorded per country as a function of their economic development level. 'D' refers to Developed countries; 'DPG' are Developing countries; 'LDC' stands for Least Developed Countries; and 'SIDS' are the Small Island Developing States.

Issues related to *management plans* are of various types. It was reported to be at the centre of a fishery conflict in Japan. Some fishers are unsatisfied with the regulation of the pooling period, which provides an equal distribution of the income among all fishers. Some fishers argue that the government should take into account the different needs of the families, related with their structure, before establishing the repartition of the social protection. In Argentina, communities of inland fisheries claim for an increase in the fishing quotas. It is reported that such regulation is embedded in the misconception from the part of the government following which the indigenous communities only fish for subsistence instead of commercial purposes. In the transboundary coastal pelagic fisheries of Northwest Africa, artisanal fishers oppose to concede the surplus of catch to foreign countries as established by the existing fishing agreements. The multi-species indigenous fishers of Canada currently fight against some regulations imposed by the government upon their fishery, arguing that other fisheries segments are not subject to the same restrictions as they are. The same happens in Belize.

The *interaction between fishers and the government* has been conflictive in marine fisheries of the west coast of the United States. Fishers complain about the lack of accountability with regards to their experience, for the benefit of science. Similarly, fishers from the Colombian Amazon forest are affected by the lack of communication between harvesters and the governmental authority. This leads fishers to be excluded from the monitoring, surveillance and control processes, which, in turn, triggers cases of discontentment and non-compliance.

In some cases, the *enforcement conflicts* relate to the lack of, or a deficient enforcement, such as in China.

3.2.3 Conflicts over Internal Allocation

Competition between communities over the resource, conflicts between local small-scale and national industrial fishers and conflict between fishing communities and seasonally migrant fishers together account for 61% of the conflicting situations reported around *Internal Allocation* issues (Figure 12). ‘Gear wars’ come next, totaling 26% of the cases. Between countries, the group of DPG and SIDS account for most of the records of *Internal Allocation* conflicts, but the distribution of the type of conflicts between economic groups of countries (Figure 13) does not show a particular trend. However, it is interesting to note that no conflict involving recreational fisheries was reported for the LDC. This may be due to the lower development of the recreational fisheries in these countries compared to its importance in the richer ones.

Communities competition over the resource was identified in Costa Rica, Indonesia and Kenya, since the depletion of some fishing grounds lead fishers to explore other fishing grounds, triggering conflicts between communities. Often, the *outsiders* are found guilty of the dwindling stocks, among others by fishing with illegal gears or in protected areas.

Conflicts opposing *local small-scale fisheries (SSF) and national industrial fisheries (IF)* are present in the Colombian Pacific, among others. There, the State was reported to stimulate the industrial fleet through subsidies in the 1970’s, towards infrastructure and technological improvement, leading this sector to encroach in artisanal fishing areas. However, from 1982 on, monofilament trammel nets, also called “Electronic trammels”, were allowed for use by artisanal fishers. The low cost and high catch efficiency of this technique increased the artisanal production; leading the industrial one to decrease, and many industrial fishers to collapse. *Conflicts between SSF and IF* often sparkles in the form of a hostile act which is gear destruction. This is the case for the transboundary coastal pelagic fisheries from Northwest Africa Artisanal, as well as the lobster fishery in Kenya. Another expression of conflict between these two fleet is given in Equatorial Guinea, where the IF is reported not to respect the fishing limits attributed to the artisanal sector. A comparable situation is happening in the Pacific Colombian Coast with tuna ships infringing on artisanal fishing grounds. It has generated protests from the small-scale fishers.

Migrant fishers are often blamed for many of the burdens identified in local small-scale fisheries. For example, migrant fishers are considered to be the cause of a harmful increase of fishing effort in Nigeria’s coastal and inland fisheries. Such conflict was also verified in Northwest Africa as well as in the Municipality of San Joaquin, Philippines. In this latter locality, local fishers blame migrant fishers of using forbidden gears and devices such as superlight, cyanide and dynamite.

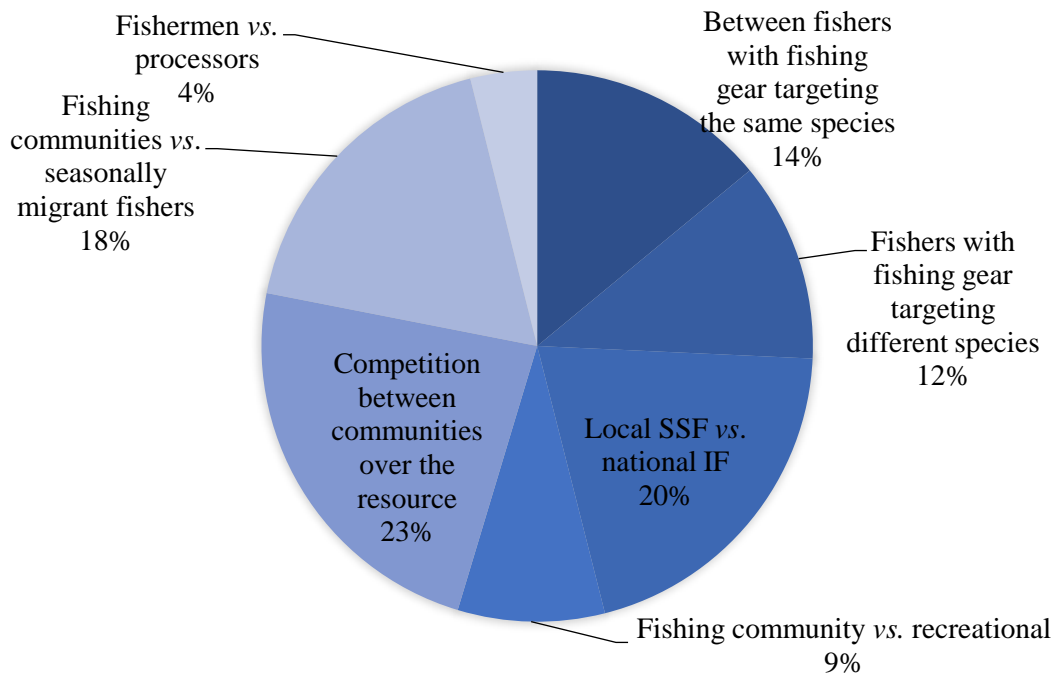


Figure 12 - Frequency of occurrence (in percentage) of each category of fisheries conflict related to Internal Allocation issues. Here, SSF stands for Small-Scale Fishers and IF stands for Industrial Fishers.

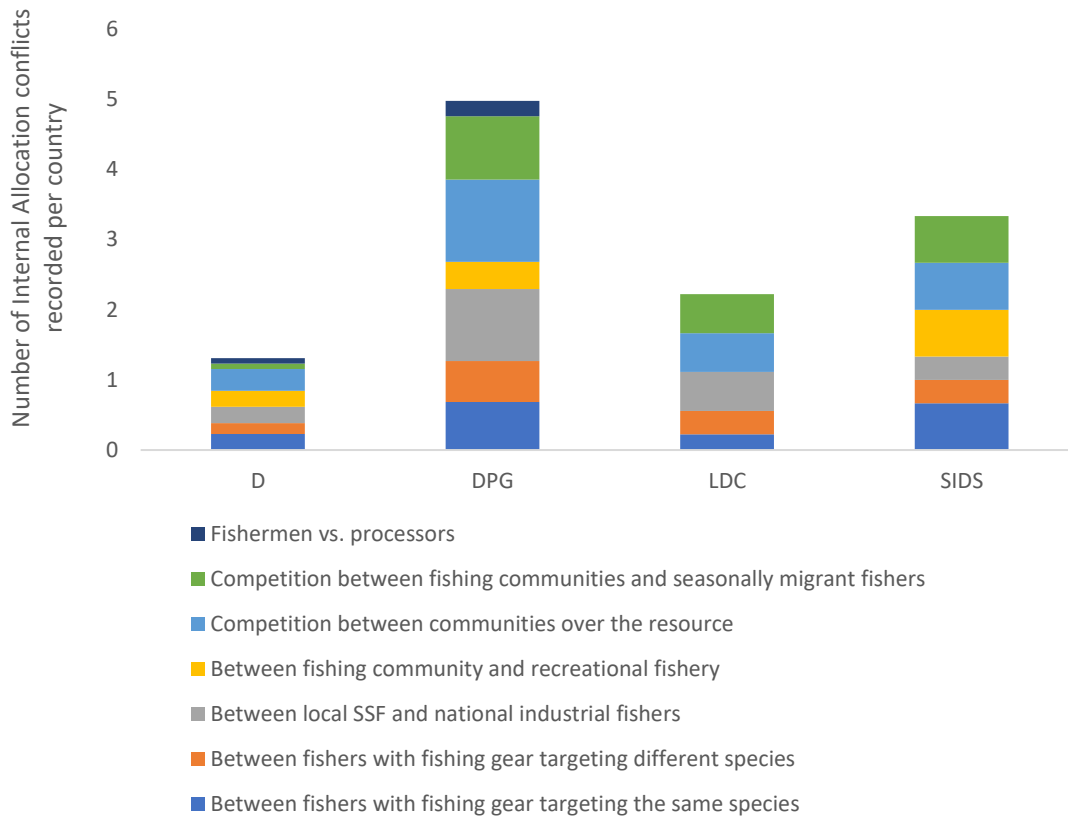


Figure 13 - Number of Internal Allocation conflicts recorded per country as a function of their economic development level. 'D' refers to Developed countries; 'DPG' are Developing countries; 'LDC' stands for Least Developed Countries; and 'SIDS' are the Small Island Developing States.

The two categories of conflicts: (1) *conflict between fishers with fishing gear targeting the same species* and (2) *conflicts between fishers with fishing gear targeting different species* encompass what is known as ‘gear wars’. The first type of gear war is illustrated by the conflicts between fishers Lake Tanganyika as well as Guatemala. The complains between fishers refer to the over-capacity of one type of gear, its lack of selectivity, or still that it encroaches in other gears (when one of them can drift away). It can lead fishers to cut their net sometimes in order to be able to disentangle them, causing financial losses. The second type of gear war was identified in the sardine fishery of Venezuela. This case reported an interesting conflicting situation between two different fisher groups, investing different fishing grounds, but which activities affect the smooth running of the other. In the spiny lobster fisheries of Japan, the issues are around a same fishing ground and gears entangling in one another, threatening fishers’ life.

Conflict between the fishing community and the recreational fishers affect the croaker coastal fishery in Uruguay. The situation was reported to involve competition and interaction between three groups of fishers: the industrial, the small-scale and the sport fishers. The resulting tensions are not only over the exploitation of the resource, but also over the use of the aquatic and terrestrial coastal space. The same type of conflict was verified in Guatemala.

Fisher and processors are in conflict, as reported, in Tunisia, Argentina, Indonesia and Kenya. In Tunisia, female clam collectors are in a situation of dependence and exploitation with respect to the intermediaries. In other cases, fishers are not allowed by law to sell their catch to the processing plants but only to local markets. This is verified in Argentina and Peru. Middlemen therefore take advantage of such vulnerable situation in which local fishers are. In other countries, fishers may be dragged into a debt cycle as traders give them loans or lend them fishing gears which they don’t owe. In turn, the middlemen can determine the landing prices as well as withdraw the possibility of fishers to protect their benefits.

3.2.4 Conflicts over External Allocation

In this category of conflicts, the issue most cited related to illegal fishing accounted for 24% of *External Allocation* issues (Figure 14). *Mining, oil, or natural gas extraction* comes second responding for 15% of the *External Allocation* conflicts, followed by *infrastructure and industrial projects* with 12%. Conflicts with the *aquaculture* sector come after conflicts with *agriculture, tourism* and those opposing *local small-scale fishers and industrial fishers*. Interestingly, from the case studies, the LDC and SIDS are the countries most affected by these types of conflicts (Figure 15). Although this observation cannot be generalized, should this trend be confirmed by further studies, it might be linked with a higher development of such industries and activities, and a higher vulnerability of these economies to the related impacts, together with lower and less enforced regulations.

Legal and illegal fishers come into conflict in Sierra Leone and Costa Rica, in a deep and diffuse problem involving both local as well as foreign fishing boats. Fishing with illegal fishing gears and/or done during closing seasons affect local fisher’s livelihood, and even life, since illegal fishers sometimes deploy violent approaches or can happen to be armed.

Conflicts involving *mining, oil and/or natural gas extraction* activities were reported in Kenya, where mangroves and fishing grounds were destroyed; in Sierra Leone, as well as in Nigeria, where inland and coastal fisheries were hampered not only by the installation of oil platforms in the traditional fishing grounds, but also by spill accidents. The repercussions of such conflicts sometimes are not only restricted to the fishing spheres, but it can affect the whole public

order. Fisher's wives are also negatively impacted since their husband cannot go fishing and therefore makes it difficult to sustain the families' livelihoods.

Ranked as the third cause of *External Allocation* conflicts, *infrastructure and industrial projects* negatively affect fisheries in Japan, where small-scale fishers struggled for 20 years against the construction of an airport in 1979. In Kenya, the fishery is highly and negatively impacted by the infrastructural development ensuing from the construction of a port, at the point that the artisanal fishers sued the government to provide them with compensation measures.

Among the conflicts related to the *agricultural* sector, some are linked to the production of fertilizer with run-offs pollution that ultimately cause eutrophication, and algal bloom, while in other cases pollution with pesticides and other agrochemistry contaminants in the soils and water bodies are reported to be the primary causes of these conflicts. This is the case in Nigeria, Guatemala and Uganda.

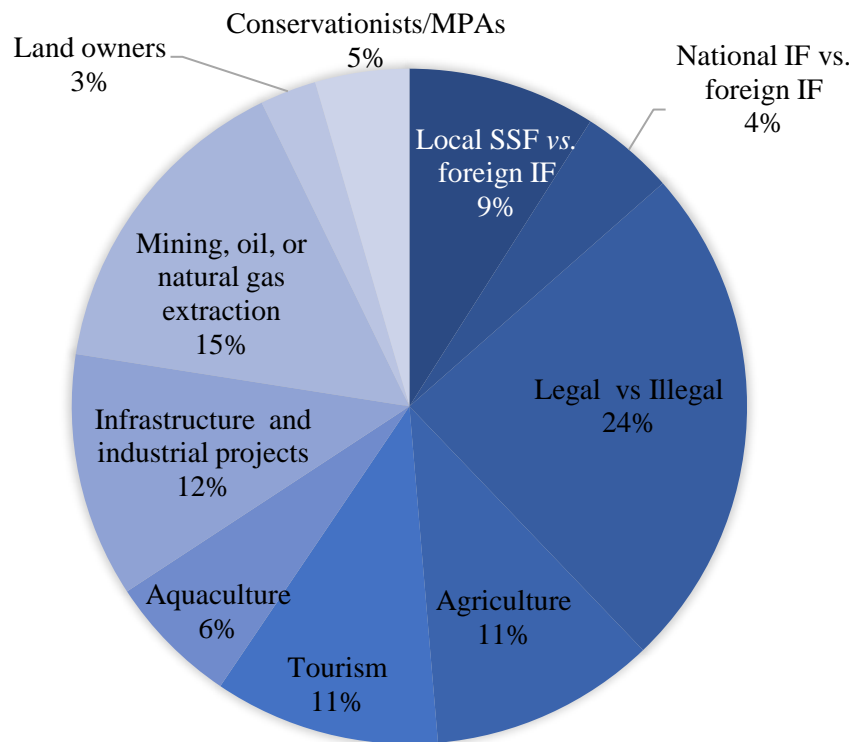


Figure 14 - Frequency of occurrence (in percentage) of each category of fisheries conflict related to External Allocation issues. IF stands for Industrial Fishers.

Furthermore, tourism can lead to cultural loss such as has been seen in Honduras, as well as strongly impacts ecosystems, by provoking erosion, destroying corals, stimulating the implementation of new infrastructure projects and increasing pollution through domestic solid waste, ultimately affecting fisher's livelihoods and activities in Sierra Leone, Kenya and China.

The case study from Timor-Leste reported conflicts between *local SSF* and *foreign IF* linked to the issuing of fishing licenses to semi-industrial fishing fleets from a foreign country, despite it being involved in IUU fishing in neighboring countries.

Conflicts with the creation of *Marine Protected Areas* (MPAs) are exemplified in Costa Rica and the Philippines. It involves the discontentment of excluded fishers, illegal fishing, or the establishment of the protected area upon a traditional fishing ground. In this latter case, fishers

may attribute the decrease in their fish catch directly to the establishment of the MPA (Cordero & Subade 2018, cited in the case study UID 48).

Finally, *National and foreign IF* are reported to conflict in Sierra Leone due to competition over a fishing ground and/or a target species. Other conflicts reported involved conflicts with *landowners* that hamper the access of local fishers to their traditional riverine fishing ground, as well as close the roads leading to the river. Fishers are obliged to travel further in order to reach the river and to be able to fish.

In Nigeria, coastal and inland fisheries are impacted by sand mining and dredging. Not only the sound pollution threatens fish away, but also miners were reported to destroy fisher’s gears and mine in fishing grounds and spawning areas.

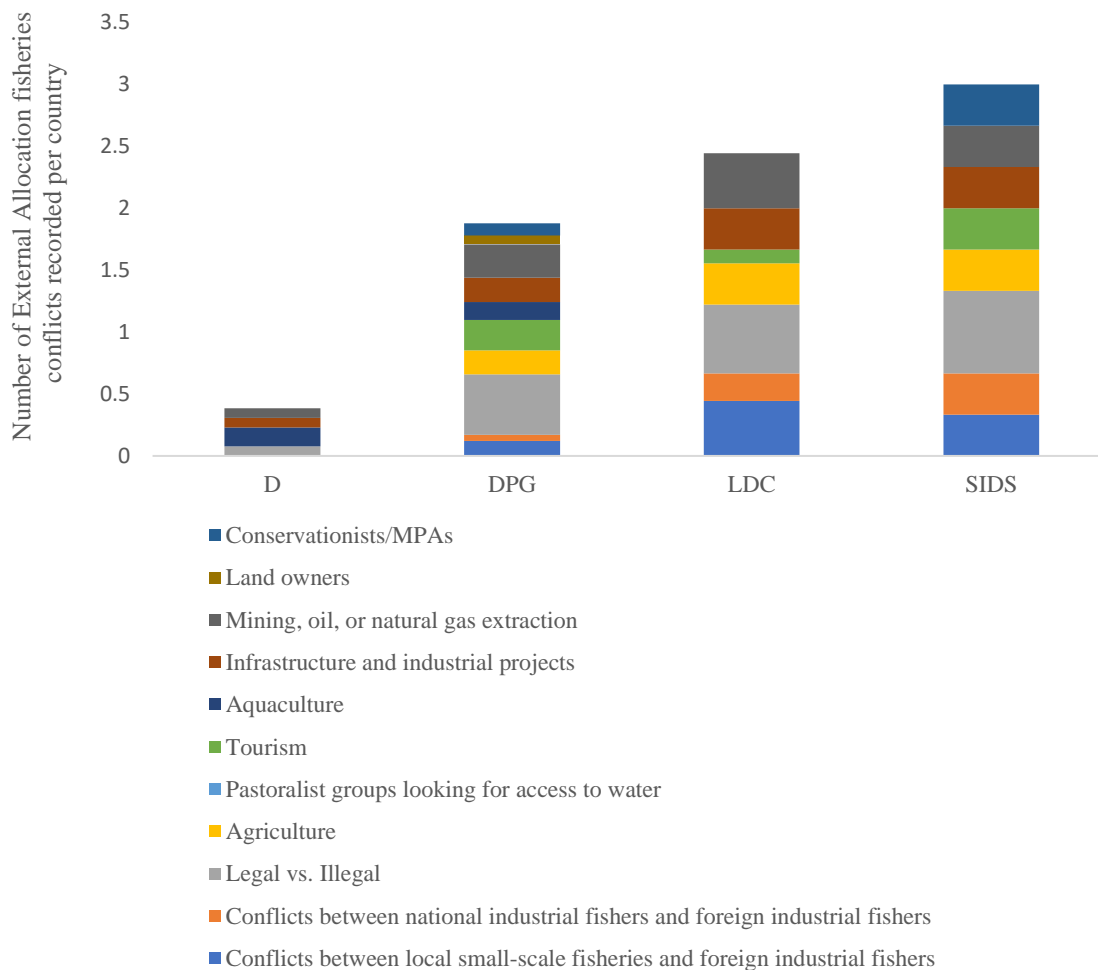


Figure 15 - Number of External Allocation conflicts recorded per country as a function of their economic development level. 'D' refers to Developed countries; 'DPG' are Developing countries; 'LDC' stands for Least Developed Countries; and 'SIDS' are the Small Island Developing States.

3.2.5 Other political, social, economic and environmental factors

Environmental degradation was cited in 37% of the cases that mentioned fisheries issues related to political, social, economic and environmental factors (Figure 16), in DPG and LDC only (Figure 17). The lack of infrastructure accounted for 20% of these conflicts, while lack of education was reported in 13% of the cases.

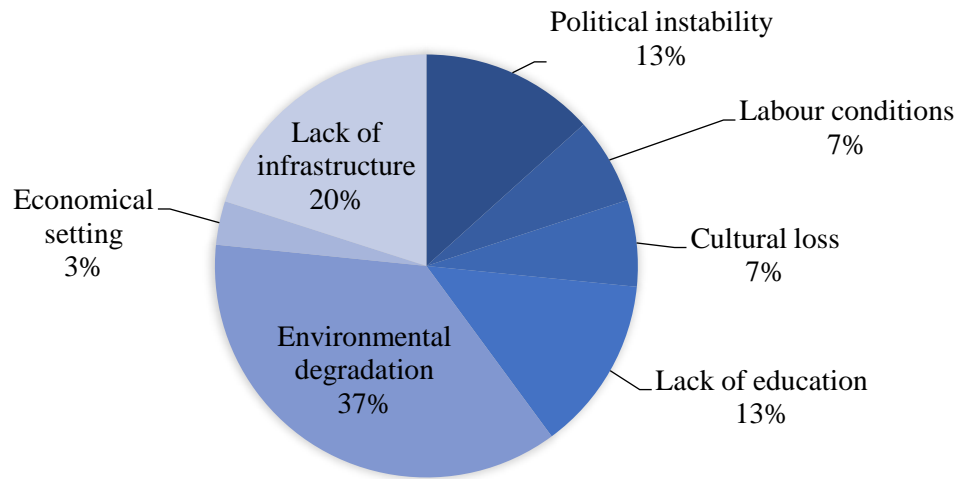


Figure 16 - Frequency of occurrence (in percentage) of each category of fisheries conflict related to Other political, social, economic and environmental factors.

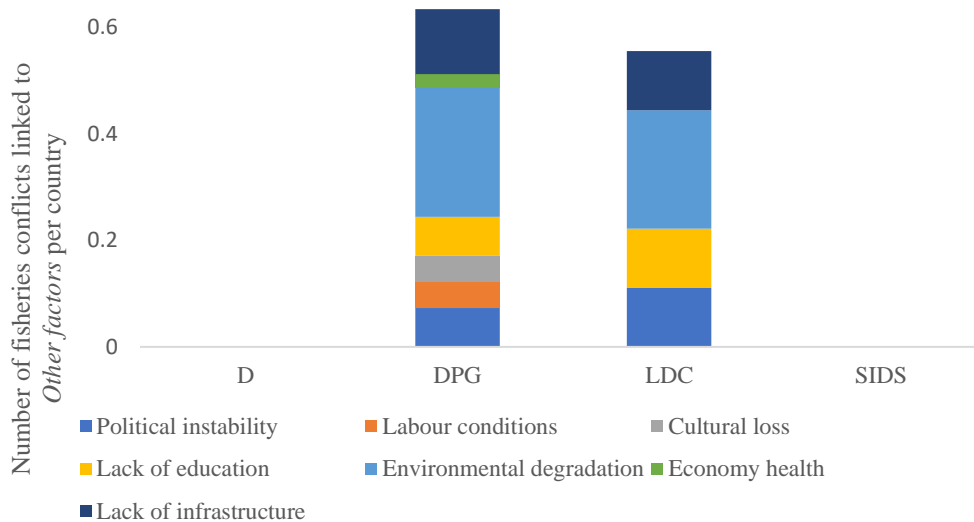


Figure 17 - Number of fisheries conflicts linked to *Other political, social, economic and environmental factors* recorded per country as a function of their economic development level. 'D' refers to Developed countries; 'DPG' are Developing countries; 'LDC' stands for Least Developed Countries; and 'SIDS' are the Small Island Developing States.

Environmental degradation caused by an array of activities affects the health of the fish stocks. The introduction of exotic species in lake Atitlán, Guatemala, has affected SSF by reducing target species abundance. In Colombia, tree cutting reduces the amount of compounds drained to the inland aquatic bodies that contributes to fish food, and triggers conflicts between fishers and the wood extraction sector. In Lake Victoria, fish died due to pollution and algal bloom, and fisheries from the Koh Keo community in Cambodia saw production decrease after a disease affected the stock in the dry season. The bigger threaten identified in the inland fisheries from Cambodia relates to “the assault of ecosystem” [Case study UID 32], namely “the conversion of flood plains to agriculture; the damage to the flooded forests; the destruction of mangrove swamps and mudflats; the reduction of river flow due to erection of barriers and construction of dams.”

The lack of consumer *education* was a factor found to contribute to the marginalization of fishermen in both the decision-making process as well as in the market dynamics, as reported in Argentina, Timor-Leste and Tunisia.

Timor-Leste’s case study also mentions a deficient *infrastructure* translated by “the lack of processing and landing facilities” as well as the “insufficient availability of ice” that affects the whole value chain. In San Juan de la Laguna, Guatemala, there is no solid waste management, and neither water treatment.

High degrees of *political instability* were reported in Eastern Congo and in Cambodia, sometimes leading fishers to be killed during civil wars.

Tourism and ‘folkloric’ culture marketing is reported to grab and transform local people’s culture, while bad working conditions and workers exploitation are a reality in Guatemala and *economic conditions* impose challenges to China’s fisheries. Resource scarcity together with a raise of fishing costs provoked a hardship to fishers whom income was seen to be unstable or reduced.

3.3 Investigating global trends

A simple graph crossing the frequency of typed of fisheries conflicts in terms of its geographical distribution did not show any trend. Still, when compared to the development rate of the countries where these different conflicts take place (i.e. between Developed countries, Developing countries, Least-Developed countries and Small-Islands Developing States), the results seem to indicate that less conflicts are recorded in developing nations. However, these are preliminary results and deserve further analysis to allow any conclusion to be made. No correlation between the type of fishery conflict and the fisheries management system in place was found. This can be linked to an insufficient sampling size or with the biases related to the methodology.

The fact that the data sampling depended on the participants of the UserRights 2018 Conference implies a few considerations. The sampling method was not systematized and did not followed a scientifically designed process. Thus, it was not possible to guarantee an equitably balanced geographical distribution of the case studies and questionnaires collected, or a consistent coverage of different existing types of fisheries and conflicts. On the other hand, however, this widespread sampling method allowed to: (1) gather an important number of questionnaires and case studies relative to different parts of the world in a reduced amount of time, as well as to (2) address key FAO’s targeted regions, particularly tropical areas that mostly includes emerging or under-developed countries. If they are comparable among them – since the questionnaires were specifically designed with this aim-, the quantity collected (i.e. N=66) however might not be

enough as to draw conclusions on it or find trends (Saldaña 2009), but surely instead provide a valuable base that allows to build a descriptive scenario of worldwide fisheries conflicts.

Secondly, the method of disclosing a semi-structured questionnaire to people by distance implies that there was no immediate way to interact with the responder in order to clarify eventual doubts, or inversely for the respondent to ask for further explanation on a question she/he might have hesitations upon. This may have led to misinterpretation as well as loss of information. In fact, it wasn't possible to systematically provide the respondent with an extensive definition of all the terms employed. The main example for this, is the lack of explicit definition in the scope of the questionnaire on what was considered to be a conflict. The case study found its complementarity in this context, since it allowed the respondent to develop her/his ideas, therefore enriching the questionnaire with a sense of her/his perceptions on the meaning of the terms. A bias for establishing a global picture of fisheries conflicts remained in that for both sides – the respondent and the researcher's –, the issue of comprehending the questions asked and/or the answers given is also a matter of perception of the facts and risks, cultural understanding and life experience linked with conflicts (Eiser *et al.* 2012), that highly influence conflict management. Other additional and more context-specific factors could not be taken into account either in the study, such as: precisions regarding the scales, both geographical and time-related, which are primordial and scarce in the peer-reviewed fisheries conflict literature (Spijkers *et al.* 2018). The present methodology does not capture the different perceptions of the parties involved in conflict, and neither understand how the place of speech of each actor, including the respondent of the questionnaire influenced in the answers. This adds to the difficulty in making deeper comparison between the data when “the most resolutely objectivist theory must integrate the representation that agents do from the social world and, more precisely, the contribution they bring to the construction of the vision of this world, and, thus, to the construction of this same world, through the representation work (in every sense of the word) that they don't cease to accomplish to impose their vision of the world or the vision of their position in this world, their social identity.”²⁵ (Bourdieu 2001, p. 300). Social representations highly influenced this study at the different levels, related with: (1) the perception that agents have upon the conflict, (2) how this conflict can and should be addressed, and the perception of the parties involved in this process, (3) the perception of the respondent of the questionnaire on the conflicting situation reported, and (4) the personal perception of the researcher who reads and analyses the case studies.

If the results obtained here can't be interpreted in the light of global trends, they are however very informative of the type of conflicts reported, or not, around the world, and speaks to the current and emerging threats over the fishing activity, as developed below.

The prevalence of fisheries conflicts related to *Management Mechanisms* and *Internal Allocation* can be partly explained by the fact that these 2 categories encompass most of the types of fisheries conflicts presented to the respondent in the close ended question of the questionnaire (see Box 1). In fact, the (sub-)categories subsequently created issuing from the coding process of the open-ended answers as well as the analysis of the case studies, generally disclose a lower percentage compared with the others. However, coming up with this enhanced merged typology was important in order to be able to record the occurrence of all the conflicts reported, as well as, once this factor is taken into account, to build a descriptive comparison out of it. What first comes out when depicting fisheries conflicts and the different causes involved, is that many of them are inter-related, as initially mentioned by Charles (1992) when describing the different categories of his typology, and further addressed by Pomeroy *et al.* (2016). This is specially the case here for management mechanisms and internal allocation-related conflicts.

²⁵ Free translation from its original version in French.

Within the *Management Mechanisms*, the regulations issuing from the *management plans* are most contested, and those define *internal allocation* settings. Most of the contestations recorded call for an increase of the fishing capacity or the given quota allowed, or oppose a certain regulation that the fishers perceive as benefiting another user group. Equally important to highlight are the cases where the *lack* of management drives fisheries challenges, such as in the indigenous fisheries in Argentina, SSF in Costa Rica and Nigeria. It is also the case in Sierra Leone as pointed out by Okeke-Ogbuafor *et al.* (*in press*), although not explicitly reflected in the case study obtained for this country, as well as for a large part of Latin America, as depicted in Gasalla & de Castro (2016). A similar rationale is true for *enforcement conflicts*, which are more often due to a *lack* of enforcement than to *over-enforcement*, a distinction that Charles (1992) had not addressed in his case studies from Canadian fisheries. Instead, Bennett *et al.* (2001) points management issues related to the lack of enforcement in Ghana and Bangladesh, and attribute this distinction to the difference between fisheries management in the developed and developing world. Here, no such analysis has been done, but case studies such as Costa Rica's, Kenya's and Belize do mention the lack of enforcement as a central challenge in their fisheries management. Both *Management Mechanisms* and enforcement, as well as *Internal Allocation* conflicts are more prone to decrease if *Fishermen-Government interaction* is well realized. However, this is particularly conflicting for some cases. Differences of culture, dynamics, lack of accountability of the fishers knowledge and lack of possibility of their participation in the decision-making process are key drivers of this type of conflict, and directly dependent on the type of fisheries management system. Jul-Larsen *et al.* (2002) (cited in Nielsen *et al.* 2004) interestingly argue in the case of South East Asia and Southern Africa, that the institutions in charge of managing fisheries were created before the "modern concept of fisheries management was well-developed". Therefore, instead of questioning the lack of management, it is the current adequacy of the institutions that should be addressed.

Internal allocation conflicts are reported to take primarily place between local small-scale and local industrial sectors. Overall, the cases speak to the difference of technology, and industrial fleet encroaching in small-scale's fishing grounds, as well as perpetuating hostile acts such as gear destruction against small-scale fishers. Although many authors date the origin of such situation back to the XXth century when States incentivized strong governmental policies in order to develop their fleets, in the global South and ex-colonies particularly, the bifurcation between 'modern' and 'traditional' activities date back to colonization times. Bavinck (2005, p.807) lists references from around the world that address this type of conflict. This list can be enhanced, as reported by the case studies, with the following countries, among others: Fiji, Guatemala, Peru, Canada, China and Cambodia.

The third main cause of *Internal Allocation* conflicts is related with *seasonally migrant fishers*. Migrant fishers are often perceived as outsiders and intrusive, and undermining the social capital and social norm, therefore increasing non-compliance, as reported by the case study from Nigeria's coastal and inland fisheries as well as in pelagic fisheries from West Africa. This goes in line with what Westlund *et al.* (2008) reports. In the literature, specific research in conflicts ensuing from fishers migrating is scarcer, although this phenomenon is reported in Salas *et al.* (2007) in the Dominican Republic (p.192), Mexico (p. 242), Puerto Rico (p. 294) and Barbados (p. 389). Results from the case studies show that fishers migration are happening and create conflicts in Guatemala, Equator, Peru and Colombia. The drivers however are different in each case: in the Amazonian fishery in Colombia, fisher's migration is reported to be linked with the hydrological cycle of the flood plains, while in Equator, apart from fisher entering the mangrove cockle's fishery, there is also the concern of fishers leaving the activity in search of better livelihood conditions. However, no migration due to climate change was reported in the case studies, while Belhabib *et al.* (2019) show how African coastal communities are increasingly

affected by it and related weather events. Neither people that migrate to work in the post-harvest sector were mentioned, which is a type of migration most recently developed in the fishery sector, and identified by Njock & Westlund (2010) in Mauritania.

Conflicts in the post-harvest have been reported in only 4% of the *Internal Allocation* conflicts cases. Generally, two main drivers stand out from these conflicts, which are mostly the fate of small-scale and marginalized fishers leaving in rural areas far from a urban tissue. First, there is the lack of integration of the fishers in the value chain, reported for the women clam collector of Tunisia, Kenyan artisanal fisheries, indigenous fishers of Argentina or the small-scale hake harvesters in Peru, among others. This factor is either linked to the lack of infrastructure that hampers the access to the markets and therefore allows a few middlemen to concentrate the control over the purchase of the production; either to public policies that directly forbidden small-scale fishers to sell their catch and exert a commercial activity. The second driver of these conflicts is the fragile situation of fishers in face of the middlemen who are able to explore them financially, either by paying a low price for the catch, either by giving loans which indebts fishers. This is also reported in the artisanal fishery of Colombia (Saavedra-Díaz *et al.* 2015).

Fishery jurisdiction was less identified as a driver of fishery conflicts compared with *Management mechanisms* and *Internal Allocation* issues, and this can be a result of the posterior inclusion of such category of conflicts when building the merged typology, as mentioned above, but also linked to the fact that the *Property rights* conflicts are mostly historical and socio-political issues, thus more diffuse in its expression than ‘gear wars’, for example, and therefore less addressed. The same hypothesis can apply for *Intergovernment conflicts*.

When not as concrete as it is in Lake Tanganyika, *Intergovernment conflicts* might also consist in diplomatic frictions, which, unless it leads to hostile acts between states, are less reported and broadcasted. Such types weren’t captured by the case studies. Instead, *Intergovernment conflicts* were mostly linked to unharmonized policies between countries that share an aquatic body such as the Amazon floodplain, and it speaks to the lack of an efficient transboundary stock management. While the case study on the Tarapoto lakes mention incursions of Brazilian and Peruvian fishers into Colombian waters to fish with gears forbidden in Colombia, the opposite is also an issue from the Brazilian perspective. Maldonado *et al.* (2017) address the case of the silver arawana fishery in the triple border of the Peru-Colombia-Brazil Amazon. Not only the transboundary conflicts ensue from different management strategies among countries, but also from different market settings. For example, lower prices for middlemen to market the silver arawana in Peru than in Colombia, while in Brazil, this fishery is more regulated.

The *role of government* was identified in the case where fishers are isolated in rural areas of Argentina. The author points the top-down approach to fisheries management as closely linked to issues of interaction between fishers-government, echoing with Jentoft *et al.* (1998, p. 431). As top-down management has been recognized to fail in addressing the most pressing fisheries issues, an alternative often emerges under the concept of co-management. Jentoft *et al.* (1998) argue how co-management is likely to reduce fisheries conflicts as it is “not so much about the rules per se as it is about the communicative and collaborative process through which these rules are formed: who participates, how debates are structured, how knowledge is employed, how conflicts of interest are addressed, and how agreements are reached”.

Under the 5 categories, *External Allocation* represented only 16% of the fisheries conflicts. This result is interesting firstly because the range of conflicts related to this category was presented in the questionnaire, therefore motivating or recalling the respondent to address them, except for the *Legal vs illegal* category, which was subsequently added. Still, the predominance of conflicts around illegal fishing speaks to its widespread and acknowledged occurrence. Illegal fishing was reported in the case studies to happen in different scales, sometimes supported by States, and

sometimes between communities and at a local scale. Key drivers reported were lack of enforcement (also highlighted by Petrossian 2015), an inefficient management system that fails to account for the local socio-ecological features (echoing Jentoft *et al.* 1998), and competition over the resource (also addressed by Pomeroy *et al.* 2016).

Mining, oil or natural gas extraction was the second most cited cause of *External Allocation* conflicts, even before *Infrastructure and industrial projects*, or even *Aquaculture*, which comes after *Agriculture* and *Tourism*. Mining issues at sea are a polemic and contemporary topic as the International Seabed Authority²⁶ is currently working on a draft that establishes international regulations for the deep-sea mining exploitation, in which negotiations the fishing industries are involved²⁷. In the case studies however, no such conflicts was reported. Instead, clashes with oil and gas companies prevailed. The totality of the cases reported were in Southern countries, and among them, almost ¾ are in Africa, including the case study on Western African fisheries.

The consequences related with the ‘Ocean Grab’ (Franco *et al.* 2014) and development of infrastructure project as well as other industries are reported in some case studies. Land and fishing ground privation were among the most recurrent mentions, together with environmental pollution. Although not detailed in the case study from Ghanaian fisheries, a conflict between fisheries and sea oil extraction is addressed by Adjei & Overå (2019). The authors frame a triple perspective on the conflict: the pro-fishery, pro-fish conservation and pro-petroleum extraction, within which the first category speaks out against the installations claiming it hampers their mobility and negatively affects the fishing grounds. However, in most of this type of conflicts, the voice of small-scale fishers is underrepresented and lacks of governmental support. Among conflicts related to infrastructure and industrial projects, it is important to highlight the predominant socio-ecological threat that represents the construction of dams to inland fisheries. This is mentioned in the case of Cambodian inland fisheries, and also by Ziv *et al.* (2011) who dig deeper into the consequences and the institutional framework of such conflict.

Finally, among the *Other political, social, economic and environmental factors*, the *environmental degradation* as a diffuse driver of fisheries conflicts was predominant among the cases, expressed through an alteration of the environmental quality, either aquatic or continental, translated into algal blooms, eutrophication and pollution. The pollution is linked to untreated domestic waste due to the lack of infrastructure, among other factors. From the main contemporary pollutants in the aquatic world listed by Islam & Tanaka (2004), two are reported in the cases of inland fisheries of Guatemala, affected by ‘Biological pollution’²⁸, as well as in Lake Victoria, where ‘Eutrophication and algal bloom’ kill fish. Other drivers identified in the case studies and mentioned by the authors are: (1) Fertilizers, pesticides and agrochemicals; (2) Domestic and municipal wastes and sewage sludge; (3) Oils; and (4) Plastics. Pollution is highly linked to the lack of public infrastructure accountable for sanitary conditions treatment and post-harvest facilities such as reported in Timor-Leste. Thirdly, *Political instability* and *Lack of education* were identified as propellers of fisheries conflicts. Political instability is mostly an issue in the African case studies, and addressed as such in literature. For example, Lake Victoria is reported to be one of the region with the higher rates of conflicts in the world (Sundberg & Melander 2013 cited in Glaser *et al.* 2019). The catch decline reported by the case study obtained for the Nile Perch fishery there could be explained by the fact that civil war in northern Uganda lead to massive migration

²⁶ The International Seabed Authority is an organization established by the United Nations Convention on the Law of the Sea with the aim to regulate “mineral-related activities in the international seabed area.” International Seabed Authority. https://en.wikipedia.org/wiki/International_Seabed_Authority

²⁷ ‘Deep-sea mining to turn oceans into ‘new industrial frontier’’, The Guardian, 03/07/2019.

²⁸ The authors explains that ‘Biological pollution’ is a recent expression that refers specifically to the impacts issuing from the introduction of exotic species in an environment.

of people around the lake, increasing the fishing effort. This mechanism is described in Glaser *et al.* (2019), and also verified by Westerkamp & Houdret (2010) in Lake Albert. In fact, the case study addressing fisheries in Lake Albert mention political instability in the Democratic Republic of Congo as a challenge to fisheries sustainability; which could be related to the decline in fish stocks observed in 2006.

3.4 Fisheries conflicts as transversal socio-political issues

For each and every category of fisheries conflicts, socio-political factors account for an important, if not predominant part of the drivers. Quantifying this relationship would be difficult, but fisheries conflicts are mainly socio-political conflicts. Two approaches can support this argument.

First, the analysis undertaken by Okeke-Ogbuafor *et al.* (*in press*) finds that small-scale fisheries of Sierra Leone face a series of ‘wicked problem’. This analysis shall be addressed to the other countries spotted here, such as Ghana, Nigeria, Tunisia, Kenya, Guatemala, Colombia and Sri Lanka, to name a few, as well as to conflicts involving large-scale fleets and developed countries fisheries, based on the framework suggested by Jentoft & Chuenpagdee (2009). The authors cite Rittel & Webber (1973) and Kooiman (2003) to highlight the following characteristics of wicked problems:

- (1) They are not intrinsically technical;
- (2) They do not have a fixed and linear formulation, neither a “set of potential solutions”;
- (3) They depend on perspectives, and therefore ensue from social constructs, which, in turn, leads to a difficulty to define them;
- (4) “They are often a symptom of larger issues” and therefore address different scales, at the same time as they are situation specific.

From the case studies analyzed here, none presented only one type of conflict, and generally the (sub-)categories interweaved, mainly between *Management mechanisms*, *Internal allocation* and *Fishery Jurisdiction* issues. Fisheries conflicts are complex, and therefore they meet the second characteristic mentioned of a wicked conflict. Notwithstanding this study fails to account for the perspectives and values of the different stakeholders, these conflicts “take place across, and not within, the boundaries of social systems”, as argued by Bavinck (2005), and therefore “they are embedded in different normative perspectives, social realities, economic concerns”. This feature is particularly key in the *Property rights* conflicts as well as *conflicts with seasonally migrant fishers*, for example. Furthermore, a nuance of the role of the economic settings is captured in the predominance of fisheries conflicts in terms of frequency, as well as intensity and complexity, in the Global South. Finally, if it seems more intuitive that fisheries conflicts related to *External allocation* are a “symptom of larger issues”, this is also valid for most of the punctual and specific fisheries conflicts reported such as the ‘gear wars’. This argument is developed by Bavinck (2005) when re-sketching conflicts between SSF and IF in the Global South under a legalist pluralist perspective, but also acknowledged under the lenses of the ‘Ocean Grab’ (Franco *et al.* 2014). Recognizing fisheries conflicts as such also allows to: (1) embrace and equally address the ‘non-negotiable conflicts’ in fisheries, to recall the definition given by Castro & Engel (2007) and disclosed in item 2.2.1 *Conceptual framework for understanding fisheries conflicts*; as well as

it (2) provides a framework that places the socio-political factors as the core drivers of fisheries conflicts.

On the other hand, the last item (2) implies well recognizing, addressing and holding the political accountability of fisheries conflicts. In this sense, the political feature of wicked problems should not get lost and diffuse following the argument that “they depend on the perspective, i.e. how the problems are looked upon, and that may vary from one person to the next, conditioning on the extent to which the person in question is affected by it.” (Rittel & Webber 1973 in Jentoft & Chuenpagdee 2009).

Therefore, it is also legitimated to frame fisheries conflicts within Bourdieu’s (2001) school. The driving causes of the conflicts found here can overall be summed by a dynamic interweave of 2 factors namely (1) appropriation issues, and (2) a situation of resource scarcity. Pomeroy *et al.* (2016) also argues that such drivers directly explain the *competition between communities over the resource*. Similarly argued by Mormont (2006), such framework understands the stakeholders as social groups, with different social capitals, whose perceptions and discourses clash. As *External Allocation* issues progressively gain importance in the contemporary world, the role of resource scarcity in fishery conflicts will likely diminish relatively to the competition for space and a widespread and diffuse degradation of the natural environment. These two issues are intrinsically political instead of technical, and it is in such optics that fishery conflicts can be effectively addressed.

4 RESOLUTION MECHANISMS FOR FISHERIES CONFLICTS

This chapter will introduce key mechanisms and existing systems, from the individual to the institutional levels, that constitute the process of conflict resolution. In a second moment, it further digs into the field of fisheries conflicts by highlighting different institutional systems through which fisheries conflicts are addressed in the 66 cases, and depicting it with examples from the literature.

4.1 Towards conflict resolution: different approaches

4.1.1 Political processes at the individual level

There are several ways to address a conflict. Prevention strategies can be deployed when the conflict is still in its burgeoning stage. When already manifested, choosing to monitor it without intervention can be the most desirable approach if the situation is not to escalate (Castro & Engel 2007). A conflict can also be shortened and dissipate if a party realize that the costs of undertaking it are too high for low benefits (Upreti 2001). The approach adopted in natural resource conflict management depends, among others, on the characteristics of the conflict, such as: (1) the geographical scale of the conflict; (2) the types and number of stakeholders involved; and (3) the level of intensity of the conflict.

If intervention is to be the strategy undertaken because the conflict persists and/or threatens the communities' wellbeing, the stakeholders: (1) have to get together, in order to be able to (2) communicate and exchange, and to this end, (3) there must exist a place, or arena, not only physical, but also symbolical (i.e. the existence of the place of speech) where (1) and (2) take place. This is conceptualized in Figure 18.

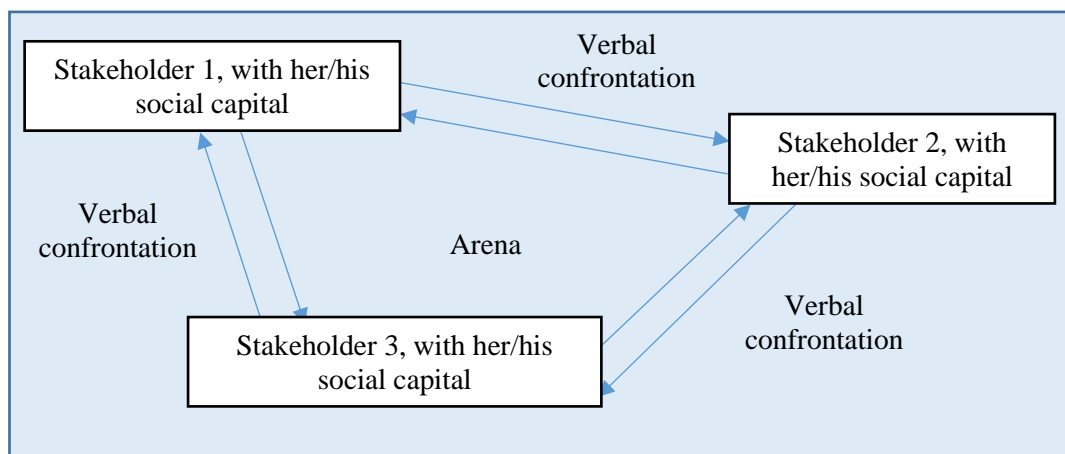


Figure 18 - Schematic representation of the premises for a conflict resolution mechanism to fall into place. There can be more than 3 stakeholders, but no less than 2.

The arena, as called here, echoes the notion of ‘political field’²⁹ used by John B. Thompson in the preface of Bourdieu (2001, p. 44). The ‘political field’ is, in Thompson’s words, “effectively among other things the quintessential place where agents look to form and to transform the visions of the world and this way to act upon the world itself: the quintessential place where the words are actions and where it is a matter of power symbolism.”

The verbal confrontation between stakeholders in the political arena can be framed under Amossy’s perspective (2014, p.51), who advocates for the role of polemics in conflict management. The author argues that polemics “fill important social functions [...]: a verbal management of the conflict realized based on the disagreements.”, and that it can only happen if there is a verbal confrontation, defined as “the action of putting two discourses in presence, and thus in relation, this way allowing an appreciation through comparison.” Such definition also highlights the two-way feature of this interactional process, which ideally should be balanced between the stakeholders. This is not often the case as the social capital held by each (group of) people involved unbalance this equilibrium, influencing on the dynamic conceptualized in Figure 18. In this sense, Uphoff (2000) defines social capital as “an accumulation of various types of social, psychological, cultural, cognitive, institutional and related assets that increase the amount (or probability) of mutually beneficial co-operative behavior”, which therefore will strongly vary as a function, among others, of each stakeholder financial, educational and health conditions.

Taking into account the probable imbalance of power (and) relations between the stakeholders in a conflict is therefore fundamental and can be done using stakeholder analysis. Stakeholder analysis is a set of tools that enables one to depict and understand the key drivers of the dynamics of interaction between the stakeholders. These key drivers can be, for example: the interrelation between people and groups of people, interests in the resource (Ramirez 1999), and their social capital. Different patterns of position among stakeholders can be identified as a function of their relative power in the scene: some will argue for legal protection, others may have political clout, others may have the background to block negotiated agreements, and others will fall upon moral claims (Susskind & Cruikshank 1987, cited in Ramirez 1999).

Taking this into account, the strategies employed by and between stakeholders in the process of resolving an environmental conflict are also referred to as ‘conflict resolution mechanisms’ (CRM). They take place at various levels, from the individual to the institutionalized collective level. Some strategies put in place within the verbal confrontation are known as: withdrawal, collaboration, accommodation, compromise, consensus, passive acceptance, while other modalities include cheating, lying, requesting, entreating, manoeuvring, pressuring, threatening, demanding, monitoring, arguing by rules, staying neutral, and exploiting (Upreti 2001, p. 20). The most recognized strategies are, however: negotiation, mediation, arbitration, adjudication and coercion (Box 2).

Each of those strategies are recurrent in, although not exclusive to, a certain institutionalized social system.

²⁹ Ostrom (2000, p.35) also uses this term when expatiating on self-organized resource governance systems, as will be addressed in item 4.2.

Box 2 - Definition of the main conflict resolution strategies deployed in natural resource conflict management. Adapted from: Castro & Engel (2007)

Negotiation: The negotiation is a voluntary process in which parties reach agreement through consensus, creating an outcome that all parties can support.

Mediation: Mediation uses a third party to facilitate the negotiation. This third party does not have the authority to impose a solution.

Arbitration: Through arbitration, the parties of the conflict submit the situation to a mutually agreeable third party. This third party renders an often non-binding decision.

Adjudication: Through adjudication, the parties of the conflict rely on a judge or administrator to make a binding decision.

Coercion: Coercion happens when one (or more) part(y)(ies) threaten or use force to impose a position and generate an outcome.

4.1.2 An institutional framework for conflict resolution

Castro & Engel (2007) display 2 main types of social systems within which the conflict management takes place (there can also be a combination of social systems). They are the: (1) customary system, and (2) legal system. Similarly, Upreti (2001) names the (1) customary system and to ‘Interest-based’ or ‘Alternate’ approaches to conflicts, while the (2) legal system corresponds to a ‘right-based’ approach. These systems are framed within two main institutional streams of the same name detailed in Table 5, and both end up developing, to varying extend, the same most common resolution mechanisms (Castro & Ettenger 1996, cited in Buckles & Rusnak 1999).

Table 5 - Synoptic table explaining the customary and legal approaches to natural resource conflict management, based on Upreti (2001) and Castro & Engel (2007).

	Interest-based or customary system approach	Right-based or legal system approach
Broadly, what is it about?	It relies on traditional authorities and customary rules.	It relies on (inter)national bodies and policy frameworks to address a conflict.
Conflict-management bodies and institutions	Local councils, fishers organizations, cooperatives, local management institutions. The community leader(s) generally embody the authority in the process.	Regulatory and judicial institutions such as: Courts, Tribunals, Governments, Governmental Police, International Organizations. Judges and officials commonly represent these institutions in the process.

Most strategy used in conflict-resolution

Negotiation, mediation and arbitration

Adjudication, arbitration, litigation³⁰ procedures, coercion

In fisheries management, whether a conflict is resolved through the customary or legal approaches (or a combination of both), depends on the nature and features of the conflict, as well as the existing management context of the fishery (i.e. under which jurisdiction the fishery falls and what sort of management system is in place). The next sections will further detail each system.

4.1.2.1 Customary systems

Although inscribed in customary systems, some mechanisms may or may not involve official governmental institution in the resolution of conflicts, but rather ensue from norms traditional to the local community. When the fisheries management engage, to some extent at least, the actors who are then “involved over time in making and adapting rules within collective-choice arenas regarding the inclusion or exclusion of participants, appropriation strategies, obligations of participants, monitoring and sanctioning, and conflict resolution”, then Ostrom (1999) identifies the fishing resource as a self-governed resource. Following the author, the appropriators of a self-governed resource present, among other characteristics, the autonomy that enables them to “determine access and harvesting rules without external authorities countermanding them”, as well as disclose organizational and local leadership skills by interacting with other local associations and groups. Therefore, a self-governed resource is also contextualized within a customary system. This parallelism allows to state that a key factor for “long-enduring common-pool resource institutions” is a conflict-resolution mechanism, among other conditions, or principles³¹. These are summarized in Table 6.

Table 6 - "Design principles illustrated by long-enduring common-pool resource institutions". Source: Ostrom (2000)

	Principles	Details
1	Clearly defined boundaries	Individuals or households with rights to withdraw resource units from the common-pool resource and the boundaries of the common-pool resource itself are clearly defined.
2	Congruence	A. The distribution of benefits from appropriation rules is roughly proportionate to the costs imposed by provision rules. B. Appropriation rules restricting time, place, technology, and/or quantity of resource units are related to local conditions.

³⁰ Litigation is defined as “the process of taking a case to a court of law so that a judgment can be made.” By the Cambridge Dictionary. Available online at: <https://dictionary.cambridge.org/dictionary/english/litigation>. Consulted in May 2019.

³¹ Ostrom (2000) defines ‘principles’ after Ostrom (1990) as an “element or condition that helps to account for the success of these institutions in sustaining the [common-pool resource] and gaining the compliance of generation after generation of appropriators to the rules in use.”

3	Collective-choice arrangements	Most individuals affected by operational rules can participate in modifying operational rules.
4	Monitoring	Monitors, who actively audit common-pool resource conditions and appropriator behavior, are accountable to the appropriators and/or are the appropriators themselves.
5	Graduated Sanctions	Appropriators who violate operational rules are likely to receive graduated sanctions (depending on the seriousness and context of the offense) from other appropriators, from officials accountable to these appropriators, or from both.
6	Conflict-resolution mechanisms	Appropriators and their officials have rapid access to low-cost, local arenas to resolve conflict among appropriators or between appropriators and officials.
7	Minimal recognition of rights to organize	The rights of appropriators to devise their own institutions are not challenged by external governmental authorities.
For common-pool resources that are part of larger systems:		
8	Nested enterprises	Appropriation, provision, monitoring, enforcement, conflict resolution, and governance activities are organized in multiple layers of nested enterprises.

Adapted from: E. Ostrom (1990:90)

Ostrom's (1999) analysis cite two key features that have to be met if a conflict-resolution mechanism is to be successful. They are the "reliance on the decisions made by one or a few leaders, [...] a formal reliance on majority or super-majority vote, [...] reliance on consensus or close to unanimity" (p.36); and pg. 39 shows the importance of a common understanding among appropriators in order to establish an agreement. Furthermore, all the principles for a long-enduring common-pool resource institution are inter-linked, and an effective (6) *Conflict-resolution mechanism* implies all the other requirements to be satisfied. For example, strong property rights constitute *per se* (a part of) resolution mechanisms. Some studies highlight that the stronger and well defined the bundle of rights, the easier will be for solving the conflict within the formal institutional sphere. On the opposite, the weaker the property rights, the more room there will be for unsolved conflicts. There are different forms of negotiating an institutional change, and in the ideal scenario where Ostrom's (1999) settings are fulfilled, local communities are more likely to manage fishing resources more sustainably than if the authority fully relied in a third party -such as a government-, which means that conflicts are more sustainably and efficiently managed.

Common conflict management mechanisms in customary systems range from taboos, gossip and other social and relational practices that influence on one's perception by the surrounding group of people, to ostracism and violent acts. Institutions of customary conflict management can be embodied in the person of (a) leader(s), parents, a clan, a local council, an informal meeting, church leaders or elders.

In the words of Engel & Korf (2005), the strengths of customary systems are to: (1) encourage participation by community members, and respect local values and customs; (2) be more accessible because of their low cost, their flexibility in scheduling and procedures, and their use of the local language; (3) encourage decision-making based on collaboration, with consensus

emerging from wide-ranging discussions, often fostering local reconciliation; (4) contribute to processes of community empowerment and (5) provide a sense of local ownership of both the process and its outcomes. Still, customary system is not always destined to succeed in conflict management, as its spatial and institutional reach can be limited; there might be exclusion of people throughout the process, including women who are often victims of gender inequality; as well as might not be efficiently able to address inter-community conflicts.

4.1.2.2 *Legal systems*

Although legal systems for conflict management can build on customary conflict management approaches, it remains that they ideally have to act in line with national legislations. Furthermore, the legal system often relies in a combination of regulatory bodies working in conjunction or exclusively, depending on the situation, such as the governmental, as well as judicial ones. Legal systems are also different from customary ones in that they largely depend on the degree of (des)centralization of the fisheries management. In a highly centralized context, a legal system approach to fisheries conflict management will likely resort to the government level. Instead, a more decentralized management underpins the existence and action of local governmental authorities. In any case, while an authority is recognized as being in charge of fisheries management, it should also be mandated to manage fisheries conflicts (Cochrane & Garcia 2009).

Engel & Korf (2015) list strengths and limitations of the legal systems for natural resource conflict management. Among the strengths cited are empowerment of the civil society as a whole, which fosters the environmental responsibility; a broader national and international outreach; the better enablement to address power imbalances among the stakeholders; as well as a special technical and judicial capacity. Furthermore, the legal system can also be able to address non-negotiable conflicts, more than customary systems.

On the other hand, a recurrent issue identified in the legal approach to conflict management, is that it leads to exclusion of people from the process, either because of power imbalances settings, either because of inaccessibility of the process-making institutions to the conflict stakeholders (for example due to a lack of education that hampers the comprehension by a community of the regulations and negotiations, or due to the remoteness of this community) or also lack of accountability for the local knowledge (FAO 2001). It is worth to introduce Bourdieu's (2001) perspective on the dynamics that shape the 'political field' (see item 4.1).

When the political field runs through bureaucracy and institutions, a phenomenon that Bourdieu calls 'political dispossession' takes place. The author argues that political dispossession is mainly driven by, in a first moment, the implementation of "permanent institutional structures, a bureaucracy, remunerated employees, etc" (Bourdieu 2001, p. 45). In a second moment, governmental agents undertake a persuasion of themselves and the others, "that they are politically autonomous and thus, that they remain at the source of their [people's] power and charisma", but instead, a growing detachment progressively occurs between people's political power of action, and the institutional structure in place. Further on the exclusion of people from the legal system management, this dispossession also takes place as "the usage of the language, meaning at the same time the way as well as the substance of the discourse, depends on the social position of the speaker which commands the access that (s)he can have to the institutional language, to the official word, orthodox, legitimate" (Bourdieu 2001, p. 163).

Inversely, the outreach of the legal system towards people locally can be hampered by the same difficulty to be able to communicate in a friendly way, legal and policy decisions. Engel &

Korf (2015) further point that governmental officers may lack of expertise and knowledge about the real situation and its drivers, leading to inadequate decisions. These latter are also often of the win-lose type, affected by the type and features of the government in place, such as corruption and political inclination.

4.2 Conflict resolution in the 66 fisheries

Among the 66 case studies, 69% relied on *Governmental fisheries management authority* and/or *Judicial systems* for the resolution of fisheries conflicts, while only 16% involved *Customary systems* (Figure 19). In 4 case studies, other types of conflict resolution mechanisms were identified.

Most commonly, conflict resolution mechanisms exist simultaneously: in 34.84% of the cases, there are more than 1 type of CRM, while 28.8% of the fisheries rely in only one type of CRM. Of those, 3 fishery cases reported customary systems, versus 10 which relied solely in governmental authorities. In 9% of the cases, authors reported that there were no conflict resolution mechanisms instituted (Annex 5).

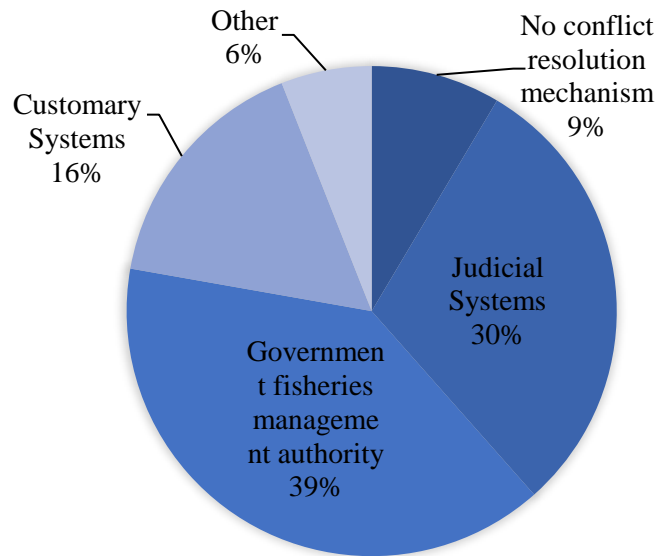


Figure 19 - Relative frequency (in percentage) of the types of conflict resolution mechanisms in the 66 case studies.

4.2.1 Governmental fisheries management authority and/or Judicial systems

4.2.1.1 *Addressing international fisheries issues*

This largely prevalent type of CRM is found in case studies addressing a variety of fisheries associated to a wide range of types of conflicts. In the North African pelagic fisheries (UID 3) for example, conflicts between countries that fish in foreign EEZs, i.e. conflicts related to transboundary fishery jurisdiction, are addressed at the governmental level. The same occurs in Venezuela and Peru, where, respectively, sardine and hake fisheries-related issues and their resolution are officially framed within the fisheries and aquaculture law.

Apart from direct governmental negotiations when a conflict arises, the case study UID 19 on “The experience of the Treaty of the La Plata River and its maritime front” disclose treaties³² as a conflict management mechanism at the transnational level. The Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime Boundary³³ was signed in 1973 between the Argentinian Republic and the Eastern Republic of Uruguay, and also marks the establishment of a Joint Technical Commission for the Maritime Front. The treaty not only addresses fisheries matters, but also the Maritime Boundaries, Navigation and Work, Pilotage, Bed and Subsoil, Port Facilities, among others. In the field of fisheries, this agreement answers to the reclamation expressed by fishers of the neighboring countries that the fishery was open-access, and its establishment opened doors to various negotiations and settlement of conflict of interest around catch quota allocations (Bezzi *et al.* 1999). Furthermore, (1) ‘PART 1 - Chapter XIII: Conciliation procedure’ comprises Articles 68 and 69 saying that disputes between Parties shall be conciliated through the Administrative Commission (Figure 20). And, if conciliation is not reached among the parties, then direct negotiation between them should be employed as a way to achieve the disputes resolution. In the case dispute resolution is still not reached, the Treaty advices the parties to submit the case to the International Court of Justice. Dispute resolution flow in the Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime Boundary is therefore composed, in a first stage, of the fishery management authority articulating the process through negotiation and mediation, followed by an intervention of the international judicial system with a litigation procedure. This case shows that the Treaty emerges as a remedy to tackle a transboundary conflicting situation, and that the resolution process to be adopted in case further conflicts disrupt follows an approach ruled by an institutional hierarchy as a function of the different stages and outputs of the CR process.

³² A Treaty is “a generic term embracing all instruments binding under international law, regardless of their formal designation, concluded between two or more international juridical persons.” (UN 2012, p. 71). Treaties are established between States as well as between International Organizations and between International Organizations and States. A treaty is “intended to create rights and obligations enforceable under the international law.” (UN 2012, p. 71).

³³ An online version of the Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime Boundary is available at: <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/TREATIES/URY-ARG1973MB.PDF>

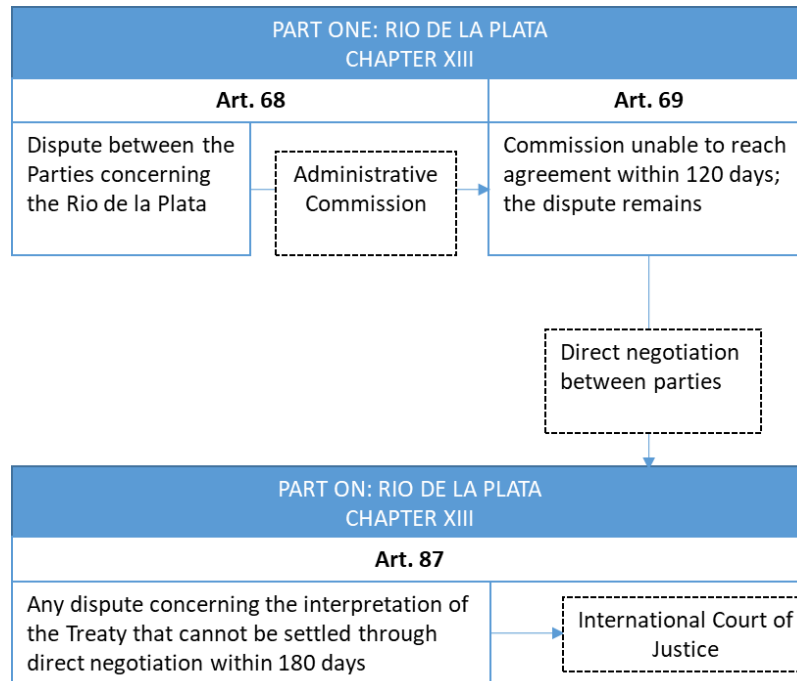


Figure 20 - Schematic representation of the processual flow for conflict resolution procedures contemplated in the Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime Boundary. Boxes with dotted lines highlight the conflict resolution mechanisms.

4.2.1.2 (Des)centralization stories I: intra-national conflict resolution mechanisms

In the case of the small-scale Okinawan fisheries, in Japan, the conflict is precisely upon who is entitled to manage fishing resources. Currently, the responsibility of fisheries management lies in two bodies: the prefectural government and the Fishery Cooperative Association (FCAs), this latter being composed of customary fishers. However, another customary group of fisher exist in the region which is not affiliated to any FCA, while they also play a role in managing and enforcing the small-scale fishery. In such situation, both the informal as well as the formal institutions recognized (either by law, such as the prefecture and the FCAs, either by part of the public opinion, such as other organized local customary fisher groups) as fisheries management bodies are fighting among each other for their legitimacy to undertake their function. In this context, the ability of both the governmental as well as the FCAs to resolve this conflict as well as others that are simultaneously occurring can be hampered (Ruddle 1992). This case illustrates the importance of a fisheries management authority to be publically acknowledged if it's to resolve conflicts.

A last interesting example to mention is the crab fishery in the Bering Sea (case study UID 16). Conflict resolution mechanisms vary from interpersonal resolution or cooperative-based resolution process for more local conflicts. In case of a higher intensity scale, the issue can be addressed by the US court, or, in case of policy issues, the North Pacific Fishery Management Council (NPFMC) is activated.

4.2.2 (Des)centralization stories II: Articulating Governmental, Judicial and Customary conflict resolution mechanisms

Marine small-scale fisheries of Sierra Leone are an example where the combination of fishery authorities, judicial and customary systems act towards conflict resolution. In this case, tribal council are the representatives of the customary system. However, SSF in Sierra Leone are affected by multiple problems, or ‘wicked problems’ (Okeke-Ogbuafor *et al.* 2019), managed by a failing state (Thorpe *et al.* 2009), which, although it has been working towards a decentralization of fisheries management enhancing the responsibility of local fisheries institutions, reveals incoherence in its policies and a weak management system.

A case where no major conflicts occur is the one of the T’aaq-wiihak fishery in Canada (UID 43). When it happens however, the T’aaq-wiihak directly dialogue with the government through participative advisory meetings. The early 2000s mark the beginning of the T’aaq-wiihak involvement with a judicial process claiming for legal recognition of rights. An interesting insight in the conflict management mechanism in this case stands out in the following passage of the case study:

“In the absence of a precise definition of the right, the Court directed the T’aaq-wiihak First Nations and the federal government to consult and negotiate the manner in which the aboriginal right to fish and to sell fish can be accommodated and exercised without jeopardizing Canada’s legislative objectives and societal interests in regulating the fishery.”

It speaks to: (1) the parties involved to address the T’aaq-wiihak’s claims –the T’aaq-wiihak themselves, the Court and the federal government-; (2) the mechanisms of conflict management, namely consultation and negotiation; (3) the different interests that were affected. In this case, the higher institutional level (the Court) is clearly depicted solely as a mediator of the conflict, instead of playing an arbitration role between the two groups opposed in the conflict. This process led to a positive outcome for the T’aaq-wiihak, to whom the Court recognized their aboriginal rights, as well as facilitated the access to fish markets. However, the T’aaq-wiihak’s salmon fishery still find itself negotiating and claiming for the recognition of further rights as the government continue to label it as a “demonstration fishery”, this way justifying the application of extra-judicial policies.

In the traditional small-scale fishery of Lake Atitlán, Guatemala, fishery management relies in the articulation of customary and legally-recognized rights. In San Juan de la Laguna specifically, fisher’s association called “Chajil Ch’upup” ensures the conceding and distribution of fishing rights. Furthermore and interestingly, the case reports the existence and prevalence of a “mayor and peacekeeper” which used to be the sole authority for the management of conflicts within the community, who was in charge of designating this figure. This system has been supplanted by governmental institutions after the implementation of the General Law for Fisheries and Aquaculture and the Fishery and Aquaculture Division. Still, gear wars within the community are addressed through direct and traditional forms of dialogue between the involved parties, thus far without any form of violence or legal intervention involved.

Although a co-management in fisheries conflicts exists in the Volta Estuary’s fishery from Ghana [UID 7] the conflicts and violation situations most likely rely on a traditional resolution mechanism. Spiritual arguments to redress a conflicting situation can also be accompanied by further taboos such as described by the case study:

“The Volta estuary clam fisheries is self-regulated by norms and taboos which give rights to resource users. The rules are however not codified but largely obeyed with occasionally

violations and conflict situations. Violations and conflicts are either reported to law enforcement or the traditional authority for prosecution or mediation.”

Prosecution and mediation are the two mechanisms through which the traditional authorities exert their role as conflict mediators.

4.2.3 Customary approaches of conflict resolution

The customary approach was cited as unique conflict resolution mechanism in the case of SSF of Timor-Leste, Indonesia and Nigeria, among others. In the Indonesian case, local fishers under the system of Territorial Use Rights for Fisheries (TURFs) undertake conflict management. Non-Governmental Organizations (NGOs) also support conflict management, articulating with mainly religious local leaders in order to map the areas of conflicts. In this case, they act as mediators and facilitators in the process. Very similarly, in Nigeria it is reported that conflicts over coastal and inland fisheries are mainly managed through traditional approaches with the often-spiritual mediation of local fish leaders.

This is in line with Olomola’s (2008) findings, in a study undertaken in Ondo and River states of Nigeria, also mentioned in the case study UID 53. Following the author, the approaches to conflict resolution are mostly informal: elder councils play a major role in articulating negotiations, the most adopted mechanism for conflict resolution (Table 7).

Table 7 - Methods of conflict resolution in Nigerian artisanal fisheries. After Olomola (2008).

Type of conflict	Method of resolution	Outcome
Encroachment on territorial boundary	Negotiation	Pledge to renounce further encroachment
Challenge to communal ownership of lakes	Arbitration Negotiation	Confirmation of rightful owner Abrogation of individual ownership of lakes
Violation of fishery management rules	Negotiation	Renouncement of further violation
Trespass on individual territory	Mediation Arbitration Litigation	Payment of fine Payment of damages

Litigation is only employed in the case of *outsiders* and/or strangers being involved in the conflict. Olomola (2008) attributes this to the fact that these external agents -with respect to the fishing community- have another language, and often are perceived as carrying a different symbolic power, either higher or lower, linked to their place of origin and culture.

Lastly, a common point mentioned by both the case studies from Nigeria and Indonesia is the presence and action of NGOs in the resolution of conflicts. In both cases, the experiences are said to lead to positive outcomes. In fact, among NGOs possible lines of action in conflict resolution, are: facilitating the exchange between local communities and governments, or within the communities, as NGOs members are aware of local traditions and realities, but also capable to dialogue with the governmental level. The NGO can also constitute the forum where the resolution

of the conflict can take place as also reported by Pomeroy (1995) in coastal fisheries from Southeast Asia. However, NGO's role is not always beneficial to the fisher communities welfare. Academia can also play a key-role in the articulation of the different institutional levels and scales (Jentoft *et al.* 2007).

4.2.4 Other types of conflict resolution mechanisms

In 4 case studies, other types of CRM were mentioned, namely: (1) Fishers associations in Burundi, (2) Beach Management Units (BMUs) in Tanzania and Kenya; (3) Governmental environmental agency in Equator; and (4) Agreements between fishers.

Fishers associations in Burundi are embodied in the institution of Beach Management Units. The creation of the BMUs started in the 1990's and was further officialized in 2003 in Tanzania, in line with the effort to implement co-management and enhance local participation in the fishing management of the area, including Lake Victoria and Lake Tanganyika. The BMUs are composed of an assembly, committees and sub-committees, consisting in local fishing stakeholders, both from the harvest and post-harvest sectors with the final aim to manage and protect the fishing resources locally, in collaboration with the government (Luomba 2013). In fact, Luomba (2013) shows that, in the perception of fishers, conflict resolution is believed to be the driver of the creation of fishing regulations by the BMUs, which mandate in turn, includes conflict resolution. In 2012, 433 BMUs were recorded in Lake Victoria and 20 in Lake Tanganyika (Sobo 2012). In a study which analyses the action of BMUs of Lake Victoria towards social accountability, Etiegni *et al.* (2019) depicts conflict resolution mechanisms within four BMUs as a function of two types of conflict to address: rule enforcement disputes and conflict of interest among members of the BMUs. Rule enforcement disputes officially are to be transferred to a judicial court. However, in practice, most cases are resolved in the very BMU office, against a fine payment. On the other hand, conflicts of interest officially fall under the BMUs authority to manage. In fact, their by-laws contemplate conflict resolution mechanisms for gear conflicts and disputes among members.

Different types of conflicts are therefore officially relegated to different authorities, following a certain hierarchy, and a reason for this relies in the legitimacy and adequacy of each institution to tackle the conflicting situation. Enforcement conflicts should be subject to a higher authority level such as the court, while conflicts of interest, considered to implicate less social instability and intensity level, are entrusted to local administration. However, in practice, other factors lead to a parallel conflict resolution process in which the BMUs centralize the CR process, regardless of not only the court, but also people's traditions. The establishment and enablement of BMUs to resolve conflicts has been perceived to exert a negative influence upon the authority of traditional chiefs of the communities, as reported in the corresponding case study. If these latter used to be the focal person to mediate and disentangle any type of issue affecting the community and its inhabitants, BMUs have taken over not only the authority to manage fisheries conflict, but also other types of conflicts, infringing on the chief's role. Such situation is an example of an international regional effort to adopt a decentralized fisheries conflicts management through very context-specific local official institutions and the difficulties to adapt and articulate it, not only with the customary practices, but also with higher level authorities.

In Equator, the Ministry of Environment has the responsibility to allocate the custody of mangrove areas³⁴, and is therefore reported by the case study as role-player in the resolution of conflicts in these TURFs. At the same time, each *custodia* has its management plan, and at the moment of its establishment, a technical assistance agreement is signed between the social representatives³⁵ of the *custodia* and partners institutions of the Equatorial Fund Popolorum Progressio (EFPP). This agreement also includes the support for conflict resolution within the custody area (MAE 2008, p.63). However, a variety of governmental institutions are involved in the management and negotiation of the same *custodia*, leading to jurisdictional conflicts, and institutional pulverization, to recall de words of Lima & Callou (2015). This situation, in turn, is susceptible to hinder conflict management, since it might involve the Ministry of National Defense, the local Captaincy, the Ministry of Aquaculture and Fisheries, among others, each of whom have to ensure their interest and compliance to their respective areas of legislation. Institutional volatility and diffusivity is a strong characteristic in other countries of South America as well (Gasalla & de Castro 2016).

4.2.5 Fisheries without conflict resolution mechanisms

In the subsistence and/or small-scale indigenous fisheries from Honduras (Garifuna's), Argentina (from the Bermejo River), as well as the female clam collectors in Tunisia do not rely on any type of official conflict resolution mechanism. More particularly, in the case of the indigenous fishery from the Bermejo River, “in case conflicts among users of the same resource emerge, the enforcement authority resolves them unilaterally”. If on the one hand, a unilateral resolution undertaken by official authorities is a type of CRM, however, the indigenous fishery specifically does not rely on any legally recognized strategy to do conflict management at the local level.

Interestingly, at the international and transboundary level, the Eastern Pacific tropical tuna fisheries was also reported to lack of conflict resolution mechanisms. The management of tuna stocks is framed under international commissions. In the Eastern Pacific, the Inter-American Tropical Commission (IATTC) manages these fishery resources. As reported by the case study [UID 56], the commission is currently involved in conflicts over allocations, as countries that have been historically under-accounted by the quota sharing system adopted by the commission, are claiming for increasing rights. The case study therefore suggests “buybacks in combination with other measures” such as other side payments, as paths to settle the dispute. Being a Regional Fisheries Management Organizations (RFMOs), the IATTC should, however, present established conflict resolution mechanisms. In fact, RFMOs precisely emerge from the need to address and resolve transboundary fishing issues, including, if necessary, submitting conflicts to an “impartial expert panel or tribunal for a binding rule.”³⁶

³⁴ As explained by the case study [UID 15], *custodias del manglar*, or “mangrove custody” are concessions allocated to fishing communities and fishers associations who are responsible for the responsible and sustainable management of the fishery, similarly to a Territorial Use Rights for Fisheries (TURF) tenure system. It was conceded by the Ministry of Environment of Equator.

³⁵ The *custodias* are allocated to social groups that become institutionalized, such as associations, cooperatives or municipalities.

³⁶ This citation is issued from the “Report of an independent panel to develop a model for improved governance by Regional Fisheries Management Organizations”, 2007, The Chatham House. Available at: <http://www.oecd.org/sd-roundtable/papersandpublications/39374762.pdf>

4.3 Which mechanisms is appropriate? Crossing results with literature findings

The assessment of conflict resolution mechanisms efficiency for the 66 cases revealed that 45% of them are not at all to sometimes effective, while 35% are moderately effective, against only 9% of very effective ones (Figure 21). Furthermore, there was no significant difference in the effectiveness of conflict resolution mechanisms between the different conflict management systems (Figure 22). When existing, customary systems have always been reported as, at worst, rarely effective and most of the cases are found to be moderately effective. The most non-effective approach is the lack of conflict resolution mechanism, followed by *other types* of mechanisms.

Whether one or another type of conflict resolution system will be adopted, is a function of the fisheries management in place and the broad political setting, but also of the type and scale of the conflict. The conflict resolution takes place in different levels, from the very interpersonal relations, to the local/governmental and intergovernmental level from an institutional and political point of view.

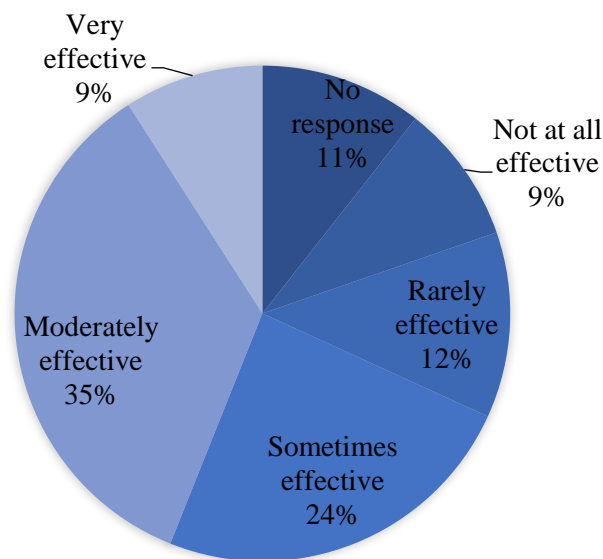


Figure 21 - Perception of the effectiveness of all conflict resolution mechanisms in the 66 cases.

The type of the conflict speaks to the nature, and therefore political power, of the stakeholders involved in the dispute. Different stakeholders involved in the conflict will frame a specific ‘political field’ –to recall Thompson’s (2001) words- to the conflict resolution arena, linked to the convergence of each stakeholders’ social capital. Peet & Watts (1996), cited in Buckles & Rusnak (1999) argue that “As in other fields with political dimensions, those actors with the greatest access to power are also able to control and influence natural resource decisions in their favor.”³⁷ With this premise, in order to address a conflict that happens between local fishers or between communities, the customary approach offers a more accessible resolution mechanism to local communities in terms of power imbalance. In fact, one other advantage of such approach,

³⁷ This statement seems to echo with Blaise Pascal’s thoughts (n°298, XVIIth century): “Being unable to make what us just strong, we have made what is strong just.” Available online at: <http://www.ntslibrary.com/PDF%20Books/Blaise%20Pascal%20Pensees.pdf>. Consulted in August 2019.

is the accessibility in terms of costs, “flexibility in scheduling and procedures”, and the alignment in the language used (Engel & Korf 2005).

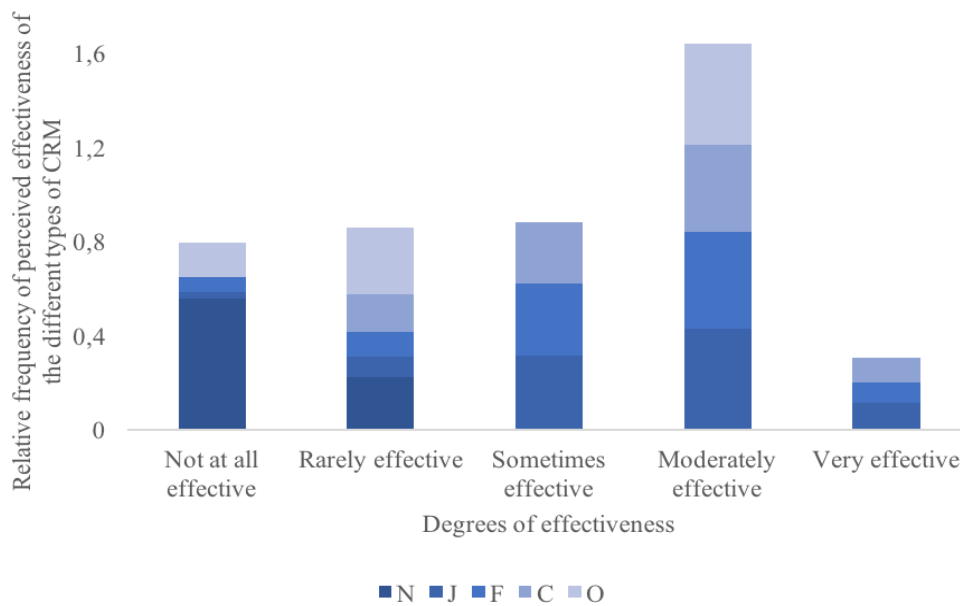


Figure 22 - Relative frequency of the perceived effectiveness of conflict resolution mechanisms per type of CRM in the 66 cases. (N= The fishery does not have an established CRM; J = Judicial Systems; F = Government fisheries management authority; C = Customary System; O = Other)

Language(s) and communications that forge social flows are found to be determinant in the resolution of conflicts, either helping or hampering the processes. It is often a barrier when the stakeholders have different social capitals (Bourdieu 2001). These factors are discussed in the case study addressing the artisanal fisheries of Tarapoto Lake [case study UID 37], in the Colombian Amazon:

“After many years tracking the fisheries management process in the region, I have evidenced that the dialoguing processes between the local communities of the indigenous area of Ticuna-Cocama-Yagua, the State institutions and the NGOs are smoothly evolving. However I consider necessary to have more integration spaces, within which it is possible to find a common language among all actors implied in the management, not only fishery management but ecosystemic, because the fishing population just as the population from the communities in general, have different ways of communicate and express ideas, and require educational processes to understand the functioning of the hierarchical structures of the different forms of government present in their territories [...].”

The need for the establishment of an ‘arena’ where the conflict resolution dynamics can take place particularly stands out from the last extract. This physical and symbolical place of speech and dialogue is vital for an exchange to take place among parties, at all levels and types of CRM. Alegret (1989) sheds light on the role of the *Cofradías de Pescadores* (fisher guilds) from

Cataluña, Spain, in creating a social space where conflicts can be solved in an institutionalized³⁸, but still local way: “[the most important] mediator role of the *Cofradías* is the one that ensues from constituting a social space where most of the conflicts generated inside the sector are resolved.”

The capacity of a community to communicate and articulate a conflict resolution mechanism can be a function of the closure of the local social network (Barnes *et al.* 2019). The authors verified that coral reef fishing communities in Kenya that were more prone to social-ecological network closure have more defined fishing rights as well as conflict resolution capacities. In fact, those 2 characteristics are part of the premises stated by Ostrom (1990) for long-enduring common-pool resource institutions (refer to Table 6). For example, in the Ghana volta estuary clam fishery [UID 7], traditional regulation for fisheries resolution is not officially recognized, and therefore the lack of clear comprehension on the individual rights is reported to lead to conflicts and a low effectiveness of the conflict resolution mechanisms.

Inversely, government officers may also not be aware of customary laws and local realities. Therefore, government institutions fail to account for local knowledge, and the conflict resolution process duplicate exclusions of people, which inexorably can lead to (another) conflict. The Okinawan artisanal fisheries typically illustrate this situation where fishers have no familiarity with the legal regulations, while government officers are not aware of customary laws. In Bangladesh, Murshed-e-Jahan *et al.* (2014) also find that conflicts are rather solved without the notification of governmental agents, as fishers prefer to deal with each other due to a “negative perception of the effectiveness of communication with government agencies and administrators”. The same is also verified in the study of the BMUs (Etiegni *et al.* 2019) and Nigerian artisanal fisheries (Olomola 2008). In fact, “social control can be the most effective tool for the observation of norms, [whilst] the management of a system [that] depends on a set of formal rules [can be] inconsistent with the SES features” (Ostrom 2001).

Another factor influencing the access from local communities to, and the correct functioning of, official conflict resolution mechanisms are institutional challenges such as corruption. To overcome it, third parties can present an alternative in the process of managing conflicts. NGOs are an example of third party that, in some cases as in the Tarapoto lakes of Colombia [UID 37] or Dampier Strait’s artisanal fisheries from Indonesia [UID 28] and Bangladesh as reported by Murshed-e-Jahan *et al.* (2014), can play a pivot role between the community and the government. Other cases see informal conflict resolution mechanisms being implemented even in the context of local fisheries offices. In Cambodia, in the province of Pursat, formally recognized fishery organizations have arranged a parallel extra-judicial committee to deal with fisheries conflicts parallel to the official system in place (Ratner 2006).

The argument developed until now shows how informal, alternative and customary practices are prioritized upon legal systems due to their higher accessibility or (perceived) failure of the legal system. In fact, this latter may not even be activated throughout the conflict resolution process, even if it is officially in place. In some cases, however, the community has been reported to fail managing conflicts, for example proving to be unable to prevent them due to lack of enforcement. It is the case with the *custodias* system in Equator in the mangrove cockle harvesting. Enhancing the presence and role of governmental officials, including technical experts was instead presented in this case as a potential solution for this situation. The same is argued by Ratner (2006) in Cambodian fisheries management. The author builds his argument on the need for a functional and transparent institutional framework for fisheries management authorities, echoing with Bennett *et al.* (2001). Among the key point highlighted by Ratner (2006), two are of particular relevance for this discussion. Effective conflict resolution mechanism in a situation of community-

³⁸ The structure and functioning of the *Cofradías de Pescadores* of Cataluña are defined by governmental law (Alegret 1989).

based management³⁹ of Cambodia should verify that: (1) legal authorities are established in practice with clear clear-cut of the extent of the authority reach, and (2) the availability, accessibility and functioning of accountability mechanisms in order for the decision-maker, either official and/or traditional authority is made responsible for his/her role in the conflict resolution process. Inversely, the implementation of co-management system is also acknowledged as a conflict resolution mechanism, as is the case reported by Sabau (2017, p.366) in Costa Rica. Small-scale fishing communities had their fishing rights suppressed after the implementation of marine protected areas enshrining on the traditional fishing grounds. Since then, fishers were in conflict with governments upon *Property rights* issues. The implementation of co-management in the area consisted in the way out for the conflict.

If the points listed by Ratner (2006) are not observed, legal systems can end up draining and emptying the role of customary authorities in conflict resolution. This situation is intrinsically linked with a top-down fisheries management, as reported in the case study UID 17 from Argentina, and illustrates the argument from Engel & Korf (2005) according to which customary systems for managing environmental resource conflicts “have been supplanted by courts and administrative laws.” NGOs are also acknowledged to act sometimes as such, as observed in inland fisheries from South America (Pinedo & Soria 2008). Legal and judicial systems are however also clearly needed to address mainly the type of conflicts related to: *Fishery Jurisdiction* issues, including *Property rights* and *transboundary* conflicts, *External allocation* issues, and *Other political, social, economic and environmental factors*. Willman *et al.* (2017, p.28) argues that “in cases involving natural resources and human rights, courts and international tribunals have shown consistent willingness to accept collective notions of tenure rights”, including in cases where traditional fisheries tenure rights were threaten or suppressed in the face of industrial or infrastructural projects, also translated into *Eternal allocation* conflicts. On the other hand, relative to transboundary issues, the small-scale fisheries are still lacking sufficient and appropriate arena, or mechanism, in order to address them (Franz & Barragán-Paladines 2017). This might reflect, either in fact a lack of such fora, either its inaccessibility to the small-scale fishers.

Formal institutions are also likely involved when conflicts escalate in terms of intensity. There is an “upgrade” from the local to the governmental level in terms of conflict resolution mechanism, pointed out by several case studies in 2 different situation patterns: (1) either the type of conflict, while manifested locally, is intended to be brought to the governmental or international level because it involves bigger companies and industries; either (2) the conflict persists after being addressed at the local level, the parties don’t find a consensual agreement and the situation deteriorates. There is therefore the need of renewing the authority institution in charge of the case. In this type of situation, the escalation in the CRM process is not necessarily officially prescribed, but other drivers can lead to such transfer. In Nigeria for example, if the majority of fisheries-related conflicts are rather resolved within the community, “for conflicts with other stakeholders such as sand miners and industrial fisheries, fishers resort to the Government or even The Hague [court]” [UID 53]. In this case, the legal system is necessary in order to guarantee an equal representation of all parties in a situation of unequal power balance (Engel & Korf 2005). The same “escalation mechanism” within conflict resolution processes are contemplated in the Treaty between Uruguay and Argentina concerning the Rio de la Plata and the Corresponding Maritime

³⁹ “Community-based management” in this analysis is understood as a type of co-management, since “The core feature of locally developed, decentralised resource management is that user communities are ceded the rights and have the responsibilities for managing their own resources, typically using a mix of traditional or more formalised mechanisms of contract and enforcement to define access, exploitation methods and intensity. This is increasingly being applied in fisheries, though in many cases, the management structure is widened to include public sector agencies and other partners, in co-management.” Fisheries and Aquaculture Department, FAO. Available at: <http://www.fao.org/fishery/topic/16626/en>

Boundary, or applied throughout the T'aaq-wiihak's fishery-related negotiations. If from one hand, such process seem to ensure that the political languages spoken by the different parties of the conflicts can dialogue, it also appears that the change of strategy to address a conflict answers, in a more subjective and informal way, to some factors such as: the need of finding another appropriate and legitimate figure of authority responsible for intermediating the conflict resolution process in the case the conflict persists; or considering the desired outcome of the conflict resolution process, i.e. what sort of penalty is envisaged out of the affair once it is submitted to a determined mediator body, and what is the perceived efficiency and representativeness of this new CRM.

The perceived legitimacy of the authority embodying the figure of mediator is a key driver in the success of a CR process. The notion of "peacekeeper" as mentioned in the traditional conflict resolution mechanism of small-scale fisheries of Guatemala reappears in the Nigerian's. In the words of Olomola (2008): "In their [the village head or representative] roles as mediators or arbitrators the council members strive, as much as possible, to establish the truth and to appear as honest and trustworthy representatives of the community whose role should be seen essentially as that of a peace maker. Such attitude has been responsible for promoting and sustaining the trust of disputants and their commitment to the resolution outcomes." Several other figures may embody this social role of the legitimated mediator for a conflict, as a direct function of the socio-cultural context where the dispute and dispute resolution process take place. At the fisher guilds level in Spain, for example, Alegret (1989, p.11-12) observes that the municipal or regional leader are not the one to be invested with people's perception of figure of authority. Instead, while these officially represent and deliberate on economic and social stakes, the one actually entrusted by fishers is the skipper of a boat "who acts as the "good man" in the resolution of most of the conflicts that take place within the sector, this way giving continuity to the Mediterranean tradition of the Catalan "prohomens" or French "prudhommes" (Tempier 1985)."⁴⁰ Here, the skipper acts as peacekeeper for the Catalan fishers.

Escalation in conflict resolution mechanisms is also observed in the conflict between trawlers and small-scale fisheries from Coromandel Coast, India (Bavinck 2005). The author evidences a struggle between the fisher groups to manage delivering the dispute to the institution that each perceive would benefit them with the potential outcome in terms of their perceived representativeness by the institution, as well as the penalty attributed (higher or lower fine). In fact, a common perception is that legal and judicial systems are underpinned by laws "as an ultimate instrument for social engineering and an effective means of homogenizing a heterogeneous society. Therefore, a legal approach resolves conflict by legal enactment and the threat of punishment (Nader & Todd, 1978)." (Upreti 2001, p. 144), which promotes an even more unbalanced process in terms of political power, and precludes expectations for a consensual and peaceful negotiation with a win-win outcome.

At the international level, Spijkers *et al.* (2019) distinguish two different approaches undertaken by the studied countries around the world when facing fisheries conflicts. They are: foundational risk mitigation strategy and specific risk mitigation strategy. The first category includes scientific collaboration and shared enforcement as lines of action. The second one instead included: side payments, long-term management plans, IUU policies and provisional fishery agreements. Each of these strategies were found to be applied for different types of fisheries conflicts. However, the authors note their scope is essentially technical and legal and therefore fail to account for socio-political and/or economic implications in the conflict. It is further arguable that some strategies mentioned to address fisheries conflicts are less likely to be successfully implemented in less developed countries, where challenges such a weak and often instable

⁴⁰ This extract has been directly translated from the original version in Spanish.

institutional structure hampers the realization of a reliable fisheries management, and, among other consequences, it precisely leads to inadequate funding strategies, limited production of scientific knowledge, dissemination and usage, as well as un-harmonized fisheries policies, in the words of Ogutu-Ohwayo & Balirwa (2006) when addressing the challenges of inland fisheries in Africa. Salas *et al.* (2007) depict a similar panorama for Latin America and the Caribbean.

5 FISHERIES CONFLICTS AND RESOLUTION MECHANISMS IN THE CCRF, VGGTs AND SSF Guidelines: (HOW) ARE THEY ADDRESSED?

5.1 The role of non-binding international policy instruments: addressing fisheries conflicts and related CRM by means of their own existence

5.1.1 Differentiating “hard-law” from “soft-law”

Although values, perceptions and attitudes vary greatly from a culture to another one, global issues regarding the society and environment need to be framed within international policy instruments. These latter contribute to set global baselines for a healthy, decent and peaceful life on earth for everyone, including future generations. Great debate is still evolving around the different ways of (re)inventing law rhetoric differentiates the so-called “hard law” from the “soft law”. Abbott & Snidal (2000) cited in Shaffer & Pollack (2010, p.715) state that: “[t]he realm of ‘soft law’ begins once legal arrangements are weakened along one or more of the dimensions of obligation, precision, and delegation.” When the instrument is non-binding, or voluntary, the weakened dimension is the obligation one. A lot of debate still flourishes around the different benefits or drawbacks of the binding versus non-binding laws (Shaffer & Pollack 2010).

Hard laws are known to reflect the traditional law-making process (Weiss 2014). Some benefits of hard-law in the words of Shaffer & Pollack (2010) are compiled in Box 3. It is of relevance here to note that hard-law instruments typically anticipate the arena and mechanisms for the resolution of conflicts and disputes. The States involved can also provide for a third-party body such as committees or “dispute-settlement panels”. In the words of the authors, these set up a “forum”, or *arena*, of negotiation and exchange.

Box 3 - Selected benefits of hard-law instruments. Adapted from: Shaffer & Pollack (2010)

Hard-law instruments:

1. Allow States to commit themselves more credibly to international agreements;
2. Are more credible because they can have direct legal effects in national jurisdictions (“self-executing”), or they can require domestic legal enactment;
3. Better permit states to monitor and enforce their commitments, including through the use of dispute-settlement bodies such as courts.

After the 2000’s however, the number of international binding instruments have decreased, while the importance of international soft-laws globally seems to grow, particularly in the environmental field (Weiss 2014). Non-binding instruments include: “declarations, charters, codes of conduct, resolutions, decisions of international inter-governmental organizations, and guidelines.” (Weiss 2014, p.84). As mentioned by Shaffer & Pollack (2010), scholars point out that non-binding instruments generally raise from a process that invokes the willingness from the States to co-govern, that is more prone to accommodate social and negotiation mechanisms such

as “persuasion, learning, argumentation, and socialization.” (Shaffer & Pollack 2010, p.720). Therefore, this also allows to take account of a broader diversity of interests and uncertainty, as well as to ensure the legitimacy of the instrument among the different groups of people. Some further benefits derived from the soft-laws are listed by Shaffer & Pollack (2010) and reproduced in Box 4.

Box 4 - Selected benefits of soft-law instruments. Adapted from: Shaffer & Pollack (2010)

Soft-law instruments:

1. Are easier and less costly to negotiate;
2. Impose lower “sovereignty costs” on states in sensitive areas;
3. Provide greater flexibility for states to cope with uncertainty and learn over time;
4. Are directly available to non-state actors, including international secretariats, state administrative agencies, sub-state public officials, and business associations and nongovernmental organizations (NGOs).

On the other hand, precisely due to the flexible feature of soft-laws, some interests can take over on others during the negotiations in which case an unbalanced political power situation could bias the resulting agreement (Cotula 2017). The probability of this happening is, however, conditioned to the type of soft-law instrument in question. “Technocratic” and/or a “corporate” code will most likely be biased than a product of a more democratic and participative process of elaboration, such as voluntary guidelines, argues Cotula (2017).

Soft and hard-laws are however not independent and unrelated to each other. First, these systems themselves are in a constant redefinition, with sometimes overlapping characteristics. The global geopolitical dynamics shaped by the globalization process open new spaces and legitimacy for an increasing number of stakeholders to elaborate and implement norms (Weiss 2014). International organizations, corporations, innumerable networks and informal or transient groups, a myriad of community groups and millions of individuals are some of the actors that build and modify the legal system(s), and particularly soft-laws arise under new forms of agreement (Abbott & Snidal 2000). Second, soft-law and hard-law may alternate and/or complement each other either when (1) a non-binding branches out in the formulation and implementation of hard-laws, either when (2) soft-laws ensure from hard-laws (Shaffer & Pollack 2010). Whether a State implements or not a soft-law, depends on an array of factors and is often a challenge. It remains that these latter establish consensual ways to address pressing global issues. In fact, they are “inherently normative in the sense that they do not merely describe phenomena. Rather, they provide pointers on what states and/or non-state actors should do.” (Cotula 2017, p.124). Therefore, deviant acts and policies undertaken by States will expose these latter to the international pressure and risks.

FAO is an international institution which utilizes voluntary policy. The CCRF, VVGTS and SSF Guidelines as international non-binding instruments play a significant role in setting policy guidance to States around fisheries issues. The next topics explore how the CCRF, VGGTs and SSF Guidelines inscribe themselves in the global fisheries picture as international soft-law instruments, and more precisely in which ways and to what extent they contribute (or not) to addressing fisheries conflicts and related CRM.

5.1.2 What does the process of emergence of the CCRF, VGGTs and SSF Guidelines tell

“We argue that international actors choose to order their relations through international law and design treaties and other legal arrangements to solve specific substantive and political problems.” (Abnott & Snidal 2000, p.421). This statement highlights a key-burgeon leading to the elaboration of legal arrangements -and, by extension, international instruments- namely “specific and political problems”. Both codes of conduct and voluntary guidelines drive global attention to particular issues.

5.1.2.1 The CCRF

The CCRF, published in 1995, emerges to address a pressing global concern: the recognition that world’s fishing resources were strongly declining in terms of biomass, together with an increasing damaged aquatic environment, ultimately affecting the market and economies (CCRF, Annex 1, p. 35). The CCRF was intended to echo, among others, the following relevant events and instruments cited in its Annex 2 (p.40): the United Nations Convention on the Law of the Sea (UNCLOS) in 1982, and “the 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 Stocks and Highly Migratory Fish Stocks”. It speaks to the strong interest in transboundary-related issues and high seas that was hovering over global fisheries debate. In fact, high seas issues were recommended to be given more emphases throughout the Code, regardless of coastal and inland fisheries. This ascertainment also implies that mostly *Fishery Jurisdiction and Management mechanisms* and, although to a lesser extent, *Internal allocation* issues would be put forth, in spite of *External allocation* and *Other political, social, economic and environmental factors* ones.

A broader picture of the major international agreements from 1975 until 2001 is showcased in Figure 23. The Agenda 21 is a product of the UN Conference on Environment and Development that took place in Rio de Janeiro, Brazil, in 1992. The document is a milestone for the sustainable use and treat to the environment, setting priorities to the ‘Social and Economic Dimensions’, as highlighted by the chapter’s structure of the document⁴¹. Interestingly, it broadly calls States to address *user conflicts*⁴², or *Internal allocation*-related conflicts within an Integrated Coastal and Marine Management, and through “consultation, as appropriate, with the academic and private sectors, non-governmental organizations, local communities, resource user groups, and indigenous people”. At the national levels, it also urges the Governments to undertake the “Development and strengthening of national dispute-resolution arrangements in relation to settlement of land and resource-management concerns” related to indigenous people’s rights (Chapter 26, Article 26.3. v.). Finally, in its ‘Chapter 39 – International Legal Instruments and Mechanisms’, item D of the list of ‘Activities’ is dedicated to “Disputes in the field of [international] sustainable development”. The article presses the States to look for international dispute settlement mechanisms, using as baseline international agreements and institutions, incentivizing cooperation and recommending appealing to the International Court of Justice “where appropriate”.

⁴¹ The Agenda 21 is available online at: <https://sustainabledevelopment.un.org/content/documents/Agenda21.pdf>

⁴² Agenda 21, Chapter 17, “Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources”. Article 17.6.

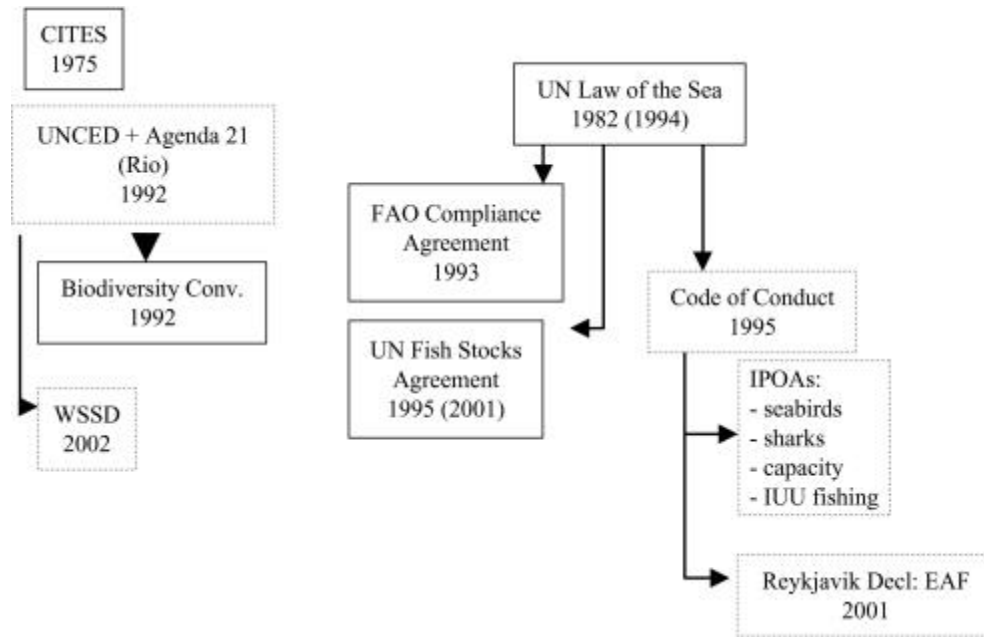


Figure 23 - Outline of some of the major international agreements (voluntary, dotted outline; binding, solid outline) directly impacting upon national and regional fisheries. (CITES = Convention on International Trade in Endangered Species of Wild Fauna and Flora; UNCED = UN Conference on Environment and Development; Biodiversity Conv. = Convention on Biological Diversity; WSSD = Plan of Implementation adopted by the World Summit of Sustainable Development; IPOA = International Plan Of Action; Reykjavik Decl = Reykjavik Declaration on Responsible Fisheries in the Marine Ecosystem; EAF = Ecosystem Approach to Fisheries) Adapted from: Cochrane & Doulman (2005).

Therefore, the Agenda 21 is innovative in the sense that it already promotes the creation of multiple and integrated *arenas*, or mechanism to address the local, national and international issues around fisheries management, with a particular socio-economic accent. It is mentioned as baseline in Article 3, item c, of the CCRF.

The elaboration of the Code was participative through consultations with relevant United Nations Agencies and other international and non-governmental organizations, as well as through technical consultations with FAO members and non-members. Its implementation is followed by COFI every 2 years, when FAO submits a progress report built upon the answers to a self-assessed questionnaire of the member states as well as RFMOs and civil society (Cochrane & Doulman 2005). Until nowadays, however, the implementation of the CCRF is unequal around the world, as shown in Figure 24. Countries with higher Human Development Index (HDI) were found to be more compliant with the code, as well as to disclose a higher level of their fisheries sustainability. Ultimately, the authors find that the implementation of the CCRF have subsequent positive ecological implications. On the other hand, Cochrane & Doulman (2005) highlight that the establishment of CRM to mediate coastal fisheries and aquaculture disputes was one of the 2 less complied items, together with the regulation of bycatch and discards.

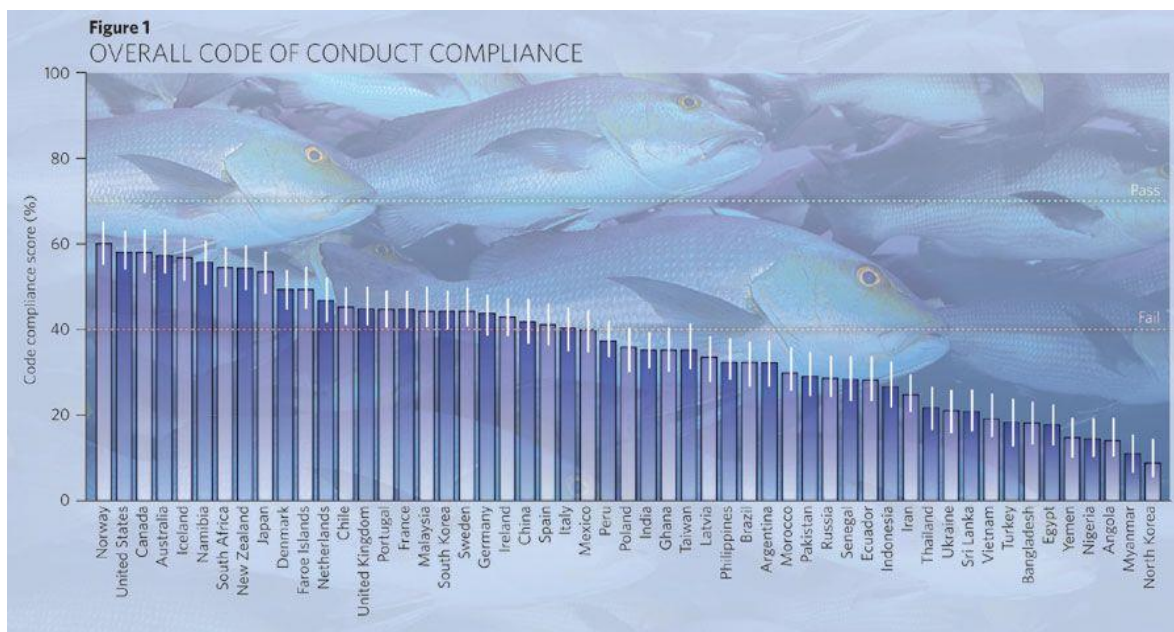


Figure 24 - Overall compliance by countries to the CCRF. Source: Pitcher et al. (2009)

5.1.2.2 The VGGTs

In 2012, the Committee on World Food Security (CFS) endorsed the Voluntary Guidelines on the Responsible Governance of Tenure in the Context of national Food Security (VGGTs). The involvement of the CFS punctuates a first important difference between the VGGTs and the Code. An array of stakeholders effectively took part in the elaboration process of the VGGTs, breaking the usual dichotomy between ‘Member states’ and ‘Non-state actors’ - or ‘observers’ of United Nations negotiations (Cotula 2017). In fact, the CFS people are framed in 3 categories: members, participants and observers⁴³. The first group consists of Member States from United Nations (and not necessarily member states from FAO), the International Fund for Agricultural Development (IFAD) or The World Food Programme (WFP). Within the participants, there are civil society from NGOs and research institutions, international or regional institutions, as well as the private sector representatives. Finally, observers are people invited by the CFS in order to accompany the development of negotiations around a specific topic of the agenda. Therefore, the CFS brings together representatives from a variety of scales and levels. Furthermore, open-ended working group were realized throughout 2011 and 2012, convoking 700 people from 133 countries, as well as the first drafts of the guidelines were submitted to the appreciation of the academia and civil society (VGGTs, p. iv).

⁴³ Source: CFS website, <http://www.fao.org/cfs/home/about/structure/en/>.

This extensive and inclusive process of consultation is well detailed in Seufert (2013, p.182-184). It translated into the multiplication of arenas where discourses and interests could intersect and dialogue, indicating that the VGGTs builds, from its first moments of existence, on concrete tensions and conflicts reported by an array of perspectives, in terms of tenure in land, fisheries and forestry. However, for this very same reason, Seufert (2013) argue that the text remained general and ambiguous – to the point that some issues were avoided-, in order to be able to accommodate all the political interests and pressure. In fact, the *momentum* of the elaboration and publication of the VGGTs reflects an increasing global concern with ‘grabbing’ processes: “‘green grabbing’, ‘water grabbing’, biofuels and biomass, the financialisation of agriculture, and the seizing of land used by peasants, indigenous communities and pastoralists” by industrial and infrastructure private initiatives (Edelman *et al.* 2013, p. 1518). Furthermore, this grabbing happened in an unbalanced geographical pattern, where ‘grabbers’ were mostly Northern countries, and ‘grabbed’, the Southern ones (Figure 25).

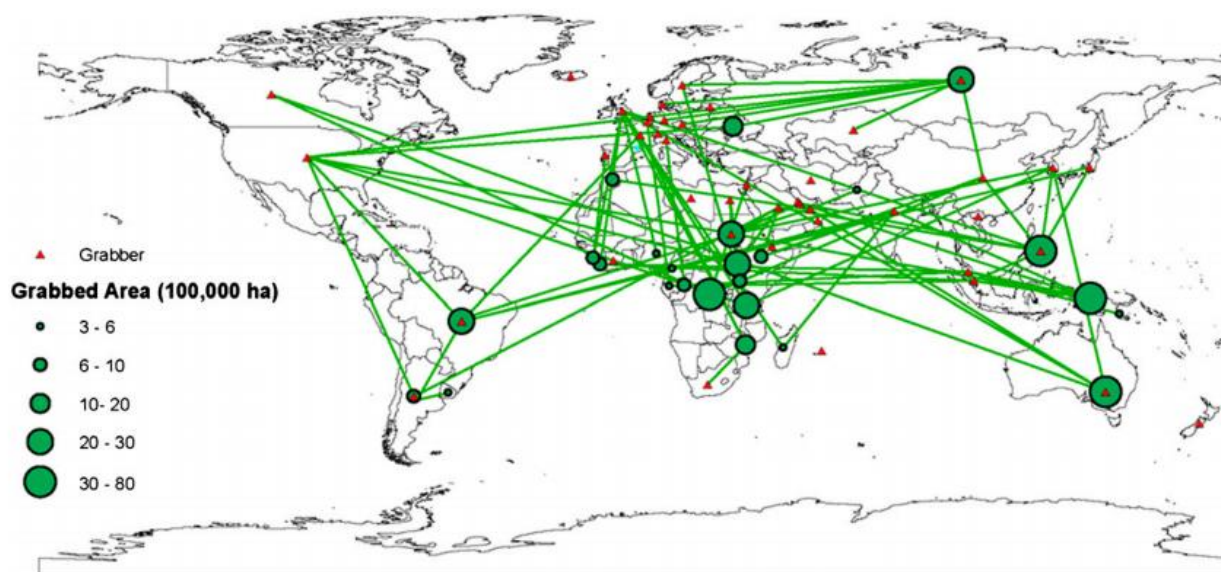


Figure 25 - A global map of the land-grabbing network: land-grabbed countries (green disks) are connected to their grabbers (red triangles) by a network link. This map considers only the 24 major grabbed countries. Relations between grabbing (red triangles) and grabbed (green circles) countries are shown (green lines) only when they are associated with a land grabbing exceeding 100,000 ha. Source: Rulli *et al.* (2012).

Still, fisheries concerns are not at all addressed in Edelman *et al.* (2013) and Rulli *et al.* (2012), when land grabbing affects both inland as well as marine fisheries, and is particularly linked to freshwater resource grabbing (Rulli *et al.* 2012). Nonetheless, ‘freshwater resource grabbing’ mostly refers to the appropriation of the water itself, mainly used for agricultural production, and fish is not accounted for. The term ‘ocean grabbing’ came later on, invested with a further social dimension: “The term ‘ocean grabbing’ aims to cast new light on important processes and dynamics that are negatively affecting the people and communities whose way of life, cultural identity and livelihoods depend on their involvement in small-scale fishing and closely related activities.” (Franco *et al.* 2014, p.3). Ocean grabbing -and by extension inland fisheries grabbing- happens when the (re)allocation of fishing resources and other types of enterprises empty local communities and small-scale fishers from the possibility and their very own right of fishing and right to decent livelihoods. A literature review indicates that the analysis

of conflicts through the optics of common resources grabbing processes is more developed as such in the field of land grabbing, compared with the aquatic grabbing. Borrás Jr & Franco (2013) highlight three main configurations of political clashes take shape: (1) the one that opposes poor people to corporate actors, (2) poor people and the state, and (3) “poor people versus poor people”. Superposing this framework to the fisheries realm, a grabbing process is therefore very much prone to mainly reflect in *Property rights* claims, *External allocation* conflicts, as well as *Other political, social, economic and environmental factors*.

In this context, the VGGT also build on the Voluntary Guidelines to Support the Progressive Realization of the Rights to Adequate Food in the Context of National Food Security (adopted by FAO in 2004) and the International Conference on Agrarian Reform and Rural Development (ICARRD) that took place in 2006 in Porto Alegre, Brazil. Such baselines propel the VGGTs into a strong socio-cultural and human rights engagement first. Similarly to the CCRF, the VGGTs have their implementation followed and reported by the CFS and its Advisory Group (FAO 2012 p.34 cited in Seufert 2013). This process is meant to be supported by the implementation at national levels of “platforms and roundtables”, described as “mechanisms intended to identify the main problems and possible solutions regarding tenure and priorities when implementing the Voluntary Guidelines at the national level.” (Seufert 2013, p.184). The VGGTs therefore, in the assessment of their implementation, call for the creation of new spaces of communication, or *arenas*, where “problems”, main claims and issues from which conflicts may rise, can be spoken and framed in order to be addressed through VGGTs guidance. These new arenas *per se* are part of conflict resolution mechanisms. However, main challenges to the functioning of such mechanisms remain, such as: (1) “Difficulty in ensuring the effective representation of the main beneficiaries in multistakeholder dialogue”; (2) “Limited knowledge and understanding of VGGT by stakeholders; and (3) “Violence against human rights defenders involved in securing land ownership”, as reported in the report of the Forty-third Session of the CFS⁴⁴ (p.11).

Monitoring different aspects or ‘thermometers’ of the compliance to the VGGTs constitute an effort towards improving its implementation. To this aim, the CFS undertakes several tasks, such as: (1) Monitoring conflicts over the resource; (2) Monitoring of evictions; (3) Monitoring land and resource grabs; (4) Monitoring access to natural resources in the context of the Voluntary Guidelines on the Right to Food; (5) Monitoring fishing rights; and (6) Monitoring policies and frameworks. All are of importance to shed light in ongoing fisheries conflicts. It is important to note, however, that (1) specifically reports conflicts of violence against the communities, i.e. conflicts of higher intensity; that (5) does not rely yet on a comprehensive database, compared to (3) Monitoring *land and resource grabs*, a “phenomenon [which] has received the global attention it deserves.” (Seufert & Suárez 2012, p. 23). Therefore, the monitoring and implementation of this guidance in the field of fisheries, as well as the conflicts around the issues of tenure are still under recorded. In 2016, the CFS estimated that 2 million individuals were being affected by the use and implementation of the VGGTs.

The different conflicts related to tenure which can be addressed by communities and civil society organizations using the VGGTs as an instrument are illustrated in fictitious situations in the People’s Manual on the Guidelines on Governance of Land, Fisheries and Forests⁴⁵ (IPC 2016). Conflicts ranging from “Concentration of land and landless people”, “Development projects in coastal zones to the detriment of fishing communities”, “Extractive Industries and threats to the territories of indigenous peoples and other communities”, “When the policies for preservation of

⁴⁴ The Forty-third Session of the CFS report is available online at: <http://www.fao.org/3/a-ms023e.pdf>.

⁴⁵ This document is available online at: <http://www.foodsovereignty.org/wp-content/uploads/2016/06/peoplesmanual.pdf>

nature affect populations that depend on it”, “Conflict, occupation and war” as well as “Impacts of trade agreements on tenure and access to fisheries” are considered.

In conclusion, both for its process of elaboration that accounted for existing tensions and conflicts, by being the product of a global and bottom-up call for containing and positioning against land and water grabbing and associated natural resources; just by existing, the VGGTs address conflicts related to land, fisheries and forestry tenure, as well as provide a framework to address such conflicts in its latent as well as manifested phase as closely analyzed subsequently.

5.1.2.3 *The SSF Guidelines*

Published only 2 years after the VGGTs, the SSF Guidelines were endorsed by COFI in 2014. The context in which the SSF Guidelines were launched interweaves with the one that embeds the VGGTs. It is interesting to start the reflection from the guidelines’ very own title, which specifies “in the context of Food Security and Poverty Eradication”. In fact, the SSF Guidelines were published 2 years after Dr. José Graziano da Silva was elected the new Director-General of FAO, projecting the rhetoric of fight against hunger and fight against poverty into FAO’s mandate (Graziano da Silva 2019). This turning point is particularly important for the fisheries realm since, until the beginning on the 2000’s, fisheries science was mostly busy addressing stock assessment in the developed world (Berkes *et al.* 2001) – and marine fisheries. At the same time, however, some trends were emerging and acknowledged as counterweights to the fisheries global paradigms back then in effect. Under the umbrella of the developing Ecosystem Approach to Fisheries (EAF, Garcia *et al.* 2003), co-management initiatives (Jentoft *et al.* 1998), the flourishing of alternative participative fisheries management (Berkes *et al.* 2001), and the questioning of the adaptability of the Western model for protected areas being implemented in Southern Countries regardless of the local realities and people (Diegues 2001) are some key debates in the wake of the 2000’s.

However, the situation of the Global South and of fishers themselves was until then still underscored, not only by academic research (addressed by, among others, Berkes *et al.* 2001); but also much in the governments’ agendas. Small-scale fishers were left marginalized due to specific policies –elaborated and implemented in a non-participatory and centralized fashion- that undermined their livelihoods, harvesting, and access to local markets, more than because of their often remoteness location and specific rhythm of life. The raising of eco-labelling in fisheries and government subsidies to industrial fisheries are two main factors contributing to this scenario (Jacquet & Pauly 2008). Further factors affecting small-scale fishers and taken up by the guidelines are: “poor access to health, education and other social services”, “existence of ill health and inadequate organizational structures”, youth unemployment, unhealthy and unsafe working conditions, forced labor, pollution, environmental degradation and climate change impacts”, all of this underpinning a multidimensional poverty (SSF Guidelines, Preface, p. x-xi). Acknowledging such challenges, embodied in tensions, distress situations and conflicts, is the beginning of the process to address it.

The SSF Guidelines align with the CCRF, the VGGTs, the Voluntary Guidelines to Support the Progressive Realization of the Right to Adequate Food in the Context of National Food Security, and the Principles for Responsible Investment in Agriculture and Food Systems (SSF Guidelines, Forewords, p. v). As the VGGTs, it ensues from a highly participatory and bottom-up elaboration process translated into more than 4000 people from the “government, small-scale fishers, fish workers and their organizations, researchers, development partners” (SSF Guidelines, Foreword, p. v) among others, involved, thereby articulating 120 countries in national meetings

led by civil society organization. The very own process of elaboration created new spaces and channels of exchange that aimed to be inclusive and democratic. These weren't, however, free from resistance and oppositions when the *status quo* was challenged during the negotiations (Jentoft *et al.* 2017).

The implementation of the SSF Guidelines are observable in different ways, although the period from its publishing until now is still short for global scale effects to be felt. However, the SSF Guidelines opened door to various further meetings, consultations and documents involving a series of stakeholders and institutions, as detailed in Franz & Barragán-Paladines (2017, p. 44-49). Furthermore, national initiatives were developed in Cambodia, Algeria, Mauritania, Sierra Leone, South Africa, Spain, the Caribbean, Canada, among others. An emblematic example of the application of the SSF Guidelines however, is Costa Rica (Sabau 2017). While the SSF Guidelines were just launched in 2014, Costa Rican government included them in the 2015-2018 National Development Plan (Sabau 2017), pushing governmental institutions to align their local plans and budget to the new guidance. More specifically, efforts were concretely made towards the engagement of fishers in the fisheries management through incentives of co-management models, among others through Marine Areas of Responsible Fishing (MARFs), strengthening social protection to small-scale fishers, as well as the creation of a regional network for the implementation of the SSF Guidelines. These are all actions that connect, both horizontally as well as vertically, fisheries stakeholders through new exchange platforms where conflicts of interest may arise, but also other disputes may be expressed, therefore initiating a conflict management process.

In conclusion, the more effectively participative is the process of elaboration and implementation of a soft-law, the more it creates democratic spaces, or arenas, where conflicts can be verbalized, and therefore, the resolution mechanism can be triggered. Furthermore, fisheries conflicts and its related resolution processes are socio-political issues, as argued in Chapter 3 and 4 respectively. Considering these two latter ascertainments, the VGGTs and SSF Guidelines are a step ahead of the CCRF, in their efficiency to address fisheries conflicts and provide solutions, strongly rooted in socio-economic aspects.

5.2 By means of their content?

This part aims to identify the extent to which the CCRF, VGGTs and SSF Guidelines address fisheries conflicts and CRM through their content. The words linked to the lexicon of conflict and CRM detected are cited in each of the three publications with the absolute frequencies given in Table 8.

The VGGTs are the publication that address the most, and by far, the conflict and conflict resolution sphere. They do so, not only by displaying the higher absolute number of citations of words related to this lexicon, but also because these words are most diffuse throughout the document, as testified by the number of paragraphs where they are found. In this sense, the VGGTs are the most conflict-sensitive document among the three.

However, the context where the term 'conflict' is employed in the three publications vary between, and within them, as well as relatively to the meaning considered in the present study. In the present study, 'conflict' speaks about any situation of disagreement encompassing both conflicts of interests and/or 'latent' conflicts, to violent conflicts, or manifested conflicts. The lack of definition of the terms 'conflict' and 'dispute' in the guidance may introduce ambiguity in their interpretation throughout the publication.

Table 8 - Absolute frequency of words related to conflicts and conflict resolution mechanisms in the CCRF, VGGTs and SSF Guidelines. The numbers between brackets refer to the number of paragraphs in the document in which the key words are found. For this table exclusively, SSF refers to the SSF Guidelines.

Keyword	CCRF, 41 pp	VGGTs, 40 pp	SSF, 18 pp
Conflict	3	17 (11)	5 (4)
Dispute	4 (1)	23 (14)	2 (1)
Resol(ve)(ution)	1 (1)	22 (14)	2(1)
Settle(ment)	3 (2)	1	0
Remed(y)(ies)	0	8 (4)	2 (1)
Total	15	77	16

5.2.1 The CCRF

In the CCRF, the paragraphs where the keywords are mentioned are transcribed in Box 5.

The CCRF use the words ‘conflict’ and ‘dispute’ interchangeably. “All disputes” (Art. 6.15, Box 5) may also include violent conflicts, as well as the conflicts referred to in articles 7.6.5 and 10.1.4 may include conflicts of interest expressed by verbal arguments. In fact, there is no indication of intensity of the conflicts or disputes. Article 7.6.5 refers to ‘user conflicts’, ‘gear wars’, or *Internal allocation* conflicts. Article 10.1.4 alludes to *Internal allocation* as well as *External allocation* conflicts, and so does the Article 10.1.5 by broadening its scope to conflicts taking place “within the fisheries sector”: it allows to consider, for example, conflicts between harvesters and post-harvesters. References to fisheries conflicts are therefore very broad and their type remain unspecified.

Regarding resolution or settlement strategies, the CCRF calls States to act before and during the conflicts and disputes situation, by preventing, avoiding risks, and then settling and resolving the situations “in a timely [...] manner”. The specific mentions to CRM are reported in the scheme of Figure 26.

From one side, by guiding States to “regulate fishing” and “adopting fisheries practices” in a way to avoid and prevent fisheries conflicts, the CCRF reinforces the need to address the conflicts both before and during their existence and manifestation, i.e. referring partially to the need of upholding fisheries conflict management, or a conflict-sensitive fisheries management, as the related paragraphs are under articles pertinent to fisheries management guidance and coastal area management. On the other hand, however, it does not address the post-conflict phase in terms of enforcement of the conflict resolution provisions, and neither establishes provisions to hold the due(s) party/ies accountable for the dispute, in case there is a situation of infringement and violation of fishing rights, for example. Furthermore, it restricts the fisheries conflict management to technical fisheries solutions only. Consequently, fisheries conflicts are directly attributed to technical causes, i.e. related to *internal allocation* issues and *management* regulations. This perspective does not give room to address *Other political, social, economic and environmental factors*, nor the socio-political nature of fisheries conflicts.

Box 5 - Transcription of the paragraphs where the Code of Conduct for Responsible Fisheries (CCRF, FAO 1995) mentions the keywords related to the conflict (resolution) lexicon. Underscored with a continuous line are the types of conflict mentioned; underscored with a dotted line are the key mechanisms provided to address such conflicts; and underscored with a wavy line are the platforms -or arenas- and stakeholders involved in the CRM.

[under ARTICLE 6 - General principles]

6.15 States should cooperate in order to prevent disputes. All disputes relating to fishing activities and practices should be resolved in a timely, peaceful and cooperative manner, in accordance with applicable international agreements or as may otherwise be agreed between the parties. Pending settlement of a dispute, the States concerned should make every effort to enter into provisional arrangements of a practical nature which should be without prejudice to the final outcome of any dispute settlement procedure.

[under ARTICLE 7 - Fisheries Management; 7.6 – Management Measures]

7.6.5 States and fisheries management organizations and arrangements should regulate fishing in such a way as to avoid the risk of conflict among fishers using different vessels, gear and fishing methods.

[under ARTICLE 10 - Integration of fisheries into coastal area management; 10.1 - Institutional framework]

10.1.4 States should facilitate the adoption of fisheries practices that avoid conflict among fisheries resources users and between them and other users of the coastal area.

10.1.5 States should promote the establishment of procedures and mechanisms at the appropriate administrative level to settle conflicts which arise within the fisheries sector and between fisheries resource users and other users of the coastal area.

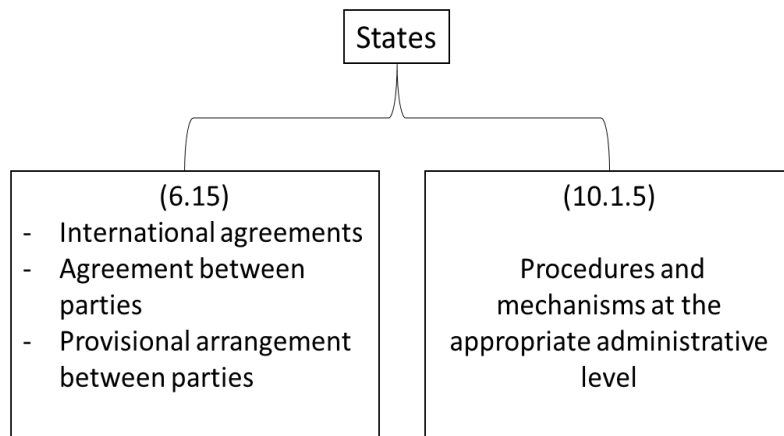


Figure 26 - Schematic representation of the guidance provided by the CCRF (FAO 1995) in different paragraphs (indicated between brackets).

Secondly, the guidance to address the conflicts remains in the “procedural” field. Reference is made purely to ‘exchange’-related “mechanisms” and “procedures”, regardless of the platforms, or arenas where these exchanges take place. This statement implies that the conflict resolution: (1) is solely attached to the inter-States level, i.e. international level, or governmental sphere. However, it does not mention any type of further international platform such as international courts or tribunals, other than the States administration’s; and (2) does not include any mention to alternative resolution mechanisms just as it has no account at all for eventual local customary practices, nor to the accessibility to the CRMs. The resolution of conflicts and disputes is therefore almost only envisaged in a horizontal State-to-State negotiation, as well as bottom-up, when it comes to its implementation.

Finally, by strengthening the international and/or coastal scopes, the guidance for CRM disregards inland fisheries issues.

5.2.2 The VGGTs

From its aim and tenure scope, the VGGTs present a strikingly different approach to disputes and conflicts than the CCRF. First and foremost, by addressing a vast array of issues related to tenure of land, fisheries and forests in an integrated way, the guidelines already constitute an instrument susceptible to frame conflicts related to tenure and its resolution within international ethical standards aligned with the Human Rights.

The paragraphs containing the keywords are entirely transcribed in Annex 6. Table 9 summarizes the main content, guidance provided and stakeholders invoked when the VGGTs address conflicts and disputes.

Table 9 - Summary of the paragraphs of the VGGTs where keywords related to the conflict (resolution) lexicon are cited. Legend: § stands for “paragraph”; ‘TR’ refers to Tenure Rights; and UNHCR is the acronym for United Nations High Commissioner for Refugees.

§	Object of the paragraph	Key mechanism(s)/measures and/or platforms addressed	Stakeholders
3.1.4	Disputes over TR and situations where TR are taken for public purposes	- Judicial authorities or “other approaches” - Enforcement of outcomes - Compensation	- States - Everyone
3.1.5	Violent conflicts; Tenure disputes; Corruption	Active measures; endeavour to prevent	- States
3.2	Infringement on HR and legitimate TR of others	- Due diligence; Risk Management Systems; Provide and cooperate with non-judicial mechanisms; Remedy including grievance; Identify and access potential impacts; - Effective judicial remedies; Additional steps; Support and services	- Non-State actors, including business enterprises - States - Transnational corporations and home States - Business enterprises owned or controlled by States

4.9	Disputes over TR	- Judicial and administrative bodies; means of resolving disputes; alternative means of resolving disputes; remedies, including right of appeal, restitution, indemnity, compensation and reparation; access to such means	- States - Vulnerable and marginalized people - Any person whose HR are violated
6.3	Corruption	- Services to protect TR; Facilitate enjoyment of these rights; Services to resolve disputes; Eliminate unnecessary bureaucracy; Review services and improve it	- States
6.9	Corruption with regard to TR; Conflicts of interest	- Consultation and participation; Anti-corruption measures; Checks; Balances; Limiting arbitrary use of power; Clear rules and regulations; Hold accountable	- States - Staff working on the administration of tenure - Non-States actors
9.6	Women in conflict with custom	- Adapting policy, legal and organizational framework to recognize tenure systems; Cooperate to accommodate changes	- States - Indigenous people and other communities with customary tenure systems - Women - All parties
9.11	Tenure conflicts within communities	- Respect and promote customary approaches to resolve conflict; National and international laws; Voluntary commitment	- States - Indigenous people and other communities with customary tenure
11.2	Conflict around the transfer of tenure rights; Land speculation, concentration, abuse of customary forms of tenure	- Facilitate the operations; Applicable treaties	- States - The poor - Local communities - Indigenous people - Vulnerable groups
15.9	Disputes, corruption	- Redistributive reforms; Process and just compensation; Gender-targeted messages; Open processes; Access to means of resolving disputes	- States - Affected parties - Disadvantaged groups
21.1	Disputes over tenure; Disputes at the preliminary stages	Bodies: Judicial and administrative; Alternative means; Remedies; Right to appeal; Implementing agency; Dispute resolution services; Accessible to all in terms of location, language and procedure	- States - Women - Men
21.2	Disputes over TR; Disputes over regulated spatial planning	Specialized tribunals or bodies; Expert positions; Judicial authorities; Surveys and valuations	- States

21.3	Disputes over TR	Alternative forms of dispute resolution, especially at the local level	-States
21.4	Boundary disputes between individual parcels within national contexts	Implementing agencies; Objective reasoning; Right to appeal; Judicial authorities	- States
21.5	Corruption in dispute resolution process	Prevent	- States
21.6	Dispute resolution process	Legal assistance; Justice without discrimination	- States - Vulnerable and marginalized people - Judicial authorities and other bodies
24.5	Disputes over TR triggered during a natural disaster	Consultation and participation; Access to alternative land, fisheries and forestry	- States - Other parties - Host communities
25.1	Issues of tenure of land, fisheries and forestry as cause of conflicts	Applicable international humanitarian law; Consultation and participation	- All parties
25.2	TR conflicts	National and international laws; Voluntary commitments; Regional and international instruments; Convention related to the Status of Refugee and its Protocol and the United Nations Principle on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”); International humanitarian law	- States
25.3	Tenure problems; Dispute over tenure	Peaceful means; Revise relevant policies and laws; Customary and other local mechanisms: fair, reliable, gender-sensitive, accessible and non-discriminatory	- All parties - States
25.4	Tenure acquired through forceful or violent means	Respect and protect legitimate TR; National and international law; Not recognize TR acquired through forceful and/or violent means; Document violations and remediate; Corrective actions; Histories and testimonies	- States and other parties - Refugees and displaced persons and others affected by conflicts - Host communities
25.5	Situations of conflicts	Restitution; Support durable solutions; International standards; Assisting; Restitution; Rehabilitation; Reparation; Processing claims	- States and other parties - UNHCR; Other relevant agencies - Those affected by the conflict

25.6	Situations of conflicts	Negotiated; Resettlement and secure access to alternative land, fisheries and forests and livelihoods; Special procedures	<ul style="list-style-type: none"> - Host communities and other relevant parties - Others - Vulnerable people - Widows - Orphans
25.7	Situations of conflicts	Policies and laws revised; Address discrimination; relevant agencies re-established to deliver service of governance of tenure	—

In the VGGTs, the term conflict is used interchangeably with the words ‘dispute’. The predominant idea however, is that a conflict is a violent situation, as referred to throughout the whole chapter (PART 6, Chapter 25), while a dispute refers to a situation of verbal and administrative exchanges. If the dispute or conflict are of other nature, it can be either specified in the text, either not. In Chapter 21 – “Resolution of disputes over tenure rights” for example, the types of dispute specified are: “disputes over regulated spatial planning” (Art. 21.2) and “boundary disputes between individual parcels within national contexts” (Art. 21.4). It therefore focuses in conflicts over the spatial delimitations in tenure systems, although transboundary jurisdictional conflicts are not clearly addressed. Furthermore, disputes over catch shares (fitting under *Management mechanisms* or *Internal allocation* categories) that do not necessarily involve boundary disputes are not considered either. Instead, guidance for an equitable allocation of tenure rights is provided throughout the Part 3 of the VGGTs (p. 11) – “Legal recognition and allocation of tenure rights and duties.”

In paragraph 6.9, the text indicates that the conflict is a “conflict of interest”, which, in a first moment, does not evoke any violence. This type of conflict matches with the majority of those addressed in the 66 cases under the categories *Fishery Jurisdiction*, *Management mechanisms* and *External allocation*, which are mostly expressed through verbal manifestation of disagreements. However, the conflict of interest referred to in paragraph 6.9 is encapsulated in the governmental administrative sphere, when addressing the *Delivery of services*. There is no further mention of ‘conflicts of interest’ as such throughout the VGGTs that would take place either between fishers, either between fishers and the government. Instead, the guidance uses the word ‘dispute’ to address “dispute between communities” (paragraph 9.11) as well as “boundary disputes between individual parcels” (paragraph 21.4), which can also actually be classified as ‘conflict of interest’ at the inter-personal fishers level. *Internal allocation* issues could fit under “dispute between communities” (paragraph 9.11), but noting that it is set in the context of “Indigenous people and other communities with customary tenure systems”: ‘Gear wars’ between fishers and communities that practice small-scale fishing under the national fisheries management framework are not addressed elsewhere.

Paragraph 9.6 address the situation where women are put in conflict with custom. It is the only mention to a conflict that particularly involve women against other stakeholder(s), recognizing them as actors in a dispute. Such situation has only showed up in one case study where women are the main harvesters, namely in the Clam collectors fishery of Tunisia [UID 29]. Either in no other case study was there any conflict involving women; either their place of speech in fisheries conflicting arenas does not exist yet. This latter hypothesis is most likely to be confirmed, as Upreti (2001) speaks of the unequal power position women hold in Nepal, underpinned by ideological, legal, political, religious, cultural, and social practices that hinder them from actively

participating in conflict management. Since such statement can, in all probability, be extended and generalized elsewhere, it means that the conflict resolution process for these specific conflicts where women are involved, have not started yet. In this sense, the VGGTs are ahead of the (reported) possibilities on the ground for women to express, position and resolve conflicts (for) themselves.

Finally, Chapter 25 specifically addresses “Conflicts in respect to tenure of land, fisheries and forests.” Here, all types of conflicts are considered, those emanating from, and affecting tenure issues. However, the understanding is that the situations referred to constitute a threat to people’s livelihoods, i.e. they are violent. In such situations, women are not explicitly acknowledged as potential actors within the conflict, but rather mentioned as suffering the consequence of a conflict lived by their fisher husband, which destabilizes their livelihoods [UID 53], echoing with the widowing situation addressed in paragraph 25.6 of the VGGTs. In this sense, it is important that the VGGTs specify that women must have access to the CRM in order for them to be able to address their rights.

Although the VGGTs mention disputes and conflicts over tenure, as well as may further specify the type of conflict addressed, the lack of clarity about the definition of the dispute or conflict (e.g. At what point exactly it can be determined that women are put in conflict with customs? How to identify such conflict?) –and how it is generally expressed throughout the document- does not facilitate the user of the VGGTs to frame the conflicting situation within the guidelines, and therefore to use it in order to address the conflict. Still, the VGGTs can act in the double sense: being used by someone in order to frame a conflicting situation already manifested and identified in the field, or, inversely, to identify, from the framework provided by the VGGTs, a situation of conflict in the field, for example conflicts overlooked by the 66 cases where women are involved.

The aim of inclusivity in all the processes invoked in the VGGTs is a strength of the document. The VGGTs address conflict resolutions: (1) in different levels, from the individual to the international level, addressing an array of stakeholders; and (2) acknowledging power imbalances. These two points are key in order to lessen the probability of the CR processes excluding anyone, which could lead to further conflict or an ineffective CRM. Engel & Korf (2005) acknowledge that including all stakeholders in the process of conflict management strengthens everyone’s sense of responsibility, ensures a greater efficiency and sustainability of the decisions taken, as well as equity, transparency and accountability.

The VGGTs include stakeholders in the conflict management at the person’s level by referring to individuals as “any person [whose human rights are violated]”, “women” and “displaced person”. Paragraph 6.9 specifically states: “Staff working on the administration of tenure should be held accountable for their actions.” But it also holds each person accountable in the processes by appealing to moral and personal ethics. For example, in paragraph 21.4, although States are the main subject of the prescribed action, by calling for “decisions [...] delivered [...] based on objective reasoning”, the ‘objective reasoning’ sends the reader back to her/himself perception of what is an objective/subjective reasoning.

At the collectiv(e)(ity) level, those expected to mobilize themselves in a situation of conflict are referred by various means. Based on their institutional status, they are differentiated as non-State actors, including business enterprises, judicial authorities and other bodies and other relevant agencies. Differently from the CCRF, the VGGTs therefore directly address the responsibility of enterprises and corporations in a situation of infringement of human rights, which is particularly fundamental in the case of *External allocation* conflicts. It also refers to stakeholders at the collective level, by alluding to social groups: “Indigenous people and other communities”, “Host communities and other relevant parties”, “women”, “local communities”; as well as alluding to

their social and political status: “The poor”, “vulnerable groups”, “disadvantaged groups”, “marginalized people”. On the one hand, this way of identification is important because it shows engagement in addressing political power imbalance, explicit in the guidance of paragraph 6.9, where States and non-States actors are urged to deliver their services “Limiting arbitrary use of power” -if this engagement shows a willingness to tackle such a pillar of the *status quo* of world’s inequalities, the choice of a soft word to formulate the prescription such as “limiting”, still leaves a room for “little” arbitrary use of power to be used-. On the other hand, the usage of expressions that categorize people through such social status reinforce that this guidance is destined to the governmental level, rather than being addressed to people. In fact, the question remains as to who would spontaneously identify as belonging to “marginalized people” or “vulnerable groups”: to what extent do these expressions speak to the referred people themselves? Such debate is important to highlight because it determines the usability of the VGGTs by groups of people other than those who hold political power, as an instrument to defend their rights in a situation of conflict, ultimately influencing in the inclusivity of the CR process.

International relations are also mentioned in the context of CRM through advocating for cooperation, mentioning international law and other international agencies such as the UNHCR.

The integrative approach advocated to some extent by the VGGTs further relies in the diversity of platforms, or mechanisms acknowledged more or less directly as constitutive of CRM. The support of the VGGTs to customary and local, or alternative mechanisms to address conflicts is evident, as well as its guidance to facilitate the access to the CRM. From an official institutional perspective, it is the case when corruption is strongly tackled, as in paragraph 6.3, with guidance for “clear rules and regulations”; public services to “resolve disputes” while reducing bureaucracies. Among the 66 case studies, corruption is pointed as negatively affecting fisheries sustainability, not only in the decision-making level however, but also at the harvest and post-harvest phases, situations that are not addressed by the VGGTs. Further precisions ensure a two-track process such as compelling States to provide for “the right to appeal, indemnity” among other mechanisms cited in paragraph 4.9 that should be available to all people, as well as ensuring that the accessibility of the CRM is not hampered by issues of “location, language and procedure” (paragraph 21.1). Addressing these three latter factors is in fact primordial in order to be able to gather the premises for a CRM to fall into place, as discussed in 4.1 of this study. Finally, the VGGTs also bring “oral histories and testimonies” (paragraph 25.4) as platforms or arenas through which conflict can be expressed. In fact, in cases where the fishery takes place within an important oral transmission of knowledge, and/or where people may lack of literacy skills, ensuring this channel or arena of communication is essential for an inclusive CRM.

At the institutional level, the VGGTs advocate for CRM based on measures and bodies as schematized in Figure 27.

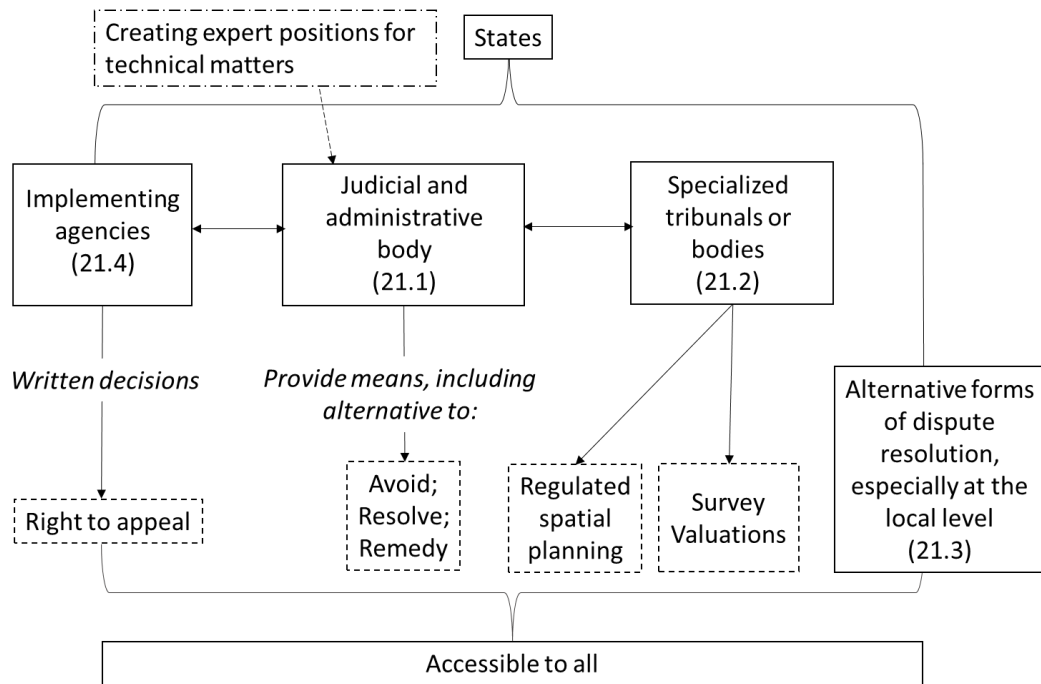


Figure 27 - Schematic representation of the guidance, at the official institutional level, provided by the VGGTs in its Chapter 21- Resolution of disputes over tenure rights. Boxes with plain line represent bodies or institutions; boxes with dotted line highlight the actions, measures and outputs prescribed.

Throughout the Chapter 21, the VGGTs not only prompt States to implement different types of official CRM, from Judicial to Legal ones, but also prescribes to strengthen and encourage alternative forms, especially at the local level, while also considering mechanisms external to the implementing agency. Such institutional arrangement for CR echoes very much with co-management structures. In Guatemala for example [UID 13], conflicts between users have diminished after the implementation of a co-management system that encompassed both customary as well as legal fishing management. This flexibility and accountability of alternative means of resolve disputes offers the States the possibility to formulate CRM that best fits to national and local realities. At the same time, it holds States accountable for fisheries conflicts and disputes, as well as for solving them, addressing the need argued by Ratner (2006, p.85): “Mechanisms of accountability need to be in place so that public officials—and community leaders as well—are made to answer for the ways in which they exercise their power. Part of this depends on the general functioning of the legal–judicial framework, such as the availability of legal recourse and due process in addressing grievances; part depends on the vitality of informal mechanisms for conflict resolution or community mobilization. When communities and government are expected to uphold complementary responsibilities, as the fisheries “co-management” concept requires, mutual respect for the authority and rights of each party is necessary.”

However, some of the 66 cases speaks to the preference that fishers express towards customary and local CRM, in comparison with the legal and judicial system implemented. In this sense, the guidance fails to indicate *how* and *when* the States should/could choose the determined institutional structure to address a conflict, and assess which CRM would best apply to given

contexts or situations. Participants from a Workshop on Conflicts in Coastal Fisheries in West Africa (Cotonou, Benin, 24-26 November 1993) argue that States should prioritize the settlement of conflicts “through mutual consent rather than through legal procedures”⁴⁶, while acknowledging that States should also create “national fisheries commissions to monitor and resolve conflicts.” In fact, Chapter 21 most likely underpins a right-based approach⁴⁷ to tenure disputes management by highlighting the implementation and action of Judicial, administrative and technical bodies. This is further accrued by the lack of mention of articulation mechanisms used in alternative CR, such as mediation, negotiation and consensual settlement. In fact, when the conflict does not involve higher institutional scales, very diverse (in terms of political power) stakeholders, no violence, and a local geographical scale, the legal and judicial systems often do not need to be activated, and in fact usually they are not. Not specifying such circumstances also leaves room for States to solely go through legal and/or judicial structures in a top-down procedure when customary practices may be the best option to resolve a conflict.

Further factors are susceptible to influence the feasibility of the guidance given in Chapter 21. Based on the results from the 66 case studies, a major issue that may hamper a CR is the lack of an effective communication. Therefore, if the CR scheme provided by the VGGTs is to be efficiently undertaken, a dynamic and transparent exchange between institutions and bodies must be guaranteed, which is not explicitly mentioned in this chapter of the guidance.

Furthermore, Chapter 21 implies that States have the political willingness to resolve fisheries conflicts, as well as the financial capacities, and such context is not verified in most of the 66 case studies.

5.2.3 The SSF Guidelines

On its part, the SSF Guidelines mention the keywords in the paragraphs transcribed in Annex 7, as summarized in Table 10.

Table 10 - Summary of the paragraphs of the SSF Guidelines where keywords related to the conflict (resolution) lexicon are cited. Legend: § stands for “paragraph”; ‘TR’ refers to Tenure Rights; UNHCR is the acronym for Declaration on the Rights of Indigenous Peoples.

§	Object of the paragraph	Key mechanism(s)/measures and/or platforms addressed	Stakeholders
5.4	Women in conflict with custom	<ul style="list-style-type: none"> - Provide legislation; identify, record, respect and recognize legitimate TR; Preferential access to SSF; Cooperate to accommodate change - International human rights law - UNDRIP - Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities 	<ul style="list-style-type: none"> - States - All other parties - Small-scale fishing communities - Legitimate TR holders - Indigenous people - Ethnic minorities - Women

⁴⁶ This workshop was co-organized by FAO and the Department of International Development Cooperation of Denmark. Its report is available online at: <http://www.fao.org/3/an093E/an093E.pdf>.

⁴⁷ Upreti (2001, p.20) defines that “Right-based approaches focus on litigation and adjudication procedures through the courts and police.”

5.9	- Arbitrary eviction and extinguishment or infringement of legitimate TR - Competition with other users - Conflicts with other sectors	- Recognize disadvantaged position of SSF communities and need for special support	- States - SSF communities - Vulnerable and marginalized groups
5.11	- Disputes over TR	- Provide access; Judicial and administrative bodies; Means of resolving disputes; Alternative means of resolving disputes; Remedies; Entitlement to appeal; Enforcement of remedies; Restitution; Indemnity; Just compensation and reparation -National legislation	- States - SSF communities - Individuals - Vulnerable and marginalized people
5.12	- Armed conflict and displaced SSF communities - Grave human rights violations	- Restore access - Establish mechanisms to support SSF - Elimination of discrimination	- States - SSF communities - Women
6.18	- Armed conflict	- VGGTs (including section 25) - Protect HR - International humanitarian law - Preserve culture - Facilitate effective participation	- SSF stakeholders

The SSF Guidelines build upon the VGGTs in 3 points: (1) when addressing the situation where women having their tenure rights legally recognized, can potentially find themselves in conflict with customs (Art 5.4 of the SSF Guidelines, corresponding to Art. 6.9 of the VGGTs); (2) with its article 5.11 which deliberates on CRM; and (3) in Article 6.18, when referring to the whole Chapter 25 of the VGGTs. The two first articles (points (1) and (2)) fall under the Chapter 5 of the SSF Guidelines on the “Governance of tenure in small-scale fisheries and resource management”. However, strong differences can be found between the two publications, and inscribe the SSF Guidelines in a less conflict, or dispute-sensitive perspective with respect to the VGGTs.

First, in paragraph 5.4 of the SSF, the part of the article concerning the specific conflict with custom is identical between the VGGTs and SSF Guidelines. However, in the beginning of its paragraph, the VGGTs state that “States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other communities with customary tenure systems.”, while the SSF Guidelines guide the following: “States should in accordance with their legislation, and all other parties should recognize, respect and protect all forms of legitimate tenure rights, taking into account, where appropriate, customary rights to aquatic resources and land [...]” The SSF Guidelines therefore don’t call the States to concretely modify their legislation in line with the guidance to recognize customary tenure systems – which includes customary CRM. These extracts suggest that the SSF Guidelines require less engagement from the States regarding the accountability of customary tenure systems when compared to the VGGTs, which in turn, hold the States strongly accountable for the protection and promotion of these.

Secondly, the fact that the SSF Guidelines incorporate disputes resolution mechanisms in only one paragraph (5.11) is certainly constraining in terms of content. In fact, important mentions that are made in the VGGTs regarding CR, are missing in the SSF Guidelines, such as: (1) references to specialized tribunals, bodies and implementing agencies to deal with technical issues and that realize surveys and valuation; (2) efforts to prevent corruption from the disputes resolution process; (4) the need to address the dispute during its latent phase, i.e. the need to put conflict prevention mechanisms in place; (5) strengthening and supporting alternative forms of dispute resolution, especially at the local level; and (6) that the CRM should be available to all. Regarding this last point on accessibility, the SSF Guidelines only address “small-scale fishing communities and individuals, including vulnerable people and marginalized people”, leaving behind specifications regarding inclusion of women, for example, and differences of languages, location and procedures. By having overlooked these specifications, the CRM prescribed by the SSF Guidelines unveil a top-down process, where the States are the only and main actors, or “providers” (Figure 28) in the words of this paragraph.

Also, no accountability is required from non-state actors such as business enterprises in the case they infringe on human rights (see Chapter 3 – Guiding Principles from the SSF Guidelines), a situation addressed by the VGGTs in its paragraph 3.2. In this sense, the SSF are arguably less prone to be used in case of *External allocation* conflicts, which mostly involve business enterprises and non-state actors. In fact, even the paragraph 5.9 of the SSF Guidelines which specifically addresses *External allocation* conflicts not only do not address directly these ‘other sectors’, but also do not name them. Instead, States are the only actors in this paragraph, but not directly called to take specific measures to address such conflicts and protect SSF communities from the threats that other sectors can provoke to their livelihoods.

Finally, paragraph 5.4 of the SSF Guidelines can be used in a situation of *Internal allocation* conflicts, and more specifically where SSF are confronted to industrial fishers. In such case, the guidelines urge States to give preferential access to fisheries resources and land to the first.

Still, throughout the SSF Guidelines, other extracts can be used in a situation of fisheries dispute. It is the case of paragraph 5.19 which addresses transboundary issues, and calls for cooperation among States. Illegal fishing is also the object of Paragraph 5.19, conflicts between harvesters and the post-harvest sector can be framed in Paragraph 7.6, and *Other political, social, economic and environmental factors* are largely addressed in the Chapters 6 – 8. In Madagascar for example, the SSF Guidelines have been reported to serve as an instrument that supported the resolution of conflicts between small-scale harvesters and the post-harvest sector (Gardner *et al.* 2017). The conflict referred to the situation where SSF were explored by the middlemen, just as related in the case studies of Tunisia, Argentina and Indonesia.

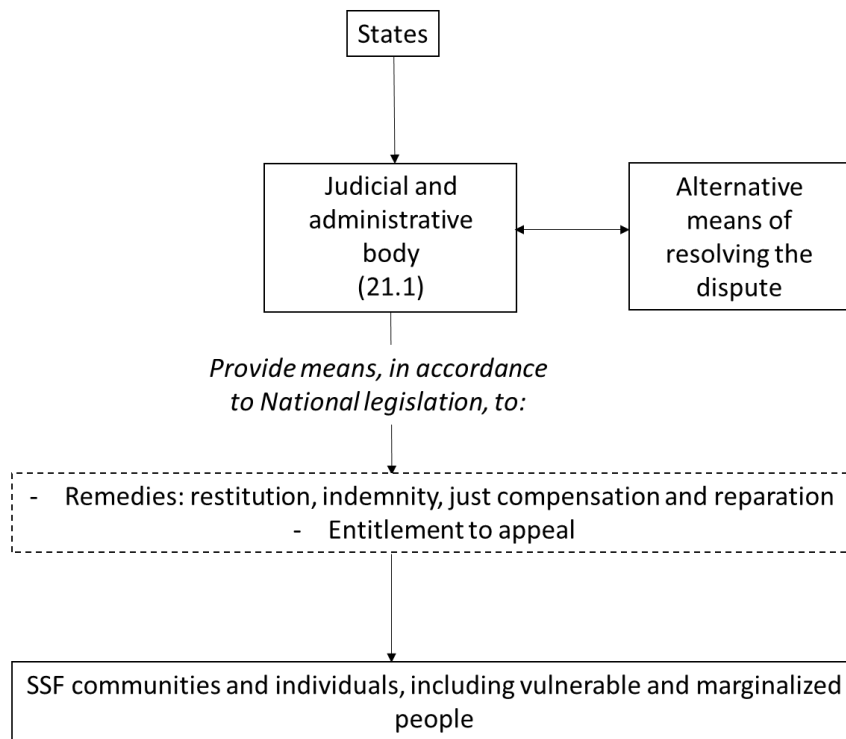


Figure 28 - Schematic representation of the guidance, at the official institutional level, provided by the SSF Guidelines in its Article 5.11, Chapter 5 – Governance of tenure in small-scale fisheries and resource management. Boxes with plain line represent bodies or institutions; boxes with dotted line highlight the actions, measures and outputs prescribed.

The SSF Guidelines do address fisheries conflicts and provide some CRM, but in a much general and tangential way when compared to the VGGTs. The States are the sole actors held accountable for all the processes analyzed related to disputes, conflicts and solutions provided, which, from one hand allows to refer back to the States obligations and responsibilities when needed, but from the other hand, fails to address the role of other primordial stakeholders identified in fisheries conflicts, hampering a real inclusive and democratic two-track CR process. Furthermore, similarly to the findings from Cumming *et al.* (2006) who discuss scale mismatch in socio-ecological systems, different levels of resolution mechanisms are needed for different types of conflicts taking into consideration the stakeholders involved, as well as the scales -both temporal and spatial- of the conflict. These settings, which are not independent from one another, will influence on the power imbalance, duration and intensity of processes of ‘emergence’ and ‘escalation’ of the conflicts. It is therefore important to take into account all the dimensions of space and levels of institutions in the perspective of conflict management, which is not the case in paragraph 5.11 of the SSF Guidelines. This, in turn, can pose a problem since it can leave room for States to address very local and punctual conflict through its governmental agencies, instead of investing in strengthening local customary CRM. The second challenge raised by such a scale mismatch lies in terms of legitimacy of these governmental agencies from the communities perspectives, to disentangle the conflicts (see item 4.5 of this study for more details).

5.3 The VGGTs and SSF Guidelines as transversal international policy instruments to address fisheries conflicts

Still, the VGGTs and SSF Guidelines find a common denominator in that they address conflicts just by existing and ensuing from a highly participatory process of elaboration. This way, their orientation and content build upon contemporary tensions faced by the small-scale fishery sector. The guidelines, both through its elaboration process as well as through its content, capture an important part of what Ambossy (2014, p. 214) argues⁴⁸: “In a pluralist democracy, it should be possible to speak the differences and tensions, despite the utopia of a peacemaker consensus. The citizens are divided by projects of society often irreconcilable [...]. At the same time, the individuals and groups share in democracy the national space where they have to coexist not only in their differences, but also with their disagreements. In the complexity of power and interest games, of unequal statuses and identity-related tensions, of ideological and religious divergences, it is illusionary to think that all the disagreements can be settled through a sound and well-intentioned discussion. [...] the pluralist society is, by definition, regulated by the conflict and confrontation of antagonist positions.” Therefore, from this quote, it stands out that: (1) addressing fisheries conflicts not only requires addressing institutional mechanisms from a structural perspective, but also, as importantly, it requires (2) addressing the array of interweaved conditions of symbolic, cultural, political and social order that constitute the individuals and groups involved; and that (therefore) leads to (re)question the objective itself of the fishery conflict management line: should the ultimate goal be to solve conflicts, or to promote the capacity and possibility for people involved to share spaces and coexist, in the context of a plural democracy, recognizing the differences and power imbalances? In this sense, the VGGTs and SSF Guidelines together do provide some basis for addressing social fisheries conflicts in both perspectives.

First, the VGGTs provide a framework to address broadly fisheries disputes and frame possible CRM strategies for States to undertake in such situations. Not only does it address disputes and conflicts around fisheries, and provide guidance on CRM, but it also underpins the prevention of fisheries conflicts, with primarily socio-political guidance. In this sense, these instruments are important international instrument that recognize the benefits and importance of transversal policies.

By understanding that “where poverty exists in small-scale fishing communities, it is of a multidimensional nature” (SSF Guidelines, Preface, p. x), the SSF Guidelines are acknowledging the need to promote transversal policies in order to address tenure and fisheries issues and conflicts, and this is where resides the most, the guidelines strengthen and universality. In fact, a conflict management mechanism solely framed as shown in Figure 27 and Figure 28 relying on the classic public administration structure, will not be able to address fisheries conflicts in their diversity and transversality by itself. Building on Serra (2005, p. 1-2)⁴⁹, it is possible to identify the Guidelines as transversal⁵⁰ policy instruments since they raise from the need of the public administrations to address two increasingly fundamental issues: “(1) The emergence of social demands or public policies that are not included in the mission of the competencies of a unique part of the vertical organic structure of the corporation, but that imply the whole organization or a significant part of it; and (2) The need to set an integrated vision of determined segments of the population considered priority from the public action point of view.” This is mostly ensured through the strong human

⁴⁸ Free translation from the original version written in French.

⁴⁹ Free translation from the Spanish original version.

⁵⁰ Serra (2005, p.3) further defines *transversality* as “at the same time, a concept and an organizational instrument which function is to bring capacity for action to the organizations related to some themes for which the classic organization proves to be inadequate.”

rights optics endorsed by the guidelines, as opposed to the CCRF's vision of responsible fisheries⁵¹, which is exempted from references to social and human well-being. Both the guidelines strongly address the need to secure human rights, recognize and protect local and customary practices, by, among others, enhancing the dialogue between governments and people. Their whole content constitutes them as transversal instruments to both prevent as well as comprehensively, although not specifically, tackle existing fisheries disputes and conflicts.

However, it is important to highlight that the CCRF, VGGTs and SSF Guidelines should not constitute a whole new policy framework *per se* to be undertaken by the States in addition to their current legislations. Instead, for an efficient implementation, the guidelines are aimed to guide States to elaborate and implement policies aligned with internationally agreed standards. An important challenge resides in the different and changing national political contexts and political priorities to take into account international Soft laws (Skjærseth & Wettestad 2006). And this challenge is enhanced in developing countries which face greater institutional and socio-economic challenges.

⁵¹ The CCRF builds on the definition of responsible fisheries of the Declaration of Cancun (1992) as a “concept [that] encompasses the sustainable utilization of fisheries resources in harmony with the environment; the use of capture and aquaculture practices which are not harmful to ecosystems, resources or their quality; the incorporation of added value to such products through transformation processes meeting the required sanitary standards; the conduct of commercial practices so as to provide consumers access to good quality products.”(Annex 1 of the CCRF, p.35).

6 CONCLUSIONS AND RECOMMENDATIONS

The fisheries conflicts reported in the 66 case studies around the world are likely linked with *Management mechanisms* and *Internal allocation* issues, building upon Charles (1992) classificatory typology of fisheries conflicts. The resolution mechanisms are predominantly of legal and judicial nature, while their overall perceived effectiveness is moderated. The definition of the type of CRM adopted to address a fishery conflict varies in terms of institutional hierarchy, as a function of the complexity of the different social capitals of the stakeholders involves, as well as the spatial and violence scales of the conflict.

If the conflict happens in a local scale (in terms of geographic extension and stakeholders involved) and does not escalate into violence, the resolution mechanism adopted will preferentially be the customary one, for matters of legitimacy with the local population, knowledge of the local conditions, as well as lowering costs, among others. However, in some situations, it is essential that legal and judicial mechanisms are available and functional to address *External allocation* and *Fishery Jurisdiction* conflicts, or when higher levels of violence break out, as well as in case of “non-negotiable conflicts”. In fact, an articulation between the different types of resolution mechanisms and institutions is needed in order for stakeholders from all levels to be able to address, in a more coordinated and democratic way, fisheries issues. Taking account of the livelihood conditions and political power imbalance between the different social and institutional groups involved, which highly affect their ability to take part and advocate for their rights and interests in the conflict management process, is therefore primordial.

If conflicts in fisheries is an unsolvable reality, international institutions such as FAO elaborating soft-laws such as the CCRF (FAO 1995), the VGGTs (FAO 2012), and the SSF Guidelines (FAO 2014), can play a major role to influence these processes. The instruments set principles and guidance globally agreed that aims at underpinning legislative and policy measures undertaken by States, towards sustainable fisheries, tenure rights, and small-scale fisheries. By issuing from a highly participatory elaboration process, the VGGTs and SSF Guidelines already address existing tensions faced by small-scale fisher(ie)s. However, it is also desirable that these three publications set the guidance needed in order to guarantee the best positive social transformation as an outcome of an eventual fishery conflict. In this sense, this study concludes with two key-points when comparing if, and how the CCRF, VGGTs and the SSF Guidelines address fishery conflicts and related CRM.

First, an analysis of content of these international guidance showed that the VGGTs are the one that most specifically and democratically address conflicts related to fisheries tenure, and frame possible resolution mechanisms. The VGGTs guide States to: (1) take into account, by supporting and promoting them, local existing and potential alternative methods of resolution of disputes; and (2) implement and improve a judicial and legal structure composed of implementing agencies, tribunal and bodies, in order to address disputes arising from, or related to, land, fisheries and forestry tenure, both to prevent as well as to ensure a durable solution. Differently from the CCRF and the SSF Guidelines, the document further highlights that these processes should be available and accessible to all, considering people’s different languages, location and procedures. Furthermore, the VGGTs are the only guidance that explicitly holds business enterprises accountable when they are responsible of negatively impinging on people’s human rights. On the other hand, the SSF Guidelines also give useful -although generic- guidance that can be used to particularly address *gear wars* and conflicts between small-scale fisheries and other users of the coastal zone. However, the SSF Guidelines are less explicit and refined in its guidance compared to the VGGTs.

Second, a major difference between the CCRF and the guidelines resides in that the latter acknowledge, and ground fisheries issues in the optics of transversal policy matters. As such, the guidelines are inherently transversal policy instruments, as it aims at addressing SSF through a comprehensive socio-political approach. There lies their fundamental asset and advance, which makes them prominently more operational than the CCRF for both States as well as other stakeholders to address fisheries conflicts in all its multidimensionality.

However, it would be advisable to conceive further and complementary international fisheries instruments capable of better integrating to the treatment of conflicts, the relevance of local challenges and contexts for sustainable fisheries. To support this recommendation, the “Corporate Framework to support sustainable peace in the context of Agenda 2030”⁵² launched by FAO in 2018 is of great relevance. It highlights the role of FAO as the “UN’s foremost technical institution in helping to prevent conflict over access to natural resources (land, water, fisheries), using a combination of capacity development, partnerships, policy support, globally accepted voluntary guidelines, and strategic deployment of technical staff.” (p. 6) due to the strong negative impacts that conflicts exert on food security and human wellbeing. The Framework points at 5 expected deliverables, that are adapted here in order to guide future FAO’s actions and work to start shedding light on, and effectively embracing the reality of fisheries conflicts within all fields of fisheries-related projects. They are:

- (1) The integration of concepts, indicators, and lesson learning on contributing to sustainable peace (reflecting the central importance of gender and age) within the (small-scale) fishery sector;
- (2) Improved evidence base and strengthened, gender and age-disaggregated monitoring systems that focus on the linkages between food security, nutrition, and peace in all its dimension in the fishery sector, and on the effectiveness of various approaches of fisheries conflict management;
- (3) Leverage a robust flexibly financed global portfolio of engagements in supporting sustainable peace in all its dimension within the fishery sector, with measurable results; and
- (4) Foment new coalitions, partnerships and leadership roles at country level and globally on supporting sustainable management of fisheries conflicts.

These goals can be envisaged under the creation of a new program within the Fisheries and Aquaculture Department of FAO, specifically aimed at addressing fisheries conflicts and related consequences upon global food supply and nutrition. More specifically, goals (1) and (2) can be developed through regional workshops, subsequently leading to the elaboration of Technical guidance addressed to States and non-States actors, based on the evidences collected as well as embedded in the VGGTs and SSF Guidelines, particularly on: (1) defining and framing fisheries conflicts and its most common expressions in all scales; (2) how to prevent and tackle fisheries conflicts; and (3) how to adapt national legislation in order to achieve (2). This latter can be inspired by FAO’s Forestry Department’s initiative from 1990’s⁵³.

Furthermore, among the relevant specific topics to be further investigated are: (1) the role of women as actors in fisheries conflicts; (2) the influence of national and local politics over fisheries

⁵² The framework is available online at: <http://www.fao.org/3/I9311EN/i9311en.pdf>

⁵³ Back in 1992, the Community Forest Unit (CFU) in cooperation with the Forests, Trees and People Programme (FTPP) from FAO organized a series of workshops to advance the understanding on the link between policies, laws and regulations, and conflicts involving forest-dependent communities. One of the products of these workshops is the document “Integrating conflict management considerations into national policy frameworks”, available online at: <http://www.fao.org/3/a-x9610e.pdf>

conflicts; (3) the link between land tenure and climate change related to fisheries conflicts; (4) the global increase in conflicts related to *External Allocation* issues.

This complementary technical guidance should acknowledge fisheries conflicts as transversal socio-political issues. Special attention has to be given to the recognition and supporting of local conflict resolution mechanisms, through bottom-up processes, the orientation of local resistances, as well as to relentlessly work towards an inclusive and pro-poor fisheries conflict resolution. Still, it is fundamental to keep addressing the substantial challenges that remain as for the effective implementation of international guidance at the national and local levels, both vertically as well as horizontally (for example between different government bodies); often constrained by divergent political priorities from the different governments. Capacity building initiatives are potential channels that FAO can implement, through which directly interact with people while attending to the exigencies of their local realities. All stakeholders must be engaged in enabling actors historically excluded from the conflicts and conflict resolution processes, to create and foment new arenas with a place of speech towards a participative fisheries management; as well as strengthen the communication flow between and within different scales and levels – from international to local and from local to international.

Only by recognizing that fisheries conflicts first draw from a global order based in social inequalities, currently in a rising trend, i.e. that fisheries conflicts are transversal socio-political issues, and assimilating this perspective into international fishery guidance, will an integrated fishery governance effectively be taking place.

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Annex 1 - List of the 66 questionnaires filled by the participants of the UserRights 2018 Conference (Yeosu, South Korea, September 2018).

Unique Identification (UID)	Title of Case Study
1	Small-scale fisheries of Timor-Leste
2	Small-scale fisheries in Senegal
3	African north west pelagic fisheries
4	Artisanal Fisheries of Sierra Leone
5	Aceh fisheries after tsunami in Indonesia
6	Open access Fisheries in Lake Tanganyika
7	Marine, inshore and estuarine fisheries of Ghana
8	The lobster fishery in Kenya
9	Sardine fisheries in Venezuela
10	Artisanal anchoveta and sardine Fisheries in Chile
11	The Namena Marine reserve, Fiji
12	Small-scale fisheries and illegal fishing in Indonesia
13	Inland fisheries in Lake Atitlán, Guatemala
14	Small-scale fisheries in Japan
15	Mangrove cockle fishery in Ecuador
16	Bering Sea/Aleutian Island crab fishery
17	Indigenous fishery in the Bermejo River, Argentina
18	The Lake Albert fishery of Uganda
19	The Common Fishing Zone of Argentina and Uruguay
20	Conflicts in the hake fisheries of Peru
21	The Paiche fishery and management, Peru
22	Sipicate artisanal fisheries, Guatemala
23	Fishing activity and post-harvest in the Amazon forest
24	Coastal fisheries in Colombia
25	Garifuna's fishing activity and post-harvest,
26	Small-scale fishery of Costa de Pájaros, Costa Rica
27	Small-Scale fisheries in Kolono Bay, Indonesia
28	Small-scale demersal fishery, Indonesia
29	Clam Fisheries (collection) in Tunisia
30	Post-harvest sector, Korea
31	Spiny Lobster Fisheries in Wagu district, Japan

32	Inland fisheries in Cambodia
33	Kodiak Salmon Fishery, Alaska
34	Clam fisheries of Noia, Spain
35	Swedish demersal fisheries
36	Small-scale fisheries of Sierra Leone
37	Artisanal fisheries of the Tarapoto lakes, Colombia
38	Coastal fisheries on Marshall Islands
39	U.S west coast pacific whiting fisheries
40	Belize's artisanal fishery
41	Jimo's marine fishery, China
42	Croaker coastal fishery in Uruguay
43	Multi-species indigenous fishery, Canada
44	Kenyan marine artisanal fishery
45	West Coast Pacific Groundfish fishery
46	Small-scale capture fisheries, Philippines
47	Lake Victoria fisheries
48	Capture fisheries in San Joaquin, Philippines
49	Pelagic industrial fisheries in Chile
50	Tuna longline small scale fishery, Sri Lanka
51	Industrial fisheries of Sierra Leone
52	SSF of Koh Keo community, Cambodia
53	Artisanal Fisheries in Nigeria
54	Spencer Gulf Prawn Fishery, Australia
55	Anchoveta fishery of Peru
56	Tropical tuna fishery in the Eastern Pacific
57	Capture Fishery in Sri Lanka
58	Chinese marine fisheries
59	Marine fishery of Zhousan, China
60	Korean marine fisheries
61	West African fisheries
62	Artisanal fisheries of Equatorial Guinea
63	Coastal fisheries in the Republic of Korea
64	Fishing communities in Korea
65	Lobster fishery in Oman
66	Artisanal and industrial fishery of southern hake

Annex 2 - Table of contents of the Code of Conduct for Responsible Fisheries (FAO 1995).

PREFACE

INTRODUCTION

Article 1 -	Nature and Scope of the Code
Article 2 -	Objectives of the Code
Article 3 -	Relationship with other International Instruments
Article 4 -	Implementation, Monitoring and Updating
Article 5 -	Special Requirements of Developing Countries
Article 6 -	General Principles
Article 7 -	Fisheries Management
Article 8 -	Fishing Operations
Article 9-	Aquaculture Development
Article 10 -	Integration of Fisheries into Coastal Area Management
Article 11-	Post-harvest Practices and Trade
Article 12 -	Fisheries Research
Annex 1	BACKGROUND TO THE ORIGIN AND ELABORATION OF THE CODE
Annex 2	RESOLUTION

Annex 3 - Table of contents of the Voluntary Guidelines on the Responsible Governance of Tenure (FAO 2012).

PREFACE

Preliminary

1. Objectives
2. Nature and scope

General matters

3. Guiding principles of responsible tenure governance
 - 3A General principles
 - 3B Principles of implementation
4. Rights and responsibilities related to tenure
5. Policy, legal and organizational frameworks related to tenure
6. Delivery of services

Legal recognition and allocation of tenure rights and duties

7. Safeguards
8. Public land, fisheries and forests
9. Indigenous peoples and other communities with customary tenure systems
10. Informal tenure

Transfers and other changes to tenure rights and duties

11. Markets
12. Investments
13. Land consolidation and other readjustment approaches
14. Restitution
15. Redistributive reforms
16. Expropriation and compensation

Administration of tenure

17. Records of tenure rights
18. Valuation
19. Taxation
20. Regulated spatial planning
21. Resolution of disputes over tenure rights
22. Transboundary matters

Responses to climate change and emergencies

23. Climate change
24. Natural disasters
25. Conflicts in respect to tenure of land, fisheries and forests

Promotion, implementation, monitoring and evaluation

Annex 4 - Table of contents of the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (FAO 2014).

Abbreviations and acronyms

Preface

Part 1

Introduction

1. Objectives
2. Nature and scope
3. Guiding principles
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Part 2

Responsible fisheries and sustainable development

5. Governance of tenure in small-scale fisheries and resource management
 - 5a. Responsible governance of tenure
 - 5b. Sustainable resource management
6. Social development, employment and decent work
7. Value chains, post-harvest and trade
8. Gender equality
9. Disaster risks and climate change

Part 3

Ensuring an enabling environment and supporting implementation

10. Policy coherence, institutional coordination and collaboration
11. Information, research and communication
12. Capacity development
13. Implementation support and monitoring

Annex 5 - Types of Conflict Resolution Mechanism reported for each of the 66 cases.

Unique Identification (UID)	Conflict Resolution Mechanism (N= The fishery does not have an established CRM; J = Judicial Systems; F = Government fisheries management authority; C = Customary Systems; O = Other)
1	C
2	J,F,C
3	F
4	J,F,C
5	N
6	O
7	J,F,C
8	J,F,C,O
9	J,F
10	F
11	J,C
12	J,F,C
13	J,F,C
14	No answer
15	O
16	J,F
17	N
18	F
19	J,F
20	F
21	F
22	J,F
23	J,F
24	F
25	N
26	J,F,O
27	O
28	C
29	N
30	C
31	J,C
32	J,F,O
33	J,F
34	F,C
35	J
36	F,C
37	F,C
38	J
39	J,F
40	J,F
41	F

42	J,F
43	J,F,C
44	F
45	J,F,C
46	J,F
47	F
48	F
49	F
50	J,F
51	J,F
52	J,F
53	C
54	J,F
55	J
56	N
57	F
58	J,F
59	J,F
60	J,O
61	J,F,C
62	F
63	J,F
64	No answer
65	F,C
66	J,F

Annex 6 - Transcription of the paragraphs where the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security (VGGT, FAO 2012) mention the keywords related to the conflict (resolution) lexicon. Underscored with a continuous line are the types of (source of) conflict mentioned; underscored with a dotted line are the key mechanisms provided to address such conflicts; and underscored with a wavy line are the platforms -or arenas- and stakeholders involved by the CRM. Repeated words and expressions are underscored only once in the same paragraph.

[under PART 2. General matters – 3. Guiding principles of responsible tenure governance - 3A General principles]

3.1.4 [States should] Provide access to justice to deal with infringements of legitimate tenure rights. They should provide effective and accessible means to everyone, through judicial authorities or other approaches, to resolve disputes over tenure rights; and to provide affordable and prompt enforcement of outcomes. States should provide prompt, just compensation where tenure rights are taken for public purposes.

3.1.5 [States should] Prevent tenure disputes, violent conflicts and corruption. They should take active measures to prevent tenure disputes from arising and from escalating into violent conflicts. They should endeavour to prevent corruption in all forms, at all levels, and in all settings.

3.2 Non-state actors including business enterprises have a responsibility to respect human rights and legitimate tenure rights. Business enterprises should act with due diligence to avoid infringing on the human rights and legitimate tenure rights of others. They should include appropriate risk management systems to prevent and address adverse impacts on human rights and legitimate tenure rights. Business enterprises should provide for and cooperate in non-judicial mechanisms to provide remedy, including effective operational-level grievance mechanisms, where appropriate, where they have caused or contributed to adverse impacts on human rights and legitimate tenure rights. Business enterprises should identify and assess any actual or potential impacts on human rights and legitimate tenure rights in which they may be involved. States, in accordance with their international obligations, should provide access to effective judicial remedies for negative impacts on human rights and legitimate tenure rights by business enterprises. Where transnational corporations are involved, their home States have roles to play in assisting both those corporations and host States to ensure that businesses are not involved in abuse of human rights and legitimate tenure rights. States should take additional steps to protect against abuses of human rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.

[under PART 2. General matters – 4. Rights and responsibilities related to tenure]

4.9 States should provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies, which may include a right of appeal, as appropriate. Such remedies should be promptly enforced and may include restitution, indemnity, compensation and reparation. States should strive to ensure that vulnerable and marginalized persons have access to such means, in line with

paragraphs 6.6 and 21.6. States should ensure that any person whose human rights are violated in the context of tenure has access to such means of dispute resolution and remedies.

[under PART 2. General matters - 6. Delivery of services]

6.3 States should provide prompt, accessible and non-discriminatory services to protect tenure rights, to promote and facilitate the enjoyment of those rights, and to resolve disputes. States should eliminate unnecessary legal and procedural requirements and strive to overcome barriers related to tenure rights. States should review services of implementing agencies and judicial authorities, and introduce improvements where required.

6.9 States and non-state actors should endeavour to prevent corruption with regard to tenure rights. States should do so particularly through consultation and participation, rule of law, transparency and accountability. States should adopt and enforce anti-corruption measures including applying checks and balances, limiting the arbitrary use of power, addressing conflicts of interest and adopting clear rules and regulations. States should provide for the administrative and/or judicial review of decisions of implementing agencies. Staff working on the administration of tenure should be held accountable for their actions. They should be provided with the means of conducting their duties effectively. They should be protected against interference in their duties and from retaliation for reporting acts of corruption.

[under PART 3. Legal recognition and allocation of tenure rights and duties - 9. Indigenous peoples and other communities with customary tenure systems]

9.6 States should consider adapting their policy, legal and organizational frameworks to recognize tenure systems of indigenous peoples and other communities with customary tenure systems. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure systems.

9.11 States should respect and promote customary approaches used by indigenous peoples and other communities with customary tenure systems to resolving tenure conflicts within communities consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments. For land, fisheries and forests that are used by more than one community, means of resolving conflict between communities should be strengthened or developed.

[under PART 4. Transfers and other changes to tenure rights and duties - 11. Markets]

11.2 States should facilitate the operations of efficient and transparent markets to promote participation under equal conditions and opportunities for mutually beneficial transfers of tenure rights which lessen conflict and instability; promote the sustainable use of land, fisheries and forests and conservation of the environment; promote the fair and equitable use of genetic resources associated with land, fisheries and forests in accordance with applicable treaties; expand economic opportunities; and increase participation by the poor. States should take

measures to prevent undesirable impacts on local communities, indigenous peoples and vulnerable groups that may arise from, inter alia, land speculation, land concentration and abuse of customary forms of tenure. States and other parties should recognize that values, such as social, cultural and environmental values, are not always well served by unregulated markets. States should protect the wider interests of societies through appropriate policies and laws on tenure.

[under PART 4 Transfers and other changes to tenure rights and duties - 15. Redistributive reforms]

15.9 States should implement redistributive reforms through transparent, participatory and accountable approaches and procedures. All affected parties should be accorded with due process and just compensation according to national law and the provisions of Section 16. All affected parties, including disadvantaged groups, should receive full and clear information on the reforms, including through gender-targeted messages. Beneficiaries should be selected through open processes, and they should receive secure tenure rights that are publicly recorded. Access to means of resolving disputes should be provided for under national law. States should endeavour to prevent corruption in redistributive reform programmes, particularly through greater transparency and participation.

[under PART 5 Administration of tenure - 21. Resolution of disputes over tenure rights]

21.1 States should provide access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights, including alternative means of resolving such disputes, and should provide effective remedies and a right to appeal. Such remedies should be promptly enforced. States should make available, to all, mechanisms to avoid or resolve potential disputes at the preliminary stage, either within the implementing agency or externally. Dispute resolution services should be accessible to all, women and men, in terms of location, language and procedures.

21.2 States may consider introducing specialized tribunals or bodies that deal solely with disputes over tenure rights, and creating expert positions within the judicial authorities to deal with technical matters. States may also consider special tribunals to deal with disputes over regulated spatial planning, surveys and valuation.

21.3 States should strengthen and develop alternative forms of dispute resolution, especially at the local level. Where customary or other established forms of dispute settlement exist they should provide for fair, reliable, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights.

21.4 States may consider using implementing agencies to resolve disputes within their technical expertise, such as those responsible for surveying to resolve boundary disputes between individual parcels within national contexts. Decisions should be delivered in writing and based on objective reasoning, and there should be a right to appeal to the judicial authorities.

21.5 States should endeavour to prevent corruption in dispute resolution processes.

21.6 *In providing dispute resolution mechanisms, States should strive to provide legal assistance to vulnerable and marginalized persons to ensure safe access for all to justice without discrimination. Judicial authorities and other bodies should ensure that their staff have the necessary skills and competencies to provide such services.*

[under PART 6. Responses to climate change and emergencies – 24. Natural disasters]

24.5 *States and other parties should address tenure during the reconstruction phase. Persons who are temporarily displaced should be assisted in voluntarily, safely and with dignity returning to their place of origin. Means to resolve disputes over tenure rights should be provided. Where boundaries of parcels and other spatial units are to be re-established, this should be done consistent with the principles of consultation and participation of these Guidelines. Where people are unable to return to their place of origin, they should be permanently resettled elsewhere. Such resettlement should be negotiated with host communities to ensure that the people who are displaced are provided with secure access to alternative land, fisheries, forests and livelihoods in ways that do not jeopardize the rights and livelihoods of others.*

[under PART 6. Responses to climate change and emergencies - 25. Conflicts in respect to tenure of land, fisheries and forests]

25.1 *All parties should take steps to prevent and eliminate issues of tenure of land, fisheries and forests as a cause of conflict and should ensure that aspects of tenure are addressed before, during and after conflict, including in situations of occupation where parties should act in accordance with applicable international humanitarian law.*

25.2 *States should ensure that all actions are consistent with their existing obligations under national and international law, and with due regard to voluntary commitments under applicable regional and international instruments, including as appropriate those of the Convention relating to the Status of Refugees and its Protocol, and the United Nations Principles on Housing and Property Restitution for Refugees and Displaced Persons (“Pinheiro Principles”). During and after conflicts States should respect applicable international humanitarian law related to legitimate tenure rights.*

25.3 *In order that tenure problems do not lead to conflicts, all parties should take steps to resolve such problems through peaceful means. States should revise relevant policies and laws to eliminate discrimination and other factors that can be a cause of conflicts. Where appropriate, States may consider using customary and other local mechanisms that provide fair, reliable, gender-sensitive, accessible and non-discriminatory ways of promptly resolving disputes over tenure rights to land, fisheries and forests.*

25.4 *When conflicts arise, States and other parties should strive to respect and protect existing legitimate tenure rights and guarantee that these are not extinguished by other parties. Consistent with existing obligations under relevant national and international law, States should not recognize tenure rights to land, fisheries and forests acquired, within their territories, through forceful and/or violent means. Refugees and displaced persons and others affected by conflict should be settled in safe conditions in ways that protect the tenure rights of host communities.*

Violations of tenure rights should be documented and, where appropriate, subsequently remedied. Official records of tenure rights should be protected against destruction and theft in order to provide evidence for subsequent processes to address such violations and facilitate possible corrective action, and in areas where such records do not exist, the existing tenure rights should be documented as best as possible in a gender-sensitive manner, including through oral histories and testimonies. Legitimate tenure rights of refugees and displaced persons should be recognized, respected and protected. Information on tenure rights and unauthorized use should be disseminated to all affected persons.

25.5 In situations of conflicts, whenever possible or when conflicts cease, States and other parties should ensure that tenure problems are addressed in ways that contribute to gender equality and support durable solutions for those affected. Where restitution is possible and, as appropriate, with the assistance of UNHCR and other relevant agencies, refugees and displaced persons should be assisted in voluntarily, safely and with dignity returning to their place of origin, in line with applicable international standards. Procedures for restitution, rehabilitation and reparation should be nondiscriminatory, gender sensitive and widely publicized, and claims for restitution should be processed promptly. Procedures for restitution of tenure rights of indigenous peoples and other communities with customary tenure systems should provide for the use of traditional sources of information.

25.6 Where restitution is not possible, the provision of secure access to alternative land, fisheries and forests and livelihoods for refugees and displaced persons should be negotiated with host communities and other relevant parties to ensure that the resettlement does not jeopardize the livelihoods of others. Special procedures should, where possible, provide the vulnerable, including widows and orphans, with secure access to land, fisheries and forests.

25.7 Where appropriate, policies and laws should be revised to address preexisting discrimination as well as discrimination introduced during the conflicts. Where appropriate or required, relevant agencies should be re-established to deliver services necessary for responsible tenure governance.

Annex 7 - Transcription of the paragraphs where the Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries (SSF Guidelines, FAO 2014) mention the keywords related to the conflict (resolution) lexicon. Underscored with a continuous line are the types of (source of) conflict mentioned; underscored with a dotted line are the key mechanisms provided to address such conflicts; and underscored with a wavy line are the platforms -or arenas- and stakeholders involved by the CRM. Repeated words and expressions are underscored only once in the same paragraph.

[under PART 2. Responsible fisheries and sustainable development – 5. Governance of tenure in small-scale fisheries and resource management – 5A Responsible governance of tenure]

5.4. States, in accordance with their legislation, and all other parties should recognize, respect and protect all forms of legitimate tenure rights, taking into account, where appropriate, customary rights to aquatic resources and land and small-scale fishing areas enjoyed by small-scale fishing communities. When necessary, in order to protect various forms of legitimate tenure rights, legislation to this effect should be provided. States should take appropriate measures to identify, record and respect legitimate tenure right holders and their rights. Local norms and practices, as well as customary or otherwise preferential access to fishery resources and land by small-scale fishing communities including indigenous peoples and ethnic minorities, should be recognized, respected and protected in ways that are consistent with international human rights law. The UN DRIP and the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities should be taken into account, as appropriate. Where constitutional or legal reforms strengthen the rights of women and place them in conflict with custom, all parties should cooperate to accommodate such changes in the customary tenure systems.

5.9 States should ensure that small-scale fishing communities are not arbitrarily evicted and that their legitimate tenure rights are not otherwise extinguished or infringed. States should recognize that competition from other users is increasing within small-scale fisheries areas and that small-scale fishing communities, in particular vulnerable and marginalized groups, are often the weaker party in conflicts with other sectors and may require special support if their livelihoods are threatened by the development and activities of other sectors.

5.11 States should provide small-scale fishing communities and individuals, including vulnerable and marginalized people, access through impartial and competent judicial and administrative bodies to timely, affordable and effective means of resolving disputes over tenure rights in accordance with national legislation, including alternative means of resolving such disputes, and should provide effective remedies, which may include an entitlement to appeal, as appropriate. Such remedies should be promptly enforced in accordance with national legislation and may include restitution, indemnity, just compensation and reparation.

5.12 States should strive to restore access to traditional fishing grounds and coastal lands to small-scale fishing communities that have been displaced by natural disasters and/or armed conflict taking into consideration the sustainability of fisheries resources. States should establish mechanisms to support fishing communities affected by grave human rights violations to rebuild their lives and livelihoods. Such steps should include the elimination of any form of discrimination against women in tenure practices in case of natural disasters and/or armed conflict.

[under PART 2. Responsible fisheries and sustainable development – 6. Social development, employment and decent work]

6.18 Taking into account the Voluntary Guidelines for the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security including section 25, all parties should protect the human rights and dignity of small-scale fisheries stakeholders in situations of armed conflict in accordance with international humanitarian law to allow them to pursue their traditional livelihoods, to have access to customary fishing grounds and to preserve their culture and way of life. Their effective participation in decision-making on matters that impact them should be facilitated.



El Máster Internacional en GESTIÓN PESQUERA SOSTENIBLE está organizado conjuntamente por la Universidad de Alicante (UA), el Centro Internacional de Altos Estudios Agronómicos Mediterráneos (CIHEAM) a través del Instituto Agronómico Mediterráneo de Zaragoza (IAMZ), el Ministerio de Agricultura, Pesca y Alimentación (MAPA) a través de la Secretaría General de Pesca (SGP).

El Máster se desarrolla a tiempo completo en dos años académicos. Tras completar el primer año (programa basado en clases lectivas, prácticas, trabajos tutorados, seminarios abiertos y visitas técnicas), durante la segunda parte los participantes dedican 10 meses a la iniciación a la investigación o a la actividad profesional realizando un trabajo de investigación original a través de la elaboración de la Tesis Master of Science. El presente manuscrito es el resultado de uno de estos trabajos y ha sido aprobado en lectura pública ante un jurado de calificación.

The International Master in SUSTAINABLE FISHERIES MANAGEMENT is jointly organized by the University of Alicante (UA), the International Centre for Advanced Mediterranean Agronomic Studies (CIHEAM) through the Mediterranean Agronomic Institute of Zaragoza (IAMZ), and by the Spanish Ministry of Agriculture, Fisheries and Food (MAPA) through the General Secretariat of Fisheries (SGP).

The Master is developed over two academic years. Upon completion of the first year (a programme based on lectures, practicals, supervised work, seminars and technical visits), during the second part the participants devote a period of 10 months to initiation to research or to professional activities conducting an original research work through the elaboration of the Master Thesis. The present manuscript is the result of one of these works and has been defended before an examination board.