

## Table of contents

Abbreviations and definitions	11
Foreword	13
1. General introduction	17
1.1 Study's objective	17
1.2 Limitation to EEZ	21
1.3 Focus on West Africa	21
1.4 Terminology and translations	23
1.5 Methodology	24
1.6 Organisation of the study	26
Part 1: Current situation	29
2. IUU Fishing	29
2.1 Introduction	29
2.2 Impact of IUU fishing	31
2.3 IUU fishing and fisheries regulations	32
2.4 IUU fishing in West Africa	34
2.5 Forms of IUU fishing	36
3. Fight against IUU Fishing: Role of governmental and non-governmental organisations	41
3.1 Introduction	41
3.2 Global governmental organisations	41
3.3 Regional governmental organisations	43
3.4 Role of NGOs	48
3.5 West Africa: Status quo	49
	5

## *Table of contents*

4. Actors in IUU fishing	51
4.1 Introduction	51
4.2 Vessel-related persons	52
4.3 Vessel owners	53
4.4 Vessel operators	56
4.5 Market-related persons	57
Part 2: International legal regime	59
5. UNCLOS and maritime zones	59
5.1 Introduction	59
5.2 Maritime zones	61
6. EEZ: General	67
6.1 Introduction	67
6.2 Status and legal regime	68
7. EEZ: Fishing	73
7.1 Introduction	73
7.2 EEZ and fishing: Coastal state rights	73
7.3 EEZ and fishing: Coastal state obligations	75
7.4 EEZ: Fisheries regulations	78
7.5 Application of fisheries regulations to vessel owners and operators	80
8. UNCLOS and enforcement of EEZ fisheries regulations	83
8.1 Introduction	83
8.2 ‘Necessity’ requirement	83
8.3 No imprisonment	86
8.4 Prompt release	88
8.5 Responsibility for sanctioning IUU fishing	90
8.6 Enforcement of sanctions against foreign offenders	91

9. Fisheries regulations: State practice	93
9.1 Introduction	93
9.2 Bases for prescriptive and enforcement jurisdiction	93
9.3 Coastal states: Access of foreign vessels to an EEZ	99
9.4 Coastal states: Authorisation to fish	100
9.5 Coastal states: Breach of fisheries regulations	102
9.6 Flag states: General	105
9.7 Flag states: West African states	106
9.8 Flag states: Other states	107
9.9 EEZ fisheries regulations: Summary	109
10. International fisheries instruments	111
10.1 Introduction	111
10.2 UNCLOS: Flag states and vessel nationality	111
10.3 UNCLOS: Stateless fishing vessels	113
10.4 UNCLOS: Scope of flag state fisheries regulations	113
10.5 Binding international fisheries instruments	114
10.6 The FSA	116
10.7 The FAOCA	119
10.8 The PSMA	120
10.9 The WTO Agreement on Fisheries Subsidies	123
10.10 EEZ access agreements	124
10.11 EU Sustainable Fisheries Partnership Agreements	126
10.12 Non-binding international fisheries instruments	129
10.13 The Code of Conduct	130
10.14 The IPOA IUU	132
11. IUU Advisory Opinion	137
11.1 Introduction	137
11.2 Legal status of the IUU Advisory Opinion	138

## *Table of contents*

11.3	Flag state's obligations relating to foreign EEZs	138
11.4	Nature of flag state's obligations	141
11.5	Flag state's liability	142
11.6	Content of due diligence obligation	143
11.7	Impact of IUU Advisory Opinion	145
11.8	Enforcement of flag state's due diligence obligation	147
11.9	State responsibility and M/V 'Virginia G'	150
	Part 3: Role of vessel owner states	153
12.	International law and the prevention principle	153
12.1	Introduction	153
12.2	International case law	154
12.3	The prevention principle and due diligence	157
12.4	The prevention principle and cybercrime	158
12.5	Application of the prevention principle to the EEZ	161
13.	UNCLOS: Vessel owner state responsibility?	165
13.1	Introduction	165
13.2	UNCLOS: A living treaty	165
13.3	Flag states and nationals of other states	169
13.4	Coastal state liability: No exclusive role for flag states	171
13.5	Vessels and connected persons: No exclusive flag state responsibility	173
13.6	Responsibility of vessel owner states: Introduction	175
13.7	Responsibility of vessel owner states: Articles 58(3) and 62(4) UNCLOS	175
13.8	Responsibility of vessel owner states: Articles 192, 194(2) and 194(5) UNCLOS	180
14.	Vessel owner state responsibility: Supporting sources	185
14.1	Introduction	185

14.2	IUU fishing and UN General Assembly resolutions	185
14.3	IPOA IUU: Paragraphs 18 and 21	189
14.4	IPOA IUU: National Plans of Action	190
14.5	IPOA IUU: Technical Guidelines	194
14.6	PSMA: Preamble	196
14.7	IUU Advisory Opinion: Submitted views	197
14.8	FSA: Review meetings	199
15.	Vessel owner state responsibility: State practice	203
15.1	Introduction	203
15.2	Regulation of IUU fishing by nationals: EU IUU Regulation	203
15.3	EU IUU Regulation and member state obligations	205
15.4	EU IUU Regulation and member state implementation	208
15.5	EU IUU Regulation and ‘non-cooperating’ third states	209
15.6	Impact of EU IUU Regulation	214
15.7	Regulation of IUU fishing by nationals: The US Lacey Act	216
15.8	Regulation of IUU fishing by nationals: Other states	221
15.9	Enforcement action against nationals	222
15.10	Bengis case	222
15.11	Vidal Armadores case	226
Part 4:	Vessel Owner State responsibility: Way forward	231
16.	Introduction	231
16.1	Vessel owner state responsibility	231
16.2	International law and national fisheries regulations	232
16.3	West Africa: Obligations of coastal states	235
16.4	Responsibility of coastal, flag and vessel owner states	236
17.	Vessel owner state responsibility: Implementation	239
17.1	Introduction	239

## *Table of contents*

17.2	Vessel owner state's due diligence obligation	240
17.3	Jurisdictional bases for regulations	241
17.4	Enforcement of regulations	242
18.	Vessel owner state responsibility: Coastal and flag state measures	245
18.1	Introduction	245
18.2	Flag states: Disclosure of beneficial owners and operators	245
18.3	Coastal state fisheries regulations	246
18.4	STP and Cabo Verde: Scope of application	247
18.5	STP and Cabo Verde: Access to the EEZ	248
18.6	STP and Cabo Verde: Infringements and sanctions	249
18.7	STP and Cabo Verde: Involvement of nationals	250
18.8	STP and Cabo Verde: Flag and vessel owner states	251
18.9	EEZ fisheries regulations: Recommendations	251
19.	Conclusion	253
	Sources	255