

**The *Scales of Justice* in High Seas fisheries:
How economic, cultural and political systems behind
Ocean governance create injustices**

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Submitted to
Central European University
Undergraduate Studies Department

In partial fulfillments of the requirements for the degree of Bachelor of Culture,
Politics and Society

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Vienna, Austria

2025

Author's Declaration

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Vienna, 16 June 2025

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Abstract

Apart from threatening marine biodiversity and therefore harming Ocean health of global significance, fishing in the High Seas is connected to many other global injustices. This thesis aims to understand the emergence of those injustices, by applying Nancy Fraser's *Scales of Justice* theory, which focuses on the underlying economic, cultural and political systems. While Ocean governance has been analyzed by scholars using justice oriented analytical lenses, the fishing regime specifically needs to be examined through them. I found the economic class structure to be shaped by the High Seas' and fish stocks' natural features: Fishing there is very resource intensive due to the water's vastness and the decreasing fish stocks' spacious distribution. Subsidies need to fuel this industry, low-income countries are therefore excluded from this technically global market. On the cultural scale I found the status order of cultural values to reflect Western hegemony. Examples of institutions holding up this order are epistemology and green growth capitalism. Lastly, I found the political constitution(s) of Ocean governance to misrepresent the rights, needs and interests of many. Examples of such misrepresentations are the omission of direct fishery laws in the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ), Regional Fisheries Management Organization's (RFMO) enforcement mechanism, or on a broader scale the anthropocentric frame setting.

Acknowledgements

First and foremost, I would like to thank my parents Silvana Siqueira-Gabler and Daniel Gabler for providing me with the opportunity to complete a higher education program. Thank you for believing in me and my goals, and selflessly supporting them.

I would also like to express my gratitude to my supervisor Marie-Pierre Françoise Granger, who's efficient, clear communication style I appreciate and without whose help I would not have been able to find the gap I found. Thank you for your interest in my topic, all the helpful suggestions and guidance.

Lastly, I would like to thank the Ocean, who's existence and services I get to enjoy. Thank you for being a source of inspiration, and maybe even more importantly - motivation.

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List of Abbreviations

ABNJ	Areas beyond national jurisdiction
BBNJ	Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction
EEZ	Exclusive Economic Zone
FSA	United Nations Fish Stocks Agreement
GDP	Gross Domestic Product
MPA	Marine Protected Area
RFMO	Regional Fisheries Management Organization
SDG	Sustainable Development Goal
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
WTO	World Trade Organization

1. Introduction

“IF THE OCEANS DIE, WE DIE.”

CAPTAIN PAUL WATSON

Overfishing has long been known to threaten ecosystems, habitats, marine biodiversity, livelihoods, economies, traditions, and ultimately – lives. Despite this awareness and new measures and treaties to limit overfishing, a third of fish stocks are estimated to be overfished,¹ a measure which still might deeply underestimate the real depletion.² But the global impact the fishing industry and how it is governed, goes way beyond the issue of overfishing.

Regardless of being among the biggest threats to marine biodiversity,³ fishing has not been regulated directly in a new treaty aiming to conserve biodiversity in areas beyond national jurisdiction (ABNJ). The absurdity of this contradiction inspired this research.

There are studies relating Ocean⁴ governance to justice questions and others that focus exclusively on ABNJ and fishing, but the connection between fishing governance and justice remains underexplored. As I will show, the better known problems of environmental degradation or economic disparities are only part of the injustices related to the international fishing regime. The research focuses on the High Seas⁵ fishing regime, but locates it within the broader contexts of Ocean governance or fishing in national waters. To understand how the governance regime of High Seas fishing creates injustices, I apply Nancy Fraser’s theory on the *Scales of Justice* as a framework. Her theory gets to the crux of injustices, by defining the underlying systems creating

¹ FAO, *The State of World Fisheries and Aquaculture 2022*, 46.

² Sea Around Us, “Fisheries Research Overestimates Fish Stocks.”

³ Barnes, “Fisheries and Marine Biodiversity,” 546; Wright et al., “High Seas Fisheries: What Role for a New International Instrument?,” 9.

⁴ Capitalized on purpose to address the Ocean as a subject.

⁵ Capitalized on purpose to address the High Seas as a subject.

them. The High Seas fishing regime creates injustices because of its class structure, status order and political constitution(s).

After reviewing existing literature and identifying gaps in our understanding of the justice implications of Ocean governance and the High Seas fishing regime more particularly, I start by examining the economic scale. I show that the economic class structure of fishing in ABNJ is unfair, as corporations depend on receiving subsidies in order to fish outside of their national waters. This de facto allows only wealthy nations to profit from the fish in global waters. I then explore the cultural scale, in which I find that the status order of Ocean governance is unjust, because it reflects Western⁶ hegemony and subordinates non-Western values in doing so. This is upheld by institutions such as the epistemology of governing and the regime's focus on green growth capitalism. Lastly, I analyze the political scale and identify problematic political constitutions. I single out the omission of direct fishing laws in the Agreement under the United Nations Convention on the Law of the Sea (UNCLOS) on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ) and the classist enforcement mechanisms of Regional Fisheries Management Organizations (RFMOs) as ordinary-political misrepresentations. I also record cases of misframing, such as the exclusion of the Ocean or fish from representation in governance regimes.

This thesis enriches the global justice discourse surrounding High Seas fishing by defining disparities and relating them to their autonomous systems of power. It adds a decolonial and critical lens to the neutral-assumed practice of contemporary Ocean and fishing governance.

⁶ Capitalized because Western is used as a concept, not a cardinal point (explained in [4.1](#)).

2. Literature review and theoretical framework

First, I will provide context about Ocean governance and explain how fishing in the High Seas is regulated. Then, I will lay down a suitable framework to fill the gap between the fishing research and justice discourse. To do so I apply Nancy Fraser's theory about the *Scales of Justice*.

2.1. Introduction to Ocean governance

Before the scholarly literature is reviewed, one needs to understand how fishing is regulated in the High Seas. UNCLOS lays down the legal framework for the regulation of marine activities. This document defines the exclusive economic zones (EEZ) (where respective countries have special rights over resources) as extending 200 nautical miles beyond a country's territorial Sea⁷. The High Seas, or ABNJ, are international waters outside of said EEZs. As such, they belong to all but no one in particular. Article 87 of UNCLOS affirms the freedom of the High Seas and the freedom of fishing there. While there are general fishing regulations, all nations are equally free to exploit ABNJ for its resources. UNCLOS has been extended with various new treaties and bodies which regulate and restrict fishing in ABNJ, like the Fish Stocks Agreement (FSA) and the connected Regional Fisheries Management Organizations (RFMO). Their mechanism is explained further in Chapter 5.1.2, generally they have the power to set up marine protected areas (MPA) in national waters and the High Seas, which can restrict fishing.

International Ocean governance under the United Nations' (UN) regime has generated much scholarly criticism. For example, it is said to be extremely fragmented, overlapping and lacking in cohesion.⁸ Looking at legal agreements, the regime has failed to adequately address

⁷ Capitalized on purpose to address the Sea as a subject.

⁸ Watson-Wright and Luis Valdés, "Fragmented Governance of Our One Global Ocean," 18.

biodiversity threats, illustrated by not meeting the Aichi Biodiversity Targets and the limited progress and effort to reach Sustainable Development Goal (SDG) 14: Life below Water.⁹

Due to the obvious link between environmental preservation and justice, scholars have analyzed the conservation issue using justice oriented analytical lenses. Crosman et al., 2022, criticize the current framework for theoretically not focusing enough on equity and practically not providing the necessary tools to achieving it. According to them “[u]ncoordinated, poorly specified, unaccountable governance allows the powerful to entrench and maintain their dominance”¹⁰.

Human rights-based approaches also offer a critical perspective, with some highlighting the human right to a healthy Ocean,¹¹ and others connecting human rights principles to marine conservation.¹² The UN’ regime is criticized for retaining “a legacy in some places of protectionism, colonialism, and fortress conservation”¹³, which could be changed by including equity as a rights-based condition. Some authors argue that the solution lies in recognizing the High Seas as a common concern of humankind. This is a legal principle, which emphasizes the “shared obligations and responsibilities with respect to common problems facing humankind”¹⁴. Those solutions point towards a more holistic approach and new priorities.

Given the continuous decline of the Ocean’s health, which is mainly threatened by increasing plastic pollution, overfishing and the effects of climate change, such as water acidification and warming,¹⁵ it is clear that the current governing approach is failing to reach its goal of preserving

⁹ Evans et al., “Untangling Theories of Transformation,” 1.

¹⁰ Crosman et al., “Social Equity Is Key to Sustainable Ocean Governance,” 1.

¹¹ Bennett, Morgera, and Boyd, “The Human Right to a Clean, Healthy and Sustainable Ocean.”

¹² Smallhorn-West et al., “Why Human Rights Matter for Marine Conservation.”

¹³ Smallhorn-West et al., 1.

¹⁴ Li and Xing, “A Critical Appraisal of the BBNJ Agreement Not to Recognise the High Seas Decline as a Common Concern of Humankind,” 1.

¹⁵ Olivert, “The Role of UNCLOS in Upholding Maritime Order and Global Ocean Governance,” 28.

Ocean ecosystem health. The only threat which UNCLOS can address as such, is the one of overfishing.¹⁶

Fisheries' crucial impact on biodiversity and the resulting necessity to adequately govern it in globally owned waters has also been studied. Many scholars stress the need to incorporate fishing laws in BBNJ and analyze the legal intersections.¹⁷ The principle to not-undermine existing regimes, put forward by the UN' general assembly, creates legal complexities and limits BBNJ's scope.¹⁸ BBNJ's relation to RFMOs is therefore an obviously complicated one, as RFMO's already set up MPAs in ABNJ, which is the same mechanism BBNJ would use to restrict fishing.

2.2. Nancy Fraser's *Scales of Justice*

Scholars have rightfully connected Ocean governance to justice issues, indirectly they thereby address the fishing regime. But due to the disproportionate role fishing plays in justice and environmental justice questions, it needs to be addressed directly.

I adopt a critical social theory approach to explain the grounds on which High Seas fisheries are unjust. In doing so, I will focus on the explanatory-diagnostic aspect, leaving most of the anticipatory-utopian part for a further project.

In order to have a specific, but still flexible and inclusive framework of justice I have chosen Nancy Fraser's theory about the *Scales of Justice*. I apply it with a normative theoretical approach, therefore evidence is used to illustrate the described injustices, but I do not compare evidence against how these systems might foster justice. The evidence I used is diverse and

¹⁶ Olivert, 33.

¹⁷ Crespo et al., "High-Seas Fish Biodiversity Is Slipping through the Governance Net"; Wright et al., "High Seas Fisheries: What Role for a New International Instrument?"; Qu and Liu, "A Sustainable Approach towards Fisheries Management"; Tian and Guo, "The Potential Interactions between the BBNJ Agreement and RFMOs in the Establishment of ABMTs."

¹⁸ Qu and Liu, "A Sustainable Approach towards Fisheries Management," 7.

chosen to best fit the respective topic. For example I use data on global fishing efforts for the economic part, but case studies on fishing communities for the cultural part. My use of evidence is a continuity of Fraser's practice.

Fraser identified three main *Scales of Justice* – Redistribution, Recognition and Representation. She defines justice in its most fundamental meaning as parity of participation.¹⁹ Participation can be impeded or prevented by three distinct structures or systems, which interact with each other, but should not be reduced to a secondary effect of one another. For the economic scale, Redistribution, class structure is the underlying system which can create distributional injustices or maldistribution. For the cultural scale, Recognition, status order is the underlying system creating status inequality or misrecognition. And lastly, for the political scale, Representation, political constitution is the underlying system which often creates ordinary-political misrepresentation or, less obviously and on a deeper level, misframing.²⁰

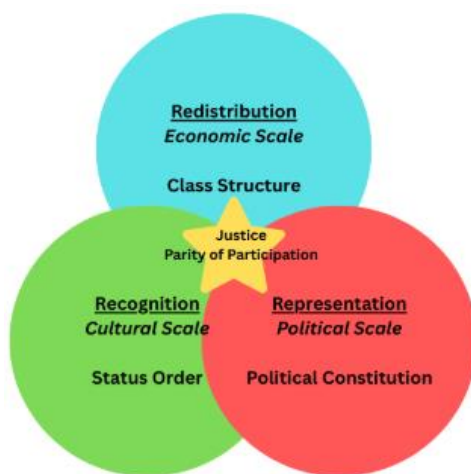


Figure 1: Visualization of the Scales of Justice

Source: Self-made

¹⁹ Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*, 16.

²⁰ Fraser, 16–19.

Theories focusing on only one of the scales do not provide the “social-theoretical complexity and moral-philosophical insight”²¹ necessary to analyze (in)justices such as the ones created by High Seas fishing in a globalizing world. Class structure, status order and political constitution have an autonomous standing towards each other and do not overlap perfectly, so they need to be addressed specifically, which I do in the following chapters.

²¹ Fraser, 17.

3. The class structure of High Seas Fisheries

In order to understand how the economic system of the fishing regime creates injustices, the class structure needs to be analyzed. Economic injustices are probably the most easily quantifiable and stand out the most strikingly, even in the much-debated global context. It is indisputable that we are living in an increasingly globalized world and that individuals are not solely affected by the economic system within their own national borders. But, if those effects really are comprehensive enough to generate global distributive duties and to which extend, is a controversial topic in the academic discourse. Because the High Seas are beyond anyone's national jurisdiction, this case specifically makes it harder for subscribers to the Westphalian framing to prioritize national economic sovereignty in governance principles. After all, those fishing grounds are not within their territory.

3.1. Entry fee: the role of resources and subsidies

However, I follow a Postwestphalian framing, like Fraser. This is demanded, on the economic scale, due to the supranational class structure of High Seas Fisheries. In theory, the High Seas are open to be exploited by whoever wants to, but in practice only those who have the resources can do so. Obviously, it is more cost-intensive to sail up to the High Seas than to regional waters and not everyone interested in profiting from fishing in ABNJ can pay this fee.

Less obviously and related to this, fishing there depends on state subsidies. This is due to the just mentioned high costs associated with conquering the vastness of those waters, but also due to the profitability of fishing being dependent on abundance. The fish stocks need to be large enough to

compensate for the resources lost in the process of fishing.²² Overfishing, without the artificial help of subsidies, should therefore not be profitable, especially not far away from coastlines.

Capacity enhancing subsidies encourage fish extraction exceeding the maximum sustainable yield²³ - in 2018, they made up 63% of global fishing subsidies.²⁴ This means, the majority of subsidies encourage overfishing, making it even harder for non-subsidized fishers to make profits, on top of threatening marine ecosystems. Global state subsidies for High Seas fishing added up to \$4.2 billion in 2014, exceeding estimated profits immensely and leaving 54% of fishing efforts to be unprofitable without them.²⁵

This problem has been acknowledged by the international community: In June 2022 the World Trade Organization (WTO) reached a multilateral deal to prohibit harmful fishing subsidies. This was the first WTO agreement to ever focus on sustainability, demonstrating just how severe the issue is. While this sparks hope, scientists criticized the agreement for not being comprehensive enough. Subsidies aimed at reducing the expenses of operating vessels or boosting fishing capacities are not tackled in the agreement.²⁶ Unfortunately, exactly those facilitate industrial fishing in the High Seas, as they allow to travel further, for a longer time and on a larger scale. Therefore, the deal does not counteract the unjust class structure observed in High Seas fishing, at least not to the extent it could.

²² Pauly, “Ask Dr. Pauly.”

²³ Maximum sustainable yield is a technical term used in models. If it is exceeded, overfishing occurs.

²⁴ Sumaila et al., “Updated Estimates and Analysis of Global Fisheries Subsidies,” 1–2.

²⁵ Sala et al., “The Economics of Fishing the High Seas,” 2–3.

²⁶ Zeller, Meeuwig, and Andreoli, “Governments Spend US\$22 Billion a Year Helping the Fishing Industry Empty Our Oceans. This Injustice Must End.”

3.2. Data showing maldistributions

According to Fraser, injustices on the economic scale depend on the underlying economic system -class structure-, which creates distributional injustices or maldistribution. To prove that the mentioned class system of High Seas fisheries is unjust, I looked at the distribution of fishing efforts and the therefore associated profits, to demonstrate that it creates such economic disparities.

A study tracked 80% of the fishing effort in ABNJ to only six nations - China, Taiwan, Japan, Indonesia, Spain, and South Korea.²⁷ Another one showed that less than 3% of the industrial fishing effort in the High Seas from 2015-2016 was flagged to lower income countries.²⁸

Taking a closer look and moving away from states, the top 100 companies fishing in the High Seas, were responsible for as much as 36% of fishing effort.²⁹ The largest companies had headquarters in China, but regardless of headquarters most were global brands, meaning their supply chains were transnational, like their subsidiaries.³⁰ Along coasts there is more biological activity and therefore more fish. Therefore, it is not surprising, that the fishing effort was the most concentrated dangerously close to other countries' EEZs.³¹ This raises concerns due to possible fish theft, depletion of fish stocks in national waters and the effects on food security of the respective coastal communities.

Additionally, banning fishing in ABNJ would drastically distribute the benefits generated from fishing. Closing the High Seas to fishing would lead to a spillover effect, meaning there would be more fish caught in national waters. Globally seen, this would be catch-neutral, but reduce fishing

²⁷ Sala et al., "The Economics of Fishing the High Seas," 1.

²⁸ McCauley et al., "Wealthy Countries Dominate Industrial Fishing," 2.

²⁹ Carmine et al., "Who Is the High Seas Fishing Industry?," 730.

³⁰ Carmine et al., 732.

³¹ Carmine et al., 731.

inequality by 50%, measuring it with the Gini coefficient.³² Lastly, the main species caught in ABNJ, such as tuna species, pelagic squid or toothfish, are destined for fine dining in food-secure countries such as the US, Japan or EU countries.³³

The class structure evidently creates distributional injustices, because fishing in ABNJ is clearly dominated by wealthy countries and not accessible for low-income countries. The corporations flying those countries' flags are of transnational nature - they are not solely fueled by their respective nation's subsidies, but are linked to a wider system. Likewise, their market is international and highly classist. This gives all the more reason to apply a Postwestphalian approach to justice in this context.

³² Sumaila et al., "Winners and Losers in a World Where the High Seas Is Closed to Fishing," 1.

³³ Schiller et al., "High Seas Fisheries Play a Negligible Role in Addressing Global Food Security," 1.

4. The status order of values in governing practices

After examining the economic class structure, I investigate the cultural scale to gain a more comprehensive understanding of the emergence of injustices. Fraser identifies the status order of values as the root for cultural injustices.

Fraser highlights the importance of analyzing the cultural scale, Recognition, as an autonomous system, while not making two mistakes related to identity politics. First, the problem of misplacement occurs when the economic scale, Redistribution, is either completely ignored or reduced to a secondary effect of misrecognition. It is then believed, that maldistribution will solve itself once misrecognition is solved.³⁴ Secondly, the problem of reification occurs when complex, multifaceted identities are simplified and only regarded as authentic if individuals conform to a single, narrow group identity. Identity politics is an approach that aims to counteract misrecognitions but commits misrecognition itself through reification.³⁵

To avoid such mistakes and get to the root of the problem I focus on the underlying system, status order. Where needed, I will be referring to the status order by either supremacy or subordination. Rather than focusing on misrecognized identities, I analyze social subordination “as a consequence of institutionalized patterns of cultural value that constitute one as comparatively unworthy of respect or esteem”³⁶. The institutions holding up this status order are diverse and overlap with the economic and political scale. Examples are codified law, “policies, administrative codes, professional practice”³⁷, customs, civil society practices and more.³⁸

³⁴ Fraser, “Rethinking Recognition,” 110–12.

³⁵ Fraser, 112.

³⁶ Fraser, 114.

³⁷ Fraser, 114.

³⁸ Fraser, 114.

4.1. Western hegemony

Coming back to Ocean governance and the High Seas fishing regime, there is a social supremacy in the form of Western hegemony. While hegemony means domination, in social sciences this term is usually used for cultural domination which is more subliminal than violent domination. This assumes that people are not simply ruled by force, but by ideas.³⁹ Donald Puchala, an international relations professor, differentiates this as follows:

Others' voluntary compliance, or their acquiescence regarding the projects of the hegemon, are offered either in exchange for rewards, from dread of penalty, or out of ideological affinity. The voluntary compliance of subjects distinguishes between hegemony and empire. Subordinate elites under conditions of hegemony are better conceived as partners rather than subjects.⁴⁰

Economically, the West is a cluster of capitalist countries, more or less committed to private enterprise and open markets; politically, it is a club of democracies; ideologically, it is the source and center of liberal internationalism; hegemonically, it is a transnational coalition of elites sharing interests, aims, and aspirations stemming from similar institutions and a common ideology.⁴¹

The West therefore is not only a geographic idea, but a multinational entity, shaped by history, common values and systems. The UN is often associated with Western values and Western hegemony.⁴²

Western hegemony is observable in social, but also economic and politic subordination. Those are mutually shaping, but nevertheless have autonomous systems creating disparities. This needs to be clear to avoid the problem of misplacement. The status order places Western values over other diverse values, sometimes described as Indigenous, pre-colonial or traditional. I will

³⁹ Bates, "Gramsci and the Theory of Hegemony," 351.

⁴⁰ Puchala, "World Hegemony and the United Nations," 572.

⁴¹ Puchala, 577.

⁴² Puchala, 577.

demonstrate this by using individual examples, but I will not define globally subordinated values to avoid the problem of reification.

4.2. The institution of knowing: the supremacy of Western epistemology in governing

My first example of an institution which reinforces Western hegemony, is epistemology.

Epistemology, or ways of knowing, are influenced by a dominant culture. Its influence goes way beyond governance, but in this example I focus on governance. Elad Lapidot, a philosopher who researches political epistemology, explains the difference between episteme and non-dominant ways of knowing as follows:

Society's authorized knowledge is also productive, namely, it participates in the constitution of social reality, such as institutions, practices, various collective and individual agencies and subjectivities, different levels and forms of discourse, and to shaping individual configurations of experience, that is expectations, hopes, fears, joys, recognitions, etc. Episteme is knowledge that generates culture and civilization.⁴³

Despite often being regarded as neutral, knowledge is therefore both informed by a culture and shapes culture - Western knowledge is not an exception. Recently Ocean governance has been shifting slightly away from exclusively being informed by Western science. This is exemplified by BBNJ, a treaty signed on June 19th 2023, explicitly mentioning the importance of and encouraging the expansion of Indigenous Knowledge⁴⁴. Despite this newer trend, the dominant governing practices are still deeply shaped and historically informed by the Western, colonial institution of knowing.

⁴³ Lapidot, "Decolonizing Epistemic Justice," 4.

⁴⁴ Capitalized because Indigenous Knowledge is a collective term used by scholars.

I seek to demonstrate this by using the example of Ghana. Emmanuel Akyeampong, a historian at Harvard University, shows the role that Indigenous Knowledge has historically played in west African fisheries development. Colonial rule and the associated focus on Western science has marginalized coastal communities and Indigenous Knowledge.⁴⁵ This is related to contemporary cultural subordination, because in the recent discourse that prioritizes breaking away from the dependence on fish, fishing is misrecognized as simply a profession, instead of being connected to a whole cultural way of life.

The rich Indigenous fishing Knowledge of various communities of Africa's west coast is reflective of their coastal culture and proof that fishing in such cases can be more than a job. As mentioned earlier, an episteme –society's authorized knowledge- creates culture. Local fishing communities in Labadi and Teshi have been documented to have extremely innovative and adaptive maritime technology.⁴⁶ They were so skilled and knowledgeable on their environment, that European ships often depended on their recruitment for offloading goods in the difficult to navigate coastal waters.⁴⁷ The Fanti, Ga and Anlo-Ewe are credited with bringing about a transformation in maritime technology with the introduction of various new net types.⁴⁸ Those transformed the sector and created fishing companies. Fishing communities also had a constituted rest day of the week when fishing was not allowed, connected to their spiritual beliefs about the Sea and the conservation of nature,⁴⁹ another example of the connection between the practice of fishing and local culture.

The initial technological development of fisheries in west Africa surprisingly encouraged Indigenous Knowledge, contrary to other colonial projects. Mostly because the colonial

⁴⁵ Akyeampong, "Indigenous Knowledge and Maritime Fishing in West Africa: The Case of Ghana," 173.

⁴⁶ Akyeampong, 174.

⁴⁷ Akyeampong, 175.

⁴⁸ Ibid.

⁴⁹ Akyeampong, "Indigenous Knowledge and Maritime Fishing in West Africa: The Case of Ghana," 177.

institutions were aware of their lack in expertise in this sector.⁵⁰ This is important historic information, because governing the fishing development based on Indigenous Knowledge was clearly the better fit. The awareness of this lack of knowledge was the crucial factor why Indigenous Knowledge was not subordinated. Nowadays, foreign development organizations do not have this awareness and thus rank Western knowledge higher.

Foreign actors, be it Non-Governmental Organizations or the World Bank, affect many layers of Ghanaian life under the plea of advancing development. An example of the exercise of influence, informed by Western episteme, is the World Bank supporting the expansion of an economic sector or industry based on the World bank's choice.⁵¹ Foreign actors with headquarters in the Global North and shaped by Western values, on the pursuit of promoting development in the Global South, are often criticized of White Saviorism. To quote Akyeampong "[d]evelopment' has become something that the government does with its international partners"⁵². Here we see the supremacy of Western episteme, because foreign actors decide what is best for Ghanaian development based on their Western ways of knowing. The local knowledge is thus subordinated, despite its relevance and richness.

An injustice resulting from this hierarchy is the proposed relocation of fishing communities inland or turn to aquaculture to improve their economic situation in light of declining fish stocks.⁵³ This ignores their culture being strongly tied to the Sea and is a clear misrecognition of their way of life. As demonstrated, their way of knowing is tied to their coastal culture.

At this point, it could be criticized that the governing approach to fisheries in Ghana is an example of social subordination, but not related to the status order shaping Ocean governance and

⁵⁰ Akyeampong, 174.

⁵¹ Akyeampong, 179.

⁵² Akyeampong, 179.

⁵³ Akyeampong, 180.

the High Seas fishing regime. At the very least, my argument can be seen as proof that episteme is an institution creating social subordination, which can result in misrecognition of cultural identities. But, considering that the world is globalized, post-colonial but not de-colonial and the UN, the governing body behind High Seas fisheries, historically being informed by the Western episteme, the case of Ghana could be extended to the global context.

4.3. The institution of green growth capitalism: the relation between Western hegemony and supremacy of profit

The second institution I chose as an example, green growth capitalism, is related to a shared system of knowing, but deserves a separate analysis. Capitalist values are related to Western hegemony and are embedded in the UN' sustainable development approach. Capitalism is not simply an economic system, it has to be integrated with institutions that pervade almost all layers of society, such as the legal or monetary systems.⁵⁴

This topic would deserve a more in-depth analysis, but I use here the idea of capitalist values in a very broad sense to demonstrate my argument. Simply put, I mean the idea of a central guiding principle being the prioritization of economic growth and profit over other goals. Decisions are made based on this priority, regimes are molded around it and their success is then defined by it. This is why it belongs to the cultural sphere - any highest priority is not culture neutral; it is chosen based on (among others) cultural norms (episteme being one of them) and/or historically determined. Additionally, a supreme priority is not only shaped by culture, it also shapes culture, because it will always subordinate other goals.

⁵⁴

Andreotti, Benassi, and Kazepov, "Western Capitalism in Transition," 5.

Measuring success through the gross domestic product (GDP) and capitalist economies are the global norm, therefore they often seem culture neutral. I will use the salmon management by the *Tla-o-qui-aht* First Nation⁵⁵ as an example that cultural values shape the level and approach to natural resource extraction.

According to elders of this Nation their values surround the *Nuu-chah-nulth* worldview, which “is grounded in the concepts of *His-shuk-nish-t’sa-waalk*, or “everything is one” and *Iisaak*, or “respect with caring””⁵⁶. The priorities in their salmon management emerge from this worldview. Enhancement and restoration efforts show respect towards the salmon and support the populations’ health and size.⁵⁷ Harvest cannot be done without those coming first, the health and abundance of the stocks would be harmed by prioritizing the harvest.⁵⁸ They highlighted that this is not a sustainability approach in the Western sense, because their conservation efforts follow a mindset of relational reciprocity, in which both the fish’ and the humans’ needs are valued.⁵⁹

Obviously, capitalist cultures are very widespread and diverse nowadays. Nevertheless, I would argue that they are deeply related to Western hegemony, especially considering the colonial project and its long-lasting impacts. It is obvious that the colonial project prioritized economic growth. This is illustrated by the colonial powers’ exploitation of human and natural resources and deployment of extractive industries, which all served to maximize imperial profits. The reflexive nature of subordination is very clear in this example. Human wellbeing and dignity or environmental conservation (which often go hand in hand) were extremely devalued based on existing cultural beliefs, like White⁶⁰ supremacy, but also reinforced through the institutions set

⁵⁵ Capitalized to respect Indigenous people(s).

⁵⁶ Bingham et al., “Knowledge Pluralism in First Nations’ Salmon Management,” 4.

⁵⁷ Ibid.

⁵⁸ Bingham et al., “Knowledge Pluralism in First Nations’ Salmon Management,” 5.

⁵⁹ Ibid.

⁶⁰ Capitalized because White here is a reference to race, not color.

up to further support economic growth. Due to the far-reaching and resistant impact colonialism had globally, it can be said that capitalist values in general are related to Western hegemony.

4.3.1. The UN' sustainable development approach: capitalism embedded in Ocean governance

After asserting the connection between capitalist values and Western hegemony, I want to show how capitalist values are embedded in the UN, the primary body to govern the High Seas. The UN follows a sustainable development approach, in which green growth is seen as the pathway to reach the associated goals.

Green growth as a solution to environmental degradation dominates the political discourse and policy efforts. It proposes that the market could be directed towards environmental conservation if the costs of the climate crisis were integrated in prizes.⁶¹ The proposed mechanism to achieve this is absolute decoupling, which means the GDP should not be coupled to natural resource use.⁶² This rests on technological advancements and allocation efficiency but does not presuppose a decrease in consumption. Those solutions are embedded within the current economic and societal system,⁶³ as such, they do not require a separation from the Western values associated with those systems.

The UN very obviously endorses green growth and presupposes it in its policies, the SDGs being a globally well-known and applied example. In the Ocean context, this approach and the growing

⁶¹ Sandberg, Klockars, and Wilén, "Green Growth or Degrowth?," 136.

⁶² Sandberg, Klockars, and Wilén, 136–37.

⁶³ Sandberg, Klockars, and Wilén, 136.

interest in Ocean commodification is often referred to as blue growth and the blue economy. The blue economy has been valued at USD1.5 trillion or 2.5% of global GDP.⁶⁴

Commodification is tightly interlinked with the previously discussed institution of knowing. The resources in the High Seas and the advancement of Ocean science to appropriate them is a very contemporary example of this link. Because of their vastness, their previous conception as inaccessible and indomitable, the High Seas are often regarded as the last planetary frontier.

Havice and Zalik connect this conception to Western hegemony and global capitalism as follows:

In [W]estern historiography, the frontier has been associated with terrestrial projects of violent conquest and colonialism, racism, imperialism, and resource-fue[l]ed global capitalism, implying a boundary to be breached, controlled and civili[z]ed. Thus, frontiers combine the creation of commodities with cultural and territorial control, making a range of natural and social processes available for appropriation.⁶⁵

BBNJ, the newest treaty under UNCLOS, sets regulatory rules for scientific Ocean exploration and exploitation and regulates the distribution of benefits gained from it. This treaty and other projects related to advancing SDG 14: Life below Water, definitely aim at closing this socially perceived frontier, via the expansion of marine jurisdiction, science and commodification.⁶⁶ Some delegates were wary of this approach, as it commodifies biodiversity.⁶⁷ It would enforce a market-based approach to determine the value of nature and manage this value based on an extractive mindset.⁶⁸

Despite being framed as inclusive and likewise of benefit to lower-income nations, there have been many injustices documented related to blue growth. A study categorized papers reporting

⁶⁴ OECD, *The Ocean Economy in 2030*, 13.

⁶⁵ Havice and Zalik, "Ocean Frontiers," 2.

⁶⁶ Havice and Zalik, 13.

⁶⁷ Havice and Zalik, 12.

⁶⁸ Ibid.

those injustices into ten categories,⁶⁹ most (if not all) are among themes which can be connected to the supremacy of Western hegemony, because they follow patterns of colonial capitalism. “Dispossession, Displacement and Ocean grabbing” , “Inequitable Distribution of economic benefits”, “Marginalization of Women” or “Human and Indigenous rights abuses” are examples of such.⁷⁰

4.3.2. Injustices related to the superiority of capitalist values

To conclude the analysis of the cultural scale, I want to mention the negative consequences of the status order which reflects Western hegemony and therefore capitalist values. It is clear that injustices generally result out of an interplay of the scales and the respective systems. The examples of injustices I chose are not an exception, but the profoundness of structural injustice becomes even more apparent taking the green growth priority and its relation to culture into account.

A very clear example is the Food and Agriculture Organization, an UN specialized agency, making the expansion and intensification of sustainable aquaculture one of their three core objectives of a blue transformation plan.⁷¹ There are countless environmental concerns related to aquaculture. Heavy pollution due to antifoulants and antibiotics, water eutrophication leading to fish suffocating, genetic pollution to wild fish or the spread of parasites are only a handful of documented issues.⁷² An intensifying of this sector is thus incompatible with sustainability, but very reflective of the contradictory nature of green growth itself.

⁶⁹ Bennett et al., “Blue Growth and Blue Justice.”

⁷⁰ Bennett et al., 2.

⁷¹ FAO, *The State of World Fisheries and Aquaculture 2022*, 110.

⁷² Mavraganis et al., “Environmental Issues of Aquaculture Development,” 444–46.

Environmental degradation clearly threatens livelihoods. By prioritizing growth over environmental preservation, human rights and human dignity are also subordinated. But there are even more direct violations resulting from the fishing industry. The Environmental Justice Foundation published multiple reports on severe human rights abuses, like slavery, forced labor, murders and violence in the Thai fishing industry.⁷³ Those reports show how the exploitation of natural and human resources go hand in hand. Especially since fishing is increasingly unprofitable due to overfishing, the costs of fishing are kept unnaturally low through such labor violations.⁷⁴

Again, those injustices are of transnational character. The vulnerable situation of migrant workers is often abused and they end up as victims of this industry, vessels frequently transcend marine borders illegally and people are imprisoned on the High Seas for years sometimes, while their ships are being supplied with fuel or water by other ships.⁷⁵ The international community has vowed to fight such violation by stopping illegal, unreported and unregulated fishing, but as I'll show in Chapter 5.1.2, policing and enforcement mechanisms do not guarantee that legal fishing operations adhere to all the human rights and conservation standards.

Coming back to Ghana, a problem related to international involvement there, is the harm to fish stocks in Ghanaian waters caused by foreign trawlers.⁷⁶ Fishermen in Ghana have frequently requested help from the government to solve this issue. The transnational nature is even more apparent by 90% of Ghanaian flagged trawlers being estimated to be owned by Chinese

⁷³ EJF, "Sold to the Sea - Human Trafficking in Thailand's Fishing Industry"; EJF, "SLAVERY AT SEA: The Continued Plight of Trafficked Migrants in Thailand's Fishing Industry"; EJF, "PIRATES AND SLAVES: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans."

⁷⁴ EJF, "PIRATES AND SLAVES: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans," 5.

⁷⁵ EJF, "SLAVERY AT SEA: The Continued Plight of Trafficked Migrants in Thailand's Fishing Industry," 28.

⁷⁶ Akyeampong, "Indigenous Knowledge and Maritime Fishing in West Africa: The Case of Ghana," 179.

corporations.⁷⁷ 81% of Ghanaian workers witnessed their vessel to have fished in zones reserved exclusively for canoe fishers, 97% were forced to work 14+ hours and 81% were victims of or saw physical violence.⁷⁸

Those injustices are severe. The choice of a highest priority in governance efforts is culturally determined, as explained earlier, therefore the resulting injustices are likewise not culture neutral.

⁷⁷ EJF, “ON THE PRECIPICE: Crime and Corruption in Ghana’s Chinese-Owned Trawler Fleet,” 4.

⁷⁸ EJF, 5.

5. The political constitution(s) of international fishing governance

To fully understand how the systems behind Ocean and fishing governance create injustices, lastly, I examine the political scale. UNCLOS is seen as the constitution of the Sea, but as over 100 international agreements govern marine affairs,⁷⁹ it would be impossible to analyze political representation issues in all of them. The agreements I use as examples are the most relevant political constitutions for High Seas fishing, and have been signed under UNCLOS.

5.1. Ordinary-political misrepresentation

Fraser distinguishes between two forms of political injustice found in constitutions. On the one hand, there are what she calls ordinary-political misrepresentations, which are disparities in political participation within the frame of a political community.⁸⁰ Those can take the form of discriminatory electoral systems, gender- or race-blind policies, misrepresentation of minorities in public discourse and many more.

Very often the boundaries of justice –the frame- are drawn across territorial borders. In the case of High Seas fisheries, all signatory states of related international agreements, like FSA or BBNJ, or members of related international bodies, like the WTO, are within the frame. I will analyze two agreements which misrepresent their respective political community.

5.1.1. BBNJ's outcome

First, BBNJ's negotiation process and its outcome are a highly contemporary and suitable example of such misrepresentations. The treaty aims to conserve biodiversity in ABNJ, while

⁷⁹ Fanning et al., "Transboundary Waters Assessment Programme (TWAP) Assessment of Governance Arrangements for the Ocean," 100.

⁸⁰ Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*, 16–19.

fostering sustainable use of marine genetic resources, by advancing Ocean science and sharing the benefits equitably.

While generally receiving a lot of positive feedback, the most elusive fact about the finished version of BBNJ is that it does not address the issue of fishing directly, despite fishing being among the biggest threats to marine biodiversity.⁸¹ Fisheries have such an invasive impact on genetic diversity, species composition, species diversity, size and age of populations, marine habitats and ecosystems etc., that they severely alter the resilience to natural and anthropogenic perturbations of ecosystems and species.⁸² The fishing industry is the largest single contributor to Sea-based plastic pollution, the severity of the problem being substantiated by 52% of plastics found in the Great Pacific Garbage Patch being traced to fishing efforts.⁸³ During BBNJ's drafting scholars have called for an inclusion of a total fishing ban in the High Seas, due to the economic class structure mentioned in Chapter 3 and fishing's detrimental, unmistakable biodiversity impacts.⁸⁴

The list of researched environmental harms attributed to fisheries is much more extensive, but despite this knowledge policy makers only addressed fishing indirectly in Part III of BBNJ, via the mechanism of MPAs. The indirect addressal is a compromise many scholars were not even expecting, as it was the most polarized topic.⁸⁵ On one hand, many stakeholders (e.g. The African Group, Peru, Costa Rica, the USA, Jamaica, NGOs) were in favor of managing fishing in

⁸¹ Barnes, "Fisheries and Marine Biodiversity," 546; Wright et al., "High Seas Fisheries: What Role for a New International Instrument?," 9.

⁸² Boehlert, "Biodiversity and the Sustainability of Marine Fisheries," 28–34.

⁸³ Apete, Martin, and Iacovidou, "Fishing Plastic Waste," 1–2.

⁸⁴ Pauly and Sumaila, "Fishing the High Seas Is Unprofitable and Destructive: Ban It and Save Our Shared Ocean," February 10, 2023.

⁸⁵ Tian and Guo, "The Potential Interactions between the BBNJ Agreement and RFMOs in the Establishment of ABMTs," 2.

BBNJ.⁸⁶ Civil society groups and scientists highlighted that fishing needs to be included to achieve a much needed integrated, holistic Ocean governance approach.⁸⁷ On the other hand, major fishing states (e.g. Japan, Russia, Iceland)⁸⁸ and the International Coalition of Fisheries Association⁸⁹ argued against the inclusion, claiming that fishing is already managed sufficiently through the RFMOs and marine biodiversity sufficiently protected.⁹⁰

Given that a compromise was reached, one could argue that BBNJ's outcome does not constitute an ordinary-political misrepresentation. I argue, that the proposed mechanism of MPAs does not manage fishing and protect biodiversity in ABNJ comprehensively. Therefore, it does not provide parity in political participation for all those who argued in favor of more fishing management and misrepresents the needs of those negatively affected by the consequences, which are extensive.

I believe this for two reasons. First of all, MPAs are ambiguous. Only no-take zones ban all industrial activity, like fishing. No-take zones have been proven to protect marine ecosystems the most effectively,⁹¹ but BBNJ does not specifically call for their setup. This leaves room for greenwashing, which is demonstrated in the databank of the Marine Protection Atlas. It found that only a third of MPAs -3% of the Ocean- is effectively protected, while a third of them still allow industrial and highly impactful activities.⁹² MPAs ambiguity and efficiency deficit make it clear that fishing needs to be addressed specifically in governance efforts.⁹³

⁸⁶ Qu and Liu, "A Sustainable Approach towards Fisheries Management," 5.

⁸⁷ Wright et al., "High Seas Fisheries: What Role for a New International Instrument?," 9.

⁸⁸ Qu and Liu, "A Sustainable Approach towards Fisheries Management," 5.

⁸⁹ ICFA, "ICFA Statement on Petition to Ban Fishing on the High Seas."

⁹⁰ Wright et al., "High Seas Fisheries: What Role for a New International Instrument?," 10.

⁹¹ Sala and Giakoumi, "No-Take Marine Reserves Are the Most Effective Protected Areas in the Ocean"; Hall, Sievers, and Kingsford, "Conservation Benefits of No-Take Marine Reserves Outweigh Modest Benefits of Partially Protected Areas for Targeted Coral Reef Fishes."

⁹² The Marine Protection Atlas, "MPA Guide Marine Protection."

⁹³ Qu and Liu, "A Sustainable Approach towards Fisheries Management," 2.

Secondly, MPAs are currently managed by RFMOs, which have been criticized for not being effective enough for a number of reasons. First, due to a lack of legal competence, they are inadequately equipped to deal with problems such as bottom trawling.⁹⁴ Secondly, compliance with their regulations is controlled through independent onboard monitoring, but they generally do not mandate comprehensive monitoring (only 3 out of 17 do).⁹⁵ This is typically conducted by a human observer who lives on the vessel and monitors the compliance with regulations, by collecting data about catch, impacts on by-catch, fishing gear etc..⁹⁶ Such observers are extremely vulnerable to pressure from the crew members or violence, but RFMO's systemically fail to protect their safety sufficiently.⁹⁷ Remote Electronic Monitoring, through video cameras for example, is another way to monitor compliance, but 100% usage of it is not mandated by any RFMO. Lastly, a study found their performance to be very low and an imbalance in their on-paper intent and de facto action has become apparent.⁹⁸

It is unclear how BBNJ will interact with the existing system, because it is not ratified yet. Both BBNJ and RFMOs generally share thematic and geographic areas, but the not-undermine clause cannot be ignored. Existing regimes' authority should not be undermined by emerging treaties. A study analyzed those how legal intersections would play out, by applying the articles 5 and 22, which address BBNJ's relationship with RFMOs, and simulating different scenarios for implication for RFMOs. This revealed that it is not BBNJ's intention to undermine the existing

⁹⁴ Telesetsky and Bratspies, "Marine Environmental Law UNCLOS Ocean Governance and Fisheries," 164.

⁹⁵ Ewell et al., "An Evaluation of Regional Fisheries Management Organization At-Sea Compliance Monitoring and Observer Programs," 1.

⁹⁶ Ewell et al., 1-2.

⁹⁷ Ibid.

⁹⁸ Cullis-Suzuki and Pauly, "Failing the High Seas."

authority or the effectiveness of RFMO's establishment of MPAs.⁹⁹ Rather, the hope is that the treaty could end the current fragmentation of governance efforts.

5.1.2. RFMOs enforcement mechanism: compliance with fishing regulations

My second example of a constitution misrepresenting the needs of its political community is the RFMO regime. Currently fishing in the High Seas is managed by RFMOs, which are treaty-based bodies under UNCLOS' FSA and make sure that parties adhere to binding conservation and management regulations (e.g. catch size and closed areas).¹⁰⁰

In the previous example I used the reliance on RFMOs in BBNJ, despite their proven shortcomings, as an example for a misrepresentation issue in BBNJ. But their own constitution, independently of BBNJ, is an example of misrepresentation on its own. By examining how they work, it becomes clear which type of actor is and is not represented in the engineering of their governance structure.

A common flaw in international law, perfectly illustrated with the example of RFMOs, is the weak policing and enforcement mechanism. The treaties governing fishing in the High Seas are international, like the enforcement body, but the enforcement de facto largely still depends on sovereign nation states. Only states who can exercise control over ships flying their flag and ensure they adhere to regulations are legally allowed to register High Seas fishing vessels under their flag.¹⁰¹ To alleviate the pressure of enforcement from the flag state, all parties to an RFMO

⁹⁹ Tian and Guo, "The Potential Interactions between the BBNJ Agreement and RFMOs in the Establishment of ABMTs," 8.

¹⁰⁰ Telesetsky and Bratspies, "Marine Environmental Law UNCLOS Ocean Governance and Fisheries," 164.

¹⁰¹ Barnes, "Fisheries and Marine Biodiversity," 552.

can board and inspect fishing vessels that are flagged to a FSA signatory nation.¹⁰² States can also inspect gear and catches of any vessel in their port, if there is an evident violation of rules.

Those three examples of monitoring mechanisms enshrined in RFMO's constitution, demonstrate that enforcement still depends on a nation's economic and labor capacity to do inspections and control their own or other vessels. Therefore, the compliance mechanism embedded in the political constitution of fisheries governance constitutes an ordinary-political misrepresentation in the form of class-blindness.

5.2. Misframing

Besides ordinary-political misrepresentation, Fraser identifies the concept of misframing to be a severe systemic injustice. Misframing occurs when one is wrongfully excluded from pressing justice claims in a political community, because one is formally not inside this community and therefore not entitled to those rights.¹⁰³ In the globalizing world, this frequently happens when political representation is limited to the Westphalian frame. Being beyond national jurisdiction, the High Seas are a unique case but still reveal serious cases of misframing.

When it comes to major environmental agreements, the Ocean is unfavorably underrepresented, which can be seen as misframing among environmental conventions. The Ocean is only mentioned in the Preamble of the Paris Agreement and UNCLOS is not even referenced in the UN Convention on Climate Change.¹⁰⁴

Among international agreements concerning the Sea, fishing is underrepresented, because international fishing law is legally separated from international biodiversity law. Dr. Ethan

¹⁰² Telesetsky and Bratspies, "Marine Environmental Law UNCLOS Ocean Governance and Fisheries," 163.

¹⁰³ Fraser, *Scales of Justice: Reimagining Political Space in a Globalizing World*, 19.

¹⁰⁴ Bender, Bustamante, and Leonard, "Living in Relationship with the Ocean to Transform Governance in the UN Ocean Decade," 1.

Beringen argues that this separation made it clear from the start that there would be opposition to managing fishing via BBNJ,¹⁰⁵ meaning that this decision is connected to a more fundamental issue than ordinary-political misrepresentation.

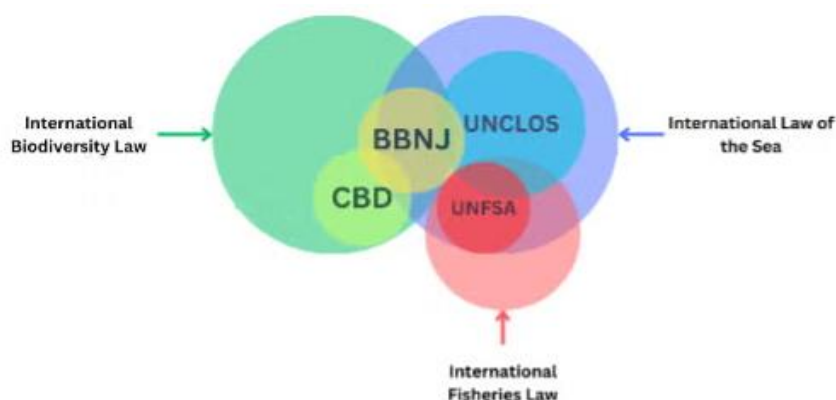


Figure 2: Separation and Overlaps of International Regimes

Source: Beringen, Ethan. "International Fisheries as the 'Whale in the Room' at the BBNJ Negotiations." *Ocean Law and Policy* (blog), March 11, 2025. <https://cil.nus.edu.sg/blogs/international-fisheries-as-the-whale-in-the-room-at-the-bbnj-negotiations/>.

Through a radical change of perspective, an even more in-depth misframing becomes apparent, which is the anthropocentrism of Ocean governance. As long as the political boundaries are drawn exclusively around humans, the Ocean and the animals living in it are determined to stay objects of exploitation, rather than subjects with their own needs and interests. Fish, the most directly impacted individuals by fishing, whose lives are taken, homes destroyed and bodies commodified are not once mentioned in justice considerations, despite the ridiculously obvious connection. In order to create a truly just and livable world, those boundaries need to expand.

¹⁰⁵ Beringen, "International Fisheries as the 'Whale in the Room' at the BBNJ Negotiations."

6. Conclusion

As demonstrated, there are many cases of injustices related to the governance and practice of High Seas fishing. Maldistribution of High Seas fishing profits, human rights abuses on fishing vessels or environmental degradation are only a handful of examples. To understand how they are created, it is crucial to understand the underlying systems enabling them to emerge.

The economic class structure is shaped by the High Seas' and fish stocks' natural features: Fishing there is very resource intensive due to the water's vastness and the decreasing fish stocks' spacious distribution. Subsidies need to fuel this industry, low-income countries are therefore entirely excluded from this technically global market. The status order of cultural values reflects Western hegemony, examples of institutions holding up this order being epistemology and green growth capitalism. The political constitution(s) misrepresents the rights, needs and interests of many. Examples of such constitutions under UNCLOS are the omission of direct fishery laws in BBNJ, RFMOs enforcement mechanism, or on a broader scale the anthropocentric frame setting.

This analysis could be extended with an anticipatory-utopian theorizing. It would be of interest to examine how a fishing ban would affect the cultural and political scale, for the economic scale such anticipations already exist. There could be other solutions besides a ban, it should be worked towards finding one that creates parity of participation on all scales.

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