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UNIVERSALIZING JURISDICTION OVER MARINE LIVING RESOURCES CRIMES

EXECUTIVE SUMMARY & RECOMMENDATIONS

A REPORT FOR WWF INTERNATIONAL

Prof Gregory Rose, Prof Martin Tsamenyi

University of Wollongong

Australian National Centre for Ocean Resources and Security (ANCORS)

WWF is one of the world's largest and most experienced independent conservation organizations, with over 5 million supporters and a global network active in more than 100 countries.

WWF's mission is to stop the degradation of the planet's natural environment and to build a future in which humans live in harmony with nature, by conserving the world's biological diversity, ensuring that the use of renewable natural resources is sustainable, and promoting the reduction of pollution and wasteful consumption.

The Australian National Centre for Ocean Resources and Security (ANCORS) is a leading provider of research, education and training, and authoritative policy-related advice on ocean law and governance, maritime security and marine resources management.

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For more information – please contact: Jessica Battle
Global Marine Programme
WWF International
jbattle@wwfint.org

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FOREWORD

A growing world population, and especially coastal and island communities in the developing world, depend upon healthy oceans as a source of livelihoods and food.



John Tanzer
Director
WWF Global Marine
Programme

But the oceans are in crisis. As much as 85 percent of global fisheries are exploited to their limits or beyond. Ninety percent of large predatory fish are gone. Coastal habitats are under stress from a multitude of activities.

Efforts to manage fisheries and to protect important marine habitats are stymied by illegal activity. Marine living resource crime, including the illegal catching of fish and the destruction of habitats or ecosystems, often crosses national borders and involves several nationalities, including that of crew, flag of vessel and ownership, as well as in the supply chain from boat to plate.

Marine living resource crime obstructs efforts to sustainably manage marine resources. Serious violations of international rules for the conservation and management of marine living resources need an urgent response. Transnational crime cases warrant international legal cooperation.

Marine living resource crime must be addressed if we are to achieve the goals agreed at Rio+20 to ensure sustainable development.

WWF is working to help governments, communities and industry ensure the world's oceans are healthy and can provide food security and sustainable livelihoods into the future.

This report, commissioned by WWF, and prepared by the Australian National Centre for Ocean Resources and Security (ANCORS) sets out a range of options to combat marine living resource crime. It argues for particular international legal actions to enforce laws against marine living resources crimes. Coordinating enforcement requires harmonising enactments against marine living resources crime, which are small, but revolutionary, steps towards universalising jurisdiction to deliver effective governance at sea.

States will then better be able to ensure the oceans can provide food security and livelihoods for generations to come.

WWF looks forward to seeing the report's recommendations discussed, developed and implemented and is prepared to assist governments in these important tasks.

A handwritten signature in blue ink, appearing to read 'John Tanzer'. The signature is fluid and cursive, with a large loop at the end.

This Executive Summary and Recommendations set out practical options for progressing towards universal enforcement jurisdiction over MLR crime.

The approach is likened to designing a map of vectors, lanes and vehicles for a transport system: First, we make general observations concerning the direction for law and policy reforms. These draw upon our earlier studies of extraterritorial national jurisdiction, coordinated and universalised, to enforce criminal laws. Second, we draw specific conclusions that suggest particular legal and policy avenues to take forward these law and policy reforms. These conclusions are based upon the lessons learned from the case studies. Finally, recommendations are made concerning strategic directions. These are based upon a survey and consideration of the various institutional vehicles potentially available to carry forward universalised enforcement jurisdiction over MLR crime.

The map of options is designed to facilitate discussion and projects for the development of universalised enforcement jurisdiction over MLR crime. There is more than one path to the destination and various options could be actioned simultaneously by different agencies. For example, the UN Food and Agriculture Organisation (FAO), a regional marine environment protection organisation and cooperating national administrations could each take different actions that best suit their circumstances. For example, the FAO might initiate an expert workshop and feasibility study, a regional marine protection organisation might develop guidelines and a code of conduct based upon its existing legal instruments, and cooperating national administrations might adopt complementary legislation on MLR crimes and cross-institutional coordination templates that facilitate international law enforcement cooperation.

A. INTERNATIONAL LEGAL PROCESS FOR LEGISLATING MLR CRIMES

Harms to marine living resources, whether in the form of overexploitation of target stocks, by-catch of non-targeted species or marine wildlife species, loss of biological resources, degradation of management systems for the marine environment, or ecosystem disruption and environmental pollution, are of global concern because of their impacts on the global commons or shared marine resources, and the international importance of marine ecosystems to

human well-being. However, these harms are crimes only when criminalised under an applicable law.

When marine living resources harm is caused in breach of law, it is sometimes a crime with international dimensions, whether by reason of transnational impacts, the necessity of shared governance, the breaches of global standards for marine conservation and management, or the involvement of transnational organised criminal groups in perpetrating these harms. Even though an act causing such harm may be a breach of international legal standards, the harmful breach is not a criminal act directly prohibited and prosecuted as a crime under international law. International law does not directly criminalise harm to marine living resources.

The most likely existing legal framework within which to situate a new binding legal standard would be the UN Convention on Transnational Organised Crime (CTOC). A protocol to CTOC could be dedicated to MLR crime or could embrace MLR crime in the wider context of crimes at sea. The most likely existing legal framework within which to situate a new, non-binding soft law international standard would be in national legislation implementing the International Plan of Action to Combat Illegal Unregulated and Unreported Fishing, although this is potentially subject to institutional reticence as suggested below.

1. LEGAL PROCESS: NO UNIVERSAL CRIMES UNDER INTERNATIONAL LAW

A crime prohibited directly under international law is termed universal. The number of universal crimes is few. Only genocide, piracy at sea, war crimes and crimes against humanity are prohibited directly under international law and the harms that these universal crimes may cause to MLR are purely coincidental.

Promoting a new form of universal crime in the form of a defined series of acts that harm MLR and are criminalised directly under international law would be a most difficult challenge. The four universal crimes established by the mid-twentieth century (genocide, war crimes, crimes against humanity and torture) are even still, in the twenty-first century, subject to major and bitter controversies as to their legal definitions and proper enforcement. Elevating or recasting illegal harms to MLR as universal crimes would be a quite long term and probably quixotic undertaking.

Therefore, an effort to obtain international acceptance of a new universal form of crimes harming MLR is likely to be an expensive, long campaign that will deliver frustrating results and none in the short or medium-term.

RECOMMENDATION 1.1 Do not promote a new universal crime under international law of causing harm to marine living resources.

2. LEGAL PROCESS: UNIVERSALISE NATIONAL MLR CRIMES

Countries may take action within their national jurisdictions to prosecute MLR crimes. This national jurisdiction extends under international law extraterritorially, in some circumstances, to allow laws to prescribe offences committed within a foreign jurisdiction or on the high seas. Thus, States can prescribe laws with global reach. Universalised national MLR crimes should apply to acts harming the marine environment outside the national maritime zones of the State (i.e. exclusive economic zone, continental shelf, territorial sea, archipelagic waters and internal waters).

RECOMMENDATION 2.1 Promote national laws criminalising defined extraterritorial harms to MLR.

Transnational links, such as the presence of a cross-border element or of multi-jurisdictional actors or elements, are typically present in treaties seeking to suppress terrorism, trafficking and organised crime. They are prerequisites for the application of most crime suppression treaties to ensure recognition of the international nature and importance of coordinated efforts to suppress the crimes specified. Examples of transnational links include the following: (1) the crime occurs in whole or part in an international space, beyond any national jurisdiction; (2) the crime crosses national boundaries, occurring in more than one national jurisdiction; or (3) the perpetrators include more than one nationality. The nature of MLR crime is that it often involves a vessel that operates beyond the boundary of the flag state, is owned in another country, managed in yet another, uses officers and crew of diverse nationalities, and lands its catch in the ports of yet other States. The prerequisite of transnational links in MLR crime could promote consensus on the need for concerted international action to combat MLR crimes specified.

RECOMMENDATION 2.2 Require, in order for universalised jurisdiction over MLR criminal law to apply, that a cross-border or multi-jurisdictional element be present in MLR crime, e.g. crossing of international maritime zone boundaries, or agents and objects governed by more than one national jurisdiction.

3. LEGAL PROCESS: HARMONISE NATIONAL MLR CRIMES DEFINITIONS

Crimes against MLR are effectively universalised if States adopt the same or similar laws against them. This presumes that the harmonised laws will have common features, preferably optimal features for the effective prevention, deterrence and punishment of MLR crimes wherever they occur.

RECOMMENDATION 3.1 To universalise jurisdiction over MLR crimes, harmonised national enactments of MLR criminal laws should have common features that optimise the prevention, deterrence and punishment of MLR crimes.

A general definition of the crime to be suppressed can aid in the subsequent interpretation of the scope of the MLR crime, lending clarity to its enactment and enforcement. For example, is the scope of the harm it addresses to be confined to fisheries or to extend also to MLR activities unrelated to fishing? Fisheries-related crimes themselves may be defined to extend to the management of by-catch and environmental impacts, as well as to unregulated and unreported fishing. Criminalisation of harm to MLR unrelated to fishing can include activities such as illegal bio-prospecting for marine genetic resources, undermining marine management and conservation systems, and marine pollution and ecosystem disruption. To maximise the potential reach of universalised jurisdiction, MLR crime categories of harm should be defined as broadly as possible within the bounds of international consensus. Thus, proposed categories of harm to MLR should initially include: target fish stocks exploitation; mismanagement of bycatch; biological resources poaching; undermining of management systems, and environmental pollution and ecosystem disruption. The implementation of high seas boarding and inspection highlights the concept of “serious violations”. It reflects agreement as to the meaning of ‘serious violations’ of fisheries laws on the high seas and leads towards global consensus on the definition comparably serious MLR crimes.

RECOMMENDATION 3.2

- **Define MLR crimes across general categories of harm as broadly as possible within the bounds of international consensus.**
- **Use the concept of ‘serious violations’, as developed in the context of regional fisheries crimes, as the basis for a broader harmonised definition of serious MLR crimes.**

International consensus already supports the prohibition of acts that cause MLR harm as specified under existing marine and environmental treaties and codes of conduct. Thus, breaches of those prohibitions set out in existing marine and environmental treaties that already recognise certain acts of MLR harm as illegal should be drawn upon to define those breaches also as criminal acts, even if committed extraterritorially. These relevant standards are to be found in current global and regional treaties, including the Convention on the Law of the Sea, UN Fish Stocks Agreement, PSM-IUU Agreement, multilateral environmental agreements, regional seas agreements, and regional fisheries management agreements. In addition, FAO codes of conduct and action plans and regional plans of action could provide relevant standards supported by international consensus. Liaison with the signatories to these instruments through their respective governing bodies could provide a way to identify the relevant standards for harmonised criminalisation. For example, in the case of regional agreements, parties to these agreements could choose to nominate the relevant standards to be implemented through universalised criminal jurisdiction. This would be an ongoing process that could be reflected in an evolving harmonisation instrument, such as one using a simplified procedure for amending its annexes.

RECOMMENDATION 3.3 Define specified MLR crimes that supplement a general definition of MLR crime by incorporating schedules of crimes that correspond to standards in existing international legal regimes for MLR conservation and management. Maintain and update definitions of specified MLR crimes through ongoing engagement with parties to the bodies and participants in the processes established by those regimes.

MLR crimes intersect with other criminal acts that are regarded as serious crimes. These include bribery, money laundering, participation in organised crime syndicates, and obstruction of justice (such as giving false or misleading evidence). These are termed cross-over crimes, as the principal crime ‘crosses over’ into a recognised additional crime. Natural resources crimes, such as MLR crimes, often involve these cross-over features. For example, corruption of public officials managing the natural resources may be required to perpetrate a crime and the obstruction of police investigations and laundering of the proceeds of the crime may be necessary to conceal it. In relation to money laundering, the natural resources crime must be specified as one that triggers the offence of money laundering, i.e. as a ‘predicate offence’ to the subsequent crime of laundering the proceeds.

RECOMMENDATION 3.4 National legislation should criminalise ‘crossover’ crimes connected with MLR crimes. Predicate offences for money laundering offences should be amended to include universalised MLR crimes.

Complicit conduct that supports a principal offence may be proscribed as an ancillary crime. Ancillary crimes include conspiracy, preparation, counselling, procuring and attempt, aiding and abetting, concealment, misprision and participation as an accessory after the fact. Different legal systems may recognise and enact all or only various of those ancillary offences. To ensure that universalised jurisdiction over MLR crimes applies to the broadest possible range of acts of harm, national legislation should criminalise not only the primary offence, but also specify acts that are ancillary to it as crimes.

RECOMMENDATION 3.5 The enactment of national legislation prescribing MLR crimes should include the widest possible range of related support acts as crimes ancillary to the primary offence, to the extent allowed by the jurisprudence of the national legal system.

Many MLR crimes are civil or administrative offences that are regarded as minor rather than serious crimes. Most international law enforcement cooperation ignores minor offences and concentrates on serious offences. To ensure that they are regarded as sufficiently important to trigger international law enforcement cooperation, harmonised MLR crimes should be classified as serious.

Serious offences require a maximum sentence entailing a period of imprisonment or its equivalent, usually at least 0.5 to 4.0 years imprisonment. Harmonisation of specific MLR crimes could qualitatively categorise them as equivalent to serious crimes, and as explicitly triggering law enforcement cooperation mechanisms. Rather than quantify the potential period of imprisonment, penalties could be specified in general terms requiring them to be sufficiently severe to prevent, deter and punish.

RECOMMENDATION 3.6 MLR crimes that are specified for harmonisation should explicitly trigger international law enforcement cooperation and should be formally qualified as serious crimes with penalties sufficiently severe to prevent, deter and punish.

Many jurisdictions have enacted legislation that makes directors criminally liable for illegal company actions. In addition, corporations themselves, as well as individual persons such as company directors, can be subject to direct criminal liability. For example, a fine or community service penalty may be imposed directly on a corporation, a corporation may be suspended from operation or required to advertise a public apology. To increase the potential effectiveness of universalised jurisdiction over MLR crimes, in addition to individual natural persons, corporations should be liable.

RECOMMENDATION 3.7 Corporations should be subject to direct criminal liability and sanction for MLR crimes commissioned by them.

4. LEGAL PROCESS: COOPERATE ACROSS JURISDICTIONS TO ENFORCE MLR CRIMINAL LAW

1. Criminal Law Enforcement Cooperation

International law permits a State to enforce its extraterritorial laws. However, most physical enforcement must take place within the State's own territory, rather than a State being allowed to project its enforcement operations beyond its territory. That is to say, every State already has under international law the power to prescribe criminal laws with global reach, but only limited jurisdiction to physically enforce them, i.e. mostly within its own territories and to some limited extent beyond, such as within its flagged vessels and premises or on the high seas.

Thus, within another State's territory, that other State's cooperation is necessary for the extraterritorial enforcement of criminal jurisdiction. Cooperation requires dual criminality, which is presumed if the crime is enacted in a harmonised fashion by States universalising it; but this may also require that the crime is regarded as a serious crime by them. For optimal flexibility, international cooperation to enforce universalised criminal jurisdiction over MLR crimes should employ the fullest range of mutual legal assistance measures.

RECOMMENDATION 4.1

- **Harmonised MLR crimes should be regarded as serious offences for the purposes of law enforcement cooperation, irrespective of the applicability or potential length of a gaol sentence under national law.**
- **To give effect to extraterritorial criminal law enforcement, a wide range of specified measures for inter-agency cooperation should include:**
 - **Information exchange between designated national agency contact points for:**
 - **Criminal intelligence**
 - **Non-compliance intelligence**
 - **Financial intelligence**
 - **Inter-agency joint law enforcement investigations operations coordinated through approvals processes, including for:**
 - **Covert operations**
 - **Hot pursuit across national borders**
 - **Cooperation in prosecution procedures, including for:**
 - **Mutual legal assistance, such as collecting, preserving, authenticating and supplying evidence, e.g. photographs, samples, witness statements, documents and data**

- **Extradition of the accused**
- **Arrangements for witnesses to give evidence**
- **Prosecution of the accused in lieu of extradition by the cooperating jurisdiction**
- **Provisions should be made for mutual recognition of judgements applying criminal penalties.**

Civil penalties and civil claims can complement traditional criminal law enforcement measures. Civil penalties include fines, fees and other financial penalties, confiscations, compensation, bans, deregistration, suspensions, community service, enforceable undertakings, injunctions, withheld benefits, mandatory negative publicity, apologies, and so on. Civil penalties or judgements are ordered at the national level but often require international cooperation in order to take effect. Cooperation through international procedures to enforce civil penalties and judgements extraterritorially presumes that they are given formal legal recognition in the foreign jurisdiction.

**RECOMMENDATION
4.2**

- **To complement the exercise of criminal jurisdiction, civil penalties and judgements should be procedurally available at the national level and supported through international law enforcement cooperation.**
 - **Information exchange between designated national agency contact points for:**
 - **Freezing, confiscation and forfeiture of suspect or criminal assets**
 - **Sharing of forfeited criminal proceeds**
 - **Mutual recognition of judgements applying civil penalties.**

Dedicated institutional mechanisms can be helpful to facilitate MLR criminal law enforcement cooperation between States. INTERPOL facilitates operational coordination but is not a mechanism for law enforcement policy review. A specialised policy review forum is needed concerning the design and effectiveness of international MLR criminal law enforcement cooperation mechanisms. In some cases, such as for the protection of human rights, review processes include independent expert panels, such as human rights complaints committees. The expert panel model could be utilised also in the field of MLR law enforcement cooperation.

**RECOMMENDATION
4.3**

- **Establish a conference process to review the design and effectiveness of international cooperation mechanisms for MLR criminal law enforcement Information exchange between designated national agency contact points for:**
 - **Establish within that framework an international panel to consider individual and State notifications of difficulty, to provide advice and to make recommendations (including for technical assistance) concerning the integrity of law enforcement cooperation.**

2. Port State Measures

The powers of a Port State to set conditions for entry into port, even conditions that seek to protect MLR beyond its exclusive economic zone, is a form of universalised enforcement jurisdiction through which it can enforce against foreign vessels voluntarily entering its ports. The full range of enforcement powers is available to

the Port State to enforce against vessels voluntarily in its ports for the commission of MLR crimes, including civil penalties and vessel forfeitures and criminal prosecutions. To avoid disadvantage to individual ports applying Port State measures (PSMs), consensus among like-minded Port States on a common program for the coordinated imposition of an expanded program of PSMs must be an important part of any future strategy to universalise jurisdiction for better protection against MLR crime. A comparison of the practice of Port States in exercising controls over vessel pollution and safety indicates some improvements that might be made to PSMs for IUU fishing, as suggested in the following recommendations.

RECOMMENDATION

4.4

- **Urge ratification of PSM-IUU Agreement.**
- **Port authorities should impose both civil and criminal penalties for breach of MLR-related conditions for port entry.**
- **Convene a consultative workshop on refinements to requirement under the PSM IUU Agreement pending its entry into force, concerning how it could be made more efficient by:**
 - **Quantification of requirements for advance notice (e.g. time, data) by foreign fishing vessels prior to intended port entry;**
 - **Using a fishing vessel risk profile as the basis for inspection sample rate requirements;**
 - **Initiating inspections on the basis of information provided by another Port Authority or by a third party;**
 - **Defining protocols for detailed inspections;**
 - **Requiring more specificity of the reports Flag States are to make on actions they take to remedy non-compliance;**
 - **Setting criteria for the restoration of good standing of a fishing vessel.**

A global MLR blacklist can be compiled to deny the use of port facilities for any blacklisted vessel. A global MLR blacklist could leverage off regional blacklists already established by RFMOs and the High Seas Vessel Authorization Record established by the FAO under Article VI of the 1993 Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. The global blacklist might comprise schedules specific to particular categories of offences. The formal establishment of a global blacklist might be facilitated by a common resolution by each RFMO to compile information and generate a global list; or by a resolution under the UN Convention on the Law of the Sea; or by a resolution under the FAO Committee on Fisheries.

RECOMMENDATION

4.5

- **Convene a consultative inter-regional workshop to compile a global MLR blacklist of vessels in breach of, or strongly suspected of being in non-compliance with, specified conservation and management norms.**
 - **The list should include, as well, vessels under common management with vessels conducting illegal activities, and vessels actively supporting a breach or non-compliance.**

A non-cooperating State blacklist could be compiled to target flags of convenience and ports of convenience to discourage their use. Naming on the list might diminish the

public international status of the non-cooperating Flag State or Port State and also result in non-arbitrary and justified disadvantage in terms of port access, flagging, joint-venture and MLR trade opportunities. Consideration of the criteria established by the FAO Committee on Fisheries and the EU for determining whether Flag State compliance with international MLR conservation and management norms could form starting points for criteria concerning non-cooperating State black lists.

- RECOMMENDATION 4.6**
- **Conduct consultation on the establishment of global non-cooperating State lists for determining whether a Flag State or a Port State is not complying with international MLR conservation and management norms and on the feasibility of establishing a non-cooperating Flag State blacklist.**

3. Long-arm Unilateral Jurisdiction

To influence behaviour in foreign jurisdictions, long-arm laws applied within the limits of international comity are a widely accepted tool, particularly when using legal jurisdiction based upon active personality. The criminalised behaviour may be the original conduct in a foreign jurisdiction or its consequential conduct within the criminalising jurisdiction, such as possession of illegally produced goods or disguising their origins. The penalties for consequential conduct often include civil penalties, such as confiscations, that result in debts over or arrests of vessels. They may also entail civil standards of proof of debt that infer the illegality of the good's production from the criteria used in the good's market certification requirements.

- RECOMMENDATION 4.7**
- **Convene regional workshops on long-arm jurisdiction over MLR crime to promote its utilisation, addressing, inter alia:**
 - **Unlawful possession of MLR produced in breach of foreign or international law**
 - **Money laundering for which the predicate offence is MLR crime**
 - **Strict liability and standards of proof for civil penalties**
 - **Debts arising from penalties for MLR crimes and consequent sharing of forfeited assets**

B. STRATEGIC ROUTES FORWARD TO UNIVERSALISE MLR CRIMINAL JURISDICTION

MLR crime can be combated using both legal and institutional mechanisms. The following survey and assessment of existing mechanisms is divided between legal frameworks and institutional frameworks. The legal frameworks are subdivided according to whether they are international or regional and then further categorised according to their primary area of concern, i.e. whether they deal primarily with marine, environment, or general crime concerns, according to their original purpose. Institutional frameworks are subdivided in the same way, into global and regional bodies.

5. STRATEGIC ROUTES: GLOBAL LEGAL FRAMEWORKS

A new international legal framework to harmonise definitions of certain MLR crimes would carry forward the universalisation of jurisdiction to enforce against them. It would build on existing international laws for criminal law enforcement cooperation by raising the understanding, profile and importance of MLR crime and by developing tailored provisions suited specifically to law enforcement within the multinational context and transnational commission of MLR crimes. The observations set out below in relation to options to develop a global legal instrument seek both to enable States to prescribe harmonised MLR crimes and to exercise universalised MLR enforcement jurisdiction.

The following survey demonstrates that, at the global level, no legal regime specifically concerning the punishment of MLR crimes has yet been established. The survey also shows that many more treaties and institutions criminalising some relevant aspect of, or potentially applicable to, MLR crimes have been developed within the legal frameworks for crime prevention than those for general affairs, marine or environment protection. This is to be expected as crime prevention laws and institutions have long been concerned with universalising jurisdiction to enforce against crimes. In contrast, international bodies concerned with general affairs, marine and environmental affairs are primarily concerned with standard setting rather than criminal law enforcement.

1. Marine Legal

Fisheries management has extensive impacts across the broad range of management of other MLR, as fisheries activities impact on target stocks but also on non-fish species affected as by-catch or impacted by degradation of ecosystem integrity and by environmental pollution. Legally binding global standards for the management of fisheries are set out in the UN Convention on the Law of the Sea 1982, FAO Compliance Agreement 1993, UN Fish Stocks Agreement 1995, and the FAO PSM-IUU Agreement 2009, etc.

However, fisheries treaties tend not to require criminalisation of breaches by individuals of their prescribed standards. Instead of engaging criminal justice systems, they address breaches through managerial and administrative capacity building mechanisms. Breaches of internationally prescribed standards of conduct are treated as non-compliance problems rather than universalised crimes.

The PSM-IUU Agreement provides the most relevant legal framework for the universalisation of MLR crimes. A protocol to the Agreement, or a declaration or resolution by the parties to it, could seek to harmonise among its parties the adoption

of national criminal provisions and to universalise enforcement jurisdiction through law enforcement cooperation. However, as the Agreement has yet to come in to force and has many implementation hurdles to clear, a push to universalise MLR crime under it is premature at this time.

With the exception of the PSM-IUU Agreement, which has not yet entered into force, international standards directly governing MLR crimes are set out in non-legally binding policy instruments. These include UN Resolutions on Driftnet Fishing, UN Resolutions on Sustainable Fisheries, the 1995 FAO Code of Conduct on Responsible Fishing, as well as FAO Guidelines such as the International Plan of Action on Capacity, International Plan of Action on Seabirds, International Plan of Action on Sharks, and the 2004 FAO Model Scheme on Port State Measures to Combat IUU Fishing.

To combat illegal fishing, the most important among these soft law instruments is the International Plan of Action-IUU Fishing adopted by the FAO in 2001. The IPOA-IUU offers a promising basis upon which to build the non-legally binding normative infrastructure for universalised MLR crime. Likelihood of success in this endeavour is better than for a legally binding framework such as the PSM-IUU Agreement.

Soft law instruments may be more achievable in the near term than a legally binding international agreement. The difficulty of reaching consensus on binding terms also can result in decline to a lowest common denominator in the adopted binding obligations. Soft law, in the form of guidelines and best-endavours commitments, on the other hand, may be expressed in more ambitious aspirational terms. Soft law can also build both consensus and international practice concerning international standards in the interim until binding measures are adopted. For example, guidelines on the universalisation of MLR jurisdiction could urge the further adoption of legally binding agreements at the bilateral or regional levels to facilitate cooperative enforcement actions (such as is urged also under the 1988 UN Drug Trafficking Convention).

RECOMMENDATION

5.1

- **Initiate a soft law development process to supplement the IPOA-IUU with guidelines promoting the harmonised enactment of extraterritorial MLR crimes and the exercise of criminal jurisdiction over them.**

2. Environmental Legal

None of the multilateral environmental agreements (MEAs) that aim to resolve global environmental problems address themselves to the shaping of domestic mechanisms of criminal law or to international legal cooperation in relation to their enforcement. They commonly require simply that parties take the appropriate legal and administrative measures to implement and enforce their obligations under the MEA. However, it is not uncommon for them to set out provisions for law enforcement cooperation. A partial exception is the Basel Convention on Hazardous Waste, which declares illegal traffic in hazardous wastes to be criminal. It provides a model for the universalisation of criminal jurisdiction against transnational criminal activity, including model legislation, a database of national legislation, guidance for detection, prevention and control of illegal traffic, and a legal instruction manual on prosecuting illegal traffic. The legal model provided by the Basel Convention demonstrates how the universalisation of enforcement jurisdiction against MLR crime might evolve over time.

- RECOMMENDATION 5.2**
- **Utilise the model provided by the Basel Convention on Trafficking in Hazardous Wastes to commit to prevent and punish MLR crime offenders. The gravity of the illegality should be categorised as criminal at a serious level and technical assistance made available to develop model criminal laws, develop a database, compile an instruction manual and conduct regional training workshops.**

3. Criminal Justice Legal

In contrast to the MEA regimes, global cooperative efforts to combat transnational crime have produced many treaties that require that their parties to proscribe specified acts as criminal. As yet, none of these require the proscription of specific acts of MLR harm. Nevertheless, if some MLR crimes under national laws are serious offences that carry a maximum penalty of no less than 4 years gaol and if they are conducted by organised transnational criminal syndicates, then the *Convention on Transnational Organised Crime* (CTOC) would apply requirements that its parties to cooperate in their suppression and punishment. There are signs of momentum gathering to address environmental crime under the CTOC. Naturally, this would concern environmental crime that is transnational and organised, which would cover much MLR. There is no suggestion yet to commence any negotiations on a CTOC protocol on natural resources and environmental crime. However, formulation of a binding protocol suitable to combat MLR crime would be conceptually straight forward. The CTOC is the natural and most likely global framework for new legally binding commitments to universalise MLR crimes.

Other multilateral crime prevention treaties requiring that their Parties act to prohibit and punish corruption and bribery relate to transnational environmental crime but tenuously, as corruption and bribery are often incidental activities that facilitate environmental crimes. The OECD Bribery Convention offers very limited possibilities for universalising jurisdiction over MLR crimes. It applies already to corrupt transactions in the MLR sector. Even though widespread, these are only those involving international transactions with foreign countries, involving also foreign public officials, active bribery and Parties that have ratified the OECD Convention. The UN Convention against Corruption (UNCAC) applies primarily to domestic corruption without a transnational link required but does provide for international technical assistance and capacity building. It could provide a useful legal framework for capacity building in fisheries ports for fisheries and customs inspectors in order to constrain corrupt facilitation of MLR crimes.

- RECOMMENDATION 5.3**
- **Encourage a new binding protocol under CTOC in the form of commitments to adopt national legislation to harmonise enactments of MLR crimes in consultation with MLR management and conservation organisations. The legal framework could link relevant ‘crossover’ crimes that support MLR crimes, such as bribery, money laundering, conspiracy and participation in organised crime syndicates, as well as serve also as a basis for national law enforcement cooperation applied to the widest possible range of MLR offences, such as information exchange, mutual legal assistance, extradition and transfer of proceedings, as well as for operational initiatives such as joint investigations.**

6. STRATEGIC ROUTES: REGIONAL LEGAL FRAMEWORKS

Progress in the assertion of criminal jurisdiction over national resources crimes have occurred only at the regional level. Those regions comprise the European Union, southern Africa and the insular Pacific. In the European Union and the insular Pacific, these advances have specifically concerned marine pollution (2005 EU Directive on ship-source pollution and on the introduction of penalties for infringements) and marine living resources (1992 Niue *Treaty on Cooperation and Fisheries Surveillance and Law Enforcement in the South Pacific Region*). In line with this regional progress, expanding the number of regional legal frameworks addressing MLR crime would be an appropriate way to advance the universalisation of criminal jurisdiction over MLR crime.

RECOMMENDATION 6.1

- **Consider a regional legal framework from which to commence the universalising of criminal jurisdiction over MLR crimes.**
 - **A flexible approach could enable actions at regional level or by its individual regional States**

1. Marine Legal

Some regional fisheries management organisation agreements on implementation of conservation and management measures set out maritime enforcement cooperation procedures. The forms of cooperation include intelligence sharing, joint enforcement operations, mutual legal assistance, extradition and sharing of seized assets. There are legal precedents in regional fisheries management agreements legal frameworks for cooperation also in related criminal justice enforcement. These legal precedents suggest that expansion of criminal law enforcement cooperation to include a broader range of MLR is feasible.

RECOMMENDATION 6.2

- **An amendment, protocol, resolution or guidelines under a regional MLR management framework could nest a range of MLR crime harmonisation and cooperative enforcement measures.**
 - **Propose that regional agreements authorise State enforcement jurisdiction against foreign vessels, crew and assets, based on evidence of an MLR offence as defined by the regional MLR agreement.**
 - **Propose that regional MLR agreements include law enforcement cooperation in freezing financial assets of corporations and beneficiaries, blacklisting vessels, and the issuing of warrants against individuals charged with IUU fishing or associated non-fishing offences such as support or ‘crossover’ crimes.**

2. Environmental Legal

Two regions have adopted legal instruments that provide frameworks to combat environmental crime through environmental law enforcement cooperation. There is scope for additional legal instruments for law enforcement cooperation to be adopted for other regions. In 2008, the Council for the European Communities adopted a directive on the protection of the environment through criminal law. It addresses breaches of national laws that implement Community environmental Directives by treating as criminal offences those environmentally harmful conducts already made unlawful by previous Community laws. This is a preferable model for a multilateral instrument on MLR crime because it leverages off already established consensus

concerning what acts are to be defined as unlawful. Thus, environmental harms that countries have already agreed to treat as unlawful under MLR laws form the basis of the acts to be criminalised under a new multilateral instrument.

In relation to MLR, the Agreement on the Conservation of Cetaceans of the Black Sea Mediterranean Sea and Contiguous Atlantic Area and various MOUs under the 1989 Bonn Convention on the Conservation of Migratory Species of Wild Animals (CMS), provide instances of regional MLR conservation standards. The UNEP RSP has adopted binding MLR protocols under framework conventions for six regions: Eastern African Region; South East Pacific; Wider Caribbean Region; Mediterranean; Red Sea and Gulf of Aden; and Black Sea. Due to the respective interests of their respective regional organisations, discussed in section 8 below, the MLR agreements for which initiatives to harmonise criminal jurisdiction over MLR crime might be pursued are the South East Pacific and the Wider Caribbean Region.

**RECOMMENDATION
6.3**

- **Consult with potentially interested members of regional marine environmental organisations with a view to harmonising regional MLR crimes by drawing upon accepted regional MLR management standards under the:**
 - **Protocol for the Conservation and Management of Protected Marine and Coastal Areas of the South East Pacific 1989**
 - **Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region 1990**

7. STRATEGIC ROUTES: GLOBAL ORGANISATIONS

The phenomenon of MLR crime has registered to varying degrees with global and regional institutions. Likely institutional vehicles at the global level to carry forward an initiative for the universalisation of MLR crime were canvassed by categories: general, marine, environmental and criminal justice institutions. The following recommendations are preliminary and require further substantive research on the relative merits of specific institutions and institutional strategies.

1. Marine Organisations

Global institutions engaged in MLR issues are more likely to be successfully engaged in a project to universalise jurisdiction against MLR crimes. It would be a major step forward to have the area of MLR crime adopted as the theme of a meeting of the UN Informal Consultative Process on Oceans and Law of the Sea (UNICPOLOS) and then as an area that could benefit from the attention of the General Assembly and the UN Secretary General. As a result of the sensitivity of the area of MLR crime for countries whose nationals organise illegal fishing activities, priority for this area on the UNICPOLOS agenda might be more accessible if presented as a facet of the broader area of maritime crime. A crime against MLR could then be highlighted in panel presentations.

**RECOMMENDATION
7.1**

- **Promote a UNICPOLOS theme devoted to MLR crime as a facet of the broader area of maritime crime.**

2. Environmental Organisations

UNEP's initiatives in relation to compliance with multilateral environment agreements (MEAs) and enforcement of national laws is closely related to the prosecution of environmental crimes. Its work on capacity building for judges and

prosecutors are aspects of this engagement. A focus on combating transnational environmental and MLR crime would be an aspect of that engagement and complement its existing work. However, it would need to be conducted in close consultation with other international organisations more directly involved in marine and crime prevention issues, particularly the Commission on Crime Prevention and Criminal Justice (CCPCJ), CTOC Conference of Parties, INTERPOL and the UN Food and Agriculture Organisation (FAO).

- RECOMMENDATION 7.2**
- **UNEP is an appropriate vehicle to carry forward an initiative to universalise jurisdiction to combat MLR crime but would need to be in partnership with other international organisations more deeply engaged in MLR conservation and management.**

3. Criminal Justice Organisations

Among UN organisations currently engaged in combating environmental and MLR crimes, UNODC is likely to be most able to take forward an initiative to universalise jurisdiction to combat MLR crime. Environmental crime is an area of emerging crime that UNODC will become increasingly engaged in both by virtue of its own mandate and by reason of its Secretariat role to bodies such as the CCPCJ and the Conference of Parties to the CTOC. It is not a political body and will not mandate political actions such as the drafting of guidelines or commencement of treaty negotiations. Its role would be to conduct research and publication and to organise a workshop on the subject, if mandated to do so by a policy-making body such as the CCPCJ or CPC.

The CCPCJ is the primary United Nations system decision-making body forming policy in the area of environmental crime. The work that it has undertaken since 2007 is liable to be expanded in the future to address fishing crimes. The CCPCJ is, therefore, an important vehicle for progressing the development of policy for universalised MLR crime within the UN system. To reinforce the work of the UNODC on MLR crime, it might be possible for the UN Congress on Crime Prevention and Criminal Justice (Congress) to pick up the MLR crime issue in 2015 as part of its mandate to set the agenda for international cooperative projects for the progressive development of criminal justice.

- RECOMMENDATION 7.3**
- **Promote the adoption of policy by the CCPCJ (and Congress) in favour of the development of universalised jurisdiction over MLR crimes and request UNODC to research implementation of this policy, particularly, to conduct workshops and consultations with MLR bodies.**

INTERPOL is rapidly expanding its Environmental Crime Programme and opportunities to promote the universalisation of jurisdiction over MLR crime are available through the new Fisheries Crime Working Group. A useful strategy could be to prepare an INTERPOL report on the contemporary problems of international legal gaps in national enforcement jurisdiction over fisheries or MLR crime. The report could be commissioned for consideration by the Fisheries Crime Working Group to canvass solutions including the universalisation of enforcement jurisdiction. Although the UN Interregional Crime and Justice Research Institute (UNICRI) has no mandate to develop legal norms but functions only as a research institute or think tank, it could also provide a forum for developing research and knowledge concerning global MLR crime, including aspects of the universalisation of national jurisdiction.

Dialogue with the Financial Action Task Force (FATF) to increase awareness of its members and of the OECD Secretariat concerning the importance of MLR crimes

would encourage the future inclusion by the FATF of MLR crimes as a designated of category of offences for predicate crimes in money laundering.

- RECOMMENDATION 7.4**
- **Engage INTERPOL and UNICRI and to develop reports and research in this area and open dialogue with the FATF to encourage it to designate MLR crimes as predicate offences for money laundering.**

4. General

As noted in Recommendation 6.1 above, UNICPOLOS could provide an avenue through which the issue of MLR crime might be brought to the attention of the UNGA. The UNGA could then mandate that the UN Secretary-General prepare a report on the threats posed by MLR crime and opportunities to combat MLR crime.

- RECOMMENDATION 7.5**
- **Build preparatory support within UNGA to instruct the UN Secretary-General to prepare a report on the threats posed by MLR crime and legal and institutional opportunities to combat them.**

8. STRATEGIC ROUTES: REGIONAL ORGANISATIONS

Regional institutions bolster economic and political solidarity, environmental protection or marine resources management and are greater in number than global institutions but are sometimes poorly resourced and ephemeral. Regional organisations for economic co-operation are typically better resourced and more robust than narrowly mandated environmental or fisheries management organisations. However, regional fisheries management organisations that serve clear economic goals may enjoy longevity and adequate resources to fulfil mandates, including MLR criminal law enforcement.

1. Marine Organisations

Regional fisheries management organisations (RFMOs) have been established where there are active international fisheries and for waters where fish stocks cross international maritime boundaries. The dynamics within each RFMO vary in each regional context. Indicators that an RFMO might be suitable to carry forward the universalisation of criminal jurisdiction over MLR crime include the presence of numerous coastal States with clearly defined MLR conservation and management interests; numerous and/or strong coastal State participation; distant water fishing States with benign interests in fisheries and strong law enforcement capacity; as well as a governing treaty and constitutional structure that facilitates innovation and integrates broad MLR conservation and management objectives. These elements are present in the Western and Central Pacific Fisheries Commission (WCPFC) region where the Pacific Islands Forum Fisheries Agency (FFA) provides a strong coastal State base of interest. Provisions in its members' Niue Treaty, which includes mutual legal assistance in criminal prosecutions and civil procedure confiscations, suggest that universalisation of criminal jurisdiction against MLR crime is a feasible development in the south-west Pacific region. Similarly, strong coastal State interests are present in the Regional Plan of Action to Promote Responsible Fishing Practices Combat IUU Fishing (RPOA) that has been adopted in South East Asia.

- RECOMMENDATION 8.1**
- **Work through FFA and relevant members of the WCPFC to carry forward the universalisation of criminal jurisdiction over MLR crime in its region.**
 - **Work through the RPOA to carry forward the universalisation of criminal jurisdiction over MLR crime in its region.**

2. Environmental Organisations

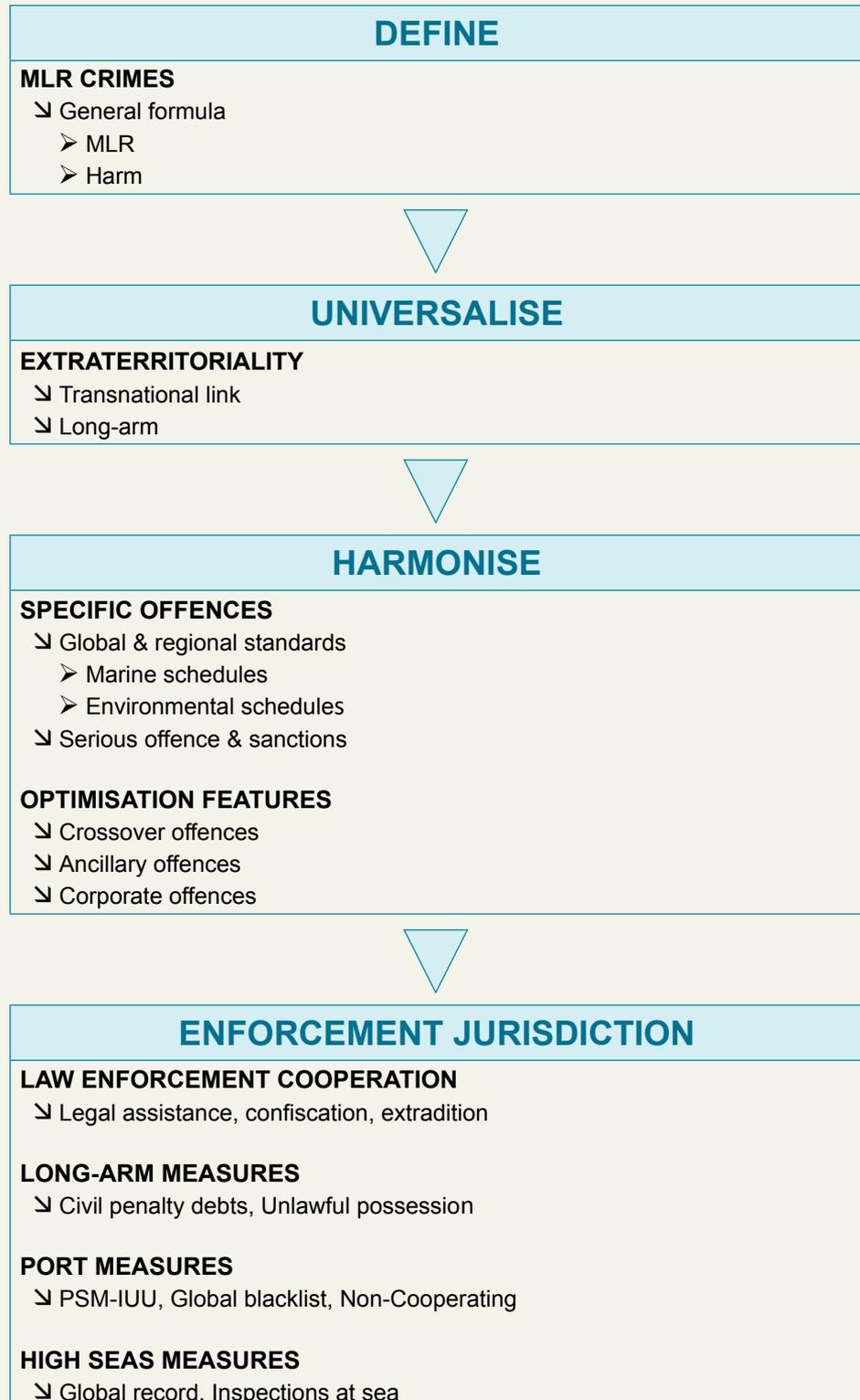
Each regional seas marine environment program is influenced by the level of regional political and economic integration, of available operational funding, the presence of driving economic forces, participation of economically developed coastal states with benign interests, their relative numbers within the regime, as well as the character of impacts on marine biodiversity. In the Wider Caribbean Region, the Caribbean Environment Programme is serviced by a secretariat provided by UNEP, established in 1986 in Kingston, Jamaica. The parties to the regional marine environmental framework agreement and its protocols, including the 1990 Protocol on Specially Protected Areas and Wildlife, are the regional organisation's members, including the United States, which generates resources and expertise to combat MLR crime.

In the South East Pacific, the Permanent Commission for the South East Pacific is an independent regional secretariat, established in 1952 and based in Ecuador. It administers the 1989 Protocol for the Conservation and Management of Protected Marine and Coastal Areas. Its members are Chile, Colombia, Ecuador and Peru, who are parties to the UNEP regional seas framework convention. Chile plays an important role due to its extensive coastal zones. The Commission engages in significant efforts to combat maritime crimes in the region, especially IUU fishing and, therefore, has an established interest in the collective efforts to combat MLR crimes.

RECOMMENDATION 8.2

- **Work through the Permanent Commission for the South-East Pacific to organise a workshop on a criminal jurisdiction initiative to combat MLR crime under the RSP program. Similarly, approach the Caribbean Environment Program.**

LEGAL PROCESSES



STRATEGIC ROUTES FOR OUTPUT DELIVERY

			LEGAL FRAMEWORKS	INSTITUTIONAL VEHICLES	▶	BEST CONNECTIONS
GLOBAL	Marine living resources	●				
		●	PSMA	FAO		
		●	IUU Code	UNICPOLOS		IUU Code ← FAO CTOC ← UNICPOLOS/ CCPCJ/UNODC/ INTERPOL
	Environment	●	CITES, CBD. (Basel)			
		●		UNEP		
		●				
	Criminal justice	●	UNCAC, OECD	WCO		
		●		UNICRI, CPC, FATF		
		●	CTOC	CCPCJ, UNODC, INTERPOL		
	General	●		ECOSOC		
		●		UNGA		
		●				
REGIONAL	Marine living resources	●				
		●	RFMOS			
		●	RPOA, FFA	FFA		WCPFC ← FFA RPOA ← ASEAN members
	Environment	●				
		●				
		●	RSP Caribbean, RSP SE Pacific			SPAW ← RSP Caribbean 1989 Protocol ← CPPS
	General	●	EU			
		●	ECOWAS			
		●				

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Gabon	Peru	*As of December 2012
Gambia	Philippines	
Georgia	Poland	
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