

## Article

# Conflicts and Challenges of Sustainable Fisheries Governance Cooperation under the Securitization of the Maritime Commons

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**Abstract:** There is a growing trend towards securitization of the maritime commons, which seriously impacts sustainable fisheries governance cooperation. This impact is mainly reflected in the fact that it undermines the effectiveness of the international legal framework for sustainable fisheries governance, which is fragmented and runs based on countries' willingness. It makes the international legal basis for sustainable fisheries governance cooperation more fragile. As a result, countries are more inclined to take the issues of sustainable fisheries governance and its sub-issues as security-related issues or tools for achieving maritime security strategies. Ultimately, it will lead to confrontation rather than cooperation in sustainable fisheries governance. Evidence that can support this theory is from combating IUU fishing, a sub-issue of sustainable fisheries governance, in the Northeast Asia Pacific and the South China Sea. From securitization theory and international law theory perspectives, desecuritization is the core of the solutions, including the desecuritization of the maritime commons and the desecuritization of its sub-issues. In practice, desecuritization includes improving the effectiveness of the international legal framework for sustainable fisheries governance and establishing regional cooperative governance mechanisms. The result will certainly help to promote sustainable fisheries governance cooperation on a regional and global scale.

**Keywords:** maritime commons; sustainable fishery governance; illegal, unreported and unregulated fishing (IUU Fishing); law of the sea



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## 1. Introduction

The principle of the freedom of the high seas profoundly influenced the exploitation of fisheries resources in the pre-industrial age [1]. Under the influence of this principle, the freedom of fishing on the high seas is enshrined as a customary law in the United Nations Convention on the Law of the Sea (UNCLOS), becoming one of the six freedoms enjoyed by any country on the high seas [2]. However, according to the data released by the Food and Agriculture Organization of the United Nations (FAO), global marine fisheries resources are declining. Global fish consumption increased at an average annual rate of 3.0% from 1961 to 2019 [3]; at the same time, the fraction of fishery stocks within biologically sustainable levels decreased to 64.6% in 2019, from 90% in 1974 [4], demonstrating a severe consequence of overfishing. Therefore, states began to pay attention to the sustainable use of fisheries resources, and the concept of “sustainable fisheries governance” was also introduced. The importance of sustainable fisheries governance has been recognized since the 1950s [5]. From 1970 to the present, marine life has declined by nearly 50%, implying an urgent need to achieve sustainable fisheries governance [6].

Sustainable fisheries governance is the sum of the legal, social, economic, and political arrangements used to achieve the goal of sustainable fisheries—involving habitat, ecosystems, etc. [7]—relating to the Sustainable Development Goals (SDGs) adopted by the United Nations (UN) [8]. Sustainable fishing guarantees the preservation of fisheries resources and the fish habitats in the future [9]. However, different from sustainable governance in

other fields, one of the characteristics of marine fish is that their movement is not restricted by artificially divided ocean areas, as is the case with migratory fish and transboundary fish [10]. Furthermore, any change in the ocean can cause a chain reaction: the extinction of one fish stock or a change in the environment of a sea area may affect the sustainability of other fish stocks or the environment of other sea areas; moreover, global issues such as climate change also have an impact on the maritime environment and the sustainability of fish stocks [11]. In other words, fish are uncontrollable, and ocean spaces cannot be separated. However, ocean governance under the law of the sea is based on the legal division of the ocean. According to UNCLOS, maritime areas are divided into five main zones—internal waters, territorial sea, the contiguous zone, exclusive economic zone (EEZ), and the high seas [2]. States have different powers and duties in different areas [2]. The difference between artificially divided oceans and natural oceans [1] implies that ocean governance, especially marine fisheries governance, requires cooperation among states because ocean governance is impossible to achieve by those measures that states take within their jurisdiction [12]—states' domestic laws can hardly be applied on the high seas. Therefore, in this field, sovereign states play the most critical role, which practice and achieve sustainable fisheries governance by developing fisheries legislation and policies to influence and regulate the behavior of other actors in fisheries, and international cooperation is necessary. The international legal framework for sustainable fisheries governance is constructed by setting forth rights and obligations for all states, through which the law of the sea provides a legal basis for cooperation among states in sustainable fisheries governance.

The law of the sea also limits, to some extent, the cooperation of states in sustainable fisheries governance. Under the influence of the freedom of fishing on the high seas [2], flag state jurisdiction [2], the principle of privity of treaty [13] as well as the rule of international law which proclaims that any state other than the flag state has no jurisdiction over foreign vessels on the high seas (established by the *Bering Sea (Fur Seals) Arbitration* [14]), sustainable fisheries governance, especially on the high seas, rely heavily on the willingness of states. The freedom of fishing on the high seas is still widely accepted and enforced, although it is gradually beginning to be restricted [15]; flag state jurisdiction and the rule of international law that vessels on the high seas have immunity from the jurisdiction of any states other than the flag state lead to a situation where, in the oceans where coastal states have no jurisdiction, only the flag state has jurisdiction over its vessels. In sustainable fisheries governance, it implies that on the high seas or in disputed waters, coastal states or flag states may refuse to regulate and punish those vessels breaking the rules of sustainable fisheries governance to practice their national security strategies. Moreover, the flags of convenience vessels, which is a common phenomenon, further produces difficulties for sustainable fisheries governance [16]. The flag that is flown by a convenience vessel is not the flag of the country of ownership, which results in the country of ownership having no jurisdiction over the vessel and the flag state being unwilling to regulate and punish the vessel.

Generally, the consideration of states' security plays an essential role in states' willingness and security strategies. When an issue is constructed as a security issue, namely, the issue is securitized [17], and its political sensitivity rapidly increases. In other words, the securitization of one issue will lead to a greater tendency of states to confront rather than cooperate on this issue and other sub-issues associated with it [18]. The securitization of maritime commons and its impact are gaining increasing discussion in the maritime field [19], which can lead to the maritime commons and those issues occurring within it becoming security issues. Securitization can also reduce a state's willingness to cooperate [20]. However, sustainable fisheries management and governance need international cooperation, which relies on the willingness of all states. Therefore, it is necessary to find solutions based on international law, which is an effective basis for cooperation.

From the perspective of international law and securitizations theory, this article focuses on the conflicts and challenges faced by international cooperation in sustainable fisheries governance due to the securitizations of maritime commons. This article first anal-

yses securitization theory and discusses the international legal framework for sustainable fisheries governance, which is a legal basis for international cooperation in this field. This article finds that the securitization of the maritime commons has damaged the international legal framework for sustainable fisheries governance, leading to the destruction of the foundation of international cooperation and the securitization of sub-issues in this field. Illegal, unreported, and unregulated (IUU) fishing has become a sub-issue that is heavily affected by the securitization of the maritime commons [21]. Therefore, after analyzing the international legal framework for addressing IUU fishing, the second part of this article chooses evidence from the Northeast Asia Pacific and the South China Sea to demonstrate that the securitization of the maritime commons has undermined international cooperation to combat IUU fishing by damaging the legal basis of international cooperation and securitizing IUU fishing. This epitomizes the detriment of the securitization of the maritime commons to international cooperation on sustainable fisheries governance. Subsequently, desecuritization is considered the core of the solution to the negative consequences produced by the securitization of the maritime commons. By desecuritization, security issues and non-security issues in the maritime commons can be distinguished and addressed separately. The political sensitivity of sustainable fisheries governance, incorporated into non-security issues, is reduced, which can effectively promote cooperation among states in this field. A formal conclusion follows the discussion of the role that international law and regional cooperation mechanisms can play in desecuritization and sustainable fisheries governance.

## **2. The Impact of the Securitization of the Maritime Commons on the International Sustainable Fisheries Governance Cooperation**

### *2.1. The Securitization of the Maritime Commons*

The definition of the maritime commons is the premise of discussing its securitization of the maritime commons. The concept of “commons” refers to those “areas of the world beyond the control of any one state” [22]. Oceans, outer space, and cyberspace are considered as typical commons [23]. However, different from the other two commons, there is a relatively complete international law in maritime commons [24], which is the international legal basis for states to govern the ocean. UNCLOS divides the ocean into different zones, where states have different rights and obligations [2]. It implies that the entire ocean cannot be called maritime commons, only the high seas, which are beyond the control of any state. In addition, in disputed waters due to maritime boundary disputes [25], there may be two or more states claiming sovereignty over a specific disputed water, but none of these states can control the disputed maritime area. This results in the disputed waters not being under the complete control of any state; therefore, these waters are also considered as a kind of maritime commons.

The basic concept of securitization theory is “security”. Traditional international relation theory equates security with military security [26], relating to the use of force to defend national interests with high political sensitivity [27]. However, in proposing securitization theory, the Copenhagen School expanded the scope of security and included threats beyond those of the military [28]. According to the definition of securitization, security is a kind of existential threat considered urgent and important [17]. In addition, securitization theory is an extension of traditional security theory. Hence, the security referred to by securitization theory should also have the same characteristics as traditional security. Therefore, security, the basis of securitization theory, refers to those urgent and important existential threats relevant to those national interests with high political sensitivity. As such, the primary approach of securitization is constructing a non-traditional security issue as a danger, emergency, and imminent threat with high political sensitivity [27]. There are three elements of securitization: a securitizing actor who can declare a threat and initiate the securitization process, a referent object which can be identified and produce a potential threat, as well as a complete securitization process where the audiences need to be persuaded and accept the issue as a security threat [29]. Securitization theory assumes that an issue is securitized

when it poses or is considered a threat, which also means the vital interests or powers are damaged or considered to be damaged [30]. When a securitizing actor believes the damage has or will happen, they tend to initiate the securitization process in which the referent object is securitized, thus, changing a non-security issue into a security issue. The securitization process includes two parts: securitizing moves and security practices [31]. The securitizing move is the action of constructing securitization: the securitizing actor associates an issue with security through legislation, policies, and other means. Further, when the security issue is accepted by the audience and seen as an existential threat, the issue is securitized and becomes a security issue. Security practice refers to those actions taken by a security actor after an issue has been successfully securitized. After the two actions are carried out, the whole process of securitization is completed, which changes non-security issues with low political sensitivity into security issues with high political sensitivity, and leads states to take confrontational measures [18]. Although securitization theory faces many criticisms [32,33], securitization, especially that of maritime, climate change, cyberspace, and other commons, is still generally considered to be real and to have widespread implications [19,22,34–36]. Therefore, this article chooses the generally accepted securitization framework to determine the reasons and the process for the securitization of the maritime commons.

The securitization of the maritime commons will be examined in the same way as above. The first item to consider is the concept of “maritime security”. The traditional concept of maritime security is associated with the military [37]. However, with development over time, the concept of “maritime security” is constantly expanding and becoming vague [38], with some non-traditional maritime security issues regarded as maritime security issues, such as IUU fishing, piracy [39], terrorism [40], etc. [41]. The maritime commons can more likely be considered relevant to security, and issues occurring within them are more likely to be constructed as security issues, such as fishing in the South China Sea [42]. The reasons for the securitization of the maritime commons are various. In different maritime commons, maritime transport, marine resources, history, refugee [43] smuggling by sea [44], and other factors can be reasons for the securitization of the maritime commons [45]. Those reasons can be divided into two parts. The first driving force to promote the securitization of the maritime commons derives from the desire of states to ensure national maritime security, which can safeguard their interests [45], with globalization strengthening this desire [46]. Evidence from the Gulf of Aden [47], the South China Sea [48], and other waters support this opinion. The second driving force derives from the desire of states to practice national security strategies by securitizing the maritime commons. The United States (US) maritime security strategy is a typical example of this purpose [42]. Incorporating how to use the commons and maintaining access to the commons into the political agenda is considered a central part of the US global security strategy and of maintaining power and influence [22,34]. In the securitization process of the maritime commons, the securitizing actors are sovereign states. The referent objects are the maritime commons and sub-issues occurring within them, such as IUU fishing, resource extraction, etc. The securitization process is initiated when those objects lead to or are considered to lead to potential threats. In the process, states link the maritime commons and those sub-issues with national security through documents such as national security strategies. When the audience accepts that the maritime commons can cause an existential threat, the maritime commons is securitized. However, different from the securitization of the specific issues, the securitization of the maritime commons is more macroscopic, which is called macrosecuritization [49], and includes more stakeholders and a more complex process of securitization and sub-issues affected by the securitization of the maritime commons or sub-issues that are also securitized [46]. Further, those securitized sub-issues may ultimately drive the securitization of the maritime commons. In other words, securitization includes that at the strategical level and at the tactical level, namely, the securitization of the maritime commons due to the existence of potential conflicts within them, and the securitization of the specific sub-issues [50]. The latter will likely further promote the

securitization of the maritime commons. A typical case is from the South China Sea, where fisheries are linked to national sovereignty and territorial integrity, which leads to their securitization [50], resulting in coastal states tending to deploy more naval and coast guard assets [51] and risking the use of force more frequently [52]. The securitization of fisheries in the South China Sea, therefore, becomes a motivation to securitize this water [50,53].

## *2.2. The Basis of International Sustainable Fisheries Governance Cooperation: International Legal Framework for Sustainable Fisheries Governance*

International legal fishery management instruments regulating ocean-related activities require countries to practice sustainable fisheries governance by regulating their actions, including UNCLOS; the Code of Conduct for Responsible Fisheries; the Cancun Declaration; the Rio Declaration; Agenda 21; a series of resolutions and decisions on sustainable fisheries adopted by the UN General Assembly; a series of conventions on the establishment of regional fisheries management organizations (RFMOs), such as the Convention for the Establishment of an Inter-American Tropical Tuna Commission; as well as conventions related to animal protection, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora. Compared with other non-legally binding international guidance documents or declaration documents, UNCLOS, which has a legally binding and dispute settlement enforcement mechanism, is the most important of those international legal instruments. UNCLOS sets forth the rights and obligations of states regarding conserving marine life and protecting the marine environment [2], which is the international legal basis for achieving sustainable fisheries and marine ecosystem governance. It promotes action on sustainable fisheries governance by requiring obligations on states for sustainable governance. In Part V and Part VII, UNCLOS provides specific regulations for states to practice sustainable fishery governance in the EEZ and the areas of the high seas. For example, Part V sets forth the obligations of coastal states to conserve and manage marine living resources, and Part VII sets forth that states have the obligation to conserve and manage living resources on the high seas [2]. In addition, Article 118 of UNCLOS requires that, in the conservation and management of living resources on the high seas, states shall “as appropriate, cooperation to establish” subregional or regional fisheries management organizations [2]. Article 118 is the legal basis for international cooperation among states in sustainable fisheries governance. States cooperate and enter into bilateral or multilateral agreements for cooperation under Article 118. However, due to being too broad, this provision is unlikely to be enforced, and disputes arising from actions violating Article 118 are difficult to resolve through the dispute settlement mechanism provided by UNCLOS. Therefore, the implementation of Article 118 in practice remains heavily dependent on the willingness of states.

International treaties that regulate specific sustainable fisheries governance issues fall into two categories. One category is international treaties relating to the conservation and management of specific fish stocks. Such treaties account for the vast majority of international treaties concerning sustainable fisheries governance, such as the Convention on the Conservation and Management of Pollock Resources in the Central Bering Sea [54], the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean [55], etc. However, such conventions are designed for specific fish stocks that are harmed by fishing activities, and their coverage is usually limited to specific sea areas. The second category is international legal instruments regulating specific marine fisheries activities, such as the series of international treaties developed to combat IUU fishing, as well as the standards and restrictions to achieve responsible fishing practices, which cover aspects such as fishing gear, banning some fishing methods, capture quantities, etc. The number of such international legal instruments is relatively few. However, the treaties on combating IUU fishing comprise the majority of them, as IUU fishing has gained increasing attention due to the damage it causes to the sustainability of fisheries [56], and its influence on human rights abuse or trafficking. Combating IUU fishing is an essential issue in international sustainable fisheries governance cooperation, which is considered

relevant to the country's economy and food security [57]. The interest in the issue has led to a rapid increase in the number of international treaties on combating IUU fishing in the last decade [58], which creates a relatively complete legal framework in specific areas of sustainable fisheries governance.

The above analysis suggests problems with the international legal framework for sustainable fisheries. Firstly, global treaties directly regulating sustainable fisheries governance are largely absent in the legal framework. The international legal document directly related to sustainable fish governance is the Code of Conduct for Responsible Fisheries [59]; however, as a guidance manual, it is not legally binding. At the same time, although UNCLOS is legally binding, it does not directly involve the content of sustainable fishery governance, but only sets forth the rights and obligations of the state in marine environmental protection, the conservation and management of marine resources, as well as cooperation. Further, it only enables UNCLOS to promote national cooperation on some issues in sustainable fisheries governance, and acting on the rule of cooperation heavily relies on states' willingness. Secondly, international treaties related to the conservation and management of specific fish stocks occupy the vast majority of the legal framework, but these issues are only a small part of sustainable fisheries governance. Moreover, the number of international treaties directly regulating marine fisheries is relatively few, and there is only a moderately complete legal framework in a special area, such as the conservation of some specific fish stocks. This suggests that an uneven coverage of issues characterizes the international legal framework for sustainable fisheries governance: for some issues, international legal provisions are complete, but for others, they are absent. This unbalanced legal framework leads states to spend more resources to fill legal gaps in the practice and cooperation of sustainable fisheries governance; however, the rising cost of practice and cooperation can undermine states' initiative and willingness. Finally, the provisions of UNCLOS relating to sustainable fisheries governance, which has a legally binding and effective dispute settlement mechanism, are challenging to implement effectively because UNCLOS lacks specific provisions on sustainable fisheries governance. However, other international legal instruments, which directly relate to sustainable fishing governance and have specific provisions, face other difficulties: few contracting parties, narrow scope of application, and a lack of effective dispute settlement mechanism. The two factors have resulted in the implementation of sustainable fisheries governance and international cooperation being heavily dependent on the willingness of all states. In sum, the international legal framework for sustainable fisheries governance is characterized by uneven coverage of issues, a lack of legally binding international instruments, and an absence of enforcement mechanisms, resulting in a weak international legal basis for cooperation. Thus, the willingness of states has a significant impact on the practice and cooperation of sustainable fisheries governance.

### *2.3. The Impact of the Securitization of the Maritime Commons on the International Cooperation in Sustainable Fisheries Governance*

The characteristics of the international legal framework for sustainable fisheries governance implies that in this field, states' willingness has a decisive influence on whether international cooperation can occur. The securitization of the maritime commons changes the priorities of countries' maritime activities and reduces states' willingness to cooperate, which can damage international cooperation in sustainable fisheries governance. The securitization as a result of climate change and its subsequent practices have proved, that while securitization focuses the attention of states on a particular area, it also has an obvious negative impact on governance and international cooperation in this field [36]. In sustainable fisheries governance, the rules can also be applied. The securitization of the maritime commons has increased states' attention to the maritime commons and various sub-issues occurring within them. It has also made it easier for states to prioritize national security when making decisions. Hence, states will be more inclined to confront rather than cooperate in maritime commons to safeguard their security interests [18]. In addition,

the securitization of the maritime commons promotes the securitization of fisheries. Fisheries issues are a sub-issue within the maritime commons and are generally considered low-political issues. Hence, states tend to cooperate on these issues to enhance strategic trust, which is the basis for countries to cooperate on high political issues [50]. However, the securitization of the maritime commons has interfered with this route, leading to issues associated more easily with those that are highly political, and resulting in these issues being securitized. The securitized fisheries issue in the South China Sea region provides valid evidence of this [42,45,50,60].

From an international law perspective, in sustainable fisheries governance, another impact is the lack of practice experience due to the reduction in states' willingness to cooperate, resulting in the absence of international legal instruments, an incomplete international legal framework, as well as difficulty establishing RFMOs and international sustainable fisheries governance mechanisms. The two important reasons for the above consequences are the inefficiency of enforcement mechanisms in the international legal framework and the fact that the framework focuses too much on states and ignores other actors in this field, for example, most international legal instruments lack focus on RFMOs. It also implies that it is possible to reduce the damage caused by the securitization of the maritime commons to sustainable fisheries governance by improving the international legal framework for sustainable fisheries governance. In other issues of the maritime commons, there are already examples of reducing the negative impact of the securitization of the maritime commons by enhancing the effectiveness of international legal documents and increasing their attention to other actors in the international community, such as the cooperation mechanism to combat piracy in the Gulf of Aden [47], the EU cooperation mechanism to combat IUU fishing [61], etc. To find suitable solutions to improve the international legal framework, it is also necessary to examine cases from a specific field of sustainable fisheries governance.

### **3. Evidence from Combating IUU Fishing in the Pacific**

#### *3.1. International Legal Framework for Combating IUU Fishing*

In sustainable fisheries governance, combating IUU fishing has a relatively complete international legal framework. The Pacific is one of the seas where IUU fishing occurs most frequently [62], and it is also the maritime commons most affected by securitization [50,63–65]. Therefore, this section uses evidence from the Pacific to illustrate the impact of the securitization of the maritime commons on cooperation in combating IUU fishing.

It is necessary to clarify the international legal framework for combating IUU fishing as the basis for international cooperation in this field before analyzing how the securitization of the Pacific has impacted on international cooperation to combat IUU fishing. The international legal instruments to combat IUU fishing include UNCLOS; the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas (1993 Agreement); the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (1995 Agreement); the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU); the Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (PSMA); and the Request for an Advisory Opinion submitted by the Sub-Regional Fisheries Commission (Advisory Opinion). Although the term "IUU fishing" does not appear in UNCLOS, the 1993 Agreement, or the 1995 Agreement [66], it does not affect the importance of these three legal instruments in the international legal framework for combating IUU fishing. In addition, there are provisions related to combating IUU fishing in World Trade Organization law, international labor law, and international environmental law. However, this article does not include them in the international legal framework for combating IUU fishing because these international legal instruments are usually not directly related to the issue.

The law of the sea achieves sustainable fisheries governance by regulating states. The same approach is followed by the international legal framework for combating IUU fishing. The international legal framework sets forth rights and obligations for coastal states, flag states, and port states. The coastal state is one of the first legal subjects to be included in this legal framework. UNCLOS sets forth a general obligation for states to protect and preserve the maritime environment. The general obligation is interpreted as an obligation with customary character to conserve marine living resources [67] and a duty to cooperate in this field [2,67,68]. This conservation obligation is implemented through the 1995 Agreement [69] and those conventions about the conservation and management of specific fish stocks. At the same time, this obligation implies that coastal states shall take measures to combat those activities which will damage the marine environment and marine living resources, including IUU fishing. Article 73 of UNCLOS provides solutions for coastal states to combat IUU fishing, including boarding, inspection, arrest, and judicial proceedings [2,70]. However, because neither UNCLOS nor the 1995 Agreement mentions IUU fishing directly, the EU experiences show that the role of coastal states in combating IUU fishing is often overlooked or confused with flag states or port states [71]. It also undermines the clarity of the legal framework of international law for combating IUU fishing.

Flag state jurisdiction under UNCLOS is the international legal basis for flag states to play a central role in the framework for combating IUU fishing. Vessels are the main actors in carrying out activities in the sea. As a general rule, the flag state is the only state with jurisdiction over ships in the maritime commons [2,14]. The 1993 Agreement sets forth an obligation for flag states to ensure those ships flying their flags comply with international conservation and management measures on the high seas [72]. In combating IUU fishing, this regulation also suggests that flag states have power to take action against vessels that fly their flag and undertake IUU fishing. In addition to those available to coastal states, solutions available to flag states to combat IUU fishing include refusal, suspension, or withdrawal of the authorization to fish on the high seas, as well as other punishment, which is effective in “securing compliance with the requirements of” the 1993 Agreement and “to deprive offenders of the benefits accruing from their illegal activities” [72]. Then, the *Advisory Opinion* sets forth the obligation of flag states to combat IUU fishing [73]. It complements the absence of IUU fishing in UNCLOS and the 1993 Agreement [66]. The *Advisory Opinion* divides the obligations of flag states into the general obligation under UNCLOS and the specific obligation centered on the obligation of due diligence. The latter allows for a coastal state to require that the flag state whose vessels conduct IUU fishing in its EEZ shall be liable for failure to take sufficient necessary and appropriate measures to fulfill the obligation of due diligence [73]. The *Advisory Opinion* sets forth the obligation of flag states in combating IUU fishing and urges that flag states shall take sufficient necessary and appropriate measures to prevent those vessels flying their flags from conducting IUU fishing. In addition, the IPOA-IUU adopted by FOA in 2001 also focuses on flag states. The IPOA-IUU, based on defining IUU fishing, requires states worldwide to take measures to combat IUU fishing [74]. The IPOA-IUU sets forth the responsibilities of the flag state in this process. Moreover, the IPOA-IUU requires states to ensure that nationals under their jurisdiction do not support or participate in IUU fishing. To this end, the IPOA-IUU requires states to cooperate to identify, prosecute, and sanction those groups of people involved in IUU fishing [75]. However, as a voluntary instrument [74], the IPOA-IUU is challenging to achieve the expected effect in practice, although it provides a comprehensive toolbox to combat IUU fishing.

Having identified the limitations of coastal states and flag states in combating IUU fishing, international legal instruments to combat IUU fishing have begun to require port states to take measures to combat IUU fishing. The approach of port state governance is to focus on the role of the market for IUU fishing [76] based on considering IUU fishing as a transnational crime [77]. Following this approach, as a port of entry into a country’s market, port states are seen as effective tools that can combat IUU fishing by preventing fish caught by IUU fishing from entering the market, which can reduce the economic incentive

for IUU fishing [58]. The IPOA-IUU is the first international document that focuses on the role of port states in combating IUU fishing [75]. The IPOA-IUU requires port states to take measures, including prohibiting IUU fishing vessels from entering the port, the review of the catch entering the port, etc. According to the regulation of the IPOA-IUU, the PSMA was adopted and came into force in 2016. The PSMA sets forth that the port states shall take measures to combat IUU fishing through ports, entry inspections, and follow-up procedures [78]. Regarding international cooperation, the PSMA stated that flag states and port states shall cooperate in combating IUU fishing [78]. It is the first time that this obligation has been established as an international legal document. However, there are still few parties to the PSMA [79], which limits the effectiveness of its implementation.

This legal framework has the same shortcomings: the principle of privity of treaty limits the role of international treaties. In combatting IUU fishing, some fishing activities are beyond the jurisdiction of states and international treaties [80]; for example, vessels flying the flags of non-party states do not consider themselves bound by the relevant international legal instruments, e.g., of RFMOs. Moreover, the international legal framework for combating IUU fishing is enforced by setting forth powers and obligations of coastal states, flag states, and port states. It suggests that this international legal framework for combating IUU fishing faces the same problems as the international legal framework for sustainable fisheries governance: the willingness of states can seriously affect their actions towards combating IUU fishing and their cooperation on this issue. Therefore, researchers believe that those legal instruments on fishing have not ended IUU fishing but have increased tensions between states and contributed to the securitization of IUU fishing [42].

Another problem to be addressed by the international legal framework for combating IUU fishing arises from the characteristics of IUU fishing itself. Usually, both the subject and operation of IUU fishing are transnational, implying that a state may simultaneously be a victim and a “perpetrator” of IUU fishing [81]. This renders a domestic solution to combating IUU fishing unlikely to be effective. In other words, it implies that a global or regional solution to combating IUU fishing is necessary, such as international legal instruments that relate to combating it. Given that IUU fishing may be a transnational organized crime [81], it is inconceivable that a single state alone can effectively combat IUU fishing. However, although the international legal instruments used to combat IUU fishing provide a complete framework, they have apparent shortcomings in quantity and effectiveness [81]. In this framework, the PSMA is the first and only legally binding international treaty that directly regulate IUU fishing, but it still faces a shortage of parties. However, UNCLOS, which has the most influence and many parties, does not directly regulate IUU fishing. Moreover, international legal documents about combating IUU fishing are mostly soft laws and lack mandatory provisions [66]. In addition, even taking these soft-law documents and legal documents indirectly regulating the fight against IUU fishing into account, there is still a shortage of international legal documents about combating IUU fishing. In terms of content, the legal framework provides a guidance program with few specific sanctions or solutions. The framework is also too simplistic in its provisions for cooperation between states in combating IUU fishing, which lacks enforceable rules and the focus on regional and global organizations that are effective cooperation models.

The above analysis suggests that this legal framework, although relatively complete, is still fragile. The characteristics of this framework render it unable to deal with the impact of the securitization of the maritime commons. The state-centered legal framework and the lack of attention to regional and global organizations means that the willingness of states remains decisive for action and cooperation in combating IUU fishing. When a state’s willingness to cooperate declines, the legal framework cannot take measures to deal with it. The lack of enforceable rules makes it more difficult for countries to cooperate, thereby increasing the cost of cooperation. Moreover, the limited number and effectiveness of those international legal instruments prevent them from taking more effective measures to avoid contradictions and disputes when states refuse to cooperate because of the securitization of the maritime commons. The consequence of the failure of the legal framework to eliminate

the negative impact of the securitization of the maritime commons is either that combating IUU fishing becomes a tool for states to achieve their maritime security strategies or that the issue of IUU fishing itself is securitized. In either case, the result leads to less and more fragile international cooperation, ultimately undermining international cooperation on sustainable fisheries governance.

### 3.2. Evidence from Northeast Asia Pacific and South China Sea

When competition in the Pacific was less intense, coastal states achieved cooperation on some low-political issues through various bilateral and multilateral agreements; for example, those states with maritime boundary disputes still signed a series of fishery agreements, such as China and Vietnam [38,82]. However, as tensions in the Pacific grew [83], the Pacific began to be securitized. These tensions were related to changes in the maritime security policies of major powers, especially the US. An important assumption of the US national security strategies is that the US has uncontested leadership of the global commons [22]. Further, leadership in the Pacific is of most concern to the US because it is seen as the most important region for the country's future [84]. However, the rise of other states in the Pacific, e.g., China, and their involvement in maritime affairs, have led the US to worry about the erosion of that assumption. This concern has ultimately motivated the US to securitize the maritime commons, especially the Pacific [84,85]. The change in US maritime security policy has impacted the securitization of the Pacific region. US–Asia policy has undergone a process from securitization to desecuritization to resecuritization [86], which has certainly affected the national security of those coastal states and the degree of the securitization of the Pacific [87–89]. The securitization of the maritime common in the Northeast Asia Pacific [65] and the South China Sea [45,90] are most significant, and their impact on regional cooperation is the most obvious.

#### 3.2.1. Combating IUU Fishing in the Northeast Asia Pacific

Apart from the reasons discussed above, the securitization of the Northeast Asia Pacific is related to the securitization of energy supply in the region, as well as to the region's history, military security, geography, and other factors [65]. Moreover, the increased economic interdependence in this region has not slowed the trend toward the securitization of the maritime commons in the area [65]. The three major countries in the region have different motivations for securitizing the waters. China's motivation is increasing attention to the role of the ocean in national development and its influence in the maritime realm [91]. Japan regards maritime order as the foundation of the country's peace and prosperity and safeguarding its interests in the maritime commons as one of the core preconditions of its national security strategy [64], which are the driving forces for Japan to participate in the securitization of the Northeast Asia Pacific. The dependence of economic development on maritime transportation and marine resources [92] is the main driving force of South Korea's increasing focus on maritime security and maritime military power [93], which has also affected its maritime security strategy. In addition, the maritime territorial disputes between China, Japan, and South Korea have certainly accelerated the competition for the securitization of the Northeast Asia Pacific [65], which also affect cooperation between the parties on sustainable fisheries governance and combating IUU fishing.

The fishery issue is one of the critical issues in the maritime boundary delimitation between China, Japan, and South Korea. China–Japan fishery cooperation and China–Korea fishery cooperation reflect the impact of the securitization of the Northeast Asia Pacific on combating IUU fishing cooperation in the region. The cooperation between China and Japan in combating IUU fishing has been directly influenced by the relationship between the two countries and by the securitization of the Northeast Asia Pacific. China and Japan signed the Agreement on Fisheries Concluded Between Japan and China (1995 Agreement on Fisheries) in 1995, which provided the basis for cooperation between the two countries in fisheries. However, the disputed waters between the two countries were avoided in the 1995 Agreement on Fisheries, laying a hidden danger for their subsequent cooperation in

fisheries: the cooperation between the two countries in fisheries is more likely to be affected by the securitization of the maritime commons. The lack of substantive progress in fishery development cooperation in the East China Sea in 2014–2015, caused by Japan's purchase of the Diaoyu Islands in 2012, is evidence of this [94]. In addition, as relations between the two countries have deteriorated and their attention to maritime security has increased, the conflict and dispute regarding fisheries have also increased. In the process, combating IUU fishing has become a tool for countries to achieve national security strategies. For example, the government of Japan has repeatedly claimed that the fishing by Chinese vessels near the Diaoyu Islands is IUU fishing. The same situation also happened between South Korea and China. In 2000, China and South Korea signed the Fisheries Agreement between South Korea and China (2000 Fisheries Agreement), in which provisional arrangements were made on fisheries issues between the two countries. According to the 2000 Fisheries Agreement, the two countries shall hold consultations on several issues on fisheries by convening the China–South Korea Joint Fishery Committee every year. The joint law-enforcement issue discussed on the committee is related to cooperation and combating IUU fishing. Compared to the 1995 Agreement on Fisheries, the 2000 Fisheries Agreement has performed better [95]. However, regarding fishery law enforcement, with the deployment of the Terminal High Altitude Area Defense and changes in maritime security policies in South Korea, the two countries have paid more attention to maritime security, resulting in conflicts that have gradually surpassed cooperation. For example, South Korea's coast guard arrests and detains Chinese fishing boats more frequently [96] and has continued to increase the severity of law enforcement and penalties [97]. However, most of the arrested and detained Chinese vessels do not violate fishery regulations or engage in IUU fishing [96].

### 3.2.2. Combating IUU Fishing in the South China Sea

Compared to the securitization of the Northeast Asia Pacific, the securitization of the South China Sea and its impact on combating IUU fishing are more complex. The disputes caused by climate change, geopolitics, institution, history, and other factors in the South China Sea mean that it has a strong tendency to be securitized [5,98]. These factors provide the coastal states a strong incentive to initiate the securitization of the South China Sea [48]. Countries outside the region have also influenced the securitization of the South China Sea. The strengthening of the strategic competition between China and Japan in the Northeast Asia Pacific [42] and the importance of the maritime routes are essential motivations for Japan [64] to intervene in the South China Sea. Japan has enhanced its influence in the South China Sea and Southeast Asia by exporting military technology and hardware to southeast Asian states [99], adjusting its maritime military arrangement to strengthen its military participation in the South China Sea [100], and other approaches, which increase the tendency of the coastal states to securitize the South China Sea. An essential consequence of the securitization of the South China Sea is that IUU fishing, which was initially one of the marine issues, also faces the risk of being securitized in this region. The securitization of IUU fishing in the South China Sea is an issue that has emerged and persisted [42,50]. It is generally believed that territorial sovereignty disputes between coastal states [101]; the relationship between IUU fishing and the security of national maritime boundaries [37]; the popular narrative of the fishing militia [50]; and the lack of RFMOs in the South China Sea [101] are the main obstacles to combating IUU fishing in the region [102], which become motivations to securitize IUU fishing in the region after the securitization process.

The negative impact of the securitization of the maritime commons on combating IUU fishing is directly reflected in the lack of mechanisms and treaties for cooperation in fisheries governance in the South China Sea. The South China Sea lacks effective multilateral governance agreements or governance institutions. This means that cooperation in combating IUU fishing lacks existing mechanisms as a basis, and the cost of establishing a new cooperation mechanism is certainly higher. Moreover, the securitization of the South

China Sea reduces trust among states, as well as the opportunities for them to build trust; this strategic trust is the basis for states to cooperate. The maritime security complex formed by the coastal states in the South China Sea is a large and diverse security complex with different and conflicting perspectives in different aspects, such as problem solving and work focus [103]. Therefore, compared with other places, the coastal states in the South China Sea need a higher level of trust to cooperate on a certain issue; moreover, the securitization of the maritime commons will damage the trust among these coastal states, making it more difficult for them to conclude multilateral governance agreements or establish multilateral cooperation mechanisms to combat IUU fishing. The securitization of the maritime commons strengthens the lack of public goods and regional laws for combating IUU fishing and increases the cost of cooperation in the South China Sea. As the implementation of the international legal framework for combating IUU fishing is heavily constrained by the willingness of states, flag state measures [101] that are believed to be effective in combating IUU fishing cannot be effective in the South China Sea when the motivation, willingness, regional legal instruments, and RFMOs to cooperate in combating IUU fishing are insufficient.

In addition, there are few bilateral agreements on cooperation in combating IUU fishing in the South China Sea; for example, China is implementing several substantial approaches to combat IUU fishing [104]. However, in waters where cooperation in combating IUU fishing is required, China will combat IUU fishing through bilateral arrangements or legal documents [38]. Joint maritime law enforcement between China and Vietnam and the two related agreements are suitable arrangements for cooperation in combating IUU fishing [101]. However, among those coastal states in the South China Sea, the Sino-Vietnamese Fishery Agreement in the Gulf of Tonkin is the only bilateral fishery agreement in force [38]. This has led to a lack of support from sufficient international legal instruments for cooperation in combating IUU fishing in the South China Sea. More importantly, in the absence of a sufficient number of treaties on cooperation in combating IUU fishing, it is impossible to sign multilateral treaties or establish cooperation mechanisms in the South China Sea to ensure this cooperation. This is because it suggests that the region lacks sufficient willingness to cooperate, in terms of practical experience, customs, legal documents, etc.

### *3.3. How the Securitization of the Pacific Impacts International Cooperation in Combating IUU Fishing*

The negative impact of the securitization of the Pacific is achieved by affecting the willingness of states to take measures and cooperate in combating IUU fishing. As evidenced by the Northeast Asia Pacific and the South China Sea, states are more inclined to view IUU fishing as a tool to achieve national maritime security strategies rather than a problem that needs to be solved cooperatively under the influence of the securitization of the maritime commons [96]. The evidence from the South China Sea supports that the securitization of the region and the resulting securitization of IUU fishing in this water has led states to pay more attention to maritime disputes rather than maritime cooperation, and to the reduction in trust and cooperation on combating IUU fishing, although IUU fishing is the main reason for the reduction in fishery resources and the degradation of the environment in these waters [90], which requires cooperation to solve. This has resulted in the absence of legal instruments and practices of cooperation in combating IUU fishing. In turn, this absence has hindered the construction of effective multilateral treaties or cooperation mechanisms in this region on cooperation in combating IUU fishing, ultimately making it more difficult for coastal states to cooperate in this field.

Moreover, the securitization of the Pacific makes it easier for all issues in the Pacific to be linked to highly political issues, and thus, to be securitized. The securitization of IUU fishing is one of the consequences of the securitization of the Pacific [42]. In the Pacific, the direct motivation to securitize IUU fishing is concern about the decline of fisheries resources, with IUU fishing being one of the main reasons [3]. Therefore, IUU fishing is

considered to pose a threat to food and economic security; some states believe that it may constitute a transnational organized crime and have included it in their maritime security strategies [37,105]. This brings IUU fishing into the scope of maritime security [40]. As a result, after the maritime commons are securitized, IUU fishing will be more likely to be securitized than other issues that also occur in the maritime commons. According to the evidence from the Northeast Asia Pacific and the South China Sea, the negative impact of the securitization of the maritime commons on combating IUU fishing is significant. For example, after the securitization of fisheries and IUU fishing in the South China Sea, most maritime disputes involved fishing vessels, which were often accused of engaging in IUU fishing [50]. This increase in disputes and conflict can lead to reduced trust among states. One consequence of the reduction is that it becomes difficult for states in the South China Sea to sign cooperation agreements and establish regional cooperation mechanisms for combating IUU fishing. At the same time, the South China Sea faces a lack of institutions for cooperation in combating IUU fishing. The securitization of the South China Sea will cause this issue to become a highly politicized issue, and the willingness of states to develop agreements or establish cooperative mechanisms will likely be further reduced. These impacts will ultimately be reflected in the absence of bilateral or multilateral treaties and the lack of regional cooperation mechanisms in the South China Sea.

#### **4. Returning to the Essence of Sustainable Fisheries Governance: Solutions to the Securitization of the Maritime Commons**

##### *4.1. The Core of the Solution: Desecuritization of the Maritime Commons and Sustainable Fisheries Governance*

Security theory believes that the desecuritization or desecuritization of some issues in the maritime commons can effectively solve problems posed by the securitization of the maritime commons [106]. The methods of desecuritization usually include: not treating it as a security emergency, not creating security dilemmas and vicious circles, as well as returning the securitized issue to low political issues [107]. In the securitization of the maritime commons, desecuritization includes the desecuritization of the maritime commons and the desecuritization of the sustainable fisheries governance. One of the goals of the securitization of the maritime commons is to protect states' maritime security. However, the evidence from the Gulf of Aden shows that the securitizations of the maritime commons cannot ensure maritime security [47]. Conversely, securitization leads to less cooperation because it reduces the level of trust among states, reducing their ability to respond to common risks at sea, such as the reduction in fisheries resources, environmental pollution, piracy, etc. It also implies that the desecuritization of the maritime commons is necessary; however, the feasibility of this is very low. Therefore, in practice, the desecuritization of the maritime commons faces a dilemma: desecuritization is necessary, while states usually refuse it. The Arctic Council is a typical example. The Arctic Council, whose purpose is not related to military security, became involved in issues related to military security, and soft tissues in the Arctic began to be securitized [108], such as the securitization of climate change in the Arctic [27]. Despite facing much criticism, the Arctic Council and its member states maintain their focus on military issues. The same thing also occurs in the maritime commons. Once the securitization of the maritime commons begins, although desecuritization is the best option for all states, the prisoner's dilemma prompts states choose to continue to treat the issues of the maritime commons as security issues and to reject desecuritization in situations when it is impossible for states to decide whether other states are genuinely fulfilling their commitment to desecuritization [102–104]. The trend towards the securitization of the maritime commons is set to continue in light of the maritime policies currently adopted by states. However, it does not mean that decoupling between sustainable fisheries governance and security issues is also infeasible.

In the context of the continuing trend of securitization of the maritime commons, decoupling the sustainable fisheries governance from security issues is an alternative solution in order to achieve sustainable fisheries governance cooperation. Traditionally, fisheries governance is considered a low-level political issue compared to the military;

states usually build and promote trust by cooperating on low-level political issues [50]. It is necessary to return sustainable fisheries governance to a low political nature, which can promote trust and cooperation among states on this issue. According to the practice of the Arctic Council [108], international legal instruments can achieve this by distinguishing sustainable fisheries governance from security issues. In addition, the critical difficulty in achieving cooperation on sustainable fisheries governance is the regulation of private actors [71]. This requires cooperative governance, which also requires states to take domestic and international measures. International law is an effective approach to regulate the behaviors of states, achieve international cooperation, and establish cooperative governance mechanisms. Therefore, the goal can be achieved by improving the international legal framework for sustainable fisheries governance and establishing regional cooperative governance mechanisms.

#### *4.2. Improvement of International Legal Framework for Sustainable Fisheries Governance*

The law of the sea is certainly necessary for achieving sustainable fisheries governance cooperation. The law of the sea governs marine fishery resources by providing preventive and curative solutions [109]. Therefore, enhancing the effectiveness of international law is an effective solution to reduce the negative impact of the securitization of the maritime commons on international cooperation in sustainable fisheries. This includes establishing minimum and enforceable standards and improving compliance by all parties [80], which can reduce the cost of cooperation, thereby promoting it.

In addition, the international legal framework shifting its focus from states to non-state actors and regional cooperation governance mechanisms can be an effective option. Currently, the international legal framework for sustainable fisheries governance is characterized by focusing on states. However, based on practice experience, non-state actors and regional cooperative governance mechanisms, e.g., RFMOS, may be able to play a more significant role in sustainable fisheries governance. For example, the European Union (EU) performs well in combating IUU fishing as a regional organization. The EU combats IUU fishing through legal documents centered on the EU IUU Regulation, combined with commercial means such as insurance regulations [61]. Likewise, the Conservation of Antarctic Marine Living Resources (CAMLR) and the Commission for the CAMLR, both regional fisheries management organizations, can still guarantee that states cooperate in combating IUU fishing and other issues of sustainable fisheries governance [42].

#### *4.3. Regional Cooperative Governance Mechanisms*

Establishing a regional cooperation governance mechanism is crucial for cooperation. An essential role of establishing a regional cooperation governance mechanism is to distinguish the issues in the region into low-level political issues and high-level political issues in the form of legally binding international legal instruments. This can effectively avoid a situation where the securitization of the maritime commons links those issues—such as marine environmental protection, fisheries governance, etc., which have low political attributes—to high political issues. The Arctic Council provides a good example of this. At the beginning of its establishment, the Arctic Council determined that it would not be involved in military security but was committed to governance and cooperation on low political issues such as the environment, climate change, and indigenous peoples [110]. This makes for a clear divide in the Arctic between low-political issues, where it is easier for states to cooperate, and high-political issues, where it is difficult for states to cooperate. Although the Arctic Council was later inevitably drawn into issues related to military security [108], and the Arctic continues to face these problems due to its securitization [27], this distinction remains effective: states are still more likely to cooperate on issues identified as low political issues by the Arctic Environmental Protection Strategy, such as environmental protection [111].

Regarding specific regional cooperation, cooperation on anti-piracy in Somali waters is worth learning from [112]. Somali waters also face the impact of the securitization of

the maritime commons on combating piracy [113], as well as the anti-piracy cooperation mechanism, although the establishment of common interests and strategic mutual trust is still effective. The same has also happened in the Pacific. China and the ASEAN have cooperated on a series of issues and formed a relatively complete cooperation mechanism [114]. By incorporating sustainable fisheries governance issues into these existing cooperation mechanisms or establishing new cooperative cooperation mechanisms based on experiences, the cooperative mechanisms and multilateral international legal instruments can identify sustainable fisheries governance as a low-level political issue and separate it from high-level political issues such as sovereignty, military, etc. On this basis, coastal states can more easily cooperate in the South China Sea. This is an effective solution to reduce the negative impact of the securitization of the South China Sea on sustainable fisheries governance cooperation [114]. In addition, the desecuritization and cooperation mechanism of the Lancang-Mekong River is a good reference for establishing effective regional cooperative governance mechanisms for sustainable fisheries governance [115]. Evidence from the Arctic, Somali waters, the South China Sea, and the Lancang-Mekong River shows that the establishment of regional cooperative mechanisms can effectively resist the negative influence of the securitization of the maritime commons on sustainable fisheries governance cooperation, which is achieved by identifying sustainable fisheries governance as a low-level political issue, enhancing trust and increasing common interests.

## 5. Conclusions

As the discussion of this article shows, the securitization of the maritime commons impacts cooperation on sustainable fisheries governance and places sustainable fishery management and resources at risk. However, the international legal framework for sustainable fisheries governance cannot effectively block negative influence nor promote cooperation among states in this field. Evidence from the Northeast Asia Pacific and the South China Sea on cooperation to combat IUU fishing supports the above conclusion. In theory, the accepted solution is achieving the desecuritization of the maritime commons, while in practice, this solution is hard to achieve. Therefore, it is crucial to decouple sustainable fisheries governance from security issues when it is difficult to achieve the desecuritization of the maritime commons. Decoupling requires a significant improvement in international legal framework and the establishment of further regional cooperative governance mechanisms.

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