

Impact case study (REF3b)

Institution: University of Hull
Unit of Assessment: C20: Law
Title of case study: Influencing Commonwealth Policy on Marine Fisheries Regulation
<p>1. Summary of the impact (indicative maximum 100 words)</p> <p>Professor Barnes conducts world leading research on international regulation of fisheries. This informed his contribution to a research programme on Commonwealth fisheries policy. The research has helped to raise awareness, stimulate debate and change attitudes towards the international regulation of fisheries at the ministerial level and the local level through the Commonwealth study tour. The programme findings were published in 'From Hook to Plate' and disseminated at the Commonwealth Heads of Government Meeting 2009. Commonwealth members accepted the findings in this report, including the specific recommendations on fisheries regulation presented in Barnes's research.</p>
<p>2. Underpinning research (indicative maximum 500 words)</p> <p>The poor state of global marine fisheries is widely acknowledged. The reasons for this are manifold and complex and require a range of technical, political, economic, social and regulatory responses. Improving the state of marine fisheries is the focus of a wider body of research across many disciplines, but research conducted at the University of Hull by Richard Barnes is pioneering in its approach and focus. It draws upon research within the fields of economics, political science, history and law to explain present defects in the current regulatory regime for managing marine fisheries, both at the international and national level. It proceeds to make a number of recommendations on how the legal regime could be reformed, some of which were endorsed in the Commonwealth Communiqué.</p> <p>This research, which led to the impacts outlined in section 4, was developed from Barnes' wider body of research into fisheries (publications 2&3). The originality, quality and rigour of the research underpinning this case study are reflected in the award of two prizes for publication 2. Publications 2 and 3 form part of Barnes' REF submission. The broader research subsequently led to a more specific focus on problems in domestic and commonwealth fisheries (publication 1). It subsequently informed governmental and private sector consultation reports (publications 4-5) and continues to provide the basis for potential impacts.</p> <p>The key findings of the research leading to the impacts are:</p> <ul style="list-style-type: none"> • The elucidation of factors that contribute to over-fishing and excess fishing capacity including the absence of detailed and effective legal requirements to conserve fish stocks, and the need to strengthen the mechanisms for holding States to account for their failure to properly manage fisheries. This includes enhanced reporting requirements to supervisory agencies and the use of periodic reviews (See publications 1, 3 and 4). • The identification of alternative regulatory options, including the use of property rights to regulate fisheries. (See publications 1 and 2). • Securing minimum levels of protection for fish stocks as essential food supplies within both property regimes and communities' legal institutions, and showing how this can be impeded by poorly structured regulation (See publication 1 and 2). • The identification of regulatory defects, including control of vessels using flags of convenience and the need to respond to Illegal, unreported and unregulated (IUU) fishing. (See publications 1-4). • The importance of securing participation in and implementation and compliance of the relevant international laws related to fisheries conservation and management, which would in turn require capacity building and improved governance (see Publications 1-3). • Ascertaining the limits on the public regulation of domestic fisheries (see publication 5)

3. References to the research (indicative maximum of six references)

1. Barnes, R. 'The Law of the Sea. A Commonwealth Perspective' in R. Bourne and M. Collins (eds) *From Hook to Plate: The State of Marine Fisheries* (2009), pp. 31-43. Book chapter. Supplied on request. The chapter features in specialised training programmes (e.g. International Oceanographic Institute's Law of the Sea and Ocean Governance programme)
2. Barnes, R., '*Property Rights and Natural Resources*' (2009). Book. Listed in REF 2. Awarded the Society of Legal Scholar's Peter Birks Prize for Outstanding Legal Scholarship 2009 and finalist's prize in the triennial Inner Temple Book Prize 2011. It has received a range of positive critical reviews in a range of international quality journals by leading scholars: D. Cole in (2009) 19 *Law and Politics Book Review* 806; L. Gramlich in (2011) 71 *Zeitschrift fur Auslandsches Offentliches Recht und Volkerrecht* 641; Robert Pritchard in '*ResourcesLaw International*', July 2009; N. Bankes in (2009) 27 *Journal of Energy and Natural Resources Law*; J. Razzaque, (2010) 22 *Journal of Environmental Law* 338; C. MacKenzie (2011) 70 *Cambridge Law Journal* 65. The work forms a reference point for research in a developing field of law. See e.g. Aileen McHarg, Barry Barton, Adrian Bradbrook & Lee Godden, 'Property and the Law in Energy and Natural Resources', in *Property and the Law in Energy and Natural Resources* (2010) or E. Benvenisti, 'Sovereigns as Trustee of Humanity: On the Accountability of States to Foreign Stakeholders' (2013) *American Journal of International Law* 295. It has also been referenced in a range of policy papers: Shepherd and Lange, *Is there still an economic right to water?* FLJS Report 2013: <http://www.fljs.org/sites/www.fljs.org/files/publications/Shepherd-Lange.pdf> or K. Khoday and L. Perch, *Development from Below: Social Accountability in Natural Resource Management* UNDP and IPC-IC Working Paper (2012), available <http://www.undp.org.sa/sa/documents/home/sanr.pdf>
3. Barnes, R., 'The Law of the Sea Convention: An effective framework for domestic fisheries regulation' in Freestone, Barnes and Ong (eds.) *The Law of the Sea: Progress and Prospects* (2006), 233-260. Book chapter. Listed in REF 2. Work is part of a leading collection of essays and forms a reference point in further research in the field. See e.g. M. George, 'Fisheries Protections in the Context of the Geopolitical Tensions in the South China Seas' (2012) 43 *Journal of Maritime Law and Commerce* 85
4. Barnes, R., Churchill, R., Goulding, I. and Lodge, M., *The United Nations Convention on the Law of the Sea: Developments, Challenges and Perspectives* (2006). Report Commissioned by European Parliament Committee on Fisheries. Consultancy Funding £4500. Report available online at <http://www.pedz.uni-mannheim.de/daten/edz-ma/ep/06/pe363.792-en.pdf> or supplied on Request. The report was subject to review by the Committee on Fisheries and received a favourable evaluation by the Committee on Fisheries.
5. Barnes R. and Starkey D. *The Public Right to Fish* (2011). Report commissioned Mourant Ozannes Law Firm, Jersey. It was used to settle a question of law relating to nature and extent of lost fishing rights resulting from an invalid Ordinance issued by the States of Guernsey following the cases: *Jersey Fishermen's Association Ltd and others v. States of Guernsey*, [2007] UKPC 30. A testimony from Mourant Ozannes can be obtained confirming a favourable report. Copy of report to be supplied on request. Consultancy funding: £2100. The research underlying the report was subsequently published as a peer-reviewed paper: 'Revisiting the Public Right to Fish' (2011) 26 *International Journal of Marine and Coastal Law* 433-61.

4. Details of the impact (indicative maximum 750 words)

Reforming international fisheries law is a long, difficult process. It begins by securing recognition of the problem at international and domestic levels. This requires the development of compelling

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case for reform, one that is politically, economically and legally feasible. This case study shows how research on fisheries regulation conducted at the University of Hull has informed high level political discussions and shaped governmental attitudes towards the fisheries regulation. It reached and informed the views of civil society organisation (CSOs) and has contributed to regulatory change.

Between 2007 and 2009, Barnes participated in the Commonwealth Fisheries Programme (CFP). This was designed to shape Commonwealth fisheries policy and to promote sustainable fisheries and improve livelihoods of coastal communities in developing countries (Source 1). It was sponsored by the UK Department for International Development, Australia's AUSAid, the Commonwealth Human Ecology Council, and the Commonwealth Policy Studies Unit. Central to this programme was a state of the art report on sustainable fisheries, compiled by 26 experts in different fields of study – *'From Hook to Plate'*: (Publication 1, Section 3). As a known expert on international fisheries law, Barnes was invited to contribute by identifying legal impediments to sustainable fisheries regulation in the Commonwealth. The research fed into the CFP study tour (2008-9) to a dozen developing States with the aim of promoting sustainable fisheries. The final research findings provided the case for and basis of options for improving the international regulation of fisheries, subsequently taken by a number of bodies.

Barnes' contribution to the Report identified and called for certain measures:

- participation of all Commonwealth States in key treaties – the UN Convention on the Law of the Sea 1982, the UN Fish Stocks Agreement 1995, and the FAO Compliance Agreement (publication 1, p. 39);
- capacity building to support implementation of the law, including tackling IUU fishing (publication 1, p. 40);
- the adoption of alternative regulatory measures (publication 1, p. 40).

These conclusions informed and influenced the position of numerous CSOs (Sources 4 and 5). The Port of Spain Statement 2009, representing the views of over 800 CSOs across the Commonwealth called upon the Commonwealth member states to endorse the recommendations in the *'From Hook to Plate'* Report. It called for States to commit to strengthening and implementing international and regional obligations and mechanisms for the protection, conservation and sustainable use of marine resources and ecosystems, including systems for data collection on small scale, address overfishing, control Illegal, Unreported and Unregulated (IUU) fishing, and abuse of flags of convenience (Source 2, para 49).

Following the presentation of the report and the Port of Spain Statement, the Commonwealth Heads of Government Meeting (CHOGM) Communiqué 2009 was adopted, representing the values and positions of the 49 countries that attended the CHOGM (Source 3 below). The communiqué was influenced by Barnes' research and report which raised awareness, shaped political views and helped secure recognition of the need for reform and strengthening of certain legal commitments (Source 4 below). The 2009 Communiqué was the first to directly address the regulation of fisheries. It specifically responds to the issues raised in the research and report, acknowledging that "the unsustainable exploitation of the world's fish stocks posed a threat to food security and could lead to long-term economic losses of depleted stocks" (para. 80). The Heads of Government also "expressed concern at the plunder caused by Illegal, Unreported and Unregulated Fishing (IUU), in violation of, *inter alia*, the UN Convention on the Law of the Sea and the FAO Code of Conduct for Responsible Fisheries" (para. 80). Finally, they "recognised that many developing states were particularly vulnerable to illegal fishing by foreign fleets" (para 80). In light of these problems, as presented in the report, the Heads of Government agreed "that urgent action was needed to strengthen fisheries and marine management in member states waters, particularly in the case of the more vulnerable member states." These issues remain on the Commonwealth policy agenda and were reiterated in the Perth Declaration on Food Security adopted at the CHOGM in 2011. (Source 5 paras 7, 11, and 14).

Since the project started, a number of Commonwealth states have adopted measures to tackle IUU fishing. In 2009 Mozambique adopted a National Plan of Action to address IUU fishing.

(Source 6). As influenced by the research, the Caribbean Regional Fisheries Mechanism adopted the Castries Declaration on IUU Fishing on 28 July 2010 (Source 7, 8). In 2010, Mauritius adopted a National Plan of Action on IUU fishing (Source 9).

5. Sources to corroborate the impact (indicative maximum of 10 references)

1. Commonwealth Fisheries Programme: <http://www.commonwealthfisheries.org/>
2. Port of Spain Civil Society Statement to the Commonwealth Heads of Government Meeting 25 Nov 2009. Available online at:
http://www.commonwealthfoundation.com/sites/cwf/files/downloads/Commonwealth_Civil_Society_Statement_2009.pdf
3. CHOGM Communiqué, Trinidad and Tobago 29 November 2009
http://secretariat.thecommonwealth.org/files/216904/FileName/TrinidadandTobagoCHOGM_Communique.pdf
4. Testimony from Head of the Commonwealth Studies Policy Unit corroborating the impact of the research and report (email)
5. Perth Statement on Food Security 2011 <http://thecommonwealth.org/media/press-release/perth-declaration-food-security-principles>
6. Mozambique Ministerial Order 58/2009. <http://faolex.fao.org/docs/pdf/moz119267.pdf>
7. Castries Declaration 2010
<http://www.caricom-fisheries.com/LinkClick.aspx?fileticket=eeRVRXUBWGA%3d&tabid=37>
8. Testimony from Chief Executive, Caribbean Regional Fisheries Mechanism (email)
9. Mauritius National Plan of Action on IUU fishing:
<http://www.gov.mu/portal/goc/fisheries/file/table.pdf>