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ON DIGNITY, VULNERABILITY, INDIGENOUS PEOPLES AND FISHERFOLKS: CHILEAN SUBSISTENCE FISHING ACCORDING TO INTERNATIONAL HUMAN RIGHTS

SOBRE DIGNIDADE, VULNERABILIDADE, POVOS INDÍGENAS E PESCADORES: A PESCA DE SUBSISTÊNCIA CHILENA DE ACORDO COM O DIREITO INTERNACIONAL DOS DIREITOS HUMANOS

Eduardo Roig Monge[1]

Abstract
Subsistence fishing is a confusing and heterogeneous fishery construct. Even so, its connection to human protection compels us to analyze it through the lens of human rights. Using the case of Chile due to its legal peculiarities, we aim to determine the scope of the Chilean legislation on subsistence fishing, integrating international treaties on human rights, case law, and reports from United Nations agencies regarding three issues. First, we examine how the Chilean legislation relates to the right to food and the promotion of decent social conditions. Next, we explain why the prohibition of riggings and propulsion enables us to identify economically precarious users and how this prohibition is related to vulnerabilities and poverty as human rights concepts. Finally, we show how the property of indigenous peoples and the culture of fisherfolk populations could impose their inclusion and preferences in access to subsistence fishing resources. Considering the results, we hold that human rights help to clarify the understanding of it and propose partial amendments to the Chilean legislation on subsistence fishing. But, above all, they introduce protection standards that allow us to see such legislation not as a mere derivation of state privilege, but as an attempt to foster a situation of equality: an affirmative action. We conclude by presenting a conceptual approach for Chilean subsistence fishing, suggesting that it could help to unveil new objectives and rights in fishing, and even influence the understanding of natural resource allocation.

Keywords
Chilean subsistence fishing; international human rights; dignity; indigenous peoples; fisherfolk populations.

Resumo
A pesca de subsistência é um construto pesqueiro confuso e heterogêneo. Apesar disso, suas referências à proteção humana nos obrigam a analisá-la sob a ótica dos direitos humanos. Usando o caso chileno, por suas peculiaridades legais, o objetivo deste artigo é ajudar a determinar o alcance de sua legislação acerca da pesca de subsistência, integrando tratados de direito internacional dos direitos humanos, jurisprudência e relatórios de agências das Nações Unidas. Primeiro, examinamos como essa legislação se articula com o conteúdo do direito à alimentação e promove condições sociais decentes. Explicamos, na sequência, por que as proibições das artes da pesca e propulsões permitem identificar usuários economicamente precários e como tais proibições se relacionam com as vulnerabilidades e a pobreza como conceitos dos direitos humanos. Por fim, mostramos

1 Servicio Nacional de Pesca y Acuicultura, Jurídico, Santiago, Chile
https://orcid.org/0000-0001-8812-0856

como a propriedade dos povos indígenas e a cultura das populações de pescadores poderiam impor inclusão e preferências de acesso aos recursos da pesca de subsistência. Considerando os resultados, sustentamos que os direitos humanos ajudam a esclarecer e alterar parcialmente o entendimento da pesca de subsistência chilena, mas principalmente estabelecem padrões de proteção que descartam essa legislação como mera derivação do privilégio estatal e sugerem que ela é uma tentativa de acesso a uma situação de igualdade: uma ação afirmativa. Concluímos apresentando uma abordagem conceitual para a pesca de subsistência chilena, sugerindo sua utilidade para serem reconhecidos novos objetivos e direitos pesqueiros e ainda para influenciar a compreensão da alocação de recursos naturais.

Palavras-chave
Pesca de subsistência chilena; direito internacional dos direitos humanos; dignidade; povos indígenas; populações de pescadores.

Introduction

Fisheries law is a special municipal regulation related to the harvesting of hydrobiological resources or management of fisheries, aimed at conservation in a trade context.[1] Its foundation is the state's power to impose terms and conditions on natural resource allocation, also called *state privilege* (DAVIS and WAGNER, 2006, p. 478), traditionally executed through a property-related rights system (STEWART, 2004, p. 86). Although fisheries law has expanded its goals to satisfy food needs (KENT, 1997, p. 393) and the attainment of human welfare (WEERATUNGE *et al.*, 2014, p. 270), its foundation and regulatory processes have not suffered substantial changes (BARNES, 2009, p. 313).

This is the context where subsistence fishing appears. Generally speaking, it is a fishing construct related to the power of harvesting to survive, distinct from commercial fisheries mainly because of its diverse and less vulnerable species composition (LABROSSE, FERRARIS and LETOURNEUR, 2006, p. 218). However, both legal markers seem to contradict, both in contents and aims, the foreign legislation on subsistence fisheries (BRANCH *et al.*, 2002, p. 476), whose approach includes fulfilling basic food requirements (HAUCK *et al.*, 2002, p. 471) to prevent harvest sales (ISLAM and BERKES, 2016, p. 16). Additionally, some scholars have shown a confusion between subsistence fisheries and commercial activities, as in the case of artisanal or

1 Broader approaches at https://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0196.xml or https://www.nyulawglobal.org/globalex/International_Fisheries_Law.html (accessed on: 12 mar. 2020).

small-scale fishing (VAN DER BURGT, 2013, p. 96), which is related to domestic, native, or poverty uses, according to scarce and restricted studies (ISLAM and BERKES, 2016, p. 2).

Considering that different understandings of subsistence fisheries have been expressed, *e.g.* as a measure against illegal fishing (COLOMBIA, 2017), a particular fishing category (SENADO, 2017), or family rights (DAVIS and WAGNER, 2006, p. 491), then we have an unsolved issue in legal doctrine.

Following this confusing trend, the Chilean Fisheries and Aquaculture General Act (*Ley General de Pesca y Acuicultura* or LGPA) (NACIONAL, 1991) aims to promote resource conservation, requiring administrative registration, authorization, or permit (FUENTES, 2012, p. 553). However, its article 140 bis describes subsistence fisheries as the individual power to harvest for personal and family consumption, without requiring a prior administrative decision.[2]

Aims and requirements apart, this statute on subsistence fisheries has internal issues. First, it does not detail the right to food or to sell surpluses. In that sense, it limits harvesting *to satisfy consumption* but simultaneously allows the commercialization of its products. Second, it prohibits *massive* riggings and boat *propulsions* without explanation or auxiliary terminology, suggesting a context of precariousness. Finally, it indicates equal protection for indigenous peoples and other populations, ignoring the special regimen of indigenous peoples and the sectoral importance of their hunting traditions (ANTUNES *et al.*, 2019, p. 9), as well as the culture of coastal-adjacent populations that live from fisheries crops (DAVIS and WAGNER, 2006, p. 478), and that we will call fisherfolk populations.[3] Moreover, the statute describes itself as an exceptional management measure, without specifying the conditions to exercise this power by the public authorities.

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2 "Subsistence fishing shall be understood as the extractive activity carried out without massive fishing gear, or with fishing gear and without vessels, or with non-propulsion support vessels up to seven meters in length, whose result is the necessary amount to satisfy the consumption of the person who performs it and that of their family. It will also be considered subsistence fishing that carried out by native peoples, in the same terms defined in this article.
Subsistence fishing shall be exempted from the administration measures of this law in cases where the respective administrative act so provides and shall not be subject to the obligation of registration in the artisanal fishing register […].
Whoever performs subsistence fishing shall not be penalized. In the same way, they shall not be sanctioned when the remainder of the subsistence fishing not consumed by the person who performs it or by their family is marketed by the former, directly to the public or to the marketer who is the tenant of a free fair, in the amount and conditions that the regulation stipulates […]" (author's translation).

3 We use "fishers", "traditional fishers" or "local fishing populations" as synonyms, although there could be differences regarding adjacency, traditions and organization. We do not use the term "family" because of its inter-American diverse determination (Caso Atala Riffo y Niñas *v.* Chile, 2012) (OPINIÓN CONSULTIVA OC-21/14, 2014), nor will we refer to subsistence fishing in areas of benthic resource management (*Areas de Manejo de Recursos Bentónicos* or AMERB) by family members, since it might be a disproportionate parallel harvest compared to their power to obtain income.

Another consideration is the conflicting Chilean legal environment. On the one hand, the legislative discussion on subsistence fisheries was almost non-existent, and the alimentary or cultural aims of the LGPA are indirect, considering the concepts of commercial *human consumption* and *sustainable use* in articles 2, 3, and 4. On the other hand, Chilean constitutional rights are absent in relation to food, indigenous peoples and fisherfolks; the Chilean Constitutional Court has shifted over the years its jurisprudence about the normative force of treaties (NOGUEIRA, 2014, p. 430), and there are only a few administrative recognitions of indigenous non-land fisheries, such as the sea lions quota (ACUICULTURA, 2012, p. 9). Considering the existence of five shore-related indigenous people[4] and thousands of non-indigenous shore settlements[5] in the same Chilean regions, a potential tension seems highly predictable.

Despite this heterogeneous and imprecise tendency, the legal doctrine mentioned shows a consistent allusion to human protection. Given that these allusions have normative implications, we believe they relate fishing objectives to other pertinent orders, which could serve as a basis to integrate international human rights law as a substantial associated regulation.

This basis is transcendent. We are not proposing a human rights-based approach to improve fisheries governance (ALLISON *et al.*, 2012, p. 15), but rather we initially recognize human rights effects on fisheries law,[6] an idea which is consistent with the use and reception of international human rights by the Chilean Supreme Court, either specifying, interpreting or integrating those rights (NASH and NUÑEZ, 2017, p. 29).

Integrating international treaties on human rights, case law, and reports from United Nations agencies, our primary aim is to determine the scope of the Chilean legislation on subsistence fishing. Thereto, we begin by discussing its relation to the right to food, and how case law and the promotion of decent social conditions by the United Nations can operate as a trigger to expand protection. Then, we discuss the legislative prohibition of riggings and propulsion, why this element reveals economically precarious users, and how it relates to vulnerabilities and poverty as human rights concepts. Finally, we analyze the preferences imposed by indigenous peoples and fisherfolk populations regimes according to their property and cultural

4 Mapuches, Lafkenches, Kaweskar, Yaganes and Changos indigenous peoples: https://www.fucoa.cl/que-hacemos/que-hacemos/cultura/pueblo-originarios/#1518536272661-6761c607-1031, http://www.memoriachilena.gob.cl/602/w3-article-93787.html (accessed on: 12 mar. 2021).

5 http://www.sernapesca.cl/sites/default/files/subsector_artesanal_2017_0.pdf (accessed on: 12 mar. 2021).

6 Integration can be applied directly at the domestic level, since it is pertinent – by hierarchy, primacy or commitment (IGNATIUS and HAAPASAARI, 2018, p. 168) –, necessary – to unify interpretive criteria (NOGUEIRA, 2003, p. 403) –, and mandatory – according to the execution burden of the state. On the other hand, it can be applied indirectly through the principle of consistent interpretation (D'ASPREMONT, 2012, p. 144).

rights. Considering this, we hold that the international human rights sources partially clarify and suggest amendments to the Chilean legislation on subsistence fishing, but also introduce protection standards related to the search for equality among groups, which is by definition an affirmative action.

1. FOOD RIGHTS: FROM ADEQUACY TO A DIGNIFIED LIFE

As in other jurisdictions, the Chilean legislation on subsistence fishing does not express the degree of food protection. On the other hand, the international human rights legal doctrine has characterized the human right to food as inclusive, requiring *availability* and *accessibility*. Availability means getting food directly from natural resources or through its purchase, free of adverse substances and acceptable by one's cultural tradition, maintaining, adapting or strengthening diet diversity. On the other side, accessibility means having economic means to feed oneself, without compromising other basic needs (GRIECO and MUSSO, 2017, p. 377). State compliance is *adequate* when it meets both requirements.

The Chilean legislation seems to relate to the right to food when it justifies protection beyond mere food deprivation and enables limited sales to obtain other resources. Additionally, its references to retail sales and street fair regulatory development at the domestic level (DIPUTADOS, 2018) meet other relative goals, such as food security (PATEL, 2012, p. 1). Nevertheless, some tensions arise from analyzing the Chilean textual limitation to an *amount needed to satisfy consumption*.

This phrase could be a way to achieve the right to food *adequacy*, fulfilling development recommendations (RESTREPO, 2011, p. 128) and economic accessibility to other foods. Also, it would help to determine sales power and a minimum enjoyment of rights. However, this amount could be part of a configuration that exceeds the protection standard of the right to food. It is known that the food-related power of subsistence fishing begins with consumer satisfaction, leading to a subsequent sale power according to the right to food availability. However, this scope could be broader considering extended goals related to the right to food, such as a *dignified life* or *overcoming poverty*.

Regarding the first,[7] Inter-American case law indicates that the right to life extends to non-deprivation conditions that guarantee a *dignified existence*, generating minimum conditions of subsistence (GONZÁLEZ-SALZBERG, 2011, p. 144). On the other hand, the European Court of Human Rights interprets dignity as the respect for individual choice (MAVRONICOLA, 2015, p. 741), allowing to include the exercise of food powers in the right to life to ensure survival. Notwithstanding, the United Nations Human Rights Committee

7 Poverty will be considered further ahead.

has expressed the most extensive tendency, commenting that states must take all appropriate measures to address the general conditions in society that may prevent individuals from enjoying their right to live with dignity (HUMANOS, 2018). Using this statement as a basis, the Human Rights Committee case law later recognized *the right to enjoy a life with dignity*, hopefully implicating ground for justiciable claims and access to effective remedies (PORTER, 2020, p. 322). This tendency is consistent with a recent Chilean Supreme Court judgment which recognized the dignified life as a mandatory concept when the right to life seems threatened because of lack of drinking water (GALLARDO/ANGLO AMERICAN SUR S.A, 2021).

This expanded protection (to achieve adequate food to guarantee dignified conditions) appears to be contextually coherent with the statutory recognition of catch and sell activities as a lifestyle, and allows to comply with the necessary full effect of the right to food (WERNAART and VAN DER MEULEN, 2016, p. 86). Furthermore, it seems to discourage over-extraction by way of a better extractive configuration, as it happens with extractive limitations in certain traditional groups (ISLAM and BERKES, 2016, p. 14). However, incorporating relational elements forces us to examine the Chilean legislation on subsistence fishing from a personal and collective level.

2. Riggings, propulsion and an implicit economic vulnerability

Besides food, both the lack of *massiveness* in riggings and the absence of *propulsion* are requirements to comply with the Chilean statutory hypothesis.

Given that massiveness has no legal description, it seems reasonable to use the abovementioned food-related approach in order to legitimize equipment. However, this could be just an incomplete determination in the light of the alimentary dignity and the existence of traditional gear used to harvest large quantities of fish, with several anglers (*e.g.* beach seines). A similar consideration applies to massiveness as the capacity to capture two or more individuals, appearing as a punishment for effectiveness in fishing.

An alternative approach could be to determine such expression negatively and incorporate a subjective perspective. In this sense, the rigging will not be massive when it requires immediate and individual physical effort in a single use. This approach would rule out the legitimacy for gear that requires machinery and several anglers, limiting per-use harvest and showing consistency with the right to food.

Propulsion also lacks a statutory definition. Nevertheless, unlike massiveness, the history of Chilean legislation on subsistence fishing excludes machinery or technology, favoring traditional use and poor extractive communities. To be consistent with that, the technical understanding of propulsion as technology, specifically propellers (CARLTON, 2019, p. 11), should be considered an appropriate answer, as with the lack of massiveness.

At this point, considering the alimentary context and the prohibition of rigging and propulsion, the Chilean legislation on subsistence fishing seems to describe users' lack of

capacities concerning consequences or economic ties. This is not an alien idea in fisheries law. Precisely, fisheries doctrine has characterized its subjects as *precarious* regarding the absence of health protection (PENA and GOMEZ, 2014, p. 4690) or gender-motivated (BENNETT, 2005, p. 452), while others have described subsistence fishers as *poor* (BRANCH *et al.*, 2002, p. 476). However, what is interesting is how these descriptions resemble certain human rights treatment alternatives, such as *vulnerabilities* and *poverty*.

Vulnerability is a term that has been criticized for its relational and complex nature (LAVRYSEN, 2015, p. 321) and conventional contradictions (BOSSUYT, 2016, p. 742). Nevertheless, it reflects structural situations that produce inequality or lack of recognition or participation for certain groups (BELOFF and CLÉRICO, 2016, p. 145), which can be the case of subsistence fishers. In this sense, human rights case law links those situations to related obligations, considering vulnerabilities as the foundation of a positive obligation to protect food, creating conditions compatible with dignity (GONZÁLEZ-SALZBERG, 2011, p. 145), and describing them as an attack to dignity when they derive from the financial condition, turbulent history, and constant uprooting of a minority (CASE OF D.H. AND OTHERS v. THE CZECH REPUBLIC (GS) application num. 57325/00, 2007, p. 64).

A more direct approach comes from *poverty*. Recognizing it as a topic by itself in legal doctrine (from substantial[8] to rights-based considerations[9]), we will only focus on related case law. As noted by the Inter-American Court of Human Rights, a person's (unfavorable) economic position is transcendent as a cause or an increase in inequality and structural discrimination (CASO TRABAJADORES DE LA HACIENDA BRASIL VERDE *V.* BRASIL, 2016, p. 86, 87). The European Court of Human Rights introduced the lack of economic capacities as an element to determine if a state intervention was proportional (LAVRYSEN, 2015, p. 302). Both expressions, regardless of their differences, show poverty as an economic-related element of mandatory consideration for the state when it comes to structural discrimination, mainly to prevent other severe human rights violations against vulnerable populations, such as fisherfolk populations.

At this point it would be attractive to give a special subsistence fisheries treatment to women, LGBTIQ+, disabled, or elderly people to ensure their accessibility, considering food as a contextual problem (WERNAART and VAN DER MEULEN, 2016, p. 75). However, subsistence fisheries objectives and limits seem to be related to a lack of economic resources, which initially rules out this legislative provision as an effective tool against permanent or

8 Related to the capability to enjoy certain freedoms (SEN, 1992, p. 111), or the inexistence of or inequality in access to basic services (SANO, 2020, p. 20).

9 A goal with respect to coastal populations for sustainable development goals; a violation of human rights basic necessities (POGGE, 2017, p. 53; HUMANOS, 2017, p. 11).

transversal needs. But there are two exceptions according to the Chilean legislation on subsistence fishing: indigenous peoples and fisherfolk populations.

3. The special indigenous and fisherfolk statutes

Formal equal access for indigenous peoples and other groups, as well as the omission of fisherfolk populations from the Chilean legislation, raise issues about implications, normative conflicts, and solutions. Hereinafter, we will discuss these issues in three sections according to the subject-matter.

3.1. Indigenous people culture and property as a source of preference

It seems intuitive to accept a formal matching between the different subsistence fisheries groups according to the principles of equality before the law or non-discrimination. However, this approach ignores indigenous people's special relationship with the land and their historical differences. Furthermore, Chile is part of the Convention 169 of the International Labor Organization (ILO), an instrument that establishes the right to access traditional resources for physical, cultural, or economic reproduction, or to the benefits derived from them. It also recognizes indigenous people's activities related to their subsistence economy to maintain their culture, self-sufficiency, and economic development.[10] Thus, a non-substantial recognition of such rights in the Chilean case could appear as a breach of such agreement.

The Chilean Constitutional Court has expressly accepted human rights treaties only as *supra legal*, as in the case of the Convention 169 on indigenous consultation (HENRÍQUEZ, 2013, p. 230). But it has also declared that consultation must elucidate within a margin delimited by International Labour Organization experience, guides, and good practices (CHILE, 2013, p. 37). In other words, this Court uses and values that institution's normative legacy to interpret consultation (TRONCOSO, 2013, p. 140), making it reasonable to estimate a similar interpretive authority in relation to other access mechanisms, such as subsistence fisheries. Given that the ILO considered indigenous subsistence economy as a pathway to the integration and recognition of the strength and validity of traditional cultures (SWEPSTON, 2018, p. 186), a restricted interpretation of subsistence mechanisms through equal access appears highly improbable.

Having integrated indigenous rights according to international law, a second obstacle appears at the municipal level. Subsistence fisheries, unlike those activities with spatial ties according to Chilean Act 20.249 (NACIONAL, 2008), seem related to activities which provide

10 Nor does protecting fishing as a cultural heritage according to the Convention to Safeguard Intangible Heritage. See an analysis regarding fisherfolk populations *infra*.

indigenous peoples with powers to exploit a delimited coastal territory. In this regard, they could be seen as two kinds of access mechanisms, mediating functional and equal rights in the case of subsistence fisheries, and spatial and exclusive rights over the marine areas recognized by the state. However, a dual understanding hardly passes human rights scrutiny because the basis of both mechanisms is the cultural and customary connection of indigenous peoples to their land, also called *distinctive connection* (DIERGARTEN, 2019, p. 49), not the territorial recognition by the state (ALVARADO, 2007, p. 614). Moreover, if the disposition of their resources (CASO DEL PUEBLO SARAMAKA *V.* SURINAM, 2007, p. 29) comes from customary property (CASO DE LA COMUNIDAD MAYAGNA (SUMO) AWAS TINGNI *V.* NICARAGUA, 2001, p. 140) or sovereignty over their natural resources (ALAM and AL FARUQUE, 2019, p. 82), a complete distinction between mechanisms and effects is doubtful.

As a result of the coordination between the mention to indigenous peoples in subsistence fishing legislation and their special rights derived from their culture (BANKS, 2010, p. 472), a preferential access to those resources is potentially accepted. In the same way, the normative specialty strongly suggests that any tension between indigenous peoples and the right of other groups to access would be solved by favoring indigenous peoples (ISLAM and BERKES, 2016, p. 2), with the exception of fisherfolk populations and environmental rights.

3.2. Peasants, cultural and dignified life as fisherfolk preference basis

Fisheries law understands fisherfolk populations as groups with adjacency and coastal food crop history (DAVIS and WAGNER, 2006, p. 478). Nevertheless, the Chilean legislation on subsistence fishing not only ignores limits or preferences but does not mention those populations as entrants. An explanation for this omission would be to accept that the state does not understand that a *distinctive connection* exists between fisherfolk populations and the land. However, the recognition of a land connection for fisherfolk populations as peasants seems to be developing based on sovereignty (CLAEYS, 2015, p. 15), as expressed in the United Nations Declaration on the Rights of Peasants (GA, 2018). Furthermore, faced with the need to recognize fisherfolk identity and its importance for coastal administration (KHAKZAD and GRIFFITH, 2016, p. 96), it is reasonable to accept that at least some of those populations could already possess that connection as a result of their long-standing presence, even independent of the concept of peasants and their history of adjacency.

Notwithstanding, land-linked rights are just one aspect. The other aspect is related to cultural rights. Recognizing the association of available and nearby resources with the values and traditions of fisherfolk populations (DAVIS and WAGNER, 2006, p. 478), we should accept fisherfolk populations as special users based on food and cultural rights, in coordination with the *cultural acceptability* of food and the right to take part in their cultural life, specifically to access and enjoy their own cultural heritage and identity (HRC, 2016, p. 2). In this sense, this coordination could allow to promote their opportunity to enjoy their inheritance

(*accessibility*) and use their assets or resources (*availability*) in consonance with the obligations imposed by the Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005).

It is imperative to recognize creation processes and traditional practices, artifacts, or knowledge transmission (such as certain crops, gears, and resource extraction). In this sense, Europe has already legitimized state measures that seek to preserve a cultural heritage due to the importance of its access (D'ADDETTA, 2017, p. 480), while at the Inter-American level some judges, such as Cançado Trindade, have expressly accepted this right for indigenous peoples (CASO COMUNIDAD INDÍGENA YAKYE AXA *V.* PARAGUAY, 2006). Nonetheless, the preservation of fisherfolk culture could be a specific state burden in light of the respect, protection, and effectiveness of peasant soft law, which includes equal or priority treatment in agrarian reforms and allowing access to resources necessary to enjoy adequate living conditions (GA, 2018). Admitting that accessibility, adjacency, necessity and adequate living conditions do not indicate priority or preference in themselves, the *priority treatment* obligation seems to provide fisherfolk populations with recognition and advantageous access to those resources when facing structural legislative changes regarding the harvest of natural resources, such as subsistence fisheries.

Along with group-related effects of cultural rights, there are also recognized connections between the construction of cultural heritage and one's own identity (LENZERINI, 2011, p. 108), particularly concerning how people define themselves, express themselves, and want to be recognized, which is also known as the *right to cultural identity* (FAUNDES, 2020, p. 83). Considering the strong conventional protection of this right through the non-denial of enjoyment of their own culture (ASSEMBLY, 1966) and immaterial heritage protection (UNESCO, 2003), we can reasonably argue that an omission of this right in an appropriate mechanism could affect the identity of these people and violate the necessary promotion of dignified social conditions, guarantee of individual living conditions and, consequently, the right to (dignified) life, which could be in harmony with the accepted interdependence between the right to life and economic, social and cultural rights (PORTER, 2020, p. 320).

At this point, we must concede that the rights of fisherfolk populations firmly advocate for the promotion of their access. Additionally, those populations are also vulnerable and can be culturally affected. Notwithstanding that, the question is if this allows to conceive that the access of fisherfolk populations could be as intense as that of indigenous people, originating a similar preference according to their backgrounds.

We answer this question affirmatively. The only distinction would be that the access of fisherfolk populations seems to begin with survival and reaches a commercial expectation that satisfies fishing customs, as a result of the ideas that connect fisherfolk populations to resources, such as access protection for local populations based on the *economic significance* of the land (DIERGARTEN, 2019, p. 52) or a new understanding of *equality* according to the meaning and distribution of goods (LANG, 2018, p. 349).

Cultural considerations are also valuable. While respecting accepted characteristics of fisherfolk populations (KHAKZAD and GRIFFITH, 2016, p. 111), they give administrative operators some scope to enforce and monitor subsistence fisheries proportionally.

3.3. Resolving tensions between rights and the burden of proof

As regards preferential position, at least two tensions and one question arise. Regarding the former, there could be a conflict between the access rights of indigenous peoples and fisherfolks, and later between those rights and environmental obligations. On the other hand, there could be doubts about who should prove the compliance with the subsistence fisheries hypothesis.

With no absolute rights involved, and with a view to equating the protection of indigenous people and fisherfolk populations, a response to the tension between special statutes could be to accommodate them preventively. A plausible alternative to doing this is to set harvest territories and extractive periods alternatively for each group, as it happens between commercial and subsistence anglers in Canada (ISLAM and BERKES, 2016, p. 13), reconciling the special rights of similar groups.[11]

Faced with the need to reconcile environmental protection obligations with indigenous peoples' rights over their resources (MORGUERA, 2019, p. 1102), the question is to what extent and in what cases this is possible. With property as a legal basis, Inter-American case law expresses that a state could proportionally limit a tradition that may substantially damage other rights, as long as it does not deny survival to the people (CASO DEL PUEBLO SARAMAKA *V.* SURINAM, 2007, p. 40). Furthermore, the Inter-American Commission on Human Rights has demanded a *rational connection* between environmental protection and resource restrictions (CASO DE LOS PUEBLOS KALIÑA Y LOKONO *V.* SURINAM, 2015, p. 24). Even though this case law does not deal with fisherfolk populations, we believe its logic seems equally appropriate. It displays the idea that a limitation is necessary to avoid substantial harm to third parties, even in the face of intense and dominant rights. Therefore, it is reasonable to assimilate indigenous property with fisherfolk cultural rights based on their analogous intensity and dominance, in order to restrict environmentally harmful fisheries.

An example of a cultural danger-based limiting tool is the *harmful tradition*. This idea, taken from women's human rights, refers to a custom with negative consequences for health and/or with adverse social and political implications (GLOVER *et al.*, 2018, p. 45), authorizing the state to interrupt substantially harmful activities. In this regard, the existence of fishing traditions that undermine environmental rights, including health, could legitimize their rejection, limitation, or condition according to the severity of the damage (CHILD,

11 This would mainly apply outside indigenous lands, otherwise territorial factors could destabilize equality.

2014, p. 15). Interestingly, this also helps to quell discussions about preference between environmental and indigenous peoples rights, as well as its consideration as an attack on cultural and biological diversity (LYVER and TYLIANAKIS, 2017, p. 142).

Additionally, we can confirm environmental access limitations through sovereignty over natural resources (CCPR, p. 6). In this regard, some scholars have said that environmental sustainability, as an objective of sustainable development, could affect the concept of *sovereignty* (GUMPLOVA, 2014, p. 110). In our view, this would force us to adapt the different types of harvest according to environmental needs, obliging the state to prevent or eliminate the cause of damage, including mechanisms and methods of extraction. A similar logic can be applied to indigenous sovereignty over their natural resources (ALAM and AL FARUQUE, 2019, p. 84), proportionally yielding to environmental risks per no-harm international law obligation.

Nothing contained in this topic is enough if we do not reference the fulfillment of the subsistence fisheries hypothesis. Initially, it seems that compliance should be presumed when a user cannot (due to survival) or does not want (to avoid undermining their property or culture) to carry out another activity to obtain hydrobiological resources. Consequently, a high negative standard of proof is required for the user's context, such as lack of vulnerability and inexistence of a preferred group membership. In this sense, limiting rights related to a dignified life would require a reason for the knowledge of the state (PASQUALUCCI, 2008, p. 31), but with a nuance: the state obligation to protect its citizens seems to impose a prior and implicit duty to seek and maintain information on vulnerable fisher subjects.

In other words, we defend that a public authority is able to demonstrate that it has followed the appropriate procedures and applied the guarantees required by law when it produces evidence of actions carried out regarding personal guarantees (AHMADOU SADIO DIALLO(REPUBLIC OF GUINEA *V.* DEMOCRATIC REPUBLIC OFTHE CONGO), 2010, p. 660, 661), especially when there is a reasonable expectation of knowledge.

4. Subsistence fisheries as an affirmative action

Facing enforcement of decent conditions, recognizing precarious users, and encouraging preferential rights, we can assert that the legislation on subsistence fishing is not a traditional fishery regulation nor a simple liability exception. In the same sense, proposals concerning its nature as a measure against illegal fishing, a fishing category or a collective right seem inappropriate.

First, the legislation on subsistence fishing does not seem *per se* to foster compliance or avoid illegalities, especially when the statute recognizes activities but does not mandate them. However, even when it does so, a formal answer related to the imposition of a state allocation prevents us from obtaining a minimal nature that considers human rights without confusing regimes.

Another argument for discarding that approach comes from admitting that subsistence fisheries do not apply a traditional logic regarding authorizations and ownership. Expressions of alimentary, dignity, and cultural-related interest defy considerations related to state administration or fishery category. Also, subsistence fisheries express personal, direct, and family access as well as enjoyment rights, which is a more complex and dynamic legal expression than the administrative duality between individual and collective rights.

If we acknowledge that the Chilean legislation on subsistence fishing declares and protects human rights, it appears rather as a human rights protection tool. However, it is still necessary to determine its motives in order to understand its powers. Fortunately, the same human rights described above suggest that the ultimate goal of the Chilean legislation on subsistence fishing is the protection from situations of vulnerability and the promotion of dignified social conditions.

We accept that both motives or justifications could correspond to conventional human rights obligations, sidelining any other nature. Nevertheless, when it comes to redistributive intentions, we know states have the burden to break down barriers that prevent access to a situation of minimum material equality. In the same way, the legislation on subsistence fishing aims to break down certain economic barriers for users, overcome vulnerability, and promote certain social conditions. Therefore, we could be facing a deliberate state decision to favor minorities and correct inequalities. In other words, we are reasonably talking about an affirmative action, according to the prevailing doctrine (GOMEZ and PREMDAS, 2013, p. 6).

This proposition delivers immediate benefits. It gives to the legislation on subsistence fishing a validity (it is expressed by fisheries law but emanates from human rights), a nature (it is an affirmative action), an intention (redistribution), a foundation (to break down barriers), and legitimacy (as rational acceptability). In addition, it recognizes a particular meaning of those assets and a situation of horizontal injustice in relation to hydrobiological resources. Finally, it expresses that subsistence fisheries ownership would be conditional to relational elements,[12] such as the subjects' material needs and its relationship with the environment.

However, it is still necessary to operationalize this extension of the legislation on subsistence fishing. One proposal could be to allow a degree of deference that determines compliance according to a concrete human rights domestic conduct. There are no relevant developments of concepts related to the dignified life in Chile. But there are other concepts related to food prices and family conditions, such as *minimum monthly income*, *household social registry*, and *poverty indicators*. Starting from a technical basis, two approaches could be envisaged to determine consumption and sales: regulating weighting tables with transfer maximums (a

12 Fisheries property does not generally include this element (SERDY, 2018, p. 282).

dynamic approach); or determining maximum sales quantities (a *static* approach), regardless of susceptible fisheries or street fair users' determination.

Final considerations

The Chilean legislation on subsistence fishing appears textually restricted. However, human rights treaty law, case law and some United Nations reports modify this diagnosis, expressing a power to harvest edible hydrobiological resources on the immediate coast under national jurisdiction, through personal and direct use of equipment, without vessels (or with vessels up to 7 meters in length), machines and propellers. The objective of the legislation seems to be a necessary amount of resources to satisfy the family's food necessities and promote their dignified life. This extends to commercial rights, recognizing economic vulnerability as an essential factor to determine beneficiaries such as street fair sellers. Additionally, the mention to indigenous peoples and the recognition of fisherfolk populations express preferences due to their property and cultural rights.

Accordingly, human rights help to precise the Chilean legislation on subsistence fishing concerning alimentary rights and the prohibition of riggings and propulsions. They also reframe the textual meaning of the legislation concerning indigenous equality and the omission of fisherfolks, which limits the freedom of fishing and the accommodation of entrants. More importantly, they introduce different protection standards (*e.g.* enjoying a dignified life or cultural heritage) and particular objectives (*e.g.* overcoming vulnerability and promoting decent social conditions). Consequently, we can discard the legislation on subsistence fishing as a mere expression of state privilege, since there is no completely autonomous administrative decision, notwithstanding the capacity of the legislation to extend those protections in order to support equality and protect minorities.

Derivatively, we can conjecture general consequences. First, the Chilean legislation on subsistence fishing seems to unveil new fishing objectives (*e.g.* cultural protection) and fisheries property characteristics, different than control or exclusiveness. It could also promote human rights recognition at the domestic level (*e.g.* food and non-indigenous legal rights) and their subsequent interpretation. Finally, it seems plausible to reproduce this exercise in other jurisdictions according to their constitutional and regional standards, recognizing different socio-economic models and even reconsidering resource allocation as distribution according to needs and relational elements.

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REFERENCES

ACUICULTURA, S. d. P. y. Informe Técnico (R.Pesq.) N° 218. Subsecretaria de Pesca y Acuicultura, Valparaíso, 2012.

AHMADOU Sadio Diallo (Republic of Guinea *v*. Democratic Republic of the Congo): International Court of Justice, 2010.

ALAM, S.; AL FARUQUE, A. From sovereignty to self-determination: emergence of collective rights of indigenous peoples in natural resources management. *The Georgetown Environmental Law Review*, v. 32, p. 59-84, 2019.

ALLISON, E. H. *et al.* Rights-based fisheries governance: from fishing rights to human rights. *Fish and Fisheries*, 13, n. 1, p. 14-29, 2012.

ALVARADO, L. Prospects and challenges in the implementation of indigenous peoples human rights in international law: lessons from the Case Awas Tingni v. Nicaragua. *Arizona Journal of International & Comparative Law*, v. 24, n. 3, 2007.

ANTUNES, A. P. *et al.* A conspiracy of silence: subsistence hunting rights in the Brazilian Amazon. *Land Use Policy*, v. 84, p. 1-11, 2019.

ASSEMBLY, U. N. G. International Covenant on Civil and Political Rights, 1966.

BANKS, N. International human rights law and natural resources projects within the traditional territories of indigenous peoples, human rights, natural resources, and indigenous peoples. *Alberta Law Review*, v. 47, n. 2, p. 457-495, 2010.

BARNES, R. *Property rights and natural resources*. Oregon: Hart, 2009.

BELOFF, M.; CLÉRICO, L. Derecho a condiciones de existencia digna y situación de vulnerabilidad en la jurisprudencia de la Corte Interamericana. *Estudios Constitucionales*, v. 14, p. 139-178, 2016.

BENNETT, E. Gender, fisheries and development. *Marine Policy*, v. 29, n. 5, p. 451-459, 2005.

BOSSUYT, M. Categorical rights and vulnerable groups. *The GeorgeWashington International Law Review*, v. 4, n. 48, 2016.

BRANCH, G. M. *et al*. Defining fishers in the South African context: subsistence, artisanal and small-scale commercial sectors. *South African Journal of Marine Science*, v. 24, n. 1, p. 475-487, 2002.

CARLTON, J. S. The early development of the screw propeller. *In*: CARLTON, J. S. (ed.). *Marine propellers and propulsion*. 4th edition. Oxford: Butterworth-Heinemann, 2019. p. 1-9.

CASE of D.H. and others *v.* The Czech Republic (GS) application num. 57325/00: Grand Chamber, European Court of Human Rights, 2007.

CASO Atala Riffo y Niñas *v.* Chile: Corte Interamericana de Derechos Humanos, 2012.

CASO Comunidad indígena Yakye Axa *v.* Paraguay: Corte Interamericana de Derechos Humanos, 2006.

CASO de la Comunidad Mayagna (Sumo) Awas Tingni *v*. Nicaragua: Corte Interamericana de Derechos Humanos, 2001.

CASO de los Pueblos Kaliña y Lokono *v.* Surinam: Corte Interamericana de Derechos Humanos, 2015.

CASO del Pueblo Saramaka *v.* Surinam: Corte Interamericana de Derechos Humanos, 2007.

CASO Trabajadores de la Hacienda Brasil Verde *v.* Brasil: Corte Interamericana de Derechos Humanos, Serie C, núm. 318, 2016.

CCPR. CCPR General comment No. 12 [21]: 13 March 1984.

CHILD, C. o. t. E. o. D. a. W. a. C. o. t. R. o. t. General recommendation No. 31 of the Committee on the Elimination of Discrimination against Women and general comment No. 18 of the Committee on the Rights of the Child on harmful practices, adopted jointly, recommends legislating and efficiently enforcing prohibitions of such activities. 2014.

CHILE, T. C. D. 2387 (acumulada con Rol N° 2388-12) Requerimiento presentado por un grupo de Senadores, que representan más de la cuarta parte de los miembros en ejercicio del Senado, para que se declare la inconstitucionalidad del artículo 1°, numerales 20, 3, letra c) y 48 del proyecto de ley que modifica, en el ámbito de la sustentabilidad de recursos hidrobiológicos, acceso a la actividad pesquera industrial y artesanal y regulaciones para la investigación y fiscalización, la Ley General de Pesca y Acuicultura contenida en la Ley N° 18.892 y sus modificaciones, incluido en el Boletín Nº 8091-21, 2013.

CLAEYS, P. The Right to land and territory: new human right and collective action frame. *Revue Interdisciplinaire d'Études Juridiques*, v. 75, n. 2, p. 115-137, 2015.

COLOMBIA, C. d. LEY 1851 DE 2017 por medio de la cual se establecen medidas en contra de la pesca ilegal y el delito de ilícita actividad de pesca en el territorio marítimo colombiano.

D'ADDETTA, M. The right of access to and enjoyment of cultural heritage. *In*: PINTON, S. A. Z., Lauso (ed.). *Cultural heritage. Scenarios 2015-2017*. Venezia: Edizioni Ca'Foscari, 2017.

D'ASPREMONT, J. The systemic integration of International Law by domestic Courts: domestic judges as architects of the consistency of the international legal order. *In*: FAUCHALD, O. K.; NOLLKAEMPER, A. (eds.). *The practice of international and national courts and the (de-)fragmentation of international law*. Oxford: Hart Publishing, 2012. p. 141-165.

DAVIS, A.; WAGNER, J. A right to fish for a living? The case for coastal fishing people's determination of access and participation. *Ocean & Coastal Management*, v. 49, n. 7, p. 476-497, 2006.

DIERGARTEN, Y. Indigenous or out of scope? Large-scale land acquisitions in developing countries, international human rights law and the current deficiencies in land rights protection. *Human Rights Law Review*, v. 19, n. 1, p. 37-52, 2019.

DIPUTADOS, C. d. Legislatura 366ª, Sesión 117ª, en miércoles 19 de diciembre de 2018.

FAUNDES, J. Derecho fundamental a la identidad cultural de los pueblos indígenas, configuración conforme el derecho internacional y perspectivas de su recepción en Chile. *Revista Ius et Praxis*, v. 26, n. 1, p. 77-100, 2020.

FUENTES, J. Las autorizaciones de pesca y el derecho de propiedad. *Revista de Derecho de la Pontificia Universidad Católica de Valparaíso*, FXXXVIII, p. 543-571, 2012.

GA. United Nations Declaration on the Rights of Peasants and Other People Working in Rural Areas. United Nations. 2018.

GALLARDO/ANGLO AMERICAN SUR S.A.: Corte Suprema de Chile, 2021.

GLOVER, J. *et al*. Persistence and resistance of harmful traditional practices (HTPs) perpetuated against girls in Africa and Asia. *Journal of International Women's Studies,* v. 19, n. 2, p. 44-64, 2018.

GOMEZ, E.; PREMDAS, R. Introduction: affirmative action, horizontal inequalities, and equitable development. *In*: GOMEZ, E.; PREMDAS, R. (ed.). *Affirmative action, ethnicity, and conflict*. Londres: Routledge, 2013. p. 1- 26.

GONZÁLEZ-SALZBERG, D. A. Economic and social rights within the Inter-American human rights system: thinking new strategies for obtaining judicial protection. *Revista Colombiana de Derecho Internacional*, v. 18, p. 117-154, 2011.

GRIECO, C.; MUSSO, F. An international and European perspective on the right to food and to adequate food for elderly people and its justiciability. *Food Common Policy and Strategies*, 2017.

GUMPLOVA, P. Restraining permanent sovereignty over natural resources. *Enrahonar*, v. 53, p. 93-114, 2014.

HAUCK, M. *et al.* Perceptions of subsistence and informal fishers in South Africa regarding the management of living marine resources. *South African Journal of Marine Science*, v. 24, n. 1, p. 463-474, 2002.

HENRÍQUEZ, M. Comentario a la sentencia del Tribunal Constitucional que asigna rango infraconstitucional a los tratados de derechos humanos. *Revista de Derecho Escuela de Postgrado*, v. 3, p. 227-234, 2013.

HRC. Resolution adopted by the Human Rights Council on 30 September 2016 33/20. Cultural rights and the protection of cultural heritage. United Nations, 2016.

HUMANOS, C. d. D. Observación General No. 36 (2018), Artículo 6: derecho a la vida. Pacto Internacional de Derechos Civiles y Políticos, 2018.

HUMANOS, C. I. d. D. Comisión Interamericana de Derechos Humanos, Informe sobre pobreza y derechos humanos en las Américas. OEA, 2017.

IGNATIUS, S.; HAAPASAARI, P. Justification theory for the analysis of the socio-cultural value of fish and fisheries: the case of Baltic salmon. *Marine Policy*, v. 88, p. 167-173, 2018.

ISLAM, D.; BERKES, F. Can small-scale commercial and subsistence fisheries co-exist? Lessons from an indigenous community in northern Manitoba, Canada. *Maritime Studies*, v. 15, n. 1, 2016.

KENT, G. Fisheries, food security, and the poor. *Food Policy*, v. 22, n. 5, p. 393-404, 1997.

KHAKZAD, S.; GRIFFITH, D. The role of fishing material culture in communities' sense of place as an added-value in management of coastal areas. *Journal of Marine and Island Cultures*, v. 5, n. 2, p. 95-117, 2016.

LABROSSE, P.; FERRARIS, J.; LETOURNEUR, Y. Assessing the sustainability of subsistence fisheries in the Pacific: the use of data on fish consumption. *Ocean & Coastal Management*, v. 49, n. 3, p. 203-221, 2006.

LANG, R. *Complex equality and the Court of Justice of the European Union*. Leiden: Brill Nijhoff, 2018.

LAVRYSEN, L. Strengthening the protection of human rights of persons living in poverty under the ECHR, *Netherlands Quarterly of Human Rights*, v. 33, n. 3, p. 293-325, 2015.

LENZERINI, F. Intangible cultural heritage: the living culture of peoples. *European Journal of International Law*, v. 22, n. 1, p. 101-120, 2011.

LYVER, P. O. B.; TYLIANAKIS, J. M. Indigenous peoples: conservation paradox. *Science*, v. 357, n. 6347, p. 142-143, 2017.

MAVRONICOLA, N. Crime, punishment and article 3 ECHR: puzzles and prospects of applying an absolute right in a penal context. *Human Rights Law Review*, v. 15, n. 4, p. 721-743, 2015.

MORGUERA, E. Under the radar: the role of fair and equitable benefit-sharing in protecting and realising human rights connected to natural resources. *The International Journal of Human Rights*, v. 23, n. 7, p. 1098-1139, 2019.

NACIONAL, C. *Decreto 430 fija el texto refundido coordinado y sistematizado de la Ley N° 18.892, de 1989 y sus modificaciones,* Ley General de Pesca Y Acuicultura, del Ministerio de Economía, Fomento y Reconstruccíon, 1991.

NACIONAL, C. *Ley N° 20249, crea el espacio costero marino de los pueblos originarios*, 2008.

NASH, C.; NUÑEZ, C. Los usos del Derecho Internacional de los Derechos Humanos en la jurisprudencia de los Tribunales Superiores de Justicia en Chile. *Estudios Constitucionales*, v. 15, n. 1, p. 15-54, 2017.

NOGUEIRA, H. Los derechos esenciales o humanos contenidos en los tratados internacionales y su ubicación en el ordenamiento jurídico: Doctrina y jurisprudencia. *Revista Ius et praxis*, v. 9, p. 403-466, 2003.

NOGUEIRA, H. El valor jurídico asignado por la jurisprudencia del Tribunal Constitucional al derecho convencional internacional de los derechos humanos y su fuerza normativa en el periodo 2006-2013. *Revista Chilena de Derecho*, v. 41, n. 2, p. 409-435, 2014.

OPINIÓN CONSULTIVA OC-21/14: Corte Interamericana de Derechos Humanos, 2014.

PASQUALUCCI, J. M. The right to a dignified life (vida digna): the integration of economic and social rights with civil and political rights in the Inter-American human rights system. *Hastings International & Comparative Law Review*, v. 31, n. 1, 2008.

PATEL, R. C. Food sovereignty: power, gender, and the right to food. *PLOS Medicine*, v. 9, n. 6, e1001223, 2012.

PENA, P. G. L.; GOMEZ, C. M. Health of subsistence fishermen and challenges for Occupational Health Surveillance. *Ciência & Saúde Coletiva*, v. 19, p. 4689-4698, 2014.

POGGE, T. Introduction. *In*: POGGE, T. (ed.). *Freedom from poverty as a human right:* who owes what to the very poor? Oxford: Oxford University Press, 2017.

PORTER, B. Interdependence of human rights. *In*: DUGARD, J. *et al.* (ed.). *Research handbook on economic, social and cultural rights as human rights*. Cheltenham: Edward Elgar, 2020.

RESTREPO, O. El derecho alimentario como derecho constitucional. Una pregunta por el concepto y estructura del derecho constitucional alimentario. *Opinión Jurídica*, v. 8, n. 16, 2011.

SANO, H.-O. How can a human rights based approach contribute to poverty reduction? The relevance of human rights to sustainable development goal one. *In*: KALTENBORN, M. *et al*. (ed.). *Sustainable development goals and human rights*. Cham, Switzerland: Springer, 2020.

SEN, A. *Inequality re-examined*. Cambridge, Massachusetts: Harvard University Press, 1992.

SENADO. *Diario de sesiones del senado*. Legislatura 364ª sesión 87ª, en martes 7 de marzo de 2017, ordinaria, 51 p.

SERDY, A. *The new entrants problems in international fisheries law*. Cambridge: Cambridge University Press, 2018.

STEWART, C. *Legislating for property rights in fisheries*. Rome: Food and Agriculture Organization of the United Nations, 2004.

SWEPSTON, L. *The foundations of modern International Law on indigenous and tribal peoples.* The preparatory documents of the Indigenous and Tribal Peoples Convention, and its development through supervision. Leiden: Brill Nijhoff, 2018.

TRONCOSO, C. El proyecto de modificación a la «Ley de Pesca» y el convenio 169. Reflexiones en torno a un fallo del tribunal constitucional chileno. *Revista Tribunal Internacional*, v. 2, n. 4, p. 139-145, 2013.

UNESCO. Convention for the Safeguarding of the Intangible Cultural Heritage, 2003.

UNESCO. Convention on the Protection and Promotion of the Diversity of Cultural Expression, 2005.

VAN DER BURGT, N. *The contribution of International Fisheries Law to human development*. Leiden: Brill Nijhoff, 2013.

WEERATUNGE, N. *et al.* Small-scale fisheries through the wellbeing lens. *Fish and Fisheries*, v. 15, n. 2, p. 255-279, 2014.

WERNAART, B.; VAN DER MEULEN, B. The right to food in International Law with case studies from the Netherlands and Belgium. *In*: STEIER, G.; PATEL, K. K. (ed.). *International Food Law and Policy*: Springer, 2016.

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Eduardo Roig Monge

Bachelor in Legal Sciences UBO (Chile). Master in Legal Sciences UPF (Spain). Counsellor at Servicio Nacional de Pesca y Acuicultura R.M. (Chile).

ejrmonge@gmail.com