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Diplomatic restorative justice in international fisheries enforcement: Indonesia's policy innovation in addressing transnational illegal fishing

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Abstract: The aim of this study is to address challenges in resolving illegal fishing incidents by foreign nationals in Indonesian waters. The proposed diplomatic restorative justice (DRJ) model combines restorative justice principles with diplomatic negotiations to resolve transnational fisheries violations. The model emphasises bilateral negotiations, admission of responsibility by perpetrators, compensation for environmental damages, and formal agreements as alternatives to criminal prosecutions. Using normative legal research with conceptual analysis and case studies, the study finds that DRJ provides an effective, efficient, and humane alternative to punitive enforcement, while upholding national sovereignty and international law. This approach also provides a structured framework for interstate cooperation in maritime governance and conflict resolution.

Keywords: restorative justice; diplomacy; illegal fishing; non-judicial settlement; transnational justice; Indonesia.

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1 Introduction

Law enforcement against illegal fishing by foreign nationals (FNs) in Indonesia has long been a complex issue. Since the implementation of the zero-tolerance policy toward illegal fishing, the Indonesian government has adopted a repressive approach involving vessel seizure and criminal prosecution of foreign crew members (Ministry of Marine Affairs and Fisheries of the Republic of Indonesia, 2021). In 2024, the Ministry of Marine Affairs and Fisheries (KKP) apprehended 240 illegal fishing vessels, 24 of which were foreign-flagged. This demonstrates the government’s continued commitment to combating these illegal practices (HUMAS DITJEN PSDKP, 2024). Although such measures may serve as a deterrent, they have also placed pressure on the judicial system, increased bilateral tensions, and reduced opportunities for peaceful resolution. Therefore, enforcement of Law No. 45 of 2009 on Fisheries, which amended Law No. 31 of 2004 and earlier Law No. 5 of 1985, remains essential but is no longer sufficient on its own.

To maintain friendly relations among states, resolving illegal fishing cases requires more than a repressive approach. It must also incorporate the principles of diplomatic law. In international law, these principles are primarily governed by two multilateral conventions: the Vienna Convention on Diplomatic Relations (1961) and the Vienna Convention on Consular Relations (1963). By January 1996, a total of 174 countries had become parties to these conventions, reflecting widespread international recognition of the importance of diplomatic engagement. Diplomacy thus offers an effective path forward. Over time, professional practices in diplomacy have evolved into what is referred to as ‘professional diplomacy’ (Suryokusumo, 2004). Several legal instruments support this approach in Indonesia, including the Decree of the Coordinating Minister for

Maritime Affairs No. 128 of 2019 on the Maritime Diplomacy White Paper, the Vienna Convention on the Law of Treaties (1969), Law No. 24 of 2000 on International Treaties, and Law No. 37 of 1999 on Foreign Relations.

One diplomatic mechanism that can be utilised is bilateral or multilateral negotiation between the states involved (Laksmi et al., 2022). Such mechanisms are still necessary, as foreign vessels involved in illegal fishing within Indonesia's sovereign waters continue to be apprehended. In the jurisdiction of the Fisheries Resource Surveillance Division of the KKP in Bitung, several foreign vessels were seized between the end of 2020 and the present. These include Vietnamese-flagged vessels such as MV Dolphin 457 and MV Dolphin 638, as well as the fishing boat M/BCA Marian. According to KKP Bitung investigations, a total of 33 illegal foreign vessels were detained as evidence. This group includes 15 from Vietnam, 9 from the Philippines, 8 from Malaysia, and 1 from Taiwan (Mahrofi, 2020). While not analysed as formal case studies, this data provides important contextual illustration of the scale and geographic pattern of transnational illegal fishing in Indonesia's Exclusive Economic Zone (EEZ). Many of the offenders are small-scale fishermen from neighbouring countries who operate out of economic necessity. They often do not understand maritime jurisdiction boundaries and lack adequate legal protection. In such cases, repressive measures tend to be counterproductive and fail to address the root causes (Ismail et al., 2020).

This article introduces the concept of diplomatic restorative justice (DRJ) as a new approach to resolving illegal fishing cases involving FNs. This model proposes solutions based on diplomatic negotiation, acknowledgment of responsibility, compensation for resource damage, and the strengthening of bilateral agreements as mechanisms for reparation and rehabilitation. It seeks to avoid formal judicial processes and instead promote consensus-based resolution methods.

2 Methods

This study employs normative legal research with a conceptual and documentary case study approach. The case materials are drawn from official publications, public enforcement records, bilateral agreements, and institutional reports concerning Indonesia's response to illegal fishing incidents. Sources include the Ministry of Marine Affairs and Fisheries (KKP), Food and Agriculture Organization (FAO) reports, international treaties, and public media statements. These are used to illustrate the application of DRJ in practice, rather than primary fieldwork. The primary legal sources include the 1982 United Nations Convention on the Law of the Sea (UNCLOS) (United Nations, 1982), the 1961 Vienna Convention on Diplomatic Relations (United Nations, 1961), the 1963 Vienna Convention on Consular Relations (United Nations, 1963), the 1970 Declaration on Principles of International Law concerning Friendly Relations (United Nations General Assembly, 1970), and the Charter of the United Nations (United Nations, 1945b). Indonesian domestic instruments include the 1945 Constitution of the Republic of Indonesia, Law No. 1 of 1982 on the Ratification of the Vienna Convention on Diplomatic Relations, Law No. 37 of 1999 on Foreign Relations, Law No. 24 of 2000 on International Treaties, Law No. 45 of 2009 on Fisheries, and Presidential Regulation No. 8 of 2021 on the General Defense Policy for the 2020–2024 period. Secondary legal materials are drawn from scholarly journals, international organisational reports such as those from the FAO (2015), the International Organization for Migration

(IOM), and comparative legal studies from other states. The analysis is conducted qualitatively through normative interpretation and the construction of legal reasoning.

3 Result and discussion

3.1 Conceptual foundation: what is DRJ?

Criminal prosecution of FNs involved in illegal fishing does not always lead to effective enforcement. In many cases, the sentences are difficult to execute, particularly when offenders cannot serve their penalties or when their home countries intervene diplomatically (Massie et al., 2024). Legal proceedings often result in high costs and prolonged timelines (Jakarta Globe, 2025). The *Vienna Convention on Diplomatic Relations* (VCDR) of 1961 provides that, in cases involving FNs such as fishermen arrested for illegal fishing, the coastal state may issue a diplomatic note or formal protest to the flag state of the offenders (United Nations, 1961). Article 3(1)(b) of the VCDR affirms that one of the primary functions of diplomatic missions is “protecting in the receiving State the interests of the sending State and of its nationals...”.

To avoid escalation of maritime disputes, incidents may be resolved through diplomatic roles such as peaceful negotiations, formal diplomatic protests, or the conclusion of bilateral agreements. However, Article 41 of the VCDR emphasises that diplomats must not interfere in the internal affairs of the receiving state, thereby reinforcing the need for peaceful and official diplomatic channels. The *Vienna Convention on Consular Relations* (VCCR) of 1963 further supports the role of consular offices in providing protection and assistance to their nationals abroad. In the context of illegal fishing, the VCCR enables consular representatives to assist detained fishermen and allows room for negotiation of repatriation or delay of legal proceedings. According to Article 36(1)(b), if a FN (such as a Vietnamese fisherman detained in Indonesia for illegal fishing) requests consular assistance, the authorities must inform the consular post of the sending state and grant communication and visitation rights. Article 36(1)(c) also allows consular representatives to visit and provide legal aid to the detainee.

In line with the spirit of restorative diplomacy, the flag state may request the return of detained fishermen through diplomatic negotiations without trial. This may involve signing a memorandum of understanding (MoU) on repatriation and compensation or establishing maritime surveillance cooperation as a non-penal sanction. Although the VCDR and VCCR do not explicitly regulate illegal fishing, they offer a formal legal framework for peaceful dispute resolution between states, ensure the protection of FNs, and facilitate diplomatic negotiation and restorative solutions. These principles align with the DRJ approach, which is grounded in the principles of acknowledgment of responsibility, reparation, reconciliation, structured dialogue, and peaceful resolution of transboundary harm.

For instance, in many cases, Vietnamese fishermen arrested for illegal fishing in Indonesian waters were assisted by their consulate and released through diplomatic channels (Paramadina, 2019). Repatriation protocols are often arranged through bilateral cooperation rather than purely criminal prosecution. Malaysian consular authorities frequently intervene to provide legal protection and negotiate release on humanitarian grounds and in the spirit of maintaining bilateral relations. This practice supports ongoing debates about the effectiveness of criminalising IUU fishing, especially when challenges

of jurisdiction and sovereignty emerge. In such situations, states often prefer diplomatic resolution over strictly punitive enforcement (Fajardo, 2022).

Accordingly, the principles of restorative justice, widely recognised in modern criminal law practice, can be applied to transnational dispute resolution. In line with this view, Zehr (2002, p.37), widely regarded as the ‘grandfather of restorative justice’, defines restorative justice as “a process to involve, to the extent possible, those who have a stake in a specific offense and to collectively identify and address harms, needs, and obligations, in order to heal and put things as right as possible”. Based on this definition, applying restorative justice principles in a transnational context entails acknowledgment of wrongdoing, compensation or rehabilitation, and the restoration of diplomatic relations.

Recent diplomatic developments, including New Diplomacy, Public Diplomacy, and Multilateral Diplomacy, are closely aligned with the evolving nature of international relations. These approaches reflect a shift from traditional, bilateral interactions towards more inclusive and multifaceted diplomatic strategies. Unlike ‘Old Diplomacy’, which was characterised by secrecy, exclusivity, and state-centric negotiation processes conducted behind closed doors, New Diplomacy emphasises openness, transparency, and the involvement of a wider array of actors including non-governmental organisations, civil society, and international institutions. As diplomacy becomes increasingly regularised and globalised, the mechanisms of conflict resolution and negotiation have expanded to include collaborative and participatory frameworks (Sayın and Sayın, 2013). This shift has created a more dynamic diplomatic environment, within which concepts like DRJ can thrive, drawing on principles of dialogue, inclusivity, and shared responsibility.

DRJ represents an international dispute resolution model that integrates the core principles of restorative justice – namely acknowledgment, reparation, and reconciliation – with inter-state diplomatic instruments. This restorative approach fundamentally prioritises the repair of relationships and the healing of harms caused by an offense, rather than focusing solely on punishment. In the context of maritime legal violations, the DRJ framework positions the state, the offender, and the affected state (as the resource holder) as parties engaged in structured dialogue.

Key elements of DRJ include:

- 1 a requirement for the flag state to acknowledge responsibility for failing to regulate its nationals
- 2 the use of bilateral or multilateral negotiations as the primary mechanism for resolution
- 3 reparative actions such as compensation, joint training programs, or vessel repatriation
- 4 institutional collaboration aimed at building mutual understanding and preventing recurrence.

In the context of illegal fishing, the DRJ approach is grounded in the following international legal instruments:

- 1 The United Nations Convention on the Law of the Sea (UNCLOS, 1982), particularly Article 73 on enforcement in the EEZ, Article 292 on prompt release of vessels and crew, and Part XV on peaceful dispute settlement.

- 2 The Charter of the United Nations, Article 33, which obliges states to resolve disputes peacefully.
- 3 The 1970 Declaration on Principles of International Law, which outlines the duty of states to cooperate and settle disputes by peaceful means.
- 4 The FAO's (2015) Voluntary Guidelines for Securing Sustainable Small-Scale Fisheries, which emphasise non-punitive and collaborative approaches in fisheries governance.

3.2 Indonesia's efforts to address illegal fishing through the DRJ approach

Sanctions such as the sinking or burning of vessels, as implemented by the Indonesian government, have proven insufficient in reducing the prevalence of illegal fishing (Juned et al., 2019). Given that illegal fishing constitutes a transnational crime, Indonesia must engage in diplomatic efforts with other countries to safeguard the integrity of its maritime territory. One of the steps taken by Indonesia has been the advancement of maritime diplomacy. This maritime diplomacy initiative is aligned with Indonesia's strategic vision as the Global Maritime Fulcrum, introduced in 2014 (Sanjiwani, 2022). Maritime diplomacy is expected to evolve into an essential tool for political communication and negotiation, particularly in defending and promoting national interests in the maritime sector. Indonesia carries out this diplomacy through multiple actors, including government agencies, the Indonesian National Armed Forces (*TNI*, 2018), and the Maritime Security Agency (*Bakamla*). These actors have been entrusted with legitimate authority to represent the country's interests and are actively engaged in protecting Indonesia's natural marine resources. As noted by Mièrè (2014), Indonesia's maritime diplomacy efforts are significantly shaped by the roles and capacities of these state-sanctioned actors, each of whom is authorised to carry out their respective mandates in the diplomatic domain.

3.2.1 Indonesia-Vietnam

Between 2018 and 2019, Indonesia engaged in several diplomatic efforts to address illegal fishing, primarily through bilateral cooperation (Sasmita, 2021). One notable example involves high-level meetings between Indonesia and Vietnam that addressed various maritime concerns, particularly violations committed by Vietnamese fishing vessels in Indonesian waters. These meetings specifically focused on the issue of illegal fishing, which has significantly harmed Indonesia's marine resources.

One such bilateral initiative occurred when Indonesia's Ministry of Marine Affairs and Fisheries (KKP) met with the Deputy Minister of Agriculture and Rural Development of Vietnam to explore cooperative opportunities in the fish processing industry. During the dialogue, the KKP highlighted that many Vietnamese fishing vessels had committed illegal activities within Indonesian waters, leading to the forced sinking of numerous vessels. The discussions also included proposals for Vietnamese investment in Indonesia's coastal infrastructure, such as establishing fish processing plants, with the aim of reducing future illegal fishing. This proposal was inspired by previous successful investment cooperation between Thailand and Indonesia.

Later in 2018, Indonesia's Maritime Security Agency (*Bakamla*) conducted an official visit to Vietnam, which resulted in a draft MoU with the Vietnam Coast Guard

(VCG). Acting as a diplomatic agent, Bakamla proposed holding regular ‘coast guard to coast guard’ (CG to CG) talks to further develop the draft MoU. The VCG welcomed the idea and additionally suggested more frequent working-level meetings to discuss the MoU and technical aspects of maritime safety and security cooperation (Indonesian National Armed Forces [TNI], 2018; as cited in Sasmita, 2021).

In 2019, Indonesia’s Minister of Foreign Affairs met bilaterally with the Prime Minister of Vietnam to advance the stalled negotiations on overlapping EEZ boundaries. This meeting took place during the ASEAN Dialogue Partners Meeting in Thailand. A follow-up meeting in Jakarta resulted in both countries agreeing to expedite the development of a Provisional Agreement (PA) to regulate overlapping maritime zones. The PA was intended to reduce the risk of future illegal fishing incidents by both sides (Adhywidya and Budianto, 2023).

Despite these efforts, illegal fishing incidents involving Vietnamese vessels continued into 2019. In response, negotiations were held involving Bakamla, the Indonesian Navy (TNI-AL), and the KKP, along with their Vietnamese counterparts – the VCG, Vietnam People’s Navy, and Vietnam Fisheries Resources Surveillance (TNI, 2018). Prior to this, Bakamla had established effective communication channels with the VCG, formalised through the signing of a Letter of Intent (LoI) (Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2017), which contributed to reducing maritime tensions.

In 2019, Vietnam hosted the 9th ASEAN Maritime Forum (AMF) and the 7th Expanded-ASEAN Maritime Forum (EAMF). These forums aim to promote regional maritime cooperation and mutual understanding on shared maritime challenges (Vietnam News, 2020). At these meetings, discussions focused on maritime security, the handling of illegal fishing, and collaborative efforts to address marine plastic pollution. Indonesia proposed several initiatives, including the ASEAN-WEF on Indo-Pacific Infrastructure and Connectivity Forum, designed to serve as a platform for information exchange and concrete collaboration among Indo-Pacific countries in infrastructure development (Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2020). Indonesia also proposed the establishment of the Indonesia Maritime Information Center (MIC) to serve as a central hub for data integration, anomaly detection in maritime domains, and information sharing at national, regional, and international levels (Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2020; Nirmala and Long, 2020).

3.2.2 Persuasive and coercive maritime diplomacy

In addition to cooperative diplomacy, Indonesia has also employed persuasive diplomatic efforts. According to Mièrè (2014), persuasive maritime diplomacy aims “to increase recognition of one’s maritime or national power, and build prestige for the nation on the international stage. It is neither directed towards a particular recipient nor intended to strike fear into potential opponents. Rather, it aims to persuade others that one’s own navy (or general military) is present and effective.” This form of diplomacy is not carried out through direct interactions between maritime forces, but rather through demonstrations of state presence within sovereign boundaries. One such example is the practice of ‘showing the flag’, typically executed through maritime surveillance operations.

Indonesia frequently conducts these operations, particularly in response to threats such as illegal fishing, often perpetrated by Vietnamese vessels. Patrol ships are deployed not only to assert national presence but also to intercept and apprehend vessels found violating Indonesian laws. According to the Ministry of Marine Affairs and Fisheries (KKP), 41 foreign fishing vessels were captured in 2018 alone (Kembaren, 2018). This indicates that while presence through naval patrols has been asserted, foreign fishermen still often disregard Indonesia's legal jurisdiction. In 2019, a major incident occurred when a Vietnamese vessel rammed an Indonesian Navy battleship KRI Tjiptadi-381 prompting Indonesia to intensify its surveillance in the Natuna region (Anyu and Septiari, 2019). Following that event, Indonesia issued diplomatic protests to the Vietnamese government and increased naval patrols. The Natuna region is a disputed maritime zone that requires continued protection to prevent foreign actors from illegally exploiting resources in the area (Fajriani, 2019).

These efforts were further reinforced by the establishment of a new military base in Natuna. Approved by the House of Representatives (DPR) in 2016 and inaugurated in early 2019, the base serves to bolster Indonesia's military capacity in the North Natuna Sea and its EEZ. Military enhancements have included upgraded naval vessels, missile installations, and the strengthening of integrated command infrastructure. These actions are aligned with Presidential Regulation No. 8 of 2021 concerning the General Defense Policy for the 2020–2024 period (*Antara News*, 2024). According to the Commander of the Indonesian Armed Forces (TNI), the military base serves as a deterrent to potential security threats in the border region. It is intended not only to limit China's expansion in the South China Sea but also to prevent further violations by countries such as Vietnam (Sasmita, 2021).

A third form of diplomacy employed by Indonesia is coercive diplomacy. As noted by Mièrè (2014), coercive diplomacy does not have a single, universally accepted definition, as it depends on the actors involved and the nature of their strategic intent. In Indonesia's case, coercive diplomacy is most evident in the state-sanctioned sinking of foreign vessels caught engaging in illegal fishing. This practice is explicitly authorised under Article 69 of Law No. 45 of 2009 on Fisheries. Although the policy may not directly influence bilateral diplomacy with the offending state, it serves as a symbolic and legal statement that such offenses will not be tolerated. Between mid-2018 and early 2019, Indonesia sank a total of 125 foreign vessels (Kembaren, 2018; Sasmita, 2021), including 19 in early 2019 alone (Rahman, 2019). This demonstrated Indonesia's serious commitment to enforcing both UNCLOS 1982 and national fisheries law.

One notable event took place on May 4, 2019, when the Minister of Marine Affairs and Fisheries oversaw the sinking of 13 Vietnamese-flagged vessels in the waters off Tanjung Datu, West Kalimantan. This measure was seen as essential to protecting Indonesia's marine and fishery resources. It also served as a clear legal warning to other nations, affirming that illegal fishing would result in decisive punitive action. Between 2014 and May 2019, a total of 284 Vietnamese vessels were sunk by the KKP (Carina and Meiliana, 2019, as cited in Sasmita, 2021). Legal diplomatic measures were pursued after judicial verdicts were finalised and declared *inkracht van gewijsde* (legally binding) for FNs convicted of illegal fishing (Massie et al., 2024).

Maritime diplomacy, in this context, represents Indonesia's broader efforts to secure national interests, ensure stability, and strengthen sovereignty in maritime zones (Sugiharto, 2021). The processes and modalities of engaging with other states on these issues are carried out through diplomatic channels (Faizullaev, 2014). Maritime

diplomacy concerning illegal fishing is grounded in the Indonesian legal framework, particularly Article 11(1) of the 1945 Constitution, which grants the President authority over foreign affairs. This is operationalised through Law No. 37 of 1999 on Foreign Relations, which outlines the responsibilities and powers of institutions involved in diplomacy, including the rights and obligations of diplomats.

Furthermore, Indonesia's diplomatic practices are guided by the Vienna Convention on Diplomatic Relations (1961), ratified through Law No. 1 of 1982, which governs diplomatic privileges, immunities, responsibilities, and the jurisdictional boundaries of host states. In addition, the Vienna Convention on Consular Relations (1963) remains a key reference for protecting the interests of FNs abroad and ensuring the exercise of consular functions within international legal parameters.

3.2.3 Indonesia-China diplomacy

Indonesia has taken concrete diplomatic steps to address illegal fishing in its maritime zones, including engagements with the People's Republic of China. One such instance involved Indonesia issuing a formal diplomatic protest to China and summoning the Chinese Ambassador to Jakarta (Wardah, 2019). This protest was issued in response to China's claim over parts of the Natuna Sea, which it justified through the controversial 'Nine-Dash Line' – a territorial map marked by nine dashed lines that the Chinese government uses to assert sovereignty over much of the South China Sea, including areas within Indonesia's EEZ.

A direct naval confrontation occurred in 2020 when Chinese vessels insisted on operating within this self-declared maritime boundary. Although the standoff did not change Indonesia's official position, the Chinese Coast Guard was eventually compelled to withdraw. However, Chinese Coast Guard vessels have reportedly continued patrolling within the Nine-Dash Line as recently as June 2021. Indonesia's diplomatic approach in this context aims not only to defend maritime sovereignty but also to address issues related to illegal, unreported, and unregulated (IUU) fishing and to negotiate maritime boundary delimitations (Zou, 2023).

At the international level, Indonesia has reinforced its diplomatic stance against IUU fishing through active participation in global governance mechanisms. On 10 May 2016, Indonesia contributed to the adoption of the *Agreement on Port State Measures (PSMA)* during a Food and Agriculture Organization (FAO) forum. This agreement compels port states to take steps to prevent, deter, and eliminate IUU fishing by refusing port access to vessels suspected of engaging in illegal practices. The PSMA is regarded as a pivotal legal framework to ensure long-term conservation and sustainable use of marine resources and ecosystems. It enables port authorities to inspect and detain fishing vessels suspected of IUU fishing based on a standardised enforcement mechanism.

Indonesia's diplomatic efforts were further enhanced through the launch of the initiative titled 'Strategy to improve the effectiveness of the agreement on port state measures to prevent, deter, and eliminate IUU fishing', also known as the *Bali Strategy*. This initiative was endorsed during the 4th Meeting of the Parties to the PSMA, held in Bali from 8 to 12 May 2023 (Kementerian Kelautan dan Perikanan Republik Indonesia, 2024). The Bali Strategy seeks to tighten the global response against IUU fishing and accelerate coordinated actions, especially in light of declining global fish stocks. Under this strategy, participating states are encouraged to strengthen their national policies, legal frameworks, institutional capacity, and operational mechanisms. The Bali Strategy

also urges flag states to take decisive follow-up action on vessels suspected of engaging in IUU fishing, using the Global Information Exchange System as an enforcement and coordination tool (Kementerian Kelautan dan Perikanan Republik Indonesia, 2024).

3.3 *The DRJ model*

Diplomacy plays a central role in resolving inter-state conflicts. When applying the principles of restorative justice, law enforcement officials such as police, prosecutors, and judges adopt a more comprehensive, sociological approach to criminal cases. Instead of just prosecuting offenders, they encourage perpetrators and their victims to pursue a path of voluntary reconciliation and restitution in keeping with religious, economic, and societal norms and their own consciences. In practice, restorative justice may involve mediation of criminal offenses, the restoration of assets to victims, alternative sentencing such as community service, and the rehabilitation of perpetrators. These measures have been found to strengthen communities, promote healing and reconciliation, reduce crime, and prevent recidivism (Martha and Hamidi, 2024). Within this framework, diplomacy is not only a tool for communication but also a concrete mechanism for resolution through instruments such as memoranda of understanding, repatriation arrangements, compensation schemes, and technical cooperation in the fisheries sector. The DRJ concept integrates restorative dialogue with peaceful dispute resolution using diplomatic channels. Its objective is to achieve mutually beneficial outcomes while avoiding the over-criminalisation of administrative violations.

The DRJ model consists of a structured three-stage framework designed to resolve illegal fishing disputes involving FNs through peaceful diplomatic means.

- The first stage involves the identification of the violation and the perpetrators, assessing the nature, severity, and jurisdictional context of the offense.
- The second stage centres on the acknowledgment of responsibility by the flag state and the formulation of bilateral agreements for compensation or cooperative measures.
- Finally, the third stage ensures long-term resolution through joint evaluations between states to monitor compliance, share data, and prevent recurrence.

This mechanism involves coordination among the Ministry of Foreign Affairs, the Ministry of Marine Affairs and Fisheries (KKP), judicial institutions, and foreign diplomatic missions. Each stage of the DRJ model is designed to promote structured dialogue, reduce conflict escalation, and ensure fair, non-punitive outcomes in line with international law and restorative principles. The following subsections provide a detailed explanation of each stage of the DRJ framework, outlining its legal foundations, procedures, and implementation in cross-border fisheries enforcement.

3.3.1 *Identification of the violation and the perpetrators*

To determine whether a case qualifies for resolution through the DRJ mechanism, several criteria must be assessed, including the nature of the violation, its legal classification, and the harm caused to victims. The type of violation must fall under the category of *non-serious crimes* with transboundary impact, such as illegal fishing, unauthorised entry into the EEZ by foreign vessels, or unreported cross-border fishing activities.

In terms of legal status, cases suitable for DRJ typically involve administrative offenses or minor criminal violations, particularly those involving diplomatic dimensions. This includes incidents where the perpetrators are FNs from neighbouring states who have violated domestic law in ways that intersect with international obligations or bilateral/multilateral agreements. A case may also qualify for DRJ if the violation results in measurable harm, whether through economic losses from depleted fishery resources, infringements on maritime sovereignty, or adverse impacts on local fishermen and marine ecosystems.

As noted by Kuemlanguan et al. (2023), steps toward recognising illegal fishing as a serious offense deserving strong penalties include associating it with criminal acts in the fisheries sector and other aggravating factors, such as environmental damage, its transnational nature, or connections to organised crime. In some frameworks, it may even be treated as a crime against humanity.

In the DRJ context, the ‘perpetrator’ may be an individual, a corporate entity, or even a state. For individuals such as foreign captains or crew members, identification is typically carried out on-site by enforcement officers through documentation checks. For corporations, particularly vessel owners not classified as small-scale fishers, identification involves investigating ownership records and the flag state registry (Kuemlanguan et al., 2023). In cases where the flag state is found to have supported or failed to regulate its nationals, diplomatic notes may be issued, and bilateral or multilateral investigations may be conducted to establish state accountability.

3.3.2 Acknowledgment of responsibility by the flag state and agreement on compensation through bilateral instruments

Restorative diplomacy involves several procedural stages, beginning with investigation and verification, which starts at the moment of arrest and preliminary inquiry by state authorities. The diplomatic dialogue stage includes engagement with the diplomatic representatives of the offending state for clarification and peaceful negotiation. In the acknowledgment stage, the perpetrator or the flag state formally admits responsibility, either verbally or in writing.

The next stage involves compensation or rehabilitation, which may take the form of restitution payments, the release of detained local fishermen from the perpetrator’s country, or enhanced bilateral cooperation in maritime surveillance. For small-scale fishers (defined as those operating vessels under 5 GT (Solihin et al., 2023)), the re-integration or educational stage includes repatriation on the condition of non-repetition and the provision of legal education concerning international maritime law.

To elevate bilateral agreements into legally reinforcing documents within the DRJ framework particularly for cross-border illegal fishing, legal arrangements must be internationally binding yet diplomatically flexible. The legal foundation for DRJ in bilateral treaties is based on Article 73(3) of the United Nations Convention on the Law of the Sea (UNCLOS, 1982), which requires coastal states to release detained vessels and crews upon the posting of a reasonable bond. Furthermore, Article 292 of UNCLOS provides for a prompt release procedure in cases of detention disputes. Customary international law also supports this process, particularly the principles of sovereign equality and peaceful settlement of disputes, as outlined in Articles 2 and 33 of the UN Charter.

Several types of bilateral legal documents may embody DRJ principles:

- 1 MoUs: These serve as frameworks for technical cooperation, joint surveillance, and information sharing. MoUs are considered soft law instruments – non-binding in a strict legal sense, but carrying significant moral and political weight.
- 2 Treaties or agreements: These regulate the legal procedures for resolving cross-border violations, including repatriation protocols and compensation frameworks. If ratified, they are binding under international law.
- 3 Joint statements or protocols: These are quasi-binding instruments expressing mutual commitment to resolving violations through restorative means. While not legally binding, they carry diplomatic and political influence.

Several countries have already implemented DRJ-aligned bilateral mechanisms:

- 1 Indonesia and the Philippines signed a *MoU on Sea Border Cooperation* aimed at enhancing maritime security in border areas (*Antara News*, 2022). Under this agreement, offenders were repatriated with acknowledgment of wrongdoing, and prosecution was waived through diplomatic assurances – a restorative resolution model (Kementerian Kelautan dan Perikanan Republik Indonesia, 2025).
- 2 In 2022, Indonesia and Vietnam signed a treaty delimiting their EEZ boundary, which includes provisions for peaceful fisheries dispute resolution (Tran, 2023). Prior to the treaty, detained Vietnamese fishers were released following diplomatic guarantees and educational interventions (Mazrieva, 2017).
- 3 The 1974 Box Agreement between Australia and Indonesia established a framework for regulating traditional Indonesian fishing activities within Australia's EEZ and continental shelf. This agreement has helped prevent unauthorised fishing and manage access sustainably (Australian Fisheries Management Authority, 2023).
- 4 Indonesia and Malaysia signed a *MoU on Common Guidelines for the Treatment of Fishermen by Maritime Law Enforcement Agencies* (2012), aimed at minimising conflict, ensuring humane treatment of fishers, and integrating restorative approaches to fisheries violations (Arsana, 2012).
- 5 In 2017, Australia and Vietnam signed a MoU on cooperation in combating IUU fishing, which includes provisions for information sharing, capacity building, and awareness campaigns for fishermen (Holland, 2017).
- 6 The United States has also entered into multiple bilateral agreements and MoUs with countries such as Ecuador and Costa Rica, promoting maritime law enforcement cooperation through joint training, intelligence exchange, and collaborative enforcement operations.

These practices demonstrate the global momentum toward integrating restorative diplomacy into fisheries governance, particularly in addressing transnational violations through constructive and non-punitive frameworks.

3.3.3 Joint evaluation as a mechanism for preventing recurrence

The implementation of joint evaluations following the settlement of fisheries disputes plays a vital role in reinforcing inter-state cooperation and maintaining ongoing legal compliance. Under international law, coastal states are obligated to collaborate in the

sustainable management of marine resources (United Nations, 1982). As such, joint evaluations represent a practical expression of the principle of *pacta sunt servanda* (agreements must be honoured) and the principle of good faith in dispute resolution (United Nations General Assembly, 1970). Joint evaluations must be supported by formal legal instruments that are mutually agreed upon either bilaterally or regionally. These mechanisms should also involve a range of actors, including maritime enforcement agencies, fisheries monitoring authorities, and fishing communities. The purpose of joint evaluations is to provide an open forum for reviewing weaknesses in prior procedures, identifying corrective measures, and detecting early signs of potential violations before they escalate into full conflicts. Therefore, joint evaluations play a key role in building trust among parties and ensuring compliance with agreed-upon terms, thereby enhancing the overall effectiveness of enforcement and oversight. Several core legal instruments can serve as the foundation for these evaluations:

- 1 International agreement instruments (mous/bilateral treaties)

These often include periodic or ad hoc evaluation clauses. For example, Indonesia and Vietnam agreed to accelerate EEZ boundary settlement and cooperate on addressing IUU fishing (Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2017). Such agreements may be binding (if in treaty form) or soft law (in the case of MoUs), but both provide a legal framework for joint evaluations.

- 2 Technical protocols

These serve as annexes to the main agreements and outline the technical procedures for evaluation, including methods for joint surveillance, incident reporting standards, and data exchange schedules. These protocols ensure the consistent implementation of agreements on a technical level.

- 3 Standard operating procedure (SOP).

SOPs establish the personnel, timing, and concrete mechanisms for executing joint evaluations. While not legally binding, they serve as practical, co-developed guidelines that promote transparency and accountability throughout the evaluation process.

- 4 Joint committee

Special inter-state bodies, such as Joint Monitoring Committees or Joint Working Groups, are tasked with organising and conducting evaluations. For example, following the 2023 EEZ delimitation agreement, Indonesia and Vietnam established a Joint working group responsible for evaluating the effectiveness of repatriation procedures and joint patrol operations (Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2017). These committees facilitate regular cross-institutional coordination.

Case studies of joint evaluation practices:

- 1 Indonesia-Philippines: Both countries signed MoUs on maritime and fisheries border cooperation. In September 2022, President Joko Widodo and President Marcos signed an MoU to strengthen maritime border security (*Antara News*, 2022). The agreement includes provisions for reviewing patrol cooperation, exchanging incident

reports, and conducting annual bilateral meetings to evaluate joint surveillance activities. Results are published in joint communiqués and used to implement corrective measures aimed at preventing repeated violations.

- 2 Indonesia-Vietnam: In addition to their EEZ delimitation agreement, both countries systematically monitor fisheries enforcement cases. Following the 2022 agreement, a Joint Working Group was formed to periodically evaluate the repatriation process for apprehended fishers and the effectiveness of joint patrols (Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2017). Intelligence-sharing between coast guards has already been institutionalised and is expected to be further strengthened through these evaluations (Tran, 2023).
- 3 Malaysia-Thailand: These countries co-manage a *Joint Development Area (JDA)* in the Andaman Sea, allowing fishers from both sides to operate. A *Joint Authority* and dedicated committee facilitate cross-border fisheries monitoring and evaluation. This body produces annual reports detailing fishing incidents and dispute resolutions within the JDA, helping prevent conflict escalation.

Joint evaluation practices reflect the principles of peaceful settlement of disputes and good faith under international law (Tran, 2023; Office of Assistant to Deputy Cabinet Secretary for State Documents & Translation, 2017). By creating space for sustained dialogue, joint evaluations help build confidence, promote legal compliance through transparency, and prevent future conflicts. For instance, real-time information exchange regarding IUU fishing activities enables more responsive enforcement efforts (Tran, 2023). Ultimately, this mechanism upholds the principle of *pacta sunt servanda*, which improved ‘agreements resulting from evaluations must be respected’ and the principle of non-retaliation, where the focus of evaluation remains on systemic improvement rather than fault-finding. Thus, joint evaluation significantly strengthens the legitimacy and effectiveness of restorative diplomacy in cross-border fisheries enforcement and supports the continuity of harmonious bilateral cooperation (United Nations, 1982).

3.4 Normative interpretation and legal reasoning

Under international law, the DRJ approach is firmly grounded in the obligation to settle disputes by peaceful means. Article 33 of the UN Charter (1945a) explicitly directs States to “seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, [...] or other peaceful means of their own choice” before resorting to force. In parallel, the 1982 UNCLOS confers broad enforcement powers on coastal States in their EEZ (e.g., boarding, inspection, arrest for fisheries violations), but it also imposes procedural safeguards. Notably, UNCLOS Article 73(2) requires that detained foreign vessels and crews be ‘promptly released’ upon posting reasonable bond, and Article 73(4) obliges the coastal State to notify the vessel’s flag state of any enforcement action. Article 292 further provides that only the flag state can invoke ITLOS to review a detention, thus institutionalising a prompt-release mechanism (Hamid, 2011). These rules reflect a balance of interests – coastal States’ right to enforce their laws versus foreign States’ interest in their nationals – which DRJ supports by favouring dialogue over destruction. Indeed, Ernawati et al. (2022) note that UNCLOS’s prompt-release regime [Art. 73(2), 292] essentially requires coastal authorities to offer bonds and engage the flag State diplomatically for release. In practice, for example, ITLOS cases like *MV*

Virginia G and Monte Confurco have underscored the need to balance coastal and flag-State interests by releasing vessels on bond (Darmawan, 2020). Thus, by pursuing negotiated settlements rather than punitive sinking, DRJ is fully consistent with the Charter and UNCLOS framework.

The Vienna Conventions similarly bolster diplomatic dispute resolution. The Vienna Convention on Diplomatic Relations (1961) explicitly ties diplomatic intercourse to UN Charter goals, its preamble recalls the charter's aims of "the maintenance of international peace and security, and the promotion of friendly relations among nations". Article 3 of the VCDR further instructs missions to *negotiate* with the receiving state and to 'promote friendly relations'. In the consular context, the 1963 Vienna Convention on Consular Relations tasks consuls with protecting the interests of their State and nationals, and likewise promoting amicable inter-state relations. Crucially, Article 36 of the VCCR guarantees that if a national is detained, the host State must notify the person's consular post 'without delay' and permit the consular officer to visit and assist them. In the DRJ setting, this means that any foreign crew or captain held for fishing offenses must be communicated to and engaged by their home country's consul or embassy. These norms – of consular notification, access and diplomatic immunity – manifestly support a restorative, dialogue-based resolution: they oblige Indonesia to involve foreign representatives in the outcome of fisheries cases, rather than act unilaterally. In sum, both diplomatic and consular law emphasise resolution through communication and negotiation, aligning seamlessly with the DRJ ethos.

Indonesian domestic law likewise accommodates DRJ's diplomatic route. Constitutionally, Article 11(1) of the 1945 Constitution vests in the President (with DPR approval) the power to 'make treaties with other countries'. Law No. 24/2000 on International Treaties implements this requirement, subjecting major agreements to legislative ratification (a 2018 Constitutional Court decision clarified that only treaties with 'broad and fundamental' fiscal or legal impact demand DPR approval) (Agusman, 2019). More concretely, Law No. 37/1999 on Foreign Relations defines Indonesia's diplomatic policy and the duties of its missions. Article 19 of that law obliges Indonesian embassies to 'foster unity and harmony among Indonesian citizens abroad' and to provide protection and legal assistance to them. Article 20 requires missions to help settle disputes among Indonesians abroad *through deliberation (musyawarah)*. These provisions implicitly endorse negotiated settlement: a diplomatic post must use discussion and consensus (not force) to resolve international fishery conflicts involving its nationals. Moreover, Article 6 of Law 37/1999 (and the Constitution) expressly reserves treaty-making to the President with DPR consent, ensuring that any bilateral DRJ agreement has a clear legal basis. In practice, such an agreement might be structured as a treaty or MoU under Law 24/2000, in full compliance with Article 11 and with legislative oversight as needed. Thus, Indonesian treaty law and foreign-policy statutes do not obstruct DRJ; on the contrary, they authorise the government to negotiate and formalise cooperative solutions to cross-border fishing disputes.

Even Indonesia's fisheries law can be read to allow non-punitive outcomes. The 2009 Fisheries Act (UU No. 45/2009, amending UU 31/2004) empowers enforcement vessels to arrest violators, but under UNCLOS-aligned interpretation such detention requires prompt processing. Traditionally this law controversially allowed sinking suspect vessels on mere preliminary evidence, but there has been a policy shift: the new administration has directed that IUU vessels be repurposed (e.g., for training) rather than destroyed (Darmawan, 2020). This change suggests recognition of international norms. If a

diplomatic agreement (or ad hoc bond arrangement) secures the vessel's release and payment, then neither UNCLOS nor Indonesian law is violated. In fact, scholars argue that Article 73(2)–292 together mandate such an offer of release on bond as part of enforcement (Ernawati et al., 2022). In short, while Indonesian law grants strong powers to combat IUU fishing, it does not foreclose alternative measures. On the contrary, consistent application of the Constitution and fisheries statutes would permit a negotiated resolution (for example, returning the vessel in exchange for compensation) provided the statutory penalties (fines, licenses) are satisfied.

Legal scholars and practice confirm the legitimacy of these DRJ elements. Studies of fisheries enforcement note that administrative/civil penalty regimes which allow negotiation and settlement often work better than strict criminal prosecutions. For instance, Kuemlangan (2000) observes that in many States (and regional arrangements), authorities issue a notice of violation and then negotiate a civil fine or bond so the vessel can be released. Vessels are freed upon payment or security, reflecting exactly DRJ's exchange of release for amends. Likewise, Indonesian academics emphasise that UNCLOS's immediate-release rule and consular notice requirements effectively invite diplomatic compromise. As one analysis notes, coastal States in the EEZ must "notify the flag State, through the appropriate channel (diplomatic), of the actions taken", and any non-flagged ship "must immediately be released with reasonable bonds" (Ernawati et al., 2022). These authors explicitly recognise bond-release procedures as part of law of the sea enforcement. In short, both global practice and Indonesian legal commentary portray DRJ-like negotiations, balancing justice and cooperation as not only permissible but prudent under the law. Even prominent cases highlight the very point: that cooperative, bond-based settlements honour both coastal State rights and international obligations (Ernawati et al., 2022). Together, these sources show that DRJ is rooted in sound legal reasoning: it applies the rule of law and treaty obligations to achieve a fair, diplomatically-mediated outcome.

4 Conclusions

The DRJ model offers a significant innovation in addressing illegal fishing by FNs. By maintaining accountability while shifting focus toward repairing international relationships and empowering coastal communities, DRJ provides a more sustainable and humane alternative to conventional criminal enforcement. This approach, which emphasises diplomatic negotiation, offender accountability, compensation, and bilateral cooperation, strengthens maritime law enforcement while preserving Indonesia's sovereignty and regional stability. Implementing DRJ will require supportive regulations and practical guidelines, but it holds promise as a constructive pathway for resolving transboundary fisheries conflicts by balancing justice with diplomacy.

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Declarations

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