OXFORD PUBLIC INTERNATIONAL LAW

Max Planck Encyclopedias of International Law

Port State Jurisdiction

Erik J Molenaar

Content type: Encyclopedia entries
Product: Max Planck Encyclopedias of International Law [MPIL]
Module: Max Planck Encyclopedia of Public International Law [MPEPIL]
Article last updated: January 2021

Subject(s):

Fisheries — Marine environment, protection — Continental shelf — Exclusive economic zone — Ports — Flag state — Straits — UNCLOS (UN Convention on the Law of the Sea) — Jurisdiction of states, extra-territorial

Published under the auspices of the Max Planck Institute for Comparative Public Law and International Law under the direction of Professor Anne Peters (2021–) and Professor Rüdiger Wolfrum (2004–2020).

A. Introduction

1 Port State jurisdiction is the competence of States to exercise prescriptive (or legislative) and enforcement jurisdiction over foreign vessels within their → *ports*. Like land borders, seaports give access to the landmass of a State for persons and goods, and are therefore logical points of control for, *inter alia*, customs, → *immigration*, sanitation, and national security purposes (→ *Border Controls*). Ports also offer an obvious opportunity for verifying whether visiting foreign ships comply with certain types of other national or international rules and standards and if they have engaged in certain illegal behaviour in the maritime zones of the coastal State in which the port is located, or beyond. The costs and difficulties of at-sea enforcement also mean that, despite its shortcomings, in-port enforcement is often preferable or, in fact, the only available enforcement option (→ *Maritime Jurisdiction*).

2 Port State jurisdiction may not only serve more immediate national interests but can also further the interests of the international community in relation to the oceans, for instance on maritime safety and security (→ *Maritime Safety Regulations*), marine environmental protection, sustainable use and conservation of marine living resources, food security, and conservation of marine biodiversity (→ *Marine Environment, International Protection*; → *Marine Living Resources, International Protection*). The more immediate national interests and the interests of the international community frequently coincide as well. Illegal, unreported, and unregulated ('IUU') fishing and illegal vessel-source pollution on the → *high seas*, for example, often have transboundary effects on species or the broader marine environment of the maritime zones of the coastal State in which the port is located (→ *Marine Pollution from Ships, Prevention of and Responses to*).

3 By complementing the flag State's responsibility over its ships (→ *Flag of Ships*), port States can make an important contribution to ensuring compliance with national and international regulatory efforts. Flag States, beneficial owners, and operators who benefit as 'free riders' or → *flags of convenience* from the primacy of flag State jurisdiction on the high seas and the consensual nature of international law can, through port State jurisdiction, be deprived of competitive advantages, for example lower operating costs and avoidance of catch restrictions. The level playing-field for maritime activities thereby promoted is an essential component of, or even a prerequisite for, safeguarding many of the aforementioned interests of the international community.

4 Where port State jurisdiction remains entirely optional, it inevitably leads to so-called 'ports of convenience' where less stringent levels of prescription and lower performance on enforcement exist. Incentives for operating ports of convenience include port fees, use of port services (eg landing, transshipping, packaging, processing, refuelling, resupplying, maintenance, and drydocking), linkages with transport on land, and associated socio-economic interests. These incentives may lead to situations where multilaterally agreed standards, for instance those adopted within the → *International Maritime Organization (IMO)*, the → *International Labour Organization (ILO)*, or regional fisheries management organizations ('RFMOs'; → *Fisheries, Commissions and Organizations*), are poorly enforced or not at all.

5 There are currently no definitions for the terms 'port State' or 'coastal State' in the UN Convention on the Law of the Sea or another global instrument with near-universal participation. Nevertheless, when 'port State' is used in the domain of the international → *law of the sea*, it commonly relates to foreign vessels. Depending on the instrument, the term 'port State' may concern compliance with requirements applicable within ports, within the maritime zones of the coastal State in which the port is located, within the maritime zones of other coastal States, on the high seas, and within the 'Area' (the seabed beyond

national jurisdiction; see Art. 1 (1) (1) UN Convention on the Law of the Sea; → *International Seabed Area*).

6 The term 'port State jurisdiction' is broader than the term 'port State control' ('PSC'). The latter term is best understood in light of the rationale of the Paris Memorandum of Understanding on Port State Control ('Paris MOU') and other regional merchant shipping PSC arrangements modelled thereon. These regional arrangements responded to inadequate flag State performance and ports of convenience by, *inter alia*, harmonized and coordinated PSC procedures and commitments to carry out inspections, and to take predominantly corrective enforcement measures (eg detention for the purpose of rectification). These regional arrangements—even though non-legally binding—contain saving clauses (eg Secs 1.7 and 9.1 Paris MOU [incl 42nd amendment]) to ensure that nothing in them affects the port State's so-called 'residual jurisdiction'. Such residual jurisdiction allows the port State to prescribe more stringent standards and take more onerous enforcement measures (see below) than those internationally agreed. Within the domain of international fisheries law, the term 'port State control' is often used together with the term 'port State measures'. The latter term is consistently used in the → *Food and Agriculture Organization of the United Nations (FAO)* Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ('FAO PSM Agreement'). Its usage in that Agreement indicates that port State measures can relate to prescription as well as enforcement, and that it is therefore more akin to port State jurisdiction than port State control.

B. Port State Jurisdiction under General International Law

1. Access to Ports

7 As ports are commonly located entirely within a State's territory and fall thereby under its territorial → *sovereignty*, general international law acknowledges a port State's wide discretion in exercising jurisdiction over its ports (see → *Military and Paramilitary Activities in and against Nicaragua Case [Nicaragua v United States of America] [Merits]* [1986] ICJ Rep 14 para. 213; Arts 25 (2), 38 (2), 211 (3) and 255 UN Convention on the Law of the Sea; Art. 4 (1) (b) FAO PSM Agreement). While there may often be a presumption of access to ports, general international law gives foreign vessels no general right of access to ports. Art. 2 Statute to the Convention on the International Regime of Maritime Ports (Statute), which provides for access to port based on national treatment and reciprocity, does not affect this conclusion due to the current limited formal adherence to the Convention on the International Regime of Maritime Ports and the fact that the conditional right which it establishes is further qualified, for instance in relation to fishing vessels (→ *Fishing Boats*) and → *warships* (Arts 13 and 14 Statute). Arts 4 (1) (b) and 7–9 FAO PSM Agreement as well as the many bilateral port access agreements in existence today are further arguments in support of the absence of a general right of access to ports for foreign vessels under general international law.

8 The view summarized above contrasts with alternative views, which postulate that (a) port State jurisdiction must rely on an explicit treaty provision and/or (b) port State residual jurisdiction under → *customary international law* was brought about by specific treaty provisions. The second alternative view is often related to the inclusion of so-called 'no-more-favourable-treatment' ('NMFT') clauses. These clauses require parties to apply a treaty also to vessels flying the flag of non-parties in order to ensure that such vessels do not receive more favourable treatment (eg Art. 5 (4) International Convention for the Prevention of Pollution from Ships ['MARPOL 73/78'] and Art. V (7) Maritime Labour Convention). As NMFT clauses establish an obligation to impose treaty norms on vessels flying the flag of non-parties, however, they must logically be based on an already existing right. If not, they would violate the fundamental principle of *pacta tertiis*. A port State has

this right based on its territorial sovereignty and the absence of a right of access to ports for foreign vessels under general international law.

9 This brings the discussion to the first alternative view mentioned above. This view was implicitly supported by the majority of the → *International Tribunal for the Law of the Sea (ITLOS)* in its judgment in the *M/V Norstar Case (Panama v Italy)* when it ruled: 'any act which subjects activities of a foreign ship on the high seas to the jurisdiction of States other than the flag State constitutes a breach of the freedom of navigation, save in exceptional cases expressly provided for in the Convention or in other international treaties' (para. 224). The last part of the sentence ('save…treaties') contains no reference to general or customary international law as a basis for jurisdiction, even though the judgment explicitly acknowledges the sovereignty of coastal States over their → *internal waters*—and thereby implicitly the sovereignty of port States over their ports—as well as the absence of a right of access thereto under general international law (para. 221). A direct result of this line of argumentation is that extra-territorial port State jurisdiction would only be possible based on treaty law. This would then apply both to prescriptive jurisdiction and in-port enforcement, as well as the specific scenario in the *Norstar Case*, where Italy requested Spain to seize the *Norstar* when it was in Spain's internal waters (see also paras 20 and 23 below).

10 The above conclusions on the wide nature of port State jurisdiction and the absence of a general right of access to ports under general international law within the domain of the international law of the sea are *mutatis mutandis* also applicable to airports and 'airport States' within the domain of international air law (see eg the judgment of the European Court of Justice ['ECJ'] in Case C–366/10 *Air Transport Association of America and others v Secretary of State for Energy and Climate Change*; → *European Union, Court of Justice and General Court*).

11 A widely acknowledged exception to the above-mentioned discretion involves instances requiring humanitarian assistance (→ *Humanitarian Assistance in Cases of Emergency*). In cases where ships are in distress (→ *Ships in Distress*) or in a → *force majeure* situation and humanitarian assistance is not required, however, the specific circumstances may be such that the interests of the port State and/or the coastal State override the interests attached to the ship, such as those of its flag State and owner. This understanding is clearly reflected in the neutral wording of Art. 10 FAO PSM Agreement. The IMO Guidelines on Places of Refuge for Ships in Need of Assistance of December 2003 ('IMO 2003 Guidelines'), adopted in the aftermath of the disaster with the *Prestige* in 2002, confirm the need to balance the various interests attached to the ship with those of the port State and/or the coastal State (see, *inter alia*, paras 3.12–3.14 IMO 2003 Guidelines). In January 2009, a majority within IMO's Legal Committee did not see the need for a convention on places of refuge when discussing a draft instrument developed by the Comité Maritime International.

2. Conditions for Entry into Port

12 A port State's jurisdiction to prescribe conditions for entry into port is subject to a number of restrictions. Some of these ensue from its participation in specific treaties. The principle of non-discrimination, for instance, is widely recognized in the international law of the sea (see Arts 24 (1) (b), 25 (3), 119 (3), and 227 UN Convention on the Law of the Sea) and international trade law (see Art. XX General Agreement on Tariffs and Trade 1994 ('GATT 1994'); see also the discussion below on the implications of international trade law).

13 A State's formal adherence to IMO instruments such as MARPOL 73/78 may also affect its residual jurisdiction as a port State due to specific provisions included in these instruments (eg Sec. 15 (1) Annex VI to MARPOL 73/78). Whether or not mere adherence to such instruments—in the absence of specific restrictive provisions—also constrains a port State's residual jurisdiction is an issue under debate. As regards territorial jurisdiction, however, restrictions cannot be assumed but must be based on explicit State → *consent*. Moreover, residual port State prescriptive jurisdiction is explicitly confirmed by various provisions in IMO and ILO instruments, as well as the FAO PSM Agreement, and is supported by limited but significant State practice, including by the United States and the European Union.

14 It is also widely recognized that port States commonly do not exercise jurisdiction with respect to affairs regarded as internal to the ship and not affecting the interests of the port State. Many commentators argue that this is merely a matter of → *comity* and policy, and that this does not prejudice a port State's entitlement to exercise such jurisdiction. What constitutes 'internal affairs' of the ship and 'interests' of the port State in this context depends to a large extent on specific circumstances as well as on the evolving dominant views in the international community. An example in this regard involves the working and living conditions—including hours and wages—of crew on board foreign vessels that regularly call on ports in States where significantly different conditions apply.

15 The limitations arising from diplomatic immunities and sovereign immunities for foreign warships and other government ships operated for non-commercial purposes can be mentioned here as well (as, *inter alia*, confirmed in para. 95 Order of 15 December 2012 by the ITLOS on a request for provisional measures in the *ARA Libertad Case [Argentina v Ghana]*; → *Immunity, Diplomatic*; → *State Immunity*).

16 Another general limitation on jurisdiction imposed by customary international law is the need for a sufficiently close or substantial connection with the person, fact, area, or event and the State exercising jurisdiction. This aims at creating order by minimizing overlaps in (concurrent) jurisdiction. However, unless and until States are bound to more specific limitations on jurisdiction, for instance through their adherence to treaties containing such specifications, an international court or tribunal can be asked to rule on the sufficiency and relative strength of the jurisdictional links of the States involved in a particular case.

3. Leaving Port

17 As a corollary to the absence of a general right of access to ports under general international law and the port State's broad discretion in stipulating conditions for entry into port, there is in principle no objection to imposing conditions for the departure from ports as a condition for entry. This so-called 'departure State jurisdiction' can, for example, be used to require mandatory disposal of all types of waste in port to ensure that these will not be illegally discharged after departure (eg Art. 7 Directive [EU] 2019/883 of 17 April 2019). The exercise of departure State jurisdiction may sometimes even be mandatory, for instance in cases of non-compliance with 'applicable international rules and standards relating to seaworthiness of vessels' and where such non-compliance 'threatens damage to the marine environment' (Art. 219 UN Convention on the Law of the Sea). As confirmed by the ITLOS in its judgment in the *M/V 'Louisa' Case (Saint Vincent and the Grenadines v Spain* [28 May 2013]), the freedom of navigation on the high seas as laid down in Art. 87 UN Convention on the Law of the Sea does not give a vessel 'a right to leave the port and

gain access to the high seas notwithstanding its detention in the context of legal proceedings against it' (para. 109).

4. Legal Bases for Port State Jurisdiction

18 Port State jurisdiction can either be territorial, quasi-territorial, or extra-territorial. The sufficiency of the territorial principle as a basis for jurisdiction is to be presumed unless international law stipulates otherwise. Illegal behaviour occurring in port can be addressed through territorial jurisdiction. As regards behaviour prior to entry, port States can still rely on territorial jurisdiction in case the behaviour took place within maritime zones that fall within their territory, namely their internal waters, → *archipelagic waters*, or → *territorial sea* (for areas in which the regime of → *transit passage* applies see below).

19 Jurisdiction based on the territorial principle can sometimes still be used in cases where extra-territorial jurisdiction would be inconsistent with international law, for instance with regard to unregulated high seas fishing (→ *Fisheries, High Seas*; see below). The formal target of jurisdiction is then not on any illegal behaviour that has taken place beyond port—the 'underlying' extra-territorial behaviour—but illegal behaviour that has taken place within port—'overlying' territorial behaviour—that is directly connected to the underlying extra-territorial behaviour. Obstruction of in-port inspection and investigation, or providing false or incomplete information to inspection authorities (eg oil record books or declarations of not having engaged in, or supported, IUU fishing or fishing activities), could be options in that regard. This jurisdictional technique is used extensively by the United States.

20 Port State jurisdiction with regard to construction, design, equipment, and manning ('CDEM') standards warrants separate discussion. Due to the static nature of such standards, non-compliance with them occurs continuously during a vessel's voyage at sea. This is quite different from discharge standards and many types of fisheries conservation and management measures, where non-compliance commonly occurs only incidentally during a vessel's voyage. Unlike CDEM standards, these standards and measures can be viewed as targeting 'behaviour'. However, whether CDEM standards seek to regulate behaviour or not, it is conclusive for the jurisdictional basis that non-compliance occur in port. Jurisdiction can therefore be safely based on the territorial principle (see also para. 125 ECJ judgment in Case C–366/10). The Joint Dissenting Opinion by seven judges in the *Norstar Case* criticized the decision by the majority to assess the different elements of Italy's asserted jurisdiction in isolation rather than integrally (para. 24) and the majority's failure to treat the territorial elements of Italy's asserted jurisdiction as constituent elements (para. 31) (→ *Separate Opinion: International Tribunal for the Law of the Sea [ITLOS]*).

21 The use of port State jurisdiction in the context of the regime of transit passage in straits used for international navigation laid down in Sec. 2 Part III UN Convention on the Law of the Sea (→ *Straits, International*) led to heated debate following the joint Australia–Papua New Guinea 2003 proposals within IMO to designate the → *Torres Strait* as an extension of the Great Barrier Reef particularly sensitive sea area ('PSSA') and to complement this with compulsory pilotage as an associated protective measure ('APM'). Under the UN Convention on the Law of the Sea, vessels in transit passage are subject to the limited jurisdiction that coastal States can exercise individually pursuant to Art. 42 (1) UN Convention on the Law of the Sea, or in cooperation with the IMO pursuant to, or along the lines of, Art. 41 UN Convention on the Law of the Sea. By means of Resolution MEPC. 133(53) of 22 July 2005, IMO's Marine Environment Protection Committee approved the PSSA extension and recommended governments to 'inform ships flying their flag that they should act in accordance with Australia's system of pilotage for merchant ships 70 m in length and over' (at para. 3). Despite this non-mandatory wording, however, Australia

issued Marine Notice 8/2006 (no longer current) pursuant to Secs 186G–186L of its Navigation Act 1912 (Cth) (since replaced by Secs 162–73 Navigation Act 2012 [Cth]), which stipulated that non-compliance with its compulsory pilotage system by foreign vessels would lead to the imposition of non-custodial penalties in port or for ships in transit, at the next port of call in Australia. This was softened somewhat by Marine Notice 16/2006 (no longer current), which observes that non-compliance 'may result' in prosecution. Mainly between 2006 and 2008, several States—including the United States and Singapore—repeatedly took the view within IMO and the UN General Assembly that such sanctions would be inconsistent with Resolution MEPC.133(53) and the UN Convention on the Law of the Sea. Subsequently, Australia issued Marine Notice 07/2009, which observes that non-compliance triggers a 'risk' of prosecution. Classified United States embassy cables disclosed by WikiLeaks in 2011 suggest that these changes were the result of diplomatic consultations between Australia and the United States. In September 2013, Australian authorities advised that no instances of non-compliance had occurred since Marine Notice 8/2006 was issued. In September 2019, Australian authorities advised that this situation had not changed since 2013. As Australia has therefore never actually denied access to port —either immediately or at a next call—or imposed non-custodial penalties for non-compliance with the pilotage requirements, its practice on port State enforcement jurisdiction is in line with State practice examined below in the scenario of unregulated fishing on the high seas.

22 Jurisdiction over behaviour that occurs beyond the territory of the coastal State in which the port is located can be either 'quasi-territorial' or extra-territorial. The notion of quasi-territorial jurisdiction relates to the exercise of jurisdiction over the → *exclusive economic zone* ('EEZ'), the → *continental shelf* pursuant to Arts 56 and 77 UN Convention on the Law of the Sea, and the → *contiguous zone* pursuant to Art. 303 (2) UN Convention on the Law of the Sea in conjunction with Art. 8 Convention on the Protection of the Underwater Cultural Heritage (→ *Underwater Cultural Heritage*). Such jurisdiction can be regarded as quasi-territorial for the reason that it is directly derived from the territorial sovereignty of States with a seacoast and their inherent entitlement to exercise a certain measure of authority over adjacent maritime waters. This inherent entitlement was, *inter alia*, confirmed by the → *International Court of Justice (ICJ)* in 1951, when it famously ruled: 'It is the land which confers upon the coastal State a right to the waters off its coasts' (→ *Fisheries Case [United Kingdom v Norway]* [Merits] [1951] ICJ Rep 116 para. 133). The principle of 'the land dominates the sea', the phenomenon of 'creeping coastal State jurisdiction' to which it led, and the notion of quasi-territorial jurisdiction are all closely related. Proceeding from this understanding of quasi-territorial jurisdiction means that truly extra-territorial jurisdiction exercised by a port State relates to behaviour that occurs beyond the maritime zones of the coastal State in which the port is located; therefore on the high seas, in the Area, or in the maritime zones of other States.

23 The legality of extra-territorial port State jurisdiction under international law depends on two aspects, namely a sufficient jurisdictional basis and the type of enforcement measure taken. A sufficient jurisdictional basis could, for instance, be provided by a treaty—whatever its underlying rationale—or by justifiable reliance on a jurisdictional principle, such as the universality principle or the security principle. As noted in para. 9 above, however, the majority in the *Norstar Case* took the view that extra-territorial port State jurisdiction is only possible based on treaty law; not only with regard to enforcement but also with regard to prescription. Neither the judgment nor the Joint Dissenting Opinion by

seven judges devoted attention to the relevance of the type of enforcement measures opted for, as discussed in the following paragraphs.

24 The relevance of the type of enforcement measures opted for is directly related to the absence of a right of access to ports under general international law. Examples of port State enforcement measures include:

a) Denial of landing, transshipment, or processing of cargo;

b) Denial of use of other port services (see para. 4 above);

c) Denial of access to ports (*ad hoc* or *a priori*);

d) Boarding and inspection;

e) Detention until standards are complied with ('detention for the purpose of rectification'), eg repairs to meet technical standards; and

f) Monetary or other penalties, including confiscation of the ship or its cargo.

25 A distinction can be made between measures a–c on the one hand and measures e–f on the other hand. The principal aim of the former three is to withhold benefits to which foreign vessels are not entitled under general international law. The latter two, however, can be regarded as punitive or at least as having a punitive element. While the punitive character of detention for the purpose of making repairs appears at first sight less onerous than that of a monetary penalty, owners or operators of large merchant vessels (→ *Merchant Ships*) may often prefer the latter. For such ships an extra day or even a couple of extra hours of idleness in port can be very costly.

26 There are at least two general rules on the relationship between prescriptive and enforcement jurisdiction. First, enforcement is only lawful if based on legislation that has been enacted in accordance with international law and which is applicable to the specific circumstances of the event calling for enforcement. Second, national legislation enacted in accordance with international law does not necessarily bring unlimited enforcement powers (see eg Art. 220 (5) and (6) UN Convention on the Law of the Sea).

5. Illegal Discharges and Unregulated Fishing on the High Seas

27 The argument that the legality of extra-territorial port State jurisdiction depends above all on the two aspects mentioned above can be illustrated by comparing the scenario of illegal discharges on the high seas with that of unregulated fishing on the high seas.

28 In the former scenario, Art. 218 UN Convention on the Law of the Sea grants port States the right to institute proceedings and impose monetary penalties for illegal discharges that have occurred beyond the maritime zones of the coastal State in which the port is located. The illegality of the discharges arises due to a 'violation of applicable international rules and standards'. This set of rules would seem to include at any rate the discharge standards contained in the Annexes to MARPOL 73/78 which have arguably achieved the level of 'generally accepted', as well as other rules and standards that are applicable in the mutual enforcement relationship of the States concerned. The right to institute proceedings granted by Art. 218 UN Convention on the Law of the Sea is subject to various conditions in its other paragraphs, the safeguards in Sec. 7—in particular Arts 226, 228, 230, and 231 UN Convention on the Law of the Sea—and the prompt release procedure in Art. 292 UN Convention on the Law of the Sea (→ *Prompt Release of Vessels and Crews*). Whereas various States have enacted national legislation to implement Art. 218 UN Convention on the Law of the Sea (eg pursuant to EU Directive 2005/35), it is not clear

whether these have also led to actual enforcement measures being taken or the institution of proceedings.

29 The scenario above contrasts sharply with the scenario of unregulated fishing on the high seas. Art. 116 UN Convention on the Law of the Sea recognizes that all States have a right for their nationals to fish on the high seas. This right is subject to, *inter alia*, the obligation to cooperate with coastal States and other high seas fishing States (Arts 63 (2), 64–67, and 116–19 UN Convention on the Law of the Sea). This obligation to cooperate is strengthened by Arts 8 (3) and 17 (1) Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (UN Fish Stocks Agreement), by which States fishing for → *straddling and highly migratory fish stocks* are obliged to cooperate with the relevant RFMO. This obligation can be met by becoming a member or a cooperating non-contracting party ('CNCP') of the relevant RFMO or by abstaining from fishing altogether. Arts 8 (4) and 17 (2) UN Fish Stocks Agreement stipulate that only members or CNCPs shall have access to the relevant fishery resources. Unregulated high seas fishing thus essentially means fishing by flag States that are non-members or non-CNCPs of the relevant RFMO and fail to comply with the obligation as expressed by Art. 8 (3) UN Fish Stocks Agreement.

30 Pursuant to Art. 23 (1) UN Fish Stocks Agreement, a port State 'has the right and the duty' to take certain measures in its ports. These measures are, *inter alia*, the inspection of documents, fishing gear, and catch and—when it has been established that the catch was 'taken in a manner which undermines the effectiveness of sub-regional, regional or global conservation and management measures on the high seas'—the prohibition of landings and transshipments (Art. 23 (2) and (3) UN Fish Stocks Agreement). However, neither the UN Convention on the Law of the Sea nor the UN Fish Stocks Agreement contains a provision similar to Art. 218 UN Convention on the Law of the Sea but tailored to the scenario of unregulated high seas fishing.

31 Some uncertainty is nevertheless caused by the saving clause in Art. 23 (4) UN Fish Stocks Agreement, which reads: '[n]othing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law'. There seem to be two views on the purpose of this clause. According to the first, its purpose is merely to confirm the powers that port States already have under customary international law. By emphasizing that this is not a progressive development of international law, the saving clause ensures that the measures referred to cannot just be applied on an *inter se* basis but also against vessels flying the flag of non-parties to the UN Fish Stocks Agreement. In this reading, the real innovation of Art. 23 UN Fish Stocks Agreement is that port State jurisdiction is not merely optional but also mandatory. However, even though the use of 'duty' in Art. 23 (1) UN Fish Stocks Agreement establishes mandatory port State jurisdiction as a general rule, this is considerably softened by the use of the optional 'may' in relation to all the specific enforcement measures referred to in the subsequent paragraphs.

32 According to a second interpretation, however, the saving clause serves the additional purpose of upholding more extensive rights—residual jurisdiction therefore—to which a port State would be entitled under customary international law. This could be the prescription of unilateral—rather than sub-regional, regional, or global—conservation and management measures, as well as the use of more onerous enforcement measures. In view of the discussion above, the more onerous enforcement measures are the most controversial. There seems to be no clear support for this aspect of the second interpretation, however, either in other relevant international fisheries instruments or in the practice of individual States. Even though Art. 4 (1) (b) FAO PSM Agreement acknowledges

the right of port States to impose more onerous enforcement measures pursuant to a decision of an RFMO, and a few RFMOs in fact authorize or even require their members to confiscate the catch of foreign vessels in their ports, these all relate to exceptional circumstances and it is unclear whether and to what extent port States have applied this in practice.

C. Implications of International Trade Law

33 As already mentioned, a port State's adherence to treaties can constrain its broad jurisdiction under general international law. A potentially very significant example is the GATT 1994 which, *inter alia*, lays down the freedom of transit and the prohibition of quantitative restrictions in Arts V (3) and XI. In 2000 these two provisions were invoked by the (then) European Community when it instituted a → *World Trade Organization (WTO)* dispute settlement procedure against Chile for prohibiting Spanish fishing vessels to land swordfish in Chilean ports, even for the purpose of transshipment (WTO *Chile – Measures Affecting the Transit and Importation of Swordfish—Request for Consultations by the European Communities* [26 April 2000] WT/DS193/1; → *World Trade Organization, Dispute Settlement*). The large number of States that reserved their third-party rights in this procedure bears witness to the significance of the issues and the interests involved: Australia, Canada, Ecuador, Iceland, India, Norway, and the United States. Shortly thereafter, Chile instituted a dispute settlement procedure against the EC under the UN Convention on the Law of the Sea, which eventually led to the *Swordfish Case* before the ITLOS (*Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean [Chile/European Community][Order]* ITLOS Case No 7 [20 December 2000]). In 2001, the parties to the disputes agreed to suspend both procedures while reserving their right to unilaterally revive them. The ITLOS proceedings were discontinued in 2009 and the WTO proceedings in 2010, among other things in light of the adoption by Chile and the EU of the Understanding Concerning the Conservation of Swordfish Stocks in the South Eastern Pacific Ocean (not in force) late in 2009.

34 From the perspective of general international law, the Chilean exercise of extra-territorial port State jurisdiction may by some be regarded as problematic in view of the freedom of fishing on the high seas and the primacy of flag State jurisdiction on the high seas. However, access to port is—from the perspective of general international law—regarded as a benefit rather than a right, and denial of access as withholding a benefit rather than constraining a right. Moreover, as there is no indication that Chile imposed more onerous enforcement measures, it may still be justified. From the perspective of international trade law, however, it may be an entirely different matter. In order to rely successfully on Art. XX (g) GATT 1994, Chilean regulations must not constitute unjustifiable or arbitrary discrimination or a disguised restriction of international trade. Of critical importance in this regard are Chile's serious and → *good faith (bona fide)* negotiation efforts with the EC, in part in view of the similar efforts of the EC. Initial reports in the → *US – Shrimp Case* (WTO *United States – Import Prohibition of Certain Shrimp and Shrimp Products* [15 May 1998] WT/DS58/R paras 7.43, 7.55, and 9.1; and Appellate Body Report WTO *United States – Import Prohibition of Certain Shrimp and Shrimp Products* [12 October 1998] WT/DS58/AB/R para. 186; → *Panel: Dispute Settlement System of the World Trade Organization [WTO]*; → *Appellate Body: Dispute Settlement System of the World Trade Organization [WTO]*; see also → *Dispute Settlement Body: Dispute Settlement System of the World Trade Organization [WTO]*) accepted implicitly that if serious and good faith negotiation efforts do not lead to multilateral agreement, unilateral measures may not be in violation of international trade law. More recent phases in the *US – Shrimp Case* have explicitly upheld unilateral trade measures. It seems that the need for a multilateral

solution should be weighed and balanced against the gravity of the concerns for the marine environment, marine biodiversity, and the urgency of regulatory action.

35 Another opportunity for an international ruling on the impact of GATT 1994 and international trade law on the discretion of port States under general international law could have arisen in the WTO dispute settlement procedure instituted in November 2013 by Denmark (in respect of the → *Faroe Islands*) against the EU in relation to Atlanto–Scandian herring (WTO *European Union – Measures on Atlanto-Scandian Herring—Request for Consultations by Denmark in respect of the Faroe Islands* [4 November 2013] WT/DS469/1). According to the Faroe Islands, certain coercive economic measures taken by the EU–– including the closure of EU ports to Faroese vessels (pursuant to Art. 5 (2) Commission Implementing Regulation [EU] No 793/2013 of 20 August 2013)—were inconsistent with Arts I (1), V (2), and XI GATT 1994 (→ *Economic Coercion*). Interestingly, several months before, in August 2013, Denmark (in respect of the Faroe Islands) also instituted proceedings against the EU in relation to Atlanto–Scandian herring pursuant to the UN Convention on the Law of the Sea (*The Atlanto-Scandian Herring Arbitration [The Kingdom of Denmark in respect of the Faroe Islands v The European Union]* PCA Case No 2013-30). In its Statement of Claim (on file with author), the Faroe Islands held that the (threats of) above-mentioned measures amount to a breach of the EU's obligation to cooperate in relation to shared fish stocks laid down in Art. 63 (1) UN Convention on the Law of the Sea. Both procedures were terminated in 2014.

D. Expanding Scope and Spatial Coverage

36 Port State jurisdiction is likely to have been used for many centuries for the purpose of immigration, sanitation, customs, and national security. Within the domain of the international law of the sea, port State jurisdiction became increasingly more widely accepted as a remedy for the failure of flag States to exercise effective jurisdiction and control over their ships. Incrementally, provisions on port State control or jurisdiction were inserted in all of the relevant IMO and ILO instruments. A milestone outside the domain of IMO was the adoption of the Paris MOU in 1982. Initially, the inspections under the Paris MOU were predominantly focused on maritime safety but the focus was gradually broadened with standards on marine environmental protection, navigation, and working and living conditions. The expansions in the scope in standard-setting within IMO since the early 1990s (eg operational standards, vessel-source air pollution, maritime security, and anti-fouling systems) all had a port State control or jurisdiction component and have or will lead to consequential expansions within regional merchant shipping PSC arrangements.

37 Significant developments also took place outside the domains of IMO and ILO, for instance by means of the adoption of the UNESCO Convention on the Protection of the Underwater Cultural Heritage, which imposes an obligation on port States in Art. 15. Also, the 2005 International Health Regulations adopted by the → *World Health Organization (WHO)* will broaden the obligations of port States while at the same time acknowledging their residual jurisdiction (see, inter alia, Arts 3 (4) and 43 International Health Regulations).

38 In the domain of international fisheries law, most RFMOs now have regimes for port State measures. The practice of RFMOs that pioneered in this respect inspired the negotiation of the 2009 FAO PSM Agreement. Its entry into force has led to more regional efforts on port State measures to combat IUU fishing, in particular within RFMOs.

39 The previous paragraphs show that the scope of port State jurisdiction has expanded enormously in recent decades. Also, not only have the number, duration, and complexity of inspections increased, this is also likely to be true for the frequency of multiple inspections and the involvement of multiple national inspection authorities. Integrated port State enforcement at the national level and increased coordination at the regional and inter-regional levels are required to address these issues of capacity and logistics. In some scenarios, integrated enforcement can also offer port States enforcement opportunities in one regulatory domain (eg maritime security or working and living conditions) that can be used against vessels that have engaged in behaviour in another domain (eg unregulated high seas fishing), where more onerous enforcement measures are not available to the port State. Art. 5 (a) FAO PSM Agreement contains an obligation to pursue integrated port State enforcement 'to the greatest extent possible'.

40 The adoption of the Paris MOU responded in part to the emergence of ports of convenience brought about by the optional nature of port State jurisdiction under the UN Convention on the Law of the Sea (see in particular Arts 25 (2) and 218 (1) as opposed to Arts 94, 211 (2), and 217 UN Convention on the Law of the Sea) as well as under IMO instruments. Whereas many IMO instruments contain provisions on in-port inspection, they do not oblige port States to carry out inspections but rather stipulate that, once they do inspect, such inspections are limited in certain ways, for example to a certificate check (eg Art. 5 MARPOL 73/78).

41 The 1991 IMO Assembly Resolution A.682(17), entitled 'Regional Co-operation in the Control of Ships and Discharges', acknowledged the added value of the Paris MOU and commenced efforts to create a global network of regional merchant shipping PSC arrangements. The expansion in participation in the Paris MOU and the creation and expansion of eight new arrangements since then, ie Asia and the Pacific (Tokyo MOU); Latin America (Acuerdo de Viña del Mar); Caribbean (Caribbean MOU); West and Central Africa (Abuja MOU); the → *Black Sea* region (Black Sea MOU); the Mediterranean (Mediterranean MOU); the Indian Ocean (Indian Ocean MOU); and the Arab States of the Gulf (Riyadh MOU), means that almost complete global coverage has now been achieved; except, arguably, for the Arctic Ocean/region and the Southern Ocean/Antarctic region (→ *Arctic Region*; → *Antarctica*). However, mere geographical coverage does not necessarily mean that the performance achieved by the Paris and Tokyo MOUs is also achieved by the other regional PSC arrangements. Differences in performance are among other things caused by overdue updates of constitutive instruments in view of developments at IMO and ILO and by lack of adherence by the participating authorities with the underlying regulatory conventions.

42 In the domain of marine capture fisheries, States have committed to exercising port State jurisdiction through the 2001 International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing ('IPOA-IUU'), and parties to the UN Fish Stocks Agreement are legally bound to do so pursuant to its Art. 23. At the regional level, most RFMOs that deal with straddling, highly migratory, and discrete high seas fish stocks have developed port State practices. There is nevertheless cause for improvement, however, as many of the regimes are optional or apply exclusively to vessels flying the flag of non-members or non-CNPCs of the RFMO. Such discrimination may be unjustifiable and thereby inconsistent with international trade law.

43 The 2004 Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing ('FAO Model Scheme on PSM') aimed to contribute to the creation of a global network of regional port State jurisdiction in the domain of the regulation of marine capture fisheries, and offered guidance and opportunities for harmonization in this respect. This was essentially similar to the objectives of the 1991 IMO Assembly Resolution A.

682(17) (see above). The decision to commence the negotiation process on the FAO PSM Agreement nevertheless underscored that the FAO Model Scheme on PSM was not regarded as an adequate solution for the aims it pursued. As noted above, the FAO PSM Agreement lays down global minimum standards and thereby fosters a level playing field among regions. Arts 6 and 9 (4), in conjunction with Art. 4 (2)–(3) FAO PSM Agreement also link future parties, to some extent, to the conservation and management measures of RFMOs to which they would not otherwise be legally bound. These linkages could be regarded as a step towards the development of a duty under general international law for port States to cooperate with a relevant RFMO; quite similar to the flag State's obligation under Art. 8 (3) UN Fish Stocks Agreement.

44 A new feature of the international community's efforts on port State jurisdiction in the domain of international fisheries law is the institutional component of the FAO PSM Agreement. This consists of a Meeting of the Parties ('MOP'), a 'Part 6 Working Group'—which deals with the requirements of developing States (→ *Developing Countries*)—and a technical working group on information exchange. MOP 1 was convened in 2017, and MOP 3—to be convened in 2021—will 'review and assess the effectiveness' of the FAO PSM Agreement, as envisaged in its Art. 24 (2). The efforts by these bodies of the FAO PSM Agreement will ensure that the Agreement becomes a 'dynamic' or 'living' instrument and will contribute to its success.

E. Conclusions

45 As reflected in the discussion above, port State jurisdiction is gradually moving from optional use in limited regulatory domains towards comprehensive and mandatory use through regional and global instruments and arrangements. Awareness that the interests of the international community are not only undermined by free riders in their capacity as flag States but also in their capacity as port States, is expected to spread due to current and future concerns, including the alarming rate of loss of marine biodiversity. It may therefore not be long before the notion of the 'responsible port State' becomes firmly established in law and policy.

Select Bibliography

FA Mann 'The Doctrine of Jurisdiction in International Law' (1964) 111 RdC 9–162.

AV Lowe 'The Right of Entry into Maritime Ports in International Law' (1977) 14 SanDiegoLRev 597–622.

LA de La Fayette 'Access to Ports in International Law' (1996) 11 IJMCL 1–22.

TL McDorman 'Port State Enforcement: A Comment on Article 218 of the 1982 Law of the Sea Convention' (1997) 28 JMarL&Com 305–22.

EJ Molenaar *Coastal State Jurisdiction over Vessel-Source Pollution* (Kluwer The Hague 1998).

D Anderson 'Port States and Environmental Protection' in AE Boyle and D Freestone (eds) *International Law and Sustainable Development: Past Achievements and Future Challenges* (OUP Oxford 1999) 325–44.

RR Churchill and AV Lowe *The Law of the Sea* (3rd edn Manchester University Press Manchester 1999).

F Orrego Vicuña *The Changing International Law of High Seas Fisheries* (CUP Cambridge 1999).

D Devine ‘Port State Jurisdiction: A Judicial Contribution from New Zealand’ (2000) 24 Marine Policy 215–19.

D König ‘Port State Control: An Assessment of European Practice’ in P Ehlers E Mann-Borgese and R Wolfrum (eds) *Marine Issues: From a Scientific, Political and Legal Perspective* (Kluwer The Hague 2002) 37–54.

A Serdy ‘See You in Port: Australia and New Zealand As Third Parties in the Dispute between Chile and the European Community over Chile’s Denial of Port Access to Spanish Vessels Fishing for Swordfish on the High Seas’ (2002) 3 Melbourne Journal of International Law 79–119.

AE Chircop ‘Living with Ships in Distress: A New IMO Decision-Making Framework for the Requesting and Granting of Refuge’ (2004) 3 WMU Journal of Maritime Affairs 31–49.

LS Johnson *Coastal State Regulation of International Shipping* (Oceana Publications Dobbs Ferry 2004).

RG Rayfuse *Non-Flag State Enforcement in High Seas Fisheries* (Nijhoff Leiden 2004).

H Ringbom ‘You Are Welcome, But … Places of Refuge and Environmental Liability and Compensation, with Particular Reference to the EU’ (2004) Comité Maritime International Yearbook 208–33.

V Frank ‘Consequences of the Prestige Sinking for European and International Law’ (2005) 20 IJMCL 1–64.

AE Chircop and O Lindén (eds) *Places of Refuge for Ships: Emerging Environmental Concerns of a Maritime Custom* (Nijhoff Leiden 2006).

J Roberts ‘Compulsory Pilotage in International Straits: The Torres Strait PSSA Proposal’ (2006) 37 OceanDev&IntlL 93–112.

RC Beckman ‘PSSAs and Transit Passage: Australia’s Pilotage System in the Torres Strait Challenges the IMO and UNCLOS’ (2007) 38 OceanDev&IntlL 325–57.

EJ Molenaar ‘Port State Jurisdiction: Towards Comprehensive, Mandatory and Global Coverage’ (2007) 38 OceanDev&IntlL 225–57.

H Ringbom *The EU Maritime Safety Policy and International* Law (Nijhoff Leiden 2008).

S Bateman ‘The Compulsory Pilotage Regime in the Torres Strait: A “Melting Pot” of Operational, Legal and Political Considerations’ in A Chircop T McDorman and S Rolston (eds) *The Future of Ocean Regime-Building: Essays in Tribute to Douglas M Johnston* (Nijhoff Leiden 2009) 261–86.

EJ Molenaar ‘Port State Jurisdiction to Combat IUU Fishing: The Port State Measures Agreement’ in DA Russell and DL VanderZwaag (eds) *Recasting Transboundary*

Fisheries Management Arrangements in Light of Sustainability Principles: Canadian and International Perspectives (Nijhoff Leiden 2010) 369–86.

H Ringbom ‘Global Problem—Regional Solution? International Law Reflections on an EU CO2 Emissions Trading Scheme for Ships’ (2011) 26 IJMCL 613–41.

DR Rothwell ‘Compulsory Pilotage and the Law of the Sea: Lessons Learned from the Torres Strait’ in S Wu and K Zou (eds) *Securing the Safety of Navigation in East Asia: Legal and Political Dimensions* (Chandos Publishing Witney 2013) 51–72.

DK Anton ‘Making or Breaking the International Law of Transit Passage? Meeting Environmental and Safety Challenges in the Torres Strait with Compulsory Pilotage’ in DD Caron and N Oral (eds) *Navigating Straits: Challenges for International Law* (Brill Nijhoff Leiden 2014) 49–86.

B Marten *Port State Jurisdiction and the Regulation of International Merchant Shipping* (Springer Cham/Heidelberg 2014).

H Ringbom ‘National Employment Conditions and Foreign Ships: International Law Considerations’ (2014) Scandinavian Institute of Maritime Law Yearbook 109–51.

S Kopela ‘Port-State Jurisdiction, Extraterritoriality, and the Protection of Global Commons’ (2016) 47 OceanDev&IntlL 89–130.

‘Port State Jurisdiction: Challenges and Potential’ Special Issue with Contributions by C Ryngaert H Ringbom J Swan A Serdy R Churchill B Marten AN Honniball and L Carballo Piñeiro (2016) 31 IJMCL.

NF Coelho *Unilateral Port State Jurisdiction: The Quest for Universality in the Prevention, Reduction, and Control of Ship-Source Pollution* (Doctoral Thesis Utrecht University School of Law 2019).

JJ Fanø ‘Enforcement of the 2020 Sulphur Limit for Marine Fuels: Restrictions and Possibilities for Port States to Impose Fines under UNCLOS’ (2019) 28 RECIEL 278–88.

AN Honniball *Extraterritorial Port State Measures: The Basis and Limits of Unilateral Port State Jurisdiction to Combat Illegal, Unreported and Unregulated Fishing* (Doctoral Thesis Utrecht University School of Law 2019).

A Honniball ‘Freedom of Navigation Following the M/V “Norstar” Case’ (4 June 2019) The NCLOS Blog, available at <https://site.uit.no/nclos/2019/06/04/freedom-of-navigation-following-the-m-v-norstar-case/> (13 January 2021).

Select Documents

Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (done 4 August 1995, entered into force 11 December 2001) 2167 UNTS 3.

‘ARA Libertad’ (Argentina v Ghana) (Request for the Prescription of Provisional Measures) (Order) ITLOS Case No 20 (15 December 2012).

Case C–366/10, *Air Transport Association of America and Others v Secretary of State for Energy and Climate Change* (21 December 2011) [2012] OJ C49/12.

Commission Implementing Regulation (EU) No 793/2013 of 20 August 2013 establishing Measures in respect of the Faroe Islands to Ensure the Conservation of the Atlanto-Scandian Herring Stock (20 August 2013) [2013] OJ L223/1.

Convention and Statute on the International Regime of Maritime Ports and Protocol of Signature (signed 9 December 1923, entered into force 26 July 1926) 58 LNTS 285.

Convention on the Protection of the Underwater Cultural Heritage (signed 1 November 2001, entered into force 2 January 2009) 2562 UNTS 3.

Directive 2005/35/EC of the European Parliament and of the Council of 7 September 2005 on Ship-Source Pollution and on the Introduction of Penalties for Infringements [2005] OJ L255/11, as amended.

Directive (EU) 2019/883 of the European Parliament and of the Council of 17 April 2019 on Port Reception Facilities for the Delivery of Waste from Ships, amending Directive 2010/65/EU and repealing Directive 2000/59/EC [2019] OJ L151/116.

Food and Agriculture Organization of the United Nations 'Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing' (signed 22 November 2009, entered into force 5 June 2016) (2016) 55 ILM 1159.

Food and Agriculture Organization of the United Nations (ed) *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (FAO Rome 2001).

Food and Agriculture Organization of the United Nations (ed) *Model Scheme on Port State Measures to Combat Illegal, Unreported and Unregulated Fishing* (2004) (FAO Rome 2007).

General Agreement on Tariffs and Trade 1994 (adopted 15 April 1994, entered into force 1 January 1995) 1867 UNTS 187.

International Convention for the Prevention of Pollution from Ships (signed 2 November 1973, entered into force 2 October 1983) 1340 UNTS 184; as modified by the Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, 1973 (with Annexes, Final Act and International Convention of 1973) (signed 17 February 1978, entered into force 2 October 1983) 1340 UNTS 61, as amended.

International Health Regulations Convention on the Protection of the Underwater Cultural Heritage (adopted 2 November 2001, entered into force 2 January 2009) (2002) 41 ILM 40.

International Law Association 'Report of the Sixty-Seventh Conference: Final Report of the ILA Committee on Extra-Territorial Jurisdiction Presented at the 1996 Helsinki ILA Conference' (12–17 August 1996) 520.

International Maritime Organization Resolution ‘Designation of the Torres Strait as an Extension of the Great Barrier Reef Particularly Sensitive Sea Area’ (22 July 2005) MEPC.133(53).

International Maritime Organization Resolution ‘Guidelines on Places of Refuge for Ships in Need of Assistance’ (5 December 2003) A.949(23).

International Maritime Organization Resolution ‘Regional Co-operation in the Control of Ships and Discharges’ (6 November 1991) A.682(17).

Latin American Agreement on Port State Control of Vessels (5 November 1992), as amended, available at <https://alvm.prefecturanaval.gob.ar/> (19 January 2021) (Acuerdo de Viña del Mar).

The ‘Lotus’ (France v Turkey) (Merits) PCIJ Series A No 10.

Maritime Labour Convention (signed 23 February 2006, entered into force 20 August 2013) 2952 UNTS 3.

Memorandum of Understanding on Port State Control in the Black Sea Region (8 September 2017), as amended, available at <www.bsmou.org> (19 January 2021) (Black Sea MOU).

Memorandum of Understanding on Port State Control in the Caribbean Region (9 February 1996) (1997) 36 ILM 231, as amended, available at <http://www.caribbeanmou.org/> (19 January 2021) (Caribbean MOU).

Memorandum of Understanding on Port State Control for the Indian Ocean Region (5 June 1998), as amended, available at <http://www.iomou.nic.in/> (19 January 2021) (Indian Ocean MOU).

Memorandum of Understanding on Port State Control in the Mediterranean Region (11 July 1997), as amended, available at <http://www.medmou.org> (14 January 2021) (Mediterranean MOU).

Memorandum of Understanding on Port State Control for the West and Central African Region (22 October 1999), as amended, available at <http://www.abujamou.org> (19 January 2021) (Abuja MOU).

M/V ‘Louisa’ (Saint Vincent and the Grenadines v Kingdom of Spain) (Merits) ITLOS Case No 18 (28 May 2013).

M/V ‘Norstar’ (Panama v. Italy) (Merits) ITLOS Case No 25 (10 April 2019).

Paris Memorandum of Understanding on Port State Control (signed 26 January 1982, entered into force 1 July 1982) (1982) 21 ILM 1, as amended, available at <https://www.parismou.org/> (19 January 2021) (Paris MOU).

Riyadh Memorandum of Understanding on Port State Control in the Gulf Region (June 2004), as amended, available at <https://riyadhmou.org> (19 January 2021) (Riyadh MOU).

Tokyo Memorandum of Understanding on Port State Control in the Asia-Pacific Region (signed 1 December 1993, entered into force 1 April 1994), as amended, available at <http://www.tokyo-mou.org> (19 January 2021) (Tokyo MOU).

Understanding Concerning the Conservation of Swordfish Stocks in the South Eastern Pacific Ocean (23 November 2009) [2010] OJ L155/3.

United Nations Convention on the Law of the Sea (concluded 10 December 1982, entered into force 16 November 1994) 1833 UNTS 396.

World Health Organization ‘International Health Regulations’ (adopted 23 May 2005, entered into force 15 June 2007) WHA58.3.