Foreword

This special issue of the *International Journal of Marine and Coastal Law* is dedicated to the external aspects of the European Union's (EU) common fisheries policy (CFP). Today the EU is a global actor in the fisheries field. And, looking back, it is clear that concern for external issues has been instrumental during the inception and shaping of the EU's fisheries policy generally. The external aspect of fisheries policy is important for economic activity and jobs of certain regions and it is has shaped the EU's external relations with many parts of the world, as seen by the comprehensive network of international agreements. To be certain, the EU's external fisheries policy has sought primarily to serve Europe's fishing interests, yet this has been increasingly accompanied by broader concerns to safeguard conservation of common resources worldwide, as for instance the EU legislation on illegal, unreported and unregulated (IUU) fishing shows.¹

The external aspects of fisheries policy, traditionally treated as separate from the internal aspects of the policy occupied by allocation of resources amongst the EU Member States, was made subject to common principles thorough the fisheries reform in 2013. The principles of external fisheries policy are laid down in Articles 28–33 of Regulation 1380/2013 (Basic Regulation)² and they have been also developed in the Commission Communication (2011)³ dedicated to external fisheries policy, and the corresponding Council conclusions (2013).⁴ The external fisheries policy is primarily outwards orientated,

- 1 Council Regulation (EC) No 1005/2008 of 29 September 2008 establishing a Community system to prevent, deter and eliminate illegal, unreported and unregulated fishing, amending Regulations (EEC) No 2847/93, (EC) No 1936/2001 and (EC) No 601/2004 and repealing Regulations (EC) No 1093/94 and (EC) No 1447/1999, *OJ L* 286, 29.10.2008, pp. 1–32.
- 2 Regulation (EU) No 1380/2013 of the European Parliament and of the Council of 11 December 2013 on the Common Fisheries Policy, amending Council Regulations (EC) No 1954/2003 and (EC) No 1224/2009 and repealing Council Regulations (EC) No 2371/2002 and (EC) No 639/2004 and Council Decision 2004/585/EC, *OJ L* 354, 28.12.2013, pp. 22–61 (Basic Regulation).
- 3 Commission Communication on the external dimension of the Common Fisheries Policy, COM(2011) 424 final, 13.07.2011.
- 4 Council conclusions on a Communication from the Commission on the external dimension of the Common Fisheries Policy, 19 and 20 March 2012, available at http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/agricult/129052.pdf; accessed 26 November 2019.

seeking arrangements for access to foreign and international waters, and, to a lesser extent, involving arrangements for foreign access to the EU's own waters. In essence, the modern fisheries policy is to ensure the 'sustainable' exploitation, conservation and management of marine resources and conducted in accordance with the EU's international obligations and objectives. The EU is to act in such a way as to support the development of scientific knowledge and advice, to contribute to economically viable fishing and employment in the Union, to take action for eradicating IUU fishing and to promote regional fisheries management organisations.⁵

The principles outlined by the EU legislature are complemented and detailed by international agreements concluded by the Union. The Union is a party to the main multilateral agreements, in particular the United Nations Convention on the Law of the Sea 1982 (LOSC)⁶ and the United Nations Fish Stock Agreement 1995.⁷ It is also a member of most regional fisheries management organisations,⁸ such as the International Commission for the Conservation of Atlantic Tunas (ICCAT)⁹ and the North East Atlantic Fisheries Commission (NEAFC),¹⁰ which give effect to the principles of the UN Fish Stock Agreement in terms of practical fisheries management. In addition, the EU has concluded a large number of bilateral fisheries agreements, presently called Sustainable Partnership and Fisheries Agreements. Again, the EU legislature has laid down the basic principles for these bilateral agreements, in particular to ensure sustainable exploitation of surplus marine resources.

⁵ Basic Regulation (n 2), Article 28(2).

⁶ Council Decision of 23 March 1998 concerning the conclusion by the European Community of the United Nations Convention of 10 December 1982 on the Law of the Sea and the Agreement of 28 July 1994 relating to the implementation of Part XI thereof, *OJ L* 179, 23.06.1998, 1.

⁷ Council Decision of 8 June 1998 on the ratification by the European Community of the Agreement for the implementing 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 stocks and highly migratory fish stocks, *OJ L* 189, 03.07.1998, 14.

⁸ Communication from the Commission to the Council and the European Parliament, Community participation in Regional Fisheries Organisations (RFOS), COM(1999) 613 final, 08.12.1999.

⁹ Council Decision of 9 June 1986 on the accession of the Community to the International Convention for the Conservation of Atlantic Tunas, as amended by the Protocol annexed to the Final Act of the Conference of Plenipotentiaries of the States Parties to the Convention signed in Paris on 10 July 1984, *OJ L* 162, 18.06.1986, 33.

¹⁰ Council Decision of 13 July 1981 concerning the conclusion of the Convention on Future Multilateral Cooperation in the North-East Atlantic Fisheries, *OJ L* 227, 12.8.1981, 21.

The articles comprising this special issue illustrate and discuss recent legal issues and topics connected to the EU's international fisheries practice. That practice, as the articles show, is inevitably connected and conditioned in many ways with the rules, principles and practices of international law. For instance, the readiness of the EU to combat IUU fishing may motivate other countries to take reforms to ensure or improve the regulation of their fishing fleets. However, there are international limits to how far the EU can exert influence; unilateral action also carries a risk for disputes and litigation. Sometimes, the complex and manifold interactions between EU law and international law are readily displayed in the judgments of the EU judiciary – as in the *Venezuelan Fisheries* case¹¹ and *Western Sahara Campaign UK*¹² cases – two cases illustrating how the EU judiciary can be faced with issues in the 'grey areas' of international law resulting from fisheries actions. At other times, complicated international fisheries issues are handled via diplomatic communication and consultation, as in the 'snow crab row' between the EU and Norway. This dispute brings to the fore different views over complex treaty relationships, in this case, between the Svalbard Treaty of 1920 and the modern law of the sea within the LOSC. It is perhaps only illustrative of the issues discussed in this volume that such diplomatic approaches at the international level can in addition be subject to internal legal challenge before the EU judiciary by an unsatisfied Member State.¹³ The main fisheries policy challenge in the short term is undoubtedly Brexit, which is also addressed in this volume. With the United Kingdom becoming a 'third State', it will also become a 'coastal State' vis-à-vis the EU, with both of them remaining subject to common cooperation duties concerning management of joint stocks (LOSC Article 63(1)). Looking to such a future, one can expect a bilateral EU–UK fisheries agreement to be concluded given their common fisheries and trade interests. This may become a significant new element of the external aspects of the CFP.

11 *European Parliament and European Commission v. Council of the European Union*, Joined Cases C-103/12 and C-165/12.

12 *Front Polisario v. Council of the European Union*, Case T-512/12; *Council v. Front Polisario*, Case C-104/16; *Western Sahara Campaign UK v. Commissioners for Her Majesty's Revenue and Customs and Secretary of State for Environment, Food and Rural Affairs*, Case C-266/16.

13 Case T-293/18 *Latvia v. Commission*, where the claimant argued that the Commission had failed to execute its duty under the EU Treaties to guarantee that Norway correctly observes the commitments made by that State under the Treaty of Paris regarding the rights of European Union Member States to non-discriminatory access to fish in the fishing zone of Svalbard. The action was dismissed as inadmissible by the order of the General Court of 30 January 2020.

This issue illustrates that, for a policy area of a sectoral nature, the CFP generates a surprising amount of international law related issues. By casting light of the importance and intricacies of such issues, the articles make a welcome contribution to the ongoing debates and developments.

*Esa Paasivirta*¹⁴

Legal Adviser, European Commission; Adjunct Professor, University of Helsinki, Finland

14 The information and views set out in this article are those of the author, and do not necessarily reflect the official opinion of the European Commission.