Chapter 13

Port State Jurisdiction to Combat IUU Fishing:
The Port State Measures Agreement

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Introduction

For a number of years, the international community has recognized, and expressed its concern about, the many threats posed by illegal, unreported and unregulated (IUU) fishing activities.1 IUU fishing activities do not just threaten the status of targeted fish stocks but can also negatively affect the health of marine ecosystems, for instance by using fishing practices that are prohibited for ‘legitimate’ fishermen, resulting in unnecessary mortality of fish and non-fish species and other impacts on marine ecosystems. Living and working conditions on board many vessels engaged in IUU fishing activities are often appalling and pose dangers to the crew’s health and lives. Moreover, the livelihoods and food security of coastal communities that depend on marine capture fisheries—in particular in developing states—are under direct threat of IUU fishing activities. The ensuing malnutrition, poverty, and social unrest destabilize communities and have led to increased migration and, in some cases, even piracy. The damage that is being caused by IUU fishing activities to the global marine ecosystem is difficult to estimate, but no one doubts that it is significant. In part this is of course attributable to the very different nature of each of the three components of the acronym IUU.

Especially since 2001, the urgent need for, and high potential of, port state measures to combat IUU fishing has been acknowledged by the international community in various fora. This is, inter alia, based on the recognition that

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1 For a description of the three separate components of IUU fishing, see paragraph 3 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (IPOA-IUU) (adopted by consensus by the Committee on Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO) on 2 March 2001 and endorsed by the FAO Council on 23 June 2001. Online: <http://www.fao.org/fishery/publications/ipoa/en> (accessed 15 February 2010)). In this chapter, the words ‘IUU fishing’ generally have a narrower meaning than ‘IUU fishing activities’. For a definition of ‘fishing’ and ‘fishing related activities’ see Article 1(c) and (d) of the PSM Agreement (Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing, Rome, 22 November 2009. Not in force; FAO, Report of the Conference of the FAO, Thirty-sixth Session, Rome, 18–23 November 2009, Doc. C 2009/REP, Appendix E.).
the high costs and risks of enforcement at sea make enforcement in port a cost-effective alternative. Broad international support for a legally binding global instrument on port state measures to combat IUU fishing (hereinafter PSM Agreement) eventually culminated in a mandate for a negotiation process provided by the Committee on Fisheries (COFI) of the Food and Agriculture Organization of the United Nations (FAO) at its 27th Session in 2007. The PSM Agreement was eventually adopted by the Thirty-sixth Session of the FAO Conference on 22 November 2009. This chapter analyzes some elements of this PSM Agreement in light of the international law of the sea.

There are currently no definitions for the terms ‘port state’ or ‘coastal state’ in the United Nations Convention on the Law of the Sea (LOSC) or another global instrument with (near-) universal participation. Nevertheless, when the term ‘port state’ is used in the sphere of the international law of the sea, it should be assumed to relate to foreign vessels and also to be distinct from the term ‘coastal state’. The current chapter therefore uses the term port state in connection with foreign vessels in its ports in the context of compliance with conservation and management measures whose spatial scope is not exclusively limited to the maritime zones of the port state.

The structure of this chapter is as follows. The next section provides an overview of the background to the negotiations on the PSM Agreement. The succeeding section then examines the rationale of the PSM Agreement, which is followed by a discussion on the position of the PSM Agreement in the international legal framework. Subsequently, there is a more in-depth analysis of some elements of the PSM Agreement, with subsections focusing on access to port, residual jurisdiction, extra-territorial port state jurisdiction, and linkages to regional fisheries management organizations (RFMOs). The final section offers some conclusions.

**Background to the Negotiations on the PSM Agreement**

The start of the negotiations on the PSM Agreement in June 2008 (see further below) builds on more than a decade of efforts at the global, regional, and national