

In practice, however, it is the case that some crucial matters in development cooperation are indeed regulated by the soft law type of instruments that Dann brands as 'administrative'. Thus, even though from a public law perspective his division makes sense, in terms of the 'law of development cooperation', as practised, such division is achingly bold. It further entrenches sensitive issues of insufficient legal safeguards for the sub-state level, such as the collective rights of indigenous peoples or the local authority over the use of natural resources. Arguably, this is exactly where further research and deliberation is needed, and where scholars will hopefully be able to build upon the vast comparative data with which Dann presents us.

All in all, *The Law of Development Cooperation* can justly be celebrated as the 'state of art' of legal reasoning. Every single page of the book is stimulating and full of insights valuable to both development practitioners and legal scholars alike. On the conceptual level, the construction of a multi-layered legal field of development cooperation from an institutional perspective that focuses on the legal norms of donors seems highly plausible. It presents academics with a rich yet workable area for further research. Nevertheless, placed against a wider background of academic debates about law-making and accountability in a transnational setting, the normative argument of the book comes across as putting a somewhat disproportionate weight on the international element of the system. In a way, the very project of establishing development cooperation as a field of study in international law presupposes an inclination to argue in favour of the application of international norms and principles, despite the slimmness of their content, or the low level of individual and collective protection that they entail. Arguably, a greater understanding of how this system incorporates (or at least interacts with) relevant domestic legal frameworks is necessary to offer solutions to the most pressing challenges of development cooperation. In this respect, Dann's monograph is best perceived as an invitation to engage in constructive and systematic scholarly research on these issues.

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Efthymios Papastavridis. ***The Interception of Vessels on the High Seas, Contemporary Challenges to the Legal Order of the Oceans***. Oxford: Hart, 2013. Pp. 402. £65. ISBN: 9781849461832.

Many are the threats that challenge the security of the oceans today. Piracy, which was thought to be relegated to history and adventure books (and films), has re-appeared and threatens human lives but also, cynically more importantly for states, the safe transport of goods. The seas provide the main route for trade in goods worldwide. Their security is an imperative for a globalized economy. In the 2008 Report on Oceans and the Law of the Sea, the UN Secretary General identified seven specific threats to maritime security: (1) piracy and armed robbery; (2) terrorist acts against shipping, offshore installations, and other maritime interests; (3) illicit trafficking in arms and weapons of mass destruction (WMD); (4) illicit trafficking in narcotic drugs and psychotropic substances; (5) smuggling and trafficking of persons at sea; (6) illegal, unreported, and unregulated (IUU) fishing; and (7) international and unlawful damage to the marine environment.¹

The law of the sea, and in particular the 1982 Law of the Sea Convention (UNCLOS),² does not specifically deal with maritime security. It nevertheless provides for some instruments in

¹ UNGA, 'Ocean and the Law of the Sea: Report of the Secretary General', 10 Mar. 2008, UN doc. a/63/63, paras 54, 63, 72, 82, 89, 98, 107–108.

² 21 ILM (1982) 1276; available at: www.un.org/Depts/los/index.htm.

order to manage and counter those threats on the high seas and to limit the otherwise guaranteed freedom of navigation. In particular the right of visit (Article 110 UNCLOS)³ is the core legal basis for any enforcement activity performed, unilaterally or multilaterally, on the high seas. The right to visit is the legal basis for any interception of vessels on the high seas or interdiction programme. It consists of an exception to the exclusive jurisdiction of the flag state on the high seas (Article 92 UNCLOS) and the related principle of non-interference. The analytical study of interceptions of vessels on the high seas, performed for preventing or repressing the above-mentioned threats, is the object of the book under review written by Efthymios Papastavridis.

Papastavridis investigates whether the multiplication of interceptions on the high seas in order to secure the oceans is curtailing the principle of non-interference, and thus challenging the ocean order. The principal theoretical question his book addresses is: 'how can the various grounds of interference with foreign vessels on the high seas, especially the foregoing regarding [weapons of mass destruction], illicit migration and drug trafficking, be theoretically conceptualized and legally justified under a coherent regulatory order of the oceans?' (at 3). Papastavridis' work thus highlights how both the diseases (the threats to maritime security) and the medicine (the interception activities) generate challenges for the existing ocean governance. He then questions whether this practice is modifying the ocean order by generating a new law of interdiction (at 3).

Papastavridis' work builds upon the existing scholarship and practice concerning each of the identified threats to maritime security. He refers in particular to two recent studies which strove to go beyond sector-specific analyses and adopted a global approach to maritime security: the book by Douglas Guilfoyle, *Shipping Interdiction and the Law of the Sea* (2009);⁴ and Nathalie Klein's *Maritime Security and the Law of the Sea* (2011).⁵ Papastavridis' approach is, however, more global if we consider the material scope of the analysis: both Guilfoyle's and Klein's books focus on the law of the sea, as their titles indicate. Their main aim is to analyse how this field of international law is coping with old and new security threats. Klein includes all maritime areas and activities which are accessorial to maintaining security (e.g., intelligence gathering and information sharing). Guilfoyle limits his analysis to shipping interdiction, namely to the exercise of the right of visit on the high seas. The material scope of Guilfoyle's and Papastavridis' books thus overlaps, but the latter embeds it in a wider context, as its sub-title indicates: the legal order of the oceans, i.e., ocean governance. Here lies one of the main contributions of Papastavridis' work to this field of literature.

³ '1. Except where acts of interference derive from powers conferred by treaty, a warship which encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is reasonable ground for suspecting that: (a) the ship is engaged in piracy; (b) the ship is engaged in the slave trade; (c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under article 109; (d) the ship is without nationality; or (e) though flying a foreign flag or refusing to show its flag, the ship is, in reality, of the same nationality as the warship. 2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship's right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration. 3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed any act justifying them, it shall be compensated for any loss or damage that may have been sustained. 4. These provisions apply *mutatis mutandis* to military aircraft. 5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service.'

⁴ The paperback of Guilfoyle's book was released in 2011.

⁵ The paperback of Klein's book was released in 2012.

Papastavridis follows scholars and practitioners who embrace old holistic ideas, such as Scelle's 'domaine public international'⁶ and Bastid's 'espace d'intérêt international'.⁷ The recent holistic approach concerns both lawmaking processes and implementation and enforcement mechanisms.⁸ Its application calls for a wider understanding of the normative and institutional context of any specific issue. Some of the chapters of Papastavridis' book highlight how the interception of vessels on the high seas triggers the application of other fields of international law, beyond the law of the sea. Papastavridis analyses the joint application of these regimes a little more deeply than his predecessors. The author clearly affirms at the end of Chapter 3 that 'interception on the high seas is subject to various rules of international law, which all form the "legal order of the oceans"' (at 82). The book does not, however, engage with issues of regime interaction and the respective literature. This would have been an interesting exercise and contribution to the general debate, but it does not undermine the structure of the book.

The book consists of eight chapters. In the first chapter, the Introduction, Papastavridis presents the topic and his principal theoretical question, namely whether the practice in the field of interception of vessels on the high seas has curtailed the principle of non-interference (at 3). He then briefly defines the contemporary challenges or threats that constitute the material scope of his analysis: terrorism and WMD (at 4), drug trafficking (*ibid.*), illicit migration (at 6), piracy and armed robbery (at 11), and IUU fishing (at 12). Each challenge and the related practice are then studied in what can be considered the second part of the book, which focuses on case studies (Chapters 4–8).

Before the case studies Papastavridis offers an interesting and insightful historical excursus concerning the principle of non-interference (Chapter 2). He focuses his historical reconstruction on the tension between the *mare liberum*, i.e., the argument first developed by Hugo Grotius in his book *Mare Liberum* in 1609⁹ and according to which the high seas are common to all states and cannot be submitted to territorial sovereignty, and the *mare clausum*, i.e., the argument deriving from the book of the same name by John Selden (1635) and maintaining that the high seas can be subjected to jurisdiction and sovereignty. Both positions were never absolute and allowed for exceptions, in the case of *mare liberum*, for the exercise of control over maritime zones adjacent to the coasts and, in the case of *mare clausum*, for a right of innocent passage. As is well-known, the *mare liberum* approach has prevailed, but some elements of *mare clausum* have persisted. Three categories of *mare clausum* claims in particular underpin the exercise of

⁶ G. Scelle, *Manuel élémentaire de droit international public* (1943), at 276; see also G. Scelle, *Plateau continental et droit international* (1955), at 52. Scelle constructed his theory of 'domaine public international', which encompassed all oceans, including the areas submitted to coastal states' jurisdiction, on the basis of de Lapradelle's theory of servitude: see de Lapradelle, 'Le droit de l'État sur la mer territoriale', 5 *RGDIP* (1898) 264, 309. The concept of 'domaine public international' was then developed by Ruzié (D. Ruzié, *Droit international public* (7th edn, 1987), at 82) and Nguyen Quoc Dinh (Nguyen Quoc Dinh, *Droit international public* (1975), at 525). These later authors, however, recognized that territorial waters were submitted to the territorial jurisdiction of the coastal state; see Y. Tanaka, *A Dual Approach to Ocean Governance* (2008), at 12.

⁷ P. Bastid, *Cours de droit international public* (1976–1977), at 1221.

⁸ Rayfuse and Warner point out, in order to guarantee effective protection of the marine environment, there is a need for 'an integrated governance structure which adequately protects not only the interests of individual users but also of the international community as a whole'; see Rayfuse and Warner, 'Securing a Sustainable Future for the Oceans Beyond national Jurisdiction: The Legal Basis for an Integrated Cross-Sectoral Regime for High Seas Governance for the 21st Century', 23 *Int'l J Marine and Coastal L* (2008) 399, at 402. They also suggest the development of a high seas regime based on the concept of 'international public trusteeship'; *ibid.*

⁹ *Mare liberum* was one chapter of the *De Jure Praedae* (1613), which consisted of the legal brief prepared by Grotius in order to defend the seizure of the *Sin Katerina*, a vessel of the Dutch East India Company.

jurisdiction on the high seas: (1) to maintain international peace and security (at 30); (2) to protect the *bon usage* of the high seas (at 32); and (3) to maintain the '*ordre public*' of states and the international society (at 36).

Chapter 3 explains the 'law of maritime interception on the high seas'. The evolution of the right of visit in treaty and customary law is first analysed in the context of warfare and then in peacetime. A brief overview of the main mechanisms for the expression of consent allows one to re-affirm the centrality in the ocean order of the exclusive jurisdiction of the flag state. However, recent practice shows how states increasingly bend this exclusivity through the conclusion of bilateral or multilateral treaties. Here lies Papastavridis's core argument regarding the curtailment of the principle of non-interference. The following chapters detail this argument in different normative and factual contexts.

Chapters 4 and 5 deal with interception on the high seas in the context of peace and security. Chapter 4 focuses on the right of visit when exercised in the context of an armed conflict and UN Security Council actions. The case of the *Mavi Marmara* and the 2011 operation in Libya are addressed against the background of relevant precedents. Chapter 5 examines the practice in the field of international terrorism and the proliferation of WMD. Particular attention is given to regional cooperation programmes (at 127, 136) and to the US Proliferation Security Initiative (at 139). In this specific context some states have invoked the legality of unilateral action. Papastavridis studies the possible justifications for unilateral action in the law of the sea and general international law (at 148 ff). He shows how international law sets thresholds for those actions in order to guarantee the legal order of the oceans.

Chapter 6 scrutinizes interceptions of vessels performed in order to safeguard the freedoms of the high seas, namely the freedom of navigation and the freedom of fishing (Article 87(1)(a) and (e) UNCLOS). The first part of the chapter is consequently devoted to piracy and the second part to IUU fishing. At times a bit too descriptive, this chapter offers some critical comments concerning the role of the European Union, the use of privately contracted armed security personnel in high risk zones, and the protection of the human rights of those individuals submitted to interceptions.

The protection of human rights is a crosscutting topic throughout the book and receives particular attention in the last two chapters: Chapter 7 on interceptions to counter drug trafficking and Chapter 8 on interceptions of human beings in the context of irregular migration. Core human rights obligations, such as the prohibition of arbitrary detention (at 242) and the principle of *non-refoulement* (at 302), are important yardsticks for the types of interception that international law allows. They limit the discretion of states concerning the *modus operandi*. They are encompassed in the legal order of the oceans.

Papastavridis concludes that the right of visit 'has always served as the point of reference for all claims to sovereignty and jurisdiction on the high seas as well as for the resolution of all ostensible conflicts between *mare clausum* and *mare liberum*' (at 314). One of the main contributions of Papastavridis' study is to approach from a theoretical and historical viewpoint issues which are often left to practitioners. This allows him rightly to highlight the 'internationalization' of *mare clausum* concerns (at 28–29), which means the shift 'from purely individualistic claims of states, to collectively shared legitimate concerns of states and of the other participants in the law-making process of the order of the oceans' (at 310). Concerted action through bilateral or regional cooperation mechanisms seems to prevail over unilateral claims in the field of interception of vessels on the high seas.

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