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Abstract

International fisheries governance contains no specific provisions detailing States' rights and obligations in respect of fisheries in maritime zones classified as falling under the sovereignty of coastal States, namely: internal waters, archipelagic waters and territorial seas. Using a case-study of the Western and Central Pacific Fisheries Commission, this article demonstrates that there is still a gap in international fisheries governance relating to fisheries in 'waters under sovereignty' which requires remedying, and concludes by providing some possible management options to fill the gap.

Keywords

under, rights, jurisdiction, obligations, fisheries, convention, maritime, sea, zones, states, coastal, sovereignty, law

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Fisheries Jurisdiction under the Law of the Sea Convention: Rights and Obligations in Maritime Zones under the Sovereignty of Coastal States

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Abstract

International fisheries governance contains no specific provisions detailing States' rights and obligations in respect of fisheries in maritime zones classified as falling under the sovereignty of coastal States, namely: internal waters, archipelagic waters and territorial seas. Using a case-study of the Western and Central Pacific Fisheries Commission, this article demonstrates that there is still a gap in international fisheries governance relating to fisheries in 'waters under sovereignty' which requires remedying, and concludes by providing some possible management options to fill the gap.

Keywords

fisheries jurisdiction; maritime zones under sovereignty; Western and Central Pacific Fisheries Commission; UN Fish Stocks Agreement

Introduction

One of the most far-reaching outcomes of the Third United Nations Conference on the Law of the Sea (UNCLOS III) negotiations and the resultant 1982 United Nations Convention on the Law of the Sea¹ (hereafter LOSC), was agreement on a comprehensive set of new international law rules dealing with marine fisheries. With very minor exceptions addressed later, the core

¹ United Nations Convention on the Law of the Sea (Montego Bay, 10 December 1982) 1833 *UNTS* 396, entered into force 16 November 1994, <<http://www.un.org/Depts/los>> (LOSC).

components of this new legal framework are set out in Part V of the LOSC (Exclusive Economic Zone (EEZ)) and Part VII (High Seas). These provisions are largely framed in terms of rights and responsibilities and the duty to cooperate in respect of straddling fish stocks and highly migratory species.

In the three decades after the conclusion of the LOSC and the implementation of its fisheries provisions, several gaps have been identified, particularly in respect of the scope and content of the duty to cooperate to achieve the long-term conservation and management of straddling fish stocks and highly migratory fish stocks. These gaps were to a large extent addressed by the international community in Agenda 21, Chapter 17² and the United Nations 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 (hereafter UNFSA).³

It is significant that the LOSC contains no specific provisions detailing States' rights and obligations in respect of fisheries in maritime zones classified as falling under the sovereignty of coastal States, namely: internal waters, archipelagic waters and territorial seas. This has become a challenge to the management of straddling fish stocks and highly migratory fish stocks in the Western and Central Pacific Ocean under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC Convention).⁴ The legal issue that has arisen relates to the area of application of the WCPFC Convention, and whether conservation and management measures adopted by the Western and Central Pacific Fisheries Commission (hereafter the WCPFC) apply to maritime zones under the sovereignty of members of the Commission. In the wider global context, the issue is also relevant to all Regional Fisheries Management Organizations (RFMOs) that have competence over straddling fish stocks and highly migratory species.

Using a case-study of the experience of the WCPFC, this article demonstrates that there is still a gap in the LOSC's legal framework for fisheries

² Chapter 17 of Agenda 21: *Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources* in S Johnson (ed) *The Earth Summit: The United Nations Conference on Environment and Development (UNCED)* (London/Leiden: Graham and Trotman/Martinus Nijhoff 1993).

³ Agreement relating to the Implementation of the Provisions of Part XI of the United Nations Convention on the Law of the Sea of 10 December 1982 (New York, 28 July 1994) 2167 *UNTS* 3, entered into force 28 July 1996, <<http://www.un.org/Depts/los>> (UNFSA).

⁴ Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Honolulu, 5 September 2000) 2275 *UNTS* 43, entered into force 19 June 2004, <<http://www.wcpfc.int/>> (WCPFC Convention).

which requires remedying. It will be shown that the source of the problem is the UNFSA, the very Agreement negotiated to address gaps in the LOSC fisheries framework. The article concludes by providing some possible management options to fill the gap.

Fisheries Jurisdiction and the LOSC

The LOSC divides ocean space into three broad maritime zones, namely: zones under sovereignty (encompassing internal waters, archipelagic waters and territorial seas); zones under sovereign rights (EEZ and the continental shelf); and high seas (all parts of the sea that are not included in zones under sovereignty or sovereign rights). The specific fisheries provisions in these maritime zones have been exhaustively dealt with in the literature.⁵ For the purpose of this article, it is sufficient to provide a brief summary.

Fisheries Jurisdiction in Zones under Sovereignty

The fisheries framework under the LOSC is striking for the absence of an obligation on coastal States to impose any specific conservation and management measures in maritime zones falling under their sovereignty. The only LOSC references to fisheries in zones under sovereignty are under Article 19(2)(a),⁶ Article 21(1)(d),⁷ and Article 51(1).⁸ However, none of these provisions relate to the conservation and management of fisheries.

There are at least two reasons for the absence of fisheries obligations in maritime zones under sovereignty under LOSC. First, under general international law, coastal States have absolute sovereignty in respect of the living and non-living resources coming under their sovereignty,⁹ and that can only be

⁵ See for example, S. Kaye, *International Fisheries Management* (Netherlands: Kluwer Law International 2001); E. Hey (ed) *Development in International Fisheries Law* (Netherlands: Kluwer Law International 1999); R. R. Churchill and A. V. Lowe, *The Law of the Sea* (3rd ed, Manchester: Manchester University Press 1999).

⁶ It is a violation of the right of innocent passage for a foreign vessel to engage in any fishing activities whilst passing through the territorial sea of a coastal State.

⁷ Among the laws and regulations that the coastal State is permitted to implement relating to the innocent passage of foreign vessels through their territorial sea is included “the conservation of the living resources of the sea”.

⁸ Archipelagic States shall recognise the traditional fishing rights of nationals of neighbouring States and cooperate with those States as required.

⁹ *Permanent Sovereignty over Natural Resources*, GA Res 1803 (XVII), UN GAOR, 17th session, 1194th plenary meeting, Agenda Item 39, UN Doc. A/RES/1803(XVII) (14 December 1962).

limited by their express agreement.¹⁰ The second possible reason for the lack of attention paid to fisheries matters in maritime zones of jurisdiction under sovereignty relates to the general perception, lasting from the late 1970s until the early 1990s, that over ninety per cent of the fisheries resources in the ocean were located in EEZs.¹¹

Under general international law, sovereignty is qualified only by specific international obligations assumed by States. In the absence of any specific fisheries conservation and management qualifications, coastal States “have a wide margin of discretion in regulating the use of the resources in maritime internal waters, archipelagic waters and the territorial sea.”¹² Coastal States “also are entitled to the benefits to be obtained from the fisheries resources in these zones.”¹³

Fisheries Jurisdiction in the EEZ and High Seas

Unlike maritime zones under sovereignty, the bulk of the LOSC imposes specific conservation and utilisation obligations on States relating to conservation, utilisation and enforcement in their EEZs and on the high seas.¹⁴ Again, the literature on this is exhaustive.¹⁵ Significantly there is a requirement for cooperation in respect of straddling fish stocks and highly migratory species.¹⁶ There are also specific obligations relating to anadromous stocks¹⁷ and catadromous species.¹⁸ On the high seas the LOSC grants to all States the freedom of fishing. This freedom is balanced by a duty to co-operate to manage the fisheries resources¹⁹ and a duty to adopt measures to control the fishing activities of nationals on the high seas.²⁰

¹⁰ LOSC Art. 2(3).

¹¹ A. McGinn, “Promoting Sustainable Fisheries” in L. R. Brown *et al.*, *State of the World 1998: A Worldwatch Institute Report on Progress Towards a Sustainable Society* (New York: Norton 1998).

¹² E. Hey, “The Fisheries Provisions of the LOS Convention”, in Hey, *supra* note 4, 20. See also Churchill and Lowe, *supra* note 4, 284.

¹³ Hey, *ibid.*

¹⁴ See LOSC Arts. 61 and 62.

¹⁵ See sources *supra* at note 4.

¹⁶ See LOSC Arts. 63, 64.

¹⁷ LOSC Art. 66.

¹⁸ LOSC Art. 67.

¹⁹ The duty is described in LOSC Arts. 63, 64, 66, 67, 116, 117 and 118 and a variety of conservation and management obligations are described in LOSC Arts. 63, 64, 66, 67, 116, 118 and 119.

²⁰ LOSC Art. 117.

The 1995 UNFSA—the Source of the Problem

Even before the entry into force of the LOSC, it became clear that there were significant gaps in the LOSC fisheries framework and its application to trans-boundary fisheries that migrated across or straddled multiple boundaries. In response, the United Nations General Assembly, by Resolution 47/192,²¹ convened a Conference to negotiate a new international agreement in accordance with the mandate in Chapter 17.49(e) of Agenda 21.²² The resultant UNFSA filled a major gap in the LOSC fisheries framework and further developed existing principles and standards from the LOSC relating to cooperation between States, compatibility of conservation and management across international boundaries, and State responsibility.²³

Among other things, the UNFSA prescribed specific requirements for coastal States and fishing States to implement compatible conservation and management measures. While the UNFSA explicitly recognised and maintained the sovereign rights of coastal States, it simultaneously prescribed new conservation, cooperation and compatibility obligations that made no specific reference to any maritime zone of jurisdiction under sovereignty or sovereign rights, but to the high seas and “areas under national jurisdiction.”²⁴ The UNFSA refers to “areas under national jurisdiction” in terms of obligations to cooperate to manage straddling fish stocks and highly migratory species and for States to develop compatible measures, without any definition or qualification; thus raising the question whether the phrase refers only to zones under sovereign rights (principally the EEZ) or whether it also applies to zones under sovereignty (internal waters, territorial sea and archipelagic waters).

The WCPFC Context

The WCPF Convention entered into force in 2004 and was the first treaty implementation of the UNFSA. Thus, the provisions of WCPF Convention drew extensively on the UNFSA. Additionally, the negotiation of both the

²¹ *United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks*, GA Res. 47/192 UN GAOR, 47th sess, 93rd plenary meeting, Agenda Item 79, UN Doc A/RES/47/192 (22 December 1992).

²² See Paragraph 17.49(e) Chapter 17 of Agenda 21: Protection of the oceans, all kinds of seas, including enclosed and semi-enclosed seas, and coastal areas and the protection, rational use and development of their living resources in Johnson, *supra* note 2.

²³ M. Lodge and S. Nandan, “Some Suggestions Towards Better Implementation of the United Nations Agreement on Straddling Stocks and Highly Migratory Fish Stocks of 1995” (2005) 20 *IJMCL* 345–379.

²⁴ UNFSA Art. 3.

UNFSA and the WCPF Convention were chaired by the same person, Satya Nandan, thus ensuring continuity between the two instruments.

Nine coastal States within the WCPFC area of competence control significant areas of archipelagic waters. Indonesia, Philippines, Papua New Guinea, Vanuatu, and Fiji have all submitted claims²⁵ for archipelagic State status that are in accordance with the LOSC and broadly recognised.²⁶ The Solomon Islands is also considered to be an archipelagic State under the LOSC.²⁷ In accordance with the LOSC, these States are all entitled to claim sovereignty over substantial archipelagic waters. Kiribati, Tuvalu, and the Marshall Islands have also made declarations²⁸ claiming archipelagic status, although it is doubtful whether these claims are entirely consistent with the LOSC.²⁹ In addition, the other coastal State members of the WCPFC all claim territorial seas through which straddling fish stocks and highly migratory fish stocks subject to the competence of WCPFC migrate and in which they are fished.

In all, the phrase “areas under national jurisdiction” appears in at least eighteen provisions of the WCPF Convention,³⁰ but as with the UNFSA, was left undefined. Indeed, this was one of the most contentious issues during the Multilateral High Level Conference (MHLC) that negotiated the WCPF Convention and it lasted well into the implementation of the Convention.

²⁵ For further details see United Nations, *Maritime Space: Maritime Zones and Maritime Delimitation* (2012) Available at: <<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/asia.htm>> Accessed 10 July 2012. Data reporting for fisheries within these waters has historically been poor. Therefore it is not possible to accurately estimate the total catch or value of tuna fisheries within waters under sovereignty relative to the entire WCPF Convention Area. Nevertheless, it is known that these waters are highly productive and comprise a significant percentage of the total regional tuna fisheries, and poor data reporting has been identified as a conservation and management weakness. See: J. Hampton and S. Harley. *Assessment of the Potential Implications of Application of CMM-2008-01 for Bigeye and Yellowfin Tuna*. Fifth Regular Session of the Scientific Committee to the Western and Central Pacific Fisheries Commission, Port Vila, Vanuatu, 10–21 August 2009; available at www.wcpfc.int/.

²⁶ Churchill and Lowe, *supra* note 4, 122; M. Tsamenyi, C. Schofield and B. Milligan, “Navigation through Archipelagos: Current State Practice” in M. Nordquist, T. Koh and J. Moore (eds), *Freedom of Seas, Passage Rights and the 1982 Law of the Sea Convention* (Leiden: Martinus Nijhoff 2009) pp. 413–454. See also G. Boyles and P. Woodward, *South Pacific Region Maritime Limits Map* (South Pacific Applied Geoscience Commission, Suva, Fiji and Pacific Islands Forum Fisheries Agency, Honiara, Solomon Islands 1995); WCPFC Secretariat, *Convention Map for the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean* (WCPFC 2005); available at www.wcpfc.int/.

²⁷ Churchill and Lowe, *supra* note 4, 122.

²⁸ United Nations Office of Legal Affairs, *United Nations Convention on the Law of the Sea: Declarations and Reservations* (New York: UN Publications 2010); Churchill and Lowe, *ibid*.

²⁹ Churchill and Lowe, *ibid*.

³⁰ See WCPF Convention Arts. 7(1), 7(2), 8(1), 8(2)(a), 8(2)(b), 8(3), 8(4), 10, 23(3), 24(1)(b), 24(2), 24(4), 24(8), 24(9), 28(4), 28(5), 29(2) and 29(4).

During the MHLC, Indonesia, with support from the Philippines and Papua New Guinea, argued that archipelagic waters were within their full sovereignty and therefore not subject to the duty to cooperate under the LOSC and international law, and consequently were not within the Convention area. Other archipelagic States subsequently argued that their archipelagic waters should also be included within any such exemption.³¹

Legal Analysis of the Phrase “Areas under national jurisdiction”

The term “areas under national jurisdiction” in the UNFSA gives rise to two possible interpretations.³²

Literally interpreted, the phrase “areas under national jurisdiction” is capable of being construed as referring to all waters over which a coastal State exercises either sovereignty or sovereign rights. This would include internal waters, archipelagic waters, territorial seas and EEZs.³³

Edeson points out that where UNFSA Article 3(1) refers to “areas under national jurisdiction,” that phrase is expressly qualified by “subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.” This, he argues, implies an application to more than just the EEZ. Additionally, Edeson points out that the phrase “different legal regimes” used in UNFSA Article 3, would also “in its ordinary meaning ... include internal waters, the territorial sea, and archipelagic waters.”³⁴ An extension of this reasoning will be that the implied intention of the UNFSA was that straddling fish stocks and highly migratory fish stocks should be managed “in their entirety.” This would therefore extend the competence of RFMOs to straddling and high migratory fish stocks in territorial seas and archipelagic waters.³⁵ The text of the WCPFC does not negate or support this argument as Article 3 defines the Convention area very broadly without any qualification.³⁶ In further support of this position, it could be argued that the LOSC is silent on fisheries management responsibilities in maritime zones under sovereignty, because for

³¹ Government of Australia, *Internal Report on MHLC4* (1999) 2 (available from author); S. Tarte, *Report on the Fifth Multilateral High-Level Conference on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific* (Suva: University of the South Pacific 1999) 7–9.

³² W. R. Edeson, “The Legal Aspects of the Collection of Fisheries Data” (1999) 953 *FAO Fisheries Circular* (Rome: FAO).

³³ *Ibid.*

³⁴ *Ibid.*

³⁵ See UNFSA Art. 7(2); WCPF Convention, Art. 8(1).

³⁶ The only exception is waters in the South China Sea.

fisheries management purposes, the provisions in LOSC Part V are intended to apply over the whole EEZ from the territorial sea baseline.

A more convincing legal position, however, is that the term “areas under national jurisdiction,” in the context of the LOSC, the UNFSA and the WCPF Convention is a reference to the EEZ and does not include zones under sovereignty (internal waters, archipelagic waters and territorial sea).³⁷ This conclusion is based on the negotiation history of both the UNFSA and the WCPF Convention, and the specific context and objectives of both Agreements as they relate to the LOSC. Because of space constraints, the relevant points to support this conclusion are summarised below:

- LOSC Articles 63(2) and 64 require cooperation among coastal States and States fishing in the adjacent high seas to cooperate in the management of straddling fish stocks and highly migratory fish species both within and beyond the EEZ. It is generally agreed that LOSC Articles 63(2) and 64 require cooperation in respect of EEZs and high seas and not in respect of territorial seas and archipelagic waters.
- As noted earlier, the UNFSA is a product of the United Nations Conference on Environment and Development (UNCED) negotiations (particularly Agenda 21). It is clear from this historical background to the negotiation of UNFSA that the general understanding leading to the negotiation of the Agreement was the lack of compatibility between management measures on the high seas and in EEZs and thus, the UNFSA was simply designed to give effect to Articles 63 and 64 of the LOSC, which are classically EEZ and high seas provisions.³⁸
- Essentially, the UNFSA applies to the high seas and only a few of its provisions are stated to specifically apply to the conservation and management of straddling fish stocks and highly migratory fish stocks “within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and areas beyond national jurisdiction as provided for in the Convention.”³⁹ It is significant that every reference in the UNFSA to “areas under national jurisdiction” is in the context of the EEZ or sovereign rights.

³⁷ This conclusion is also supported by the WCPFC Review Panel. *Review of the Performance of the WCPFC*, WCPFC Doc. WCPFC8-2011/12 (28 February 2012); available at www.wcpfc.int/.

³⁸ It is interesting to note that the title in French and Spanish at least to the UN Fish Stocks conference and straddling fish stocks and highly migratory species includes a reference to the EEZ. We are grateful to Bill Edeson for drawing our attention to this point.

³⁹ UNFSA Art. 3(1).

- In the context of the WCPFC, Article 3 of the WCPF Convention defines the Convention Area broadly to include the waters of the Pacific Ocean as defined by the coordinates in Article 31(1). However, the Convention Area so defined is subject to Article 4 of the Convention which provides that “Nothing in this Convention shall prejudice the rights, jurisdiction and duties of States under the 1982 Convention and the Agreement. This Convention shall be interpreted and applied in the context of and in a manner consistent with the 1982 Convention and the Agreement.” Article 3, read in conjunction with Article 4, suggests that the Convention Area defined in Article 3 is limited by Article 4 and cannot be construed to be applying to maritime zones under the sovereignty of parties to the Convention as this would be inconsistent with LOSC.
- Article 3(3) of the WCPF Convention sheds some further light on the issue. According to this Article, conservation and management measures adopted by the Commission need not necessarily apply to all the Convention Area. Article 3(3) provides: “Conservation and management measures under this Convention shall be applied throughout the range of the stocks, or to specific areas within the Convention Area, as determined by the Commission.” This suggests a distinction between the Convention Area and the area of application of conservation and management measures. Thus, physically and geographically, the Convention Area may encompass the entire western Pacific Ocean, but the area of application of conservation and management measures will be determined on a case-by-case basis, taking into account Article 4 of the Convention.
- Article 10 of the WCPF Convention specifies the functions of the WCPFC. It is important to note that these functions are “[w]ithout prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the highly migratory fish stocks within areas under national jurisdiction.”
- Finally, Article 18(2) of the WCPF Convention, dealing with the contribution formulae for the budget, puts the matter beyond doubt. The budget of the Commission is to be based on a scheme of assessment comprising an equal basic fee, a fee based on national wealth and a variable fee based on the total catch taken within EEZs and high seas in the Convention area.

From the above brief summary, the logical legal interpretation to be given to the term “areas under national jurisdiction” is the EEZ. This will mean that conservation and management measures adopted by the WCPFC would apply

only to the EEZ and the high seas unless specifically agreed by the States concerned.

Fisheries Conservation Implications

Admittedly, the legal conclusions drawn above create a significant management challenge for the WCPFC particularly, but also for other RFMOs that have a mandate over trans-boundary stocks that straddle or migrate through multiple maritime zones of jurisdiction. Clearly, the zone approach under the LOSC is not capable of providing an effective framework for the long-term sustainable management of some fish stocks, especially straddling fish stocks and highly migratory species. Undoubtedly, there is a risk to the effective management across the range of the stock if large areas under coastal State sovereignty are excluded from conservation and management measures adopted by RFMOs. If a fishing activity occurs within the territorial sea or archipelagic waters of a coastal State, then the fisheries governance framework is almost entirely at the discretion of the coastal State, subject to minimal responsibilities to not cause harm to others and a general LOSC responsibility on all parties to protect and preserve the marine environment.⁴⁰ This is particularly problematic in the Western and Central Pacific tuna fisheries, where significant catches occur within the archipelagic waters of Indonesia, Philippines, Papua New Guinea and the Solomon Islands. If these archipelagic waters are outside the mandate of the WCPFC, then practical management outcomes cannot easily be negotiated within the framework of the WCPFC.

Alternative workable management solutions must be sought. The Coral Triangle Initiative (CTI)⁴¹ includes these archipelagic waters and has recently begun to discuss tuna concerns. The CTI presents an alternative framework for developing sub-regional conservation measures for tuna fisheries in archipelagic waters. The archipelagic coastal States could potentially develop conservation measures through the non-binding CTI framework in a manner that does not undermine their sovereignty or imply any additional “duty to cooperate” for their archipelagic waters that is not currently prescribed in the LOSC. If approached carefully, then there is an opportunity for the development of compensatory mechanisms to fund any necessary reductions in fishing effort within these archipelagic waters, given that the benefits of such reductions are likely to flow primarily to other States “downstream” from the archipelagic waters. Compensation could include increased allocations to

⁴⁰ LOSC Art. 192.

⁴¹ www.coraltriangleinitiative.org/.

adjacent high seas fisheries, preferential treatment in conservation burden negotiations, or even financial inducements. The development of the compensatory mechanism to fund this approach would address important “conservation burden” questions that are fundamental to transparency in conservation and management negotiations and would enable all interests to be considered.⁴² Such a measure could then be tabled at the WCPFC as a coastal State measure for inclusion into WCPFC conservation measures without limiting or impinging on the sovereignty of coastal States.

Conclusion

The LOSC built on historical developments in the 1970s that significantly expanded coastal State fisheries jurisdiction beyond the traditional limits of the territorial sea and at the same time continued to uphold the freedom of fishing on the high seas, albeit with some limitations. A major gap in the LOSC framework was the lack of compatibility between the regimes of the high seas and of EEZs. The UNFSA effectively elaborated the high seas-EEZ compatibility issue and clarified the scope and content of the duty to cooperate in relation to straddling fish stocks and highly migratory species. However, neither the LOSC framework nor the UNFSA address fisheries jurisdiction in maritime zones under the sovereignty of coastal States. What we now see in the post-LOSC and UNFSA period, and aptly demonstrated by the example in the Western and Central Pacific region, is the need to develop similar compatibility and cooperation provisions for waters under sovereignty for straddling stock and highly migratory species. This is particularly important given the significant expansion of fishing effort in waters under the sovereignty of coastal States, especially in archipelagic waters. This problem does not necessarily require solution through the LOSC or an RFMO framework, and alternative solutions should be explored. It is also clear from the WCPFC experience that such a resolution need not be a legal solution but a management approach which recognises the problem and implements equitable options.

⁴² For example, when considering the distribution of the conservation burden, should RFMOs value the shared nature of (flag State) common rights to high seas fisheries as equal or less than the exclusive nature of coastal State sovereign rights over fisheries within EEZs, and again compared to the absolute sovereignty that coastal States enjoy over fisheries within their archipelagic waters or territorial seas? See Q. Hanich and Y. Ota, “Moving Beyond Rights-Based Management: A Transparent Approach to Distributing the Conservation Burden in Tuna Fisheries” (publication forthcoming) *International Journal of Marine and Coastal Law*.