

# The Role of Port States in Safeguarding Maritime Security and Protecting the Marine Environment

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**Abstract:** This paper will examine the potential of port states in combating marine accidents; illegal, unreported and unregulated fishing, as well as ship-sourced pollution first. Then conclude that port states actively take measures to protect maritime security in accordance with the jurisdiction conferred by a number of international conventions and regional memoranda of understanding (MOUs). These enforcement measures are not only benefiting its national interests but also contributes to the whole international community and the sustainable marine development.

**Keywords:** Maritime; Port; International

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## 1. Introduction

Incidents of marine pollution and illegal activities endangering marine security are matters of continuous concern to the international community. There are a number of conventions that form a comprehensive set of legal systems, mainly developed by the United Nations (UN), the International Maritime Organization (IMO) and the International Labour Organization (ILO) to protect the marine safety and the marine environment. As the first link between land and sea, the port facilitates verifying whether the visiting foreign vessels comply with the standards and whether they have engaged in certain illegal activities in the country where the port is located or in the nearby maritime zones. Therefore, the port jurisdiction in safeguarding maritime security and protecting the marine environment is playing an increasingly significant role.

This paper will examine the potential of port states in combating marine accidents, illegal, unreported and unregulated fishing and ship-source pollution. Port states actively take measures to protect maritime security in accordance with the jurisdiction conferred by a number of international conventions and regional memoranda of understanding (MOUs). These enforcement measures are not only benefitting its national interests but also contributes to the whole international community and the sustainable marine development.

## 2. The Background and the Legal Basis of the Flag State jurisdiction

The United Nations Convention on the Law of the Sea (UNCLOS) grants the flag state exclusive jurisdiction over the ships to which it belongs. But the status of “flag state supremacy” has been shaken by the “flag of convenience” state and the increasing complexity of maritime activities. Thus, port state jurisdiction is regarded as a complement approach to aims that the flag state has failed to achieve as well as a supplement way to the ineffective enforcement on the high seas.

The UNCLOS seeks the balance of jurisdiction between port states and flag states and introduces the

enforcement by flag states to remedy flag state's failures <sup>[1]</sup>. Although the convention does not define the specific content of port state jurisdiction, it grants the rationality and legality of port state jurisdiction in a number of articles in the form of general regulations. For examples, Article 25(2) empowers port states to take measures to prevent vessels calling at ports from violating certain conditions; Article 211(3) grants port states legislative jurisdiction; Article 218 covers enforcement rights of port State to investigate vessels; Article 219 authorizes states to take administrative measures to stop vessel sailing and avoid pollution. These clauses and others provide a legal basis for port States to carry out jurisdiction activities in terms of legislation, jurisdiction and enforcement.

Therefore, the port State could exercise jurisdiction over foreign visiting vessels in accordance with international conventions and its own laws. The next section will go on to examine the contribution of port states in specific practices in terms of shipping activities, fishing activities, and ships pollution.

### **3. The Role of Port States in Shipping Activities**

Safe and orderly shipping activities are the key to maritime security. However, maritime accidents caused by a series of human errors are a great threat to maritime safety, and subs-standard ships are considered to be the main cause of these accidents. There are a number of international conventions that provide detailed management measures for sustainable maritime safety, requiring the responsibilities of individual states. In addition to flag states and coastal states, port states also play a significant role in safeguarding shipping safety.

In accordance with the territoriality principle under public international law, a port state has jurisdiction over the activities of vessels that enter the port of that state. The specific rights and obligations of port states originate from the UNCLOS and several mandatory instruments of the IMO and the MOUs' Regime. Furthermore, Articles 25 (2), 211 (3), and 255 of the UNCLOS implicitly confirm that the port state possesses certain discretionary powers over the jurisdiction of foreign ships visiting its ports. Therefore, port states can set up entry requirements for foreign visiting vessels, and carry out inspections and enforcement of them in accordance with their domestic laws and general international regulations.

According to Article 211(3) of the UNCLOS, under certain circumstances, port states can deny entry or leaving requirements for vessels that do not comply with the standards and inspect vessels calling at its ports in accordance with the construction, design, equipment and manning of ships standards (CDEM standards) to promote the safety of shipping activities and ports safety. This is an international level standard adopted by a number of IMO Conventions <sup>[2]</sup>. The purpose of this standard is to ensure the safe navigation of at sea as much as possible and reduce the risk of maritime accidents caused by human errors or subs-standard ships.

The port state's jurisdiction over foreign visiting vessels with the CDEM standards means that ships should comply with the standard in the maritime zone of the port state, but due to the static nature of the standard, it still needs to meet this requirement throughout the voyage <sup>[3]</sup>. Therefore, port states' requirements for ships to comply with CDEM standards could facilitate maritime shipping safety and prevent wide range marine pollution. However, the scope of port state's jurisdiction to prescribe CDEM standards for foreign ships has caused a controversy. Some commenters claim that if the aim of port states requiring the CDEM standards is to regulate ships and related facilities, then this requirement is beyond its jurisdiction (extraterritorial jurisdiction) <sup>[4]</sup>.

The enforcement jurisdiction by port states is an effective mean to implement international regulation related to shipping activities and also to cover the vacuum left by flag state's supervision and enforcement. Article 218 and 219 of UNCLOS empower port states certain enforcement measures on ships that violate relevant regulations and standards. By examining the suspected ship, the port state can detain and prosecute the ship and take administrative penalties once it is determined to be illegal. Subs-standard ships may pose

endanger to other ships, life and marine environment. Therefore, the port state can use the above administrative measures to order the violating ships to be repaired and rectified until they meet international standards <sup>[5]</sup>. The port state exercises the above enforcement measures and requires these ships to undergo repairs until meet international standards before they can continue to sail.

In sum, in terms of shipping activities, although the port state acts as a supplement to the flag state and international regulations, it makes full use of its jurisdiction to effectively manage ships calling at its port. This is not only for the security interests of domestic ports, but also contributes to the protection of the safety of maritime navigation.

#### **4. The Role of Port States in Against Illegal, Unreported and Unregulated Fishing**

Fishery resources are significant elements to maintain the balance of the marine environment and to generate enormous economic benefits. Driven by economic interests, the development of illegal, unreported and unregulated (IUU) fishing activities has seriously affected the sustainable development of the economy and environment <sup>[6]</sup>. Due to the special location, the port state, as a unique jurisdiction, not only effectively supplements the flag state's loopholes in law enforcement on the high seas, but also timely monitors and prevents the unloading and transshipment of fish caught by prohibited way.

In 2001, the Food and Agriculture Organization (FAO) adopted the first international voluntary instrument focus on combating IUU fishing is the international plan of action to prevent, deter, and eliminate illegal, unreported, and unregulated fishing (IPOA-IUU) <sup>[7]</sup>. Subsequently, the FAO adopted the Port State Measures Agreement (PSM), which is the first international legal binding agreement against the IUU fishing with landmark significance. Additionally, there are a number of binding and non-binding agreements concerned the IUU fishing issued by Regional Fisheries Management Organizations (RFMOs).

Port States are at the forefront of the global unite against IUU fishing. The denial of use of the port is a significant policy within PSM. According to the regulation, ports empower to deny illegally harvested vessels calling at its ports. No matter before or after entry, once IUU vessels are confirmed, these ships would be prohibited from entering, landing and transshipment. Such measures can effectively prevent these illegal caught fish from entering the market, and the offenders fail to get profits back. This is an essential part of the IUU industry chain.

Moreover, the importance of cooperating with members to respond to IUU fishing is highlighted in the PSM. Carrying out the regional collaboration can enhance resource sharing and ensure the uniformity of enforcement measures. Europe Union mandates cooperation between members and RFMOs in activities such as the identification and blacklisting of IUU fishing vessel. The Republic of South Africa also noted that the exchange of information between Parties could facilitate the implementation of measures. But so far, there is no international minimum standard to regulate the enforcement of port state measures in various regions, and state cooperation in port measures is also limited to regions. It is necessary to be further improved, because once a state is not strictly inspected, it will provide IUU fishing with a transportation channel and undermine the overall effort.

Furthermore, the port state sea has the right to monitor ships outside the jurisdiction of the maritime zones or request information from ships. The RFMOs require ships to be equipped with the Vessel Monitoring Systems (VMS) and follow relevant reporting guidelines, so that IUU fishing can be detected before the ship enters the port. The EU requires fishing vessels to provide detailed fish information including species, size, time and location of fishing. New Zealand requires necessary documents before a ship lands or transfers. However, due to the static nature of the VMS, the status of vessels on the high seas is also transmitted in real time. As mentioned earlier, this method of monitoring may be controversial for extraterritorial jurisdiction. Although the monitoring information can be replaced by the report information, this makes it more difficult for port states to identify the fake information. Although port states have some

restrictions on using VMS on the high seas, it is undeniable that the contribution of port states in combating IUU fishing because of its relatively broad scope of extraterritorial jurisdiction and the unlimited potential of facilitating the governance of marine environment.

## **5. The Role of Port States Combating Marine Pollution from Ships**

Ship-source pollution is the second largest source of pollution in the marine environment, which not only causes direct pollution to the marine, but also causes jurisdiction disputes due to its fluidity. In the past, the jurisdiction of marine pollution is primarily the responsibility of the flag state. But because of flag states' inability and unwillingness, it was difficult to effectively monitor ships and so the marine environment continues to deteriorate <sup>[8]</sup>. Therefore, the effectiveness of port states in responding to ship pollution is valued. The UNCLOS part XII provides clear legal basis for port states to take measures against ship pollution. MARPOL 73/78 empowers port states to inspect ships and corresponding enforcement methods. Thus, a number of regional memoranda of understanding (MOUs) have also become the main form of port states responding to the ship-sources pollution.

Article 218 of the UNCLOS provides for the enforcement of port states' response to ship-source pollution. It mainly stipulates the responsibility of port state investigations, prosecutions and mutual legal assistance to other countries. According to regulations, port states have the right to investigate whether vessels calling at ports have committed illegal emissions. After confirming that there is an illegal act, the port states can detain the ship and initiate litigation and fines under certain procedures or refuse to release ship that does not meet the standards and request maintenance. However, due to the differences in the implementation measures of port states and the different political systems of the country, the enforcement by port states often results in undue detention of ships and huge economic losses to shipping companies <sup>[9]</sup>. In 2006, the United Kingdom detained the Van Gogh calling at its port because of a viral infection on board. After several days of release, the shipping company filed a lawsuit for unreasonable detention. As well as the Diamond Princess recently calling at Yokohama Port due to Covid-19 (coronavirus), Japan government requires all staff and passengers to stay on board for quarantine. Although the purpose is to avoid land-based infections, the actual measures are worthy of further discussion. The long wait for quarantine has objectively led to the spread of viral infections. Moreover, only confirmed passengers are arranged for land treatment, and leaving other passengers (including those who are not quarantined and those with normal quarantine results) on the cruise is unequal to passengers who were not infected. Therefore, it is essential to clarify the regulation concerning the implementation of port states to avoid unnecessary damage and to formulate corresponding compensation measures.

The UNCLOS grants a relatively broad legal basis for the jurisdiction of port states, while a number of maritime conventions adopted by IMO and the ILO empowers direct regulations and technical guidance for port state control, such as the SOLAS and MARPOL73/78. These conventions are also the legal basis for the measures taken by port states to respond to ship pollution, and effectively guide port states in their duties to protect the marine environment. However, in practice, few port states exercise jurisdiction over illegal discharges from vessels located outside its ports under Article 218 of the UNCLOS. Because enforcement measures by port states are not mandatory but costly, few countries are willing to take action to tackle illegal activities that do not directly harm their national interests.

Due to different development levels and enforcement standards in various regions, memorandum organizations in various regions often do not recognize the inspection results of other party, which will result in overlapping inspections of a ship in the short term and affect normal shipping activities. Nevertheless, it is undeniable that the regional MOUs cover almost the whole world. Information within the region can be shared by all members, using uniform inspection standards, and resource sharing to enhance the role of port state control. Port states have achieved remarkable results in responding to ship-

source pollution, and it is believed that with the development of MOUs in various regions, the enforcement of port states will develop in a more standardized direction.

## 6. Conclusion

The port state actively and effectively assumes responsibility for protecting the safety of the sea and the marine environment in accordance with the jurisdiction conferred by a number of international marine conventions. Not only is the protection of its own port safety, but these measures further contribute to the interests and security of the region and the international community. One advantage of port state jurisdiction is in protecting shipping activities. Although the extraterritorial jurisdiction of port states is always controversial, in practice port states are not limited to use CEDM standards that are higher than common standards to supervise ship navigation activities in and outside its maritime zones. As for the reason why the IUU fishing cannot be eliminated is not because of lack of regulations, but because of states cannot effectively take measures to combat that. And the port state is more directly connected to the ocean, which could take enforcement measures stricter and more cost-effective. It is the global common responsibility and interest of the international community to resolve ship-source pollution and protect the marine environment. With the advantages of the connection point between land and sea, port states can exert more detailed enforcement rules to reduce the risk of pollution.

## Disclosure statement

The author declares no conflict of interest.

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