



The Interception of Vessels on the High Seas

Contemporary Challenges
to the Legal Order of the Oceans

Efthymios Papastavridis

STUDIES IN INTERNATIONAL LAW

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THE INTERCEPTION OF VESSELS ON THE HIGH SEAS

The principal aim of this book is to address the international legal questions arising from the 'right of visit on the high seas' in the twenty-first century. This right is considered the most significant exception to the fundamental principle of the freedom of the high seas (the freedom, in peacetime, to remain free of interference by ships of another flag). It is this freedom that has been challenged by a recent significant increase in interceptions to counter the threats of international terrorism and WMD proliferation, or to suppress transnational organised crime at sea, particularly the trafficking of narcotics and smuggling of migrants. The author questions whether the principle of non-interference has been so significantly curtailed as to have lost its relevance in the contemporary legal order of the oceans. The book begins with an historical and theoretical examination of the framework underlying interception. This survey informs the remainder of the work, which then looks at the legal framework of the right of visit, contemporary challenges to the traditional right, interference on the high seas for the maintenance of international peace and security, interferences to maintain the *bon usage* of the oceans (navigation and fishing), piracy *jure gentium* and current counter-piracy operations off the coast of Somalia, the problems posed by illegal, unregulated and unreported fishing, interdiction operations to counter drug and people trafficking, and recent interception operations in the Mediterranean Sea organised by FRONTEX.

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Foreword

Debates regarding the permissible scope of restrictions on the freedom of the high seas may be traced back to Grotius and Selden. While the Grotian view of the importance of the freedom of the high seas for navigation and communication persists, today there are many challenges of potentially equal common concern, such as the prevention and suppression of acts of terrorism, piracy and the smuggling of drugs. The increasing use of maritime interception on the high seas, whether exercised unilaterally or pursuant to multilateral treaty or UN Security Council authorisation, has led to the need to re-examine the conditions for the lawful exercise of maritime interception and the human rights safeguards and other conditions which should apply. In this thorough and penetrating modern study, Dr Papastavridis conducts such a re-examination in historical and contemporary context, and critiques the extension of the 'threat to maritime security' framing to new issues including illicit migration and illegal unreported and unregulated fishing. The depth and breadth of his analysis provides a valuable guide to the current law and practice of maritime interception on the high seas.

Catherine Redgwell
Oxford, 14 February 2013

Preface to the Paperback Edition

This Preface, written on the occasion of the publication of *The Interception of Vessels on the High Seas* in paperback, is aimed at pointing to certain developments that have happened subsequent to the first publication of the book in 2013. These developments attest to the continuing relevance of the practice of interception of vessels in current maritime affairs. Firstly, while piracy has been decreasing in the Gulf of Aden, there has been an increase in incidents of piracy and armed robbery off the coasts of West Africa and of Indonesia. Secondly, illicit trafficking of drugs is still carried out mostly by sea, and states are called to take more robust measures to address it.

However, the most significant development has been the rapid increase of maritime migration due to the political instability in Syria, Iraq, Libya and other parts of the world, which has led to the unprecedented loss of lives in the Mediterranean Sea since October 2013. In this context, Italy has launched *Operation Mare Nostrum* in the southern Mediterranean to save lives at sea and fight the contemporary 'slave-trade', as they call it. This bolsters the argument made in this book that the 'slave-trade' provision in article 110 of the UN Convention on the Law of the Sea should be read so as to include instances of contemporary slavery, such as human trafficking. Noteworthy also is that Australia launched *Operation Sovereign Borders* in September 2013, which includes push-back operations of 'unauthorised maritime arrivals', and in addition, in May 2014, the European Union a new regulation establishing rules for the surveillance of external sea borders in the context of operations coordinated by Frontex.

As to the judicial developments since 2013, it merits referring to the judgment of the International Tribunal of the Law of the Sea (ITLOS) of 14 April 2014 in the *Virginia G* case (Panama/Guinea Bissau). In that case Panama contended that Guinea-Bissau officials had not exercised their right of visit according to the Convention and furthermore that they had used excessive force in the course of the operation. The Tribunal rejected the above allegations and reaffirmed the standards set out in the *M/V 'SAIGA' (No 2)* case as the appropriate yardstick for any law enforcement operation at sea. In addition, reference should be made to the judgment of 27 June 2013 of the European Court of Human Rights in the *Vassis and others v France* case, in which the Court found a violation of Article 5 (3) of the Convention. The case concerned drug-trafficking suspects who were placed in police custody for 48 hours prior to their first appearance before a judicial authority, having already been detained on the high seas for 18 days without any supervision by a judge.

Last but certainly not least, I would like to thank Hart Publishing, Oxford for their renewed trust in this book as well as in me personally, particularly, Richard Hart, Rachel Turner, Jo Ledger, Tom Adams, Mel Hamill, Charlotte Austin and Russell Wainwright for all their careful work and their help and support.

Preface

This book is based on a PhD thesis awarded by University of London (University College London) in October 2009. It reflects the law as it stood, to the best of the author's knowledge, on 25 November 2012. An earlier draft of chapter two was published as 'The Right of Visit on the High Seas in a Theoretical Perspective: *Mare Liberum v Mare Clausum* Revisited' (2011) 24 *Leiden Journal of International Law* 45–69, and of chapter eight as 'Interception of Human Beings on the High Seas: A Contemporary Analysis under International Law' (2009) 36 *Syracuse Journal of International Law and Commerce* 145–228. An earlier version of the author's arguments relating to piracy off the coast of Somalia in chapter six has appeared in 'Piracy off Somalia: The Emperors and the Thieves of the Oceans in the 21st Century', in A Abass (ed), *Protecting Human Security in Africa* (Oxford, Oxford University Press, 2010) 122–54.

Acknowledgements

This book began as a doctoral thesis undertaken at University College London and was concluded almost three years after submission of the thesis in August 2009. They say that every book has its own history; this one has been written in many different libraries, such as the IALS library in London or the Peace Palace Library in the Hague; in many different parts of the world, from an apartment in New York to the beaches of several islands in the Aegean Sea including Amorgos or Karpathos and even in a hospital in Athens, where I had to stay for a week in July 2012.

It is a very pleasing – albeit daunting – task to endeavour to thank everyone who has been of support, not only during the four years of doctoral study but also during the years following my return to Greece. The reason is simply that I was extremely fortunate in having received the support, the assistance and the love of many remarkable persons. First and particular thanks are due to my PhD supervisor, Professor Catherine Redgwell, whose commitment and help has been invaluable. I am certain that this work would have been very much the poorer without her influence and her detailed comments upon numerous drafts. Her dedication and her patience with regard my infamous ‘punctuality’ and my propensity to use Latin maxims have been extraordinary. I was fortunate also in having Professor Vaughan Lowe and Professor Malgosia Fitzmaurice as my doctoral examiners, who, with their valuable comments, greatly improved the present work.

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institutions in which I have studied, both in Greece and in the UK, for being the source of my inspiration and love for the discipline of public international law. Similar thanks must go to people with whom I have worked in Greece since 2009, for their encouragement and support, namely Professor Emmanuel Roucounas, Professor Costas Antonopoulos, Dr Ioannis Ktistakis, Professor Maria Gavouneli, Professor Stavros Tsakyrakis and Dr Anastasia Strati. Nothing in this book should be taken, however, as representing the views of others or the organisations for which they work.

I gratefully acknowledge the generous financial support of the Greek Institute of State Scholarships (IKY) and of the Academy of Athens throughout my doctoral studies, as well as funding provided by the UCL Old Students Association and by the UCL Graduate School (UCL Alumni Scholarship). In addition, I am especially thankful to the Directors of Research Studies at the UCL Faculty of Laws, Professor Eric Barendt and Dr Diamond Ashiagbor, for having funded my research trips to New York, Heidelberg and The Hague, which have proven particularly helpful for the completion of my doctoral thesis. Furthermore, I would like to thank all the librarians working at the IALS Library, the Peace Palace Library, the Max Planck Institute and the NYU Law Library for their kind assistance during my research in those places. Grateful mention should be made of the Hellenic Society of International Law and International Relations for its Honorary Mention for Doctoral Thesis on International Law (2009-2010) awarded to me in December 2011.

Particular thanks must go also to my friends and colleagues in London and in Greece who have been extremely helpful and supportive and have made this solitary activity a joyful and unforgettable experience. Without wanting to exclude any of my dearest friends, special thanks are due to my bright law colleagues Panos Merkouris and Anastasios Gourgourinis, who have read parts of this work in draft and have offered their valuable comments, as well as to my lovely flatmates Ilias Papapoulios and Kyriaki Bouri for their enormous patience and compassion at the difficult final stage of my studies. I am also thankful to my other young colleagues, all members of the 'Greek Mafia', with whom I spend hours discussing international law – including but not only – Dr Ilias Plakokefalos, Dr Antonios Tzanakopoulos and Dr Markos Karavias.

My final word of gratitude is due to my mother Vasileia, to whom this is dedicated.

List of Abbreviations

ACHR	American Convention on Human Rights
AJIL	American Journal of International Law
AIDI	Annuaire de l'Institut de Droit International
AFDI	Annuaire Français de Droit International
American University ILR	American University International Law Review
ARIEL	Austrian Review of International and European Law
ASIL PROC	American Society of International Law Proceedings
AYIL	Australian Yearbook of International Law
Brooklyn JIL	Brooklyn Journal of International Law
BYIL	British Yearbook of International Law
California Western ILJ	California Western International Law Journal
CYIL	Canadian Yearbook of International Law
Chicago JIL	Chicago Journal of International Law
Chinese JIL	Chinese Journal of International Law
Columbia JTL	Columbia Journal of Transnational Law
Cornell JIL	Cornell Journal of International Law
CYIL	Canadian Yearbook of International Law
Denver JILP	Denver Journal of International Law and Policy
ECOMOG	Economic Community of West African States Monitoring Group
ECOWAS	The Economic Community of West African States
ECtHR	European Court of Human Rights
EHRLR	European Human Rights Law Review
EJIL	European Journal of International Law
Emory ILR	Emory International Law Review
EPIL	Encyclopedia of Public International Law
Florida JIL	Florida Journal of International Law
Fordham ILJ	Fordham International Law Journal
FRONTEX	European Agency for the Management of Operational Co-operation at the External Borders of the Member States of the European Union
FYIL	Finnish Yearbook of International Law
GA	General Assembly
Georgetown ILJ	Georgetown Immigration Law Journal
Georgia JICL	Georgia Journal of International and Comparative Law

GYIL	German Yearbook of International Law
Harvard ILJ	Harvard International Law Journal
Hastings ICLR	Hastings International and Comparative Law Review
Houston JIL	Houston Journal of International Law
HRQ	Human Rights Quarterly
HRLR	Human Rights Law Review
ICJ	International Court of Justice
ICLQ	International and Comparative Law Quarterly
IJMCL	International Journal of Marine and Coastal Law
IJRL	International Journal of Refugee Law
ILA	International Law Association
ILC	International Law Commission
ILM	International Legal Materials
ILS	International Law Studies
ILSA JICL	ILSA Journal of International and Comparative Law
IJMCL	International Journal of Marine and Coastal Law
Int CLRev.	International Community Law Review
ISPS	International Code for the Security of Ships and of Port Facilities
IYHR.	Israel Yearbook on Human Rights
IYIL	Italian Yearbook of International Law
JCSL	Journal of Conflict and Security Law
JEA	Journal of European Affairs
JHIL	Journal of the History of International Law
JICJ	Journal of International Criminal Justice
JIML	Journal of International Maritime Law
JSAS	Journal of Southeast Asian Studies
JTLP	Journal of Transnational Law and Policy
Keesings	Keesings' Record of World Events
LJIL	Leiden Journal of International Law
LNTS	League of Nations Treaty Series
LRIT	Long-Range Identification Tracking
Max Planck	Max Planck Yearbook of United Nations Law
YBUNL	
Mediterranean	Mediterranean Journal of Human Rights
JHR	
Melbourne JIL	Melbourne Journal of International Law
Melbourne ULR	Melbourne University Law Review
Michigan JIL	Michigan Journal of International Law
MP	Marine Policy
Naval LR	Naval Law Review
Naval WCR	Naval War College Review
NILR	Netherlands International Law Review

Nordic JIL	Nordic Journal of International Law (previously: Nordisk Tidsskrift for International Ret)
North Carolina JILC	North Carolina Journal of International Law and Commerce
Northwestern ULR	Northwestern University Law Review
NYIL	Netherlands Yearbook of International Law
NYUJ Int'l Law & Pol	New York University Journal of International Law and Politics
ODIL	Ocean Development and International Law
ÖzöRV	Österreichische Zeitschrift für öffentliches Recht und Völkerrecht
Pacific Rim LPJ	Pacific Rim Law and Policy Journal
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PSI	Proliferation Security Initiative
QUTLJJ	Queensland University of Technology Law and Justice Journal
RBDI	Revue Belge de Droit International
RCADI	Recueil de Cours de l'Académie de la Haye de Droit International
RDI	Rivista de Diritto Internazionale
REDI	Revista Española de Derecho Internacional
RGDIP	Revue Générale de Droit International Public
RHDI	Revue Hellénique de Droit International
RIAA	Reports of International Arbitral Awards
SC	United Nations Security Council
Sri Lanka JIL	Sri Lanka Journal of International Law
Syracuse JILC	Syracuse Journal of International Law and Commerce
Temple ICLJ	Temple International and Comparative Law Journal
Grotius Society	Transactions of the Grotius Society
TS	Treaty Series
Tulane MLJ	Tulane Maritime Law Journal
LOSC	United Nations Convention for the Law of the Sea (1982) 21 ILM 1261
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees
UNHCR EXCOM	United Nations High Commissioner for Refugees Executive Committee
UNSC	United Nations Security Council
UNTS	United Nations Treaty Series
UChicago LR	University of Chicago Law Review
UCLA LR	UCLA Law Review

UMiami I-ALR	University of Miami Inter-American Law Review
UQueensland LR	University Queensland Law Review
Vanderbilt JTL	Vanderbilt Journal of Transnational Law
Virginia JIL	Virginia Journal of International Law
VCLT	Vienna Convention on the Law of Treaties
VN	Vereinte Nationen
Wisconsin ILJ	Wisconsin International Law Journal
Working Group	UN, Working Group on Contemporary Forms of Slavery
WMD	Weapons of Mass Destruction
Yale JIL	Yale Journal of International Law
YbILC	Yearbook of the International Law Commission
ZaöRV	Zeitschrift für ausländisches öffentliches Recht und Völkerrecht

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