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Marco Casagrande

Seaports in International Law

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Part I
Introduction

Chapter 1

The Lack of Interest for Seaports in the International Law and Doctrine

Even the greatest naval and maritime Superpowers in history are seldom associated with their ports. The still visible London Docks are a symbol of the British Empire, but much less than the Red Coats, the Royal Navy or British India. This mist of oblivion surrounding seaports is even more thick in the case of Venice. The Arsenal, the State shipyard which is considered the first assembly line facility in the world, is still a reminder of the might of the Most Serene Republic, but few people even know where the main port of Venice was (on Lido-San Nicolò).

Under this respect, the world of international law looks quite similar to the universe of popular culture. In the United Nations Cumulative Indexes, which include all the international agreements registered with the United Nations and the Secretariat of the League of Nations, only 306 instruments are classified as having as their subject “Ports”.

However, in the whole list you will find only a single major multilateral treaty regulating ports, id est the 1923 Geneva Convention.¹ The vast majority of the other treaties can be divided into two categories. To the first category belong the loan agreements and guarantee agreements stipulated by States (usually developing States) and international financial Institutions such as the World Bank in order to finance the building, and the maintenance or the renovation of a seaport; such agreements contain standard financial clauses and are not very significant from the point of view of the legal regulation of seaports. The second category is very specific and includes the bilateral agreements made by the United States pursuant to the Deepwater Port Act²; these particular agreements will be examined in due course.³

¹League of Nations (1926–1927).

²U.S. House of Representatives (2017), Title 33, Chap. 29.

³See Chap. 11.

Once you have excluded these two kinds of treaties, beside the aforementioned Geneva Convention just 19 international agreements will remain, including two for which no text is available.⁴ Between these 19 treaties, most regulate the sea lanes served by the ports involved⁵ or the rights and obligations of the ships using the said ports.⁶ In the end, the international agreements regulating some aspects of port administration, port management or port operations, including port inspections not exclusively related to ship standards, are just six: a bilateral agreement on frontier controls between Great Britain and France,⁷ a cooperation agreement applying to the Port Authorities of Strasbourg and Kehl,⁸ two ILO Conventions,⁹ the Convention of Mar del Plata¹⁰ and an agreement between France and Monaco on the appointment of the Director of the Port of Monaco.¹¹

The jurisprudence of international Courts, including WTO quasi-judicial bodies,¹² presents very few cases involving seaports; or rather, as it will be seen further on, has some landmark cases in which the port aspects, while present, were completely overlooked.¹³

As for the legal doctrine, in the Catalogue of the Peace Palace Library 258 books are classified under the subject “Ports”, but only 19 of these treat harbors as a specific and unitary topic.¹⁴ In all the other cases, the port is analyzed within treatises of maritime law or coastal law (especially national administrative law applying to coastal assets), or which are focused on a very specific port issue (typically dock work, Port State Control or competition law as applied to port infrastructures).

The picture of EU law is more mixed. The European Court of Justice has issued a landmark competition law judgment in the port of Genoa case,¹⁵ leading to a

⁴Only the registration certificate was retrieved for the following treaties: United Nations (1994, 1996).

⁵United Nations (1957, 2005, 2007).

⁶Department of Foreign Affairs and Trade (1988) and United Nations (1948, 1960, 1964, 1982, 1998, 2003).

⁷United Nations (2004).

⁸United Nations (1995).

⁹International Labour Organization (2016) and United Nations (1975). See also paragraph 3 of this chapter, in which further ILO Conventions are mentioned; however, those Conventions mostly lay down technical specifics about port structures and do not impact significantly on port management.

¹⁰United Nations (1986).

¹¹United Nations (1976).

¹²See Chap. 17.

¹³See Chap. 8.

¹⁴Burns (2015), Gutierrez Herran (2012), Maresca (2012), Hass-Engel (2009), Talley (2009), Alderton (2008), Carbone and Munari (2006), Van Hooydonk (2003), Chlomoudis (2002), Maresca (2001), Douglas (1983), Douglas (1989), En Sai (1918), Regul (1971), Tatangelo (1969), Abent (1944), Pagès (1938), Vaes (1904), and Quinette de Rochemont (1891). The list includes books on the colonial “treaty ports” (see Chap. 5), which were port cities rather than harbors.

¹⁵European Court of Justice (1991).

comprehensive if still incomplete reform of port legislation in Italy.¹⁶ After that, however, the European Parliament rejected the so-called “Port Package I”¹⁷ proposed by the European Commission, which afterwards abandoned also the plan to present a softer “Port Package II”.¹⁸ Similarly, the announced Commission Guidelines on State aids in the port sector¹⁹ were never adopted. As it will be seen further on,²⁰ the abandonment of these legislative or quasi-legislative initiatives by the European Commission was not the consequence of a generic lack of consensus within the European Parliament or elsewhere, but of strong lobbying by the main actors of the old governance of seaports, id est the governance which has often been in place since before the containerization.

These actors are still deeply rooted in many port clusters, and it is impossible to predict if and when the EU law will retake the vanguard role it briefly had in the regulation of seaports.

Hopefully, this will happen sooner or later, perhaps starting with the adoption of the third Ports Package adopted by the Commission, this time in the form of a Draft Regulation.²¹

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¹⁶State Printing Service and Mint (1994).

¹⁷European Commission (2002).

¹⁸European Commission (2004).

¹⁹European Parliament (2008), n. 8.

²⁰Under Chap. 13.

²¹In its latest version: Council of the European Union (2014).