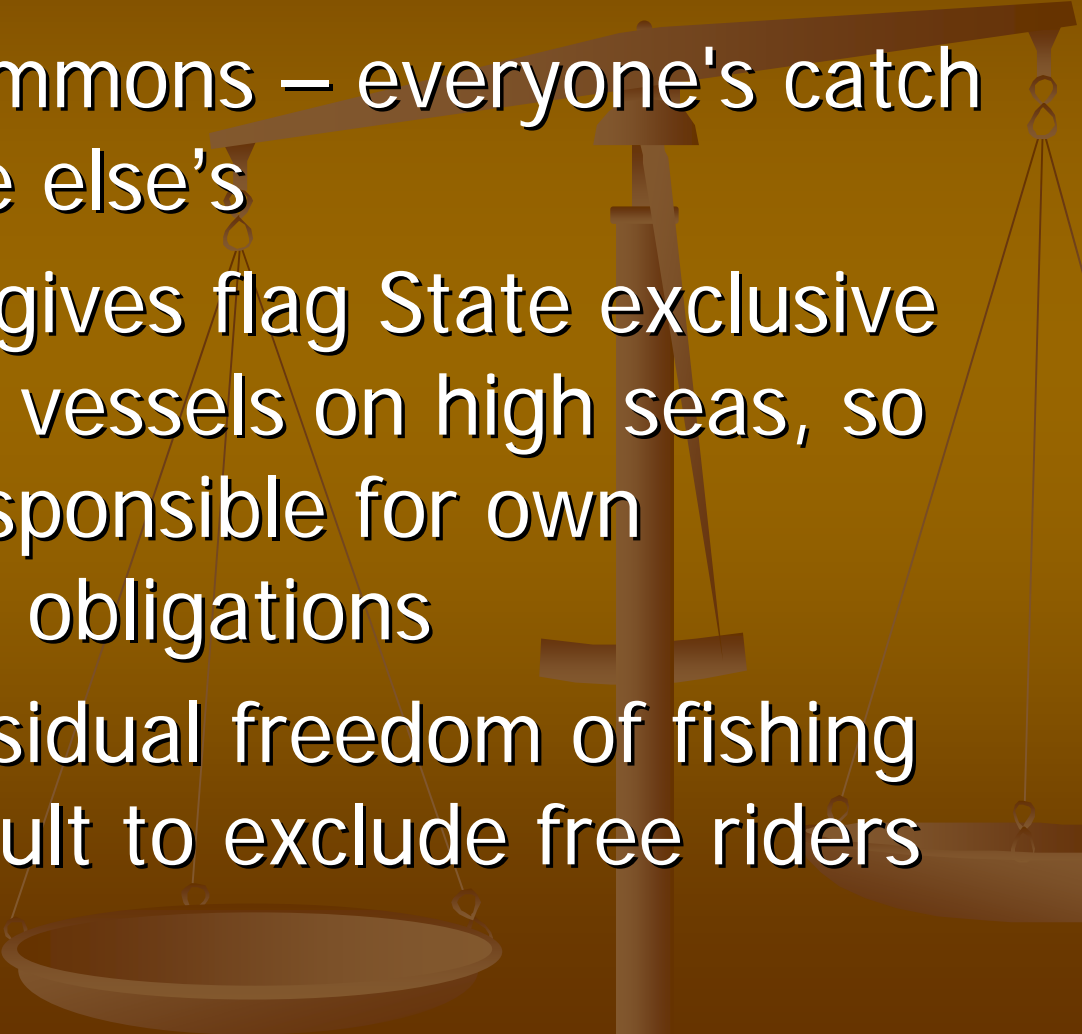


Evaluating performance of flag States of fishing vessels

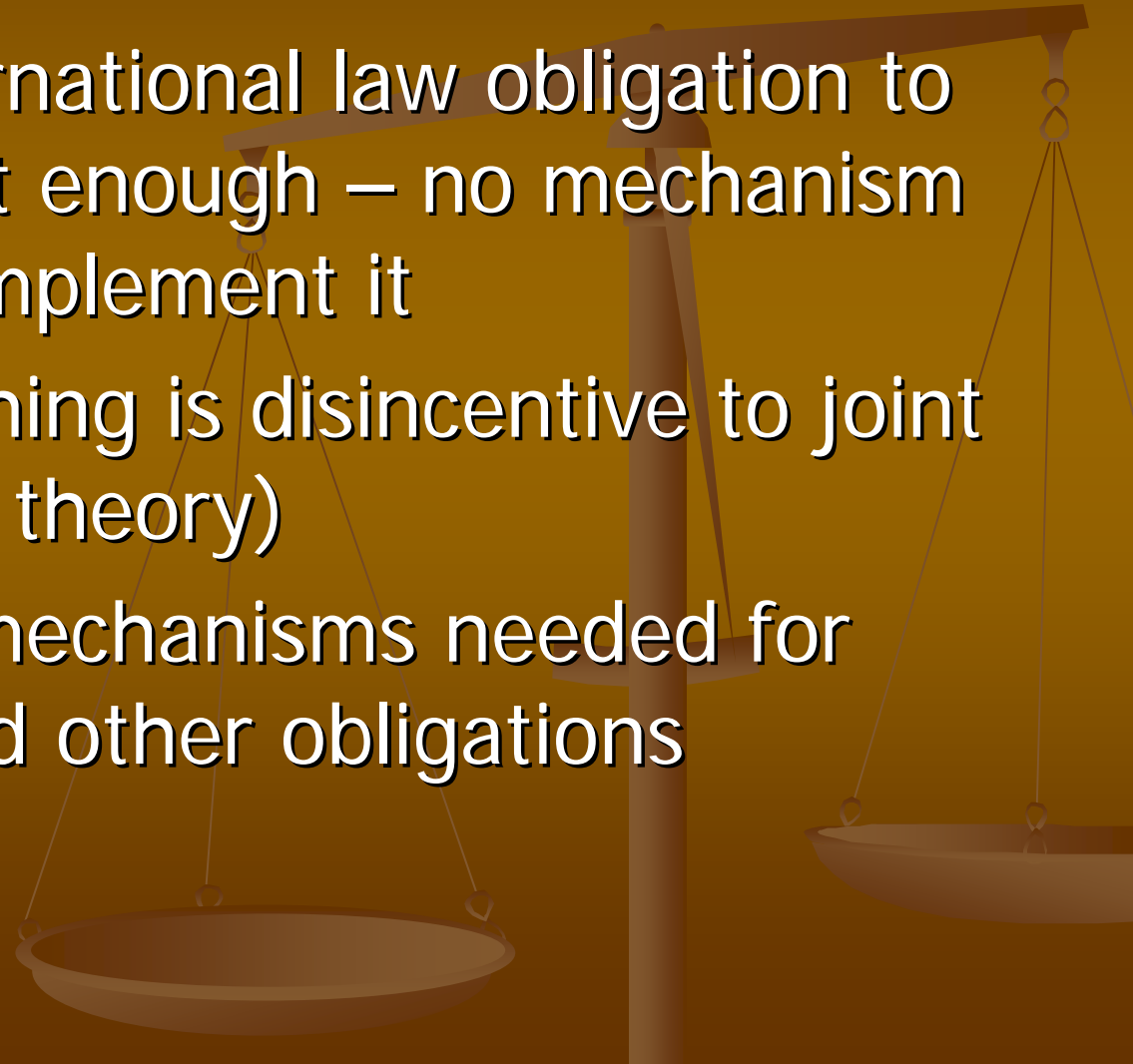
Andrew Serdy
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Why flag State responsibility is important (1)

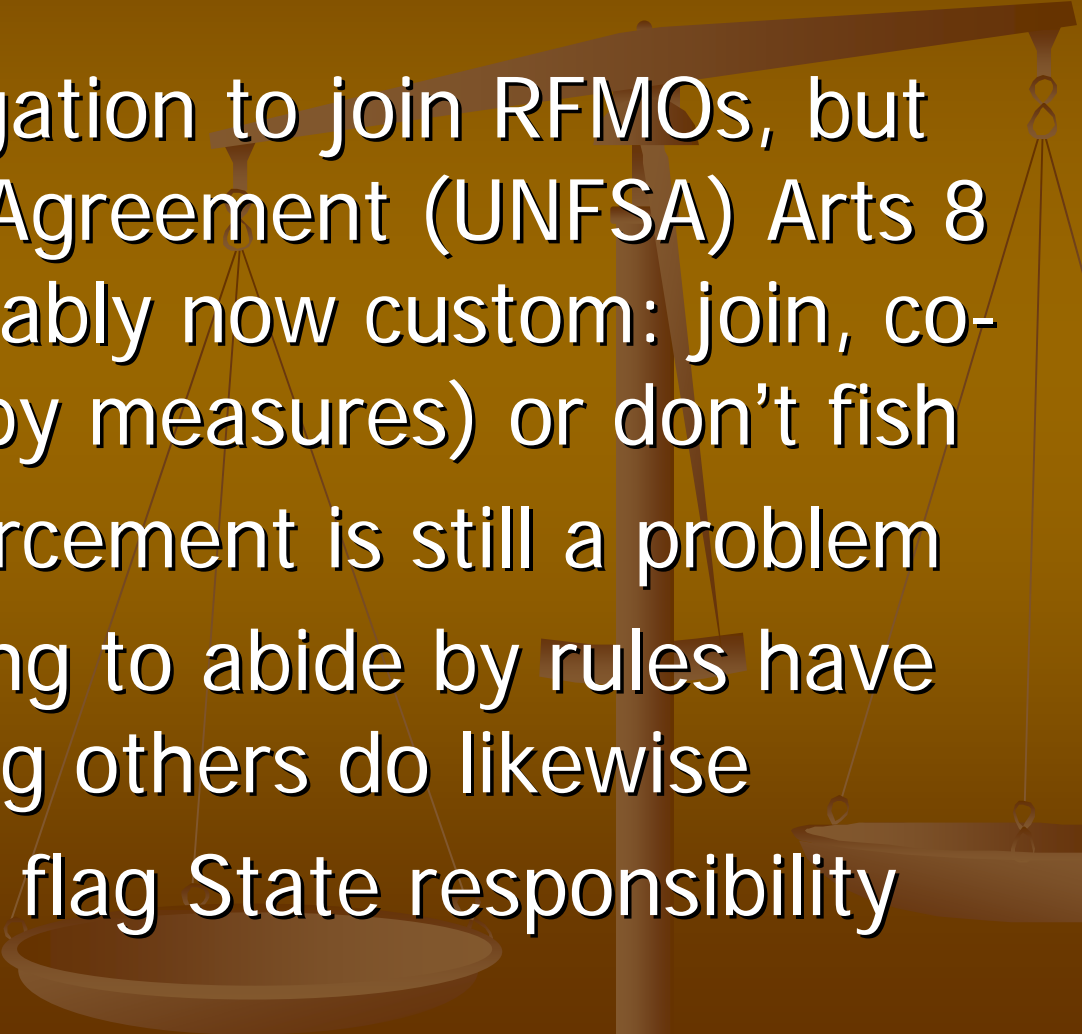
- High seas as commons – everyone's catch affects everyone else's
 - UNCLOS Art 92 gives flag State exclusive jurisdiction over vessels on high seas, so each State is responsible for own compliance with obligations
 - Coupled with residual freedom of fishing in Art 116, difficult to exclude free riders
- 

Why flag State responsibility is important (2)

- Customary international law obligation to cooperate is not enough – no mechanism in UNCLOS to implement it
- Unregulated fishing is disincentive to joint restraint (game theory)
- Accountability mechanisms needed for catch, effort and other obligations



Why flag State responsibility is important (3)

- No general obligation to join RFMOs, but UN Fish Stocks Agreement (UNFSA) Arts 8 and 17 are probably now custom: join, cooperate (abide by measures) or don't fish
 - Even then, enforcement is still a problem
 - So States wanting to abide by rules have interest in having others do likewise
 - Hence stress on flag State responsibility
- 


Criteria for assessing flag State performance

3 broad categories:


- Party to relevant treaties
- Participation in FAO and RFMOs
- Domestic actions



Category A – relevant treaties

- UNCLOS – largely custom, so mainly for compulsory dispute settlement mechanism
 - UNFSA – wide-ranging rules including flag State duties
 - FAO Compliance Agreement – for discrete high seas stocks not covered by UNFSA
 - Any treaty establishing a relevant RFMO (now central to fisheries world under UNFSA)
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Category B – participation in international organisations

- Membership of, or cooperation with, relevant RFMOs
 - Attending meetings of FAO COFI & RFMOs
 - Domestic implementation of RFMO measures: monitoring control and surveillance – and enforcement
- 

Category C – domestic actions

- National Plan of Action against IUU fishing
 - Effective compliance mechanisms: UNFSA Art 19
 - Regulating on vessels on the high seas by prohibition on fishing without positive authorisation
 - Monitoring and enforcement: UNFSA Art 18(3)(e) to (g)
 - National register of fishing vessels available to FAO and RFMOs
 - Standardised marking of fishing vessels
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