

Case Study on Concurrent Jurisdiction in Internal Waters

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Abstract

The coastal State possesses full sovereignty over its internal waters as if they were part of its land territory. Coastal state have absolutely jurisdiction over foreign vessel in internal waters if it is prejudicial to the peace, good order or security of the coastal State but the jurisdiction in the internal water is exercised subject to United Nations Convention on the Law of the Sea 1982 as well as other rules of international law. A State is called flag State when the ship is registered in that country. Flag State have exclusively jurisdiction over a vessel that is registered with the State and flying its flag. When a foreign vessel enters into the port of the coastal State, it must comply the laws of the coastal State. In addition flag state can exercise jurisdiction over its ship. The key objective of this research is how to know about jurisdiction whether flag State or coastal State and there is no prohibition of concurrent jurisdiction under UNCLOS, and vessels therefore can be subject to the jurisdiction of State besides the flag State in certain circumstances, such as entering coastal State's internal water. This research is to examine the cases related with internal waters, as well as the concurrent jurisdiction between the coastal State and flag State with the provisions of the United Nations Convention on the Law of the Sea 1982 and other international laws. Furthermore this paper delineates different adjudicated cases in connection with their facts, issues, judgment and reasoning.

Keyword: Concurrent jurisdiction, Internal waters, Flag State, Coastal State.

Introduction

The terms of jurisdiction describes the limits of the legal competence of a State. State sovereignty includes the concept of jurisdiction. It includes both power to prescribe rules (prescriptive jurisdiction) and the power to enforce them (enforcement jurisdiction). Coastal states are sovereign over their own territorial seas, their bed and subsoil, and the air space over them. The rights of coastal States are to regulate laws and rules for the entering foreign ships in the internal waters. In its internal waters a State may exercise its power of coercion. In particular, it can make arrests or conduct investigations in accordance with its legislation. Although in cases where crimes have happened on board the ship, the judicial authorities of the flag state—that is, the state whose flag the specific ship flies—may also take action. Under such circumstances, the flag state and the territorial state have jurisdiction over the ship in accordance with territorial principle.

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Aim and Objective

The growth of flag state and third state jurisdiction over an offence committed in domestic waters will be examined in this paper. It will look at cases involving internal waters and how they balance other people's interests. The proper period for (an individual, flag, coastal, and third state) to exercise their authority over any offence committed in internal seas will also be covered.

Research Method

The descriptive aspect of the work stems from a brief investigation. It is entirely based on secondary sources that were gathered from websites, journal articles, adjudicated cases, and text books on international law, among other sources. The collated sources have been provided in its previous format to enhance the study's analytical, informational, and reader- friendly qualities. Also in this study the contemporary adjudicated cases on concurrent jurisdiction are elaborately explained so that the jurisdiction, rights and obligations of coastal State and flag State can plainly be understood.

I. Nine Maritime Zones

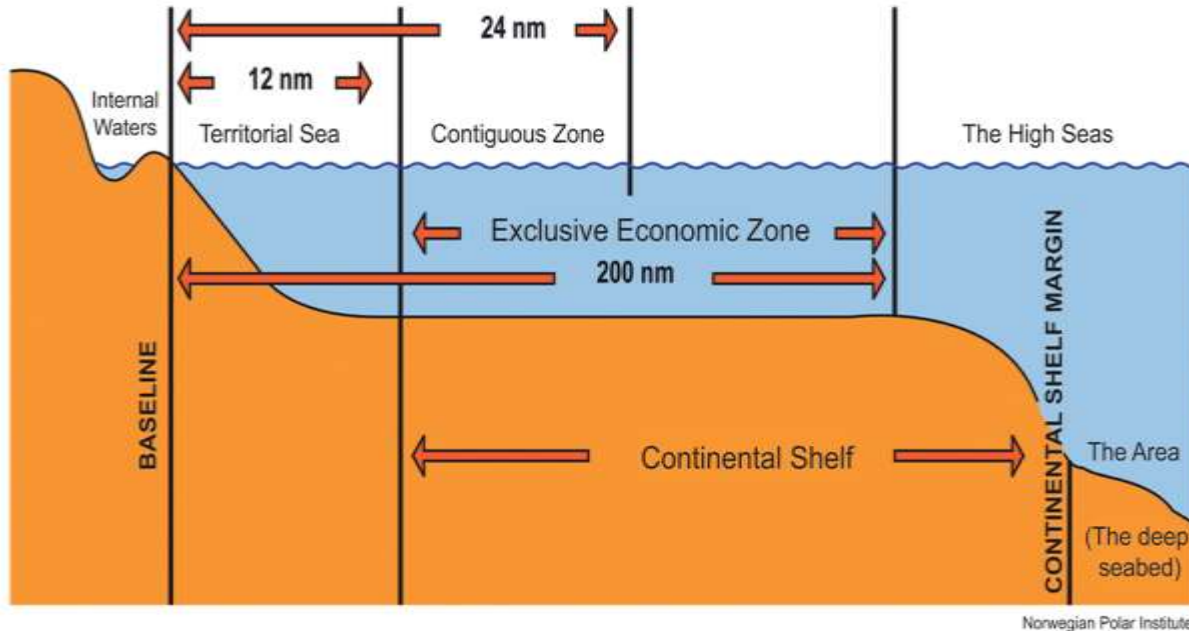
The seas were still only divided into four jurisdictional zones at the end of World War II: the high seas; the contiguous zone of indeterminate breadth, which was claimed by only a few States and used for very limited jurisdictional purposes; the territorial sea, whose breadth was generally considered not to exceed 12 miles at most; and the internal waters, which were located landward of the territorial sea's baseline. The continental shelf, the exclusive economic zone, the exclusive fishing zone, the archipelagic waters, and the "Area" outside of national jurisdiction are the other five zones that are currently either widely recognized or in the process of gaining broad recognition.

Maritime jurisdictions are now governed by the 1982 UN Convention on the Law of Sea (UNCLOS). The comprehensive 1982 Convention that replaced by the 1958 four Convention on the Law of the Sea namely the conventions were:

- Convention on the Territorial Sea and the Contiguous Zone (TSC) which entered into force on 10 September 1964;
- Convention on the Continental Shelf (CSC) which entered into force on 10 June 1964;
- Convention on Fishing and the Conservation of the Living Resources of the High Seas (FC) which entered into force on 20 March 1966;
- Convention on the High Seas (HSC) which entered into force on 30 September 1962.

The UNCLOS consists of 320 Articles and was concluded in 1982 after almost eight years of yearly substantive sessions of the third UN conference. Almost every aspect of matters relating to use of the sea and sea-beds and its resources including marine pollution and maritime scientific

research has been covered in the UN Convention, but it has not mentioned in detail provisions regarding internal waters.¹ The following diagram is none maritime zones.



(Figure 1- Nine Maritime Zones)

I. Definition of Internal Waters

Internal, or national, or interior, waters are those waters which lie landward of the baseline from which the territorial sea and other maritime zones are measured.² Any waters, including lakes, rivers, and tidewaters, that fall landward of the baseline are considered internal waters. States have the same extent of sovereign authority over their own internal waters as they do over other territory. There is no right of innocent passage through internal waters.³ Internal waters means waters on the landward side of the baseline of the territorial sea.⁴

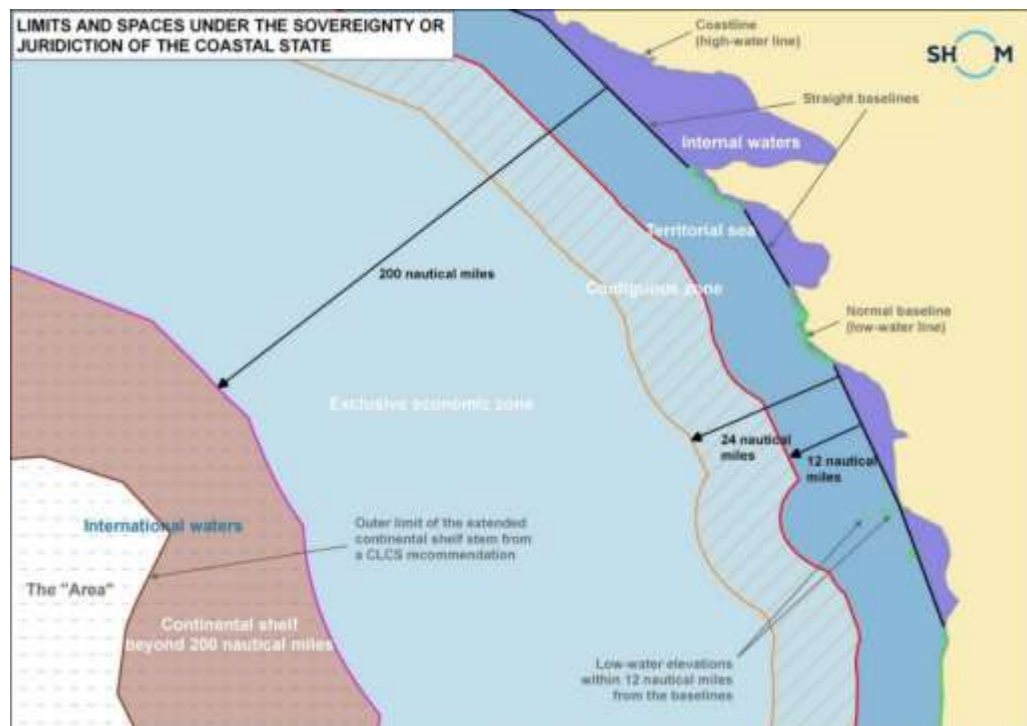
The parts of the sea that are not a part of the territorial seas, high seas, or relevant zones are referred to as internal waters. They are therefore classified as a part of the land area of the coastal state.

¹ Mazharul Islam, Jurisdiction of coastal State in internal waters nexus with cases law, International Journal of Law and Legal Jurisprudence Studies :ISSN:2348-8212: Volume 1 Issue 8, Pg.1.

² R.R Churchill and A.V Lowe, The law of the sea, 3rd Edition,1999, Manchester University Press, Pg.60.

³ Article 8, the United Nations Conventions on the Law of the Sea 1982.

⁴ Section 2(d), Myanmar Territorial Sea and Maritime Zones Law 2017.



(Figure 2- the Nine Maritime Zones)

II. Legal Status of Internal waters

The present conventional rules concerning the baseline fulfill the same function with greater precision. As a matter of international law the baselines divides a State's land territorial sea, which is the State's maritime territory.¹

All territorial sovereignty over its interior seas is enjoyed by the coastal state. that a result, they do not grant the same right of innocent passage through them that the territorial sea does. Therefore, internal waters are assimilated with the territory of the State. The only exception to this rule is that, for parties to the Territorial Sea and Law of the Sea Conventions, at least, a right of innocent passage through newly enclosed waters remains in place when straight baselines are drawn along a coastline that is heavily indented or fringed with islands, enclosing as internal waters areas that had not previously been considered as such..²

The majority of internal waters are ports, bays, and estuaries that are bounded by straight baselines. The great internal 'seas', such as the Caspian, which have no outlet to the oceans is not maritime areas, and is not governed by the international law of the sea. Their main distinction from the territorial sea is that there is no right of innocent passage that other governments' commerce might profit from. There is an exception to this rule where the straight baselines enclose as internal waters what had been territorial waters.

¹ R.R Churchill and A.V Lowe, *The law of the sea*, 3rd Edition,1999, Manchester University Press, Pg.61.

² Article 8(2),The United Nations Convention on the Law of the Sea 1982.

III. Jurisdiction of the Internal Waters

Prescriptive jurisdiction, also referred to as "law-making," is the power to enact and enforce laws. A State may have varied degrees of authority over vessels flying its flag, vessels at its ports, and vessels in its maritime zones (internal waters, territorial sea, contiguous zone, and exclusive economic zone) under international law. These jurisdictional exercises stem from ideas that are accepted as customary international law. The Law of the Sea Convention (LOSC) also recognises the exercise of jurisdiction in each case.¹

By entering foreign vessel ports and other internal waters, ships put themselves within the territorial jurisdiction of the coastal State. Accordingly, that State is entitled to enforce its laws against the ship and those on board, subject to the normal rules concerning sovereign and diplomatic immunities, which arise chiefly in the case of warships. But since ships are more or less self-contained units, having not only a comprehensive body of laws-that of the flag State-applicable to them while in foreign ports, but also a system for the enforcement of those flag State laws through the powers of the captain and the authority of the local consul, coastal State commonly enforce their laws only in cases where their interest are engaged. Matters relating solely to the 'internal economy' of the ship tend in practice to be left to the authorities of the flag State.²

Every Law applies on land shall be applied on these waters. So, States have wider sovereignty authorities on this area rather than on other areas like territorial water.

Article 25 and 27 of United Nations Convention on the Law of the Sea 1982 show some of those authorities.

When a ship enters internal waters or makes a call at a port facility outside of internal waters, the coastal state is also entitled to take the appropriate action to stop any violation of the requirements that govern the ship's entrance to internal waters or such a call is subject.

The above provisions do not affect the right of the coastal State to take any steps authorized by its laws for the purpose of an arrest or investigation on board a foreign ship passing through the territorial sea after leaving internal waters.³

In Myanmar, the Government may take the necessary steps to prevent any breach of conditions relating to ships proceeding to internal waters or a call at a port facility outside internal waters.⁴

When a vessel is staying in its internal seas, the coastal state may use its legal authority to address any transgressions that occur on board. In civil cases, even if the vessel and its behaviour have not warranted the proceedings, civil actions against the owner of the vessel may be brought

¹ <https://www.noaa.gov/jurisdiction-over-vessels>

² R.R Churchill and A.V Lowe, *The law of the sea*, 3rd Edition, 1999, Manchester University Press, Pg.65&66.

³ Article 27(2), *The United Nations Convention on the Law of the Sea 1982*.

⁴ Section 12(b), *Myanmar Territorial Sea and Maritime Zones Law 2017*.

if the seizure occurred in compliance with the rules of the coastal State and international conventions.¹⁴ If the offence is of a character to damage the peace of the nation or the good order of the territorial sea after leaving internal water, the United Nations Convention on the Laws of the Sea of 1982 establishes civil and criminal jurisdictions in connection to acts committed on board.

Therefore, the coastal State has its sovereign control and authority over its inland waters. The coastal state also has the civil and criminal jurisdiction over its internal waters. If the law and order situations in the inland waters of the coastal area are hampered, it shall definitely apply its criminal jurisdiction.

IV. Concurrent Jurisdiction between Flag State and Coastal State

In general, a coastal state can use its internal waters authority to enforce its laws against foreign ships, however the flag state's courts may have some say in the matter. (i.e., the state flying the specific ship's flag) may also take action in cases where crimes have been committed on board.

When a merchant ship enters foreign internal waters, the jurisdiction of the flag state comes into conflict with the jurisdiction of the territorial state. In such case, according to territorial principle, the territorial state and the flag state have jurisdiction over that ship. It is called "concurrent jurisdiction". As a matter of comity, competing claims to jurisdiction will be adjusted between them. But failing agreement it must be conceded that the territorial state has prior claim, at least in criminal because it is in superior position to enforce its law.

British Practice states that foreign merchant ships operating in internal waters are entirely within the territorial state's authority. However, in criminal situations, British authorities often do not become involved unless the flag state representative or the people in charge of the vessel asks them to, or unless there is a possibility that the peace and order in the port would be jeopardised. As the British, it is up to the territorial state's authority to determine whether or not to get involved in each situation.

As the practice of the US in *Wildenhus Case* (1887), 120. U.S, the Belgian steamer Noorland was docked in the port of New Jersey. On October 6, 1886, one of the Belgian members of the crew, Joseph Wildenhus, fought with another Belgian crew member Fizantas, below the docks. Fizantas died as a consequence of wound. Wildenhus was charged for murder and sent to the jail. Belgian authority claimed the case to be handled by Belgian law because no third person from another country was involved and the crime had taken place between two Belgian citizens and both of them were also the crews of the same ship. They raised the contention that, as the commission of the crime had not disturbed the public order or law or the tranquillity of the shore. The US circuit court did not grant the contention and refused to deliver the arrested persons. The consul of Belgium appealed against the decision.

The USA Supreme Court ruled that because the crime involved a commission to disturb peace and public order on land or in the port, the stabbing and death of one Belgian seaman by another on board a Belgian ship in an American port fell under local jurisdiction.

The French practice can be found in Council d' Etat in *the Newton and the Sally*. In this case, on American ship in French port, a seaman assaulted another in one of the ships. American consul claimed exclusive jurisdiction. It was held that members of the crew were subject to local jurisdiction for offences. But in this case the local authorities should not interfere in the internal discipline of vessels unless their assistant was invoked or the peace of the port was disturbed.

If a ship enters port in distress it is immune from every local law and paying local duties, though it is not immune from every local law, including the obligation to make a true report to the customs authorities.

In addition, *R VS ANDERSON*¹1868 is found that James Anderson an American citizen was indicted for murder on board of a vessel belonging to the port of Yarmouth, Nava Scotia. The ship was registered in Great Britain. At the time when an offence was committed (in Great Britain) the ship was moving up the river Garronne, on its way to the French city of Berdeaux, some ninety miles from the cost of France. That was the internal water of the France Empire.

The accused was detained on the ship until it return to the England and was charged with murder in the central criminal court of London. He was convicted of manslaughter, despite his plea that the court lacked jurisdiction to try him since the offence has committed in France territory, in colonial vessel by the American citizen. The judgment of the criminal court was appealed.

The appellate court affirmed the conviction holding that British court had jurisdiction to try the offence committed abroad in the British ship.

The Court of Criminal Appeal concluded that the accused was subject to both American jurisdiction because he was an American citizen and French jurisdiction because he had committed an offence on French territory. Additionally, because the ship was registered in Britain, the accused was also subject to British jurisdiction because British courts protect British vessels wherever they may be at any given time. The French authorities could have enforced laws that would have resulted in Anderson's arrest and trial for his offence; however, they had not suspended their right to prosecute Anderson for disrupting public order and port tranquilly. Great Britain, as the vessel's owner, exercised its authority by prosecuting Anderson.

In the case of *STATE VS YANNOPULOUS*², Mr. Yannopulous was a Greek national. He was the member of crew of a ship belong to Cypress. The ship was anchored in an Italian port with a huge quantity of marijuana. Carrying marijuana is itself an offence. Mr. Yannopulous was arrested

¹ (1868) 11 Cox Crime Cases 198 (Court of Criminal Appeal, England)

² Italy vs. Greece, 1974

and send to the court alleging that his carrying of marijuana was a threat to the peace and public order in the shore.

The Italian court acquitted Mr. Yannopulous with honour and set him free. Under the customary International law the coastal state has both the civil and criminal jurisdiction in its internal matters. But if the offence is committed on board of the vessel, the flag state has the jurisdiction, which is concurrent to that of the state whose national was the offender.

There is an exception to the general rule, which provides that if the offence disturbed the peace, tranquillity and good order of the shore, then the coastal state can try such offense on the ground of public interest.

There is no proof in this instance that Yannopulous's actions disrupted the calm, peace, and law and order in Port Nepalese. Even though Mr. Yannopulous was discovered in possession of the drugs, his counsel maintained that he was just in possession and had no plans to sell. Whether an act by an immigrant damages the peace, tranquilly, and good order of that port or that country would be decided unilaterally by the coastal state.

Conclusion

Under the customary international law the coastal state has both the civil and criminal jurisdiction in its internal matters. The foreign vessels, shall, if they are present in the internal waters of the coastal State, be subject to the authority and jurisdiction of this State. They shall be subject to domestic laws and regulations that maritime navigation, such as laws relating to security, fiscal, health and customs legislation and others. The intervention of the coastal State authorities in respect of the facts on the foreign vessel shall be limited to those of direct interest to it and accordingly, if the vessel fails to pay the prescribed consideration for the services rendered to the vessel, the jurisdiction of the coastal State shall intervene. If the crime results in disturbances affecting the security and stability of the port or at the request of the captain or the consul of the flag State, the coastal State have the right to arrest the perpetrators of the crime on board. But where the crime occurred among the members of the crew of the vessel, or internal affair of the vessel, the criminal jurisdiction of the flag State prevails.

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