
CONFLICT BETWEEN COASTAL STATE AND FLAG STATE JURISDICTION

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I. INTRODUCTION

The coastal state has the right to exercise authority over its internal and territorial waters and can formulate legislations pertaining to the safety, environment and security of their maritime boundaries. On the other side, the flag state has the regulatory control over the ship which bears the flag of the concerned flag state and it has the exclusive rights pertaining to the high seas and it has to make sure that the ship which is registered under the purview of the concerned flag state shall not deteriorate the environment of the coastal state. Any form of misconduct by the ship shall make the flag state liable to resolve or mitigate the persisting dispute. At times there comes a situation where the rights of both the states overlaps. This paper focuses on how the international instruments helps in mitigating the disparities and it probes into the efficacy of the international legal instruments in resolving and providing solution for the same. The significance of maritime jurisdiction was addressed in the dichotomy between mare liberum and mare clausum. The concept of mare liberum is that the sea is for everyone or freedom of seas in contrary to the above notion mare clausum refers to the restricted sea or closed sea where the people from other ethnicity or other region can't have access to that particular area of waters. Later, many conventions were demarcated to mitigate the disparities and UNCLOS was enacted in 1982 which demarcated appropriate zones which helps in maintaining and stipulating balance between the mare liberum and mare clausum.

RESEARCH QUESTION:

- 1.) Whether the existing international instruments and authorities mitigates overlaps with regards to the rights between the coastal state and flag state?
- 2.) Whether the existing international instruments and authorities maintain balance between the Mare Liberum and Mare Clausum?

RESEARCH OBJECTIVE:

The main objective of the research is to determine the efficiency of the international instrument in mitigating the dispute arises out of overlapping between the rights of coastal state and flag state. Another objective of this study is to examine how the international instruments regulates balance between the Mare Liberum and Mare Clausum.

RESEARCH METHODOLOGY:

The methodology of this research into jurisdictional conflict between coastal state and flag state law is strictly doctrinal, relying on primary and secondary sources. The primary sources include international conventions and treaties, specifically the United Nations Convention on the Law of the Sea (UNCLOS); judicial opinions; arbitral awards that interpret conflicts of jurisdiction and other relevant international legal documents that detail the rights and obligations of coastal and flag states. The secondary sources consist of scholarly articles, commentaries, research papers, treatises on the law of the sea, and reports compiled by international organizations, which provide critical analysis, interpretative value, and comparative features to support the commentary and advocate for the conclusions and findings.

LIMITATION:

The notions enshrined under this paper focuses only on determining the efficiency of the international instruments and it examines provisions pertaining to the rights of the flag state and coastal state. The research is confined to study how the international instruments helps in mitigating disputes arises out of overlapping between the rights of coastal state and flag state.

SCOPE :

The scope of this study covers rights and limitation of both the flag state and coastal state. It includes sanctions which can be imposed towards the violation of such rights and liabilities. The main scope of this study is to investigate the coherent nature of international instrument in balancing the Mare Liberum and Mare clausum.

II. BACKGROUND

The United Nations Convention on the Law of the Sea (UNCLOS), 1982, serves as the

cornerstone for defining and balancing the rights and obligations of both coastal states and flag states in the governance of maritime spaces. The Convention lays down a comprehensive legal framework that ensures the peaceful utilization of ocean resources, while attempting to strike a balance between the sovereignty of coastal states over their adjacent waters and the principle of freedom of navigation enjoyed by flag states. The rights and responsibilities demarcated under UNCLOS¹ are designed to reduce conflicts, promote cooperation, and ensure that the seas are used in a manner that is beneficial to the international community as a whole.

A central area of tension arises from the dual nature of jurisdiction over maritime zones. Coastal states are granted sovereign rights over their territorial waters, exclusive economic zones (EEZ)², and continental shelves for purposes of exploration, exploitation, conservation, and management of natural resources. This sovereignty also extends to certain enforcement rights, including customs, immigration, fiscal, and environmental regulations within these zones. However, at the same time, UNCLOS enshrines the principle of freedom of navigation and the right of innocent passage for vessels flagged under other states, particularly on the high seas and through straits used for international navigation. This creates a delicate balance wherein coastal states seek to protect their sovereign interests while flag states emphasize their jurisdiction over vessels that fly their flag.

The conflict between coastal state and flag state jurisdiction becomes more pronounced in areas such as fisheries management, marine pollution control, security enforcement, and regulation of maritime commerce. Coastal states may wish to impose stricter environmental or security controls within their maritime zones, while flag states assert that only they have primary jurisdiction over their vessels in accordance with the principle of exclusive flag state control. For example, while a coastal state may have legitimate concerns about illegal fishing, pollution, or trafficking in its EEZ, its ability to regulate foreign vessels is subject to limitations under UNCLOS, which often prioritizes the rights of the flag state. This overlapping jurisdiction has led to legal ambiguities and disputes, particularly in cases where flag states are unable or unwilling to enforce international obligations effectively.

Thus, the background of the conflict lies in the inherent tension between coastal state sovereignty and the global principle of navigational freedom. UNCLOS attempts to harmonize

¹ *UNCLOS+ANNEXES+RES.+AGREEMENT*, https://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf (last visited Oct. 2, 2025).

² Robert Beckman & Tara Davenport, *The EEZ Regime: Reflections after 30 Years* (2012).

these competing interests by providing structured jurisdictional boundaries, dispute settlement mechanisms, and cooperative frameworks. However, the practical application of these provisions often gives rise to disputes, making this area of maritime law both complex and dynamic.

III. FLAG STATE JURISDICTION:

Under the United Nations Convention on the Law of the Sea (UNCLOS)³, every ship is required to sail under the flag of a particular state, and by doing so, it assumes the nationality of that state. This means that the “flag state” – the country whose flag the ship flies – has primary responsibility for exercising jurisdiction and control over the vessel, particularly on the high seas where no single coastal state has authority. Article 91 of UNCLOS makes it clear that each state has the right to set the rules for ship registration and nationality, but once a ship is registered, it must follow the laws and regulations of that flag state⁴.

The responsibilities of a flag state go beyond merely allowing a ship to carry its flag. It must ensure that vessels are properly registered, safely maintained, and operated in line with international standards. This includes enforcing safety rules to avoid collisions, setting fair labor conditions for seafarers, ensuring measures are in place to prevent marine pollution, and cooperating to combat serious crimes such as piracy, smuggling, and human trafficking. Article 94 of UNCLOS specifically highlights the obligation of flag states to maintain effective jurisdiction over ships flying their flag in administrative, technical, and social matters.

Article 92 of UNCLOS establishes the principle that ships on the high seas are subject to the exclusive jurisdiction of their flag state. However, this rule is not absolute. In certain exceptional circumstances, other states may intervene. For example, in cases involving piracy (Article 105), the slave trade (Article 99), unauthorized broadcasting (Article 109), or during a lawful hot pursuit (Article 111), the jurisdiction of the flag state may be limited. Similarly, special rules apply to warships and government vessels, which enjoy sovereign immunity under Articles 95 and 96.

³ *UNCLOS and Its Limitations as the Foundation for a Regional Maritime Security Regime: Korean Journal of Defense Analysis: Vol 19, No 3*, <https://www.tandfonline.com/doi/abs/10.1080/10163270709464140> (last visited Oct. 2, 2025).

⁴ Pontus Karlsson, *Flag State vs. Coastal State- Jurisdictional Challenges Regarding Shipping Operations Affiliated with Activities in the Norwegian Petroleum Sector* (2011), <http://lup.lub.lu.se/student-papers/record/1974254>.

In practice, this framework seeks to balance the freedom of navigation on the high seas with the need for accountability. But problems often arise when states fail to exercise proper control over their registered ships. This is commonly seen in the phenomenon of “flags of convenience,” where ships are registered in states with weak enforcement mechanisms, leading to safety risks, labor exploitation, and environmental harm.

In short, the system of flag state jurisdiction is designed to give ships a clear legal identity while ensuring that someone is always responsible for their conduct at sea. It reflects the principle of freedom on the high seas but also ties that freedom to duties of safety, security, and compliance with international law.

IV. COASTAL STATE JURISDICTION:

The powers of a coastal state under UNCLOS change depending on how far from the shore you go. In internal waters, such as bays, rivers, and ports, the coastal state enjoys complete sovereignty, just as it does on land. Foreign vessels do not have any right to pass through these waters unless permission is explicitly granted. This full control is recognized under Article 2 of UNCLOS, which places internal waters entirely under the coastal state’s authority⁵.

Moving outward to the territorial sea, which extends up to 12 nautical miles from the baseline, the coastal state also has sovereignty. However, this power is balanced by the right of “innocent passage” for foreign vessels. As provided under Articles 17–19 of UNCLOS, ships from other states may pass through territorial waters as long as they do not threaten the peace, order, or security of the coastal state. In practice, this means that a foreign vessel can transit these waters, but if it engages in activities like spying, weapons testing, or pollution, the coastal state has the right to intervene.⁶

Beyond this lies the contiguous zone, stretching up to 24 nautical miles from the baseline. Here, the coastal state does not have full sovereignty but instead has certain enforcement powers. According to Article 33 of UNCLOS, a state can regulate issues like customs, taxation, immigration, and public health. This limited jurisdiction allows coastal states to prevent

⁵ Mark Davidson et al., *The CoastView Project: Developing Video-Derived Coastal State Indicators in Support of Coastal Zone Management*, 54 COASTAL ENGINEERING 463 (2007), <https://www.sciencedirect.com/science/article/pii/S0378383907000178>.

⁶ *Jurisdiction over Foreign Merchant Ships in Internal Waters*, in JURISDICTION OF THE COASTAL STATE OVER FOREIGN MERCHANT SHIPS IN INTERNAL WATERS AND THE TERRITORIAL SEA 45 (Haijiang Yang ed., 2006), https://doi.org/10.1007/3-540-33192-1_3.

violations of their domestic laws within their territorial sea while still respecting the broader principle of free navigation.

The exclusive economic zone (EEZ)⁷, extending up to 200 nautical miles, introduces a special balance between national control and international freedom. Under Articles 55–57 and 56 of UNCLOS, coastal states have sovereign rights to explore, exploit, and conserve natural resources—such as fisheries, oil, and gas—within the EEZ. At the same time, other states retain freedoms such as navigation, overflight, and the laying of submarine cables and pipelines, but they must exercise these rights with respect for the interests of the coastal state.

Closely linked to the EEZ is the continental shelf, which can extend even beyond 200 nautical miles if the geological formation continues further. As stated in Articles 76 and 77 of UNCLOS, the coastal state has exclusive rights to exploit resources like minerals and hydrocarbons in the seabed. However, the rights of other states to lay cables or pipelines remain, provided they obtain the coastal state's consent.

Finally, when we reach the high seas, UNCLOS makes it clear in Articles 86–89 that no single state may claim sovereignty. The high seas belong to everyone, and freedoms such as navigation, fishing, scientific research, and overflight are open to all. However, these freedoms come with responsibilities, as states are expected to cooperate in conserving resources and maintaining order.

In sum, coastal state jurisdiction gradually decreases the farther we move from the shoreline. From complete sovereignty in internal waters to shared rights and freedoms on the high seas, UNCLOS builds a system that balances the authority of coastal states with the principle of the ocean as a common heritage of mankind. This balance is at the heart of many disputes, as states often struggle between asserting control and respecting international freedoms.

V. CASE STUDIES

There are several case studies in which the jurisdiction of the coastal state as well as the flag state overlaps. One among that prominent case law is that **ENRICA LEXIE CASE**⁸ the facts of the case is that two fisher man Ajesh binki and Valentine jelastine were shot dead by two

⁷ Gemma Andreone, *The Exclusive Economic Zone*, in *THE OXFORD HANDBOOK OF THE LAW OF THE SEA* 0 (Donald Rothwell et al. eds., 2015), <https://doi.org/10.1093/law/9780198715481.003.0008>.

⁸ *Cases | PCA-CPA*, <https://pca-cpa.org/cases/> (last visited Oct. 2, 2025).

Italian officials. India arrested them and instigated criminal proceedings against those Italian officials. First question which was raised in this case is that whether kerala high court has the jurisdiction to prosecute the Italian citizens and those Italian citizens invoked functional immunity. This case was moved to the supreme court and supreme court stressed to decide whether those Italian citizens has the functional immunity. After this it was referred to arbitration under the virtue of annexure VII of the UNCLOS and it was contended that those Italian officials violated several articles of the United Nations Convention on Law of the Sea. The question which was persisted is that whether those Italian officials has the right to invoke functional immunity and india raised contentions that with regards to immunity the arbitration tribunal has no jurisdiction to decide which has been enshrined under the virtue of article 288(1) of the UNCLOS. The tribunal considered the article 92(1) of the UNCLOS and mentioned that the tribunal has the incidental jurisdiction to rule on immunity. The award stated that the India's action against the Italian officials is not in accordance with the procedure established under the purview of UNCLOS and it also mentioned that the Italians can invoke the functional immunity. India was held liable for the compensation while it left open for many doctrinal debates. The main notion which was criticized is that the award mentions that the functional immunity prevails over the domestic legislation.

THE WILDENHUS CASE (1887) :

In this case, a belgian steamship was docked in the new Jersey port. During altercations, The crew member Wildenhus stabbed bevans and the public near to the port saw this and had repercussions. The US government arrested wildenhus and Belgian government argued that since this particular incident happened on board ship it comes under the jurisdiction of the flag state (Belgian government) and it also stated that according to the US-belgium treaty (treaty of 1858) consular jurisdiction shall be invoked in case of disputes pertaining to the offences which occurs on merchant vessels hence they demanded that wildenhus should not be prosecuted by pursuing the US law. After considering all these contentions the US supreme court passed a judgement stating that Belgium government has jurisdiction over the minor offences which happens in the merchant vessel. But in this case it was a heinous crime against humanity and it also impacted the public order and posed threat to the public safety therefore it was decided that the wildenhus shall be prosecuted under the virtue of the US rules and regulations. This case also addressed that the difference between the public order matters and internal matters. The offences (public order matters) pertaining to homicide, violence, theft

etc.. shall come under the jurisdiction of the coastal state in contrary to public order matters the internal matters can be the offences pertaining to discipline, quarrels, minor injuries etc.. and it comes under the purview of the flag state jurisdiction⁹.

M/V NORSTAR CASE (PANAMA V. ITALY, ITLOS 2019):

M/v Norstar was an panamanian- flagged oil bunker which provided refuelling services to the yacht, ships etc.. it carried out its business in the high seas region. Italy claimed that the oil tanker involved in some economical scam activity and requested for arrest. Spain government arrested that particular ship. This particular case came before the ITLOS for the solution. Italy raised its contention by stating that the arrest of that particular ship is well within the jurisdiction of coastal state because it affects the economic interests of the state. In contrary the panama government contended that the vessel was providing service to the ships by offering fuel and it was sailing through the high seas region the coastal state has no jurisdiction to arrest any ship which sails through the high seas which infringes the freedom of navigation on the high seas which is guaranteed under the article 87 of the UNCLOS. After observing the contentions raised by both the parties ITLOS decided that the act of Italy is not in accordance with the procedures established under the purview of UNCLOS and it purely infringed the freedom of navigation on the high seas which is guaranteed to the Panamanian oil bunker under the article 87 of the UNCLOS. This ruling explicitly denoted that any actions pertaining to domestic law can be exercised only in territorial waters of the coastal state unless exeptions provided under the provisions of UNCLOS¹⁰.

REX V. ANDERSON (1868):

In this case the British vessel HMS Brunswick was anchored 3 mile away from the coast of the French port. British subject named Anderson committed homicide inside the ship and he was prosecuted under the purview of the British Law. Later, French claimed that since this incident occurred in the territorial waters of the French government, as a coastal state it has jurisdiction to prosecute the offender. The British argued that the subjects involved in this particular incident are British people and the flag state of the ship is Britain. Therefore, British government demanded that they have jurisdiction over this dispute. After analysing the notions,

⁹ *Wildenhus' Case*, 120 U.S. 1 (1887), JUSTIA LAW, <https://supreme.justia.com/cases/federal/us/120/1/> (last visited Oct. 2, 2025).

¹⁰ *The M/V "Norstar" Case (Panama v. Italy)*, <https://www.itlos.org/en/main/cases/list-of-cases/case-no-25/> (last visited Oct. 2, 2025).

the British court decided that the action of Anderson amounts to internal crimes because it did not disrupt the public order or peace. Hence it was decided that the British government has the jurisdiction to prosecute the offender Anderson according to the rules established under the virtue of British Law. This case highlighted the difference between internal acts and external acts. It also emphasized that the coastal state shall have jurisdiction to the offences which affects the public order or local peace¹¹.

VI. CONCLUSION:

After analysing the provided definitions and case laws with the research question we can infer that in certain circumstances the concerned authority failed to mitigate the balance between the flag state jurisdiction and coastal state jurisdiction. For example, in *Enrica Lexie* case the incident occurred in the contiguous zone of Indian maritime boundary. Therefore according to the provisions enshrined under the purview of the UNCLOS has to be exercised but the Italian people claimed the functional immunity and the arbitral tribunal which was constituted under the virtue of the annexure VII of the UNCLOS accredited their claim which was criticized by many individuals. Therefore in certain cases the existing international instrument failed to envisage the balance between the *Mare Liberum*¹² and *Mare Clausum*¹³ Mare.

¹¹ *Rex vs. Anderson* (1868). 11 Cox Crim Cases 198 (Court of Criminal Appeal, England). - References - Scientific Research Publishing, <https://www.scirp.org/reference/referencespapers?referenceid=1989866> (last visited Oct. 2, 2025).

¹² *Mare Liberum* | Work by Grotius | Britannica, <https://www.britannica.com/topic/Mare-Liberum> (last visited Oct. 2, 2025).

¹³ *MARE CLAUSUM* Definition & Meaning - Merriam-Webster, <https://www.merriam-webster.com/dictionary/mare%20clausum> (last visited Oct. 2, 2025).

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